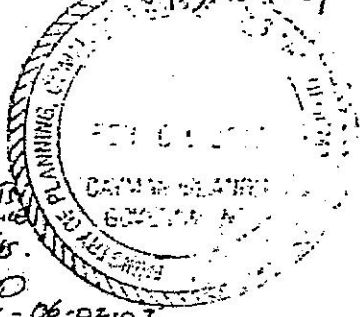


- Director
- Deputy Secy. Secretary
- Admin. Officer
- Department Secretary
- Personal Secretary
- Admin. Secretary
- Office of Telecomm.
- High Entry, ~~Control~~ ~~Sec~~

*Amended by PS on 12/2/03 JA*



*LR/L(A)*

*PLEASE NOTE my Comments  
of PREVIOUS Correspondence  
LET'S SPEAK to THIS.*

# Memo

**To:** Director of Planning (Attn: Haroon Pandohie)

**From:** Stephen Hall-Jones – Senior Crown Counsel (Civil)

**CC:** Solicitor General; Registrar of Lands





**Date:** 5<sup>th</sup> February 2003

**Re:** BEACH ACCESS - PRESCRIPTION

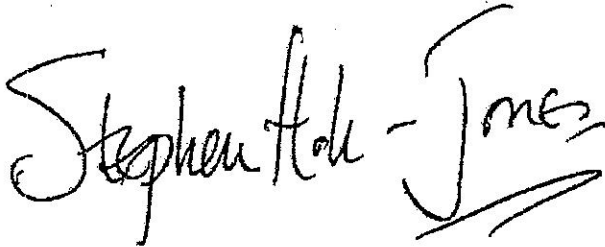
1. Your memo of the 30<sup>th</sup> January 2003 with attachments refers. (Copy of memo only attached to this reply).
2. I am not sure that you need to, or even can, take positive pro-active steps to achieve your aim.
3. The Prescription Law (1997 Revision) (the "Law") has the effect (indeed as does common law prescription) of *creating* new rights in land. (Contrast the concept of adverse possession which has the effect of *extinguishing* rights).
4. Thus under both section 2 (in relation to profits and easements generally) and section 4 (in relation to beaches and beach access) of the Law, provided the conditions in each of those sections are satisfied, the rights are created good as against all the world.
5. There is no need to "perfect" title to the rights by a court application (even if such a thing were possible) because the Law does it for you.
6. The only time envisioned by the Law when the Court will adjudicate on the question is in relation to a s.4(1) prescriptive right where there is a "dispute". Section 9 of the Law provides that a party to the dispute may lodge a plaint in the Grand Court.
7. That doesn't mean that the "owner" of a prescriptive right (whether the owner of a dominant tenement or a member of the public in relation to a PROW) could not seek a declaration from the Grand Court as to his acquisition of a



prescriptive right but it would not be possible for there to be some kind of "class action" for a universal declaration brought by a "representative" of the class. There would have to be individual applications in respect of each PROW brought by an individual member of the public.

8. In the case of a private easement of way, the litigants would have to be the owners respectively of the dominant and servient tenement and usually comes about because the owner of the servient tenement has somehow obstructed the way so that the owner of the dominant tenement cannot exercise his rights and has to litigate to get a remedy. 
9. In the case of a "public right of way" under section 4 a member of the public who has been obstructed in his use of the access way to the beach or of the beach itself (i.e a dispute has arisen) would be able to seek a declaration that the public have acquired prescriptive rights over the access or the beach. 
10. However, I do not think that a Government Department could be a Plaintiff in an action seeking a declaration under s.9 that any given access was a PROW under s.4. I think the Plaintiff would have to be the very member of the public who was in dispute. 
11. However, a member of the public claiming on behalf of the public that he had acquired a right of way under s.4 of the Prescription Law could apply to the Registrar for the registration thereof under s.138(2) of the Registered Land Law (R) of a public right of way although since a PROW is not technically an easement he may be better off seeking a declaration from the Grand Court that the track, path etc was a PROW together with an injunction restraining the owner of the land over which the PROW runs from preventing a member of the public from using the way etc. 
12. What I am really getting at is that individual members of the public must launch individual law-suits against the individual landowners for individual declarations by the Court. Neither the Department of Planning nor L&S could be a Plaintiff because the Government Department is not a member of the public or a class of public.
13. The problem is that individual law suits are expensive and individuals may not be willing to spend lots of money establishing a public right of way on behalf of the public generally. The answer is for him to form an association to raise money from the public to fund all the law suits needed, unless the Ministry is willing to commit Government revenue to funding the legal actions.
14. It may be that some of the actions could be consolidated where the facts are identical, the disputes identical, the defences identical, the claim under s.4 identical, etc etc. Unlikely to be the case in most actions.

15. For the reasons explained, I have no instructions to seek Grand Court declarations in any case contained in your memo and attached documents. I am afraid that individual persons who are "in dispute" will have to seek the appropriate Order of the Court.

A handwritten signature in cursive script that reads "Stephen Hall-Jones". The signature is written in black ink and is positioned above a horizontal line.

---

**Stephen D. Hall-Jones**

**Senior Crown Counsel (Civil)**

# Memorandum



To: Solicitor General  
 From: Director of Planning  
 CC: CO, P, C, W, & IT  
 Date: January 30, 2003  
 Re: Beach Access and the Prescriptive Law.

Please find, under cover of this memo, proposals to have a number of historic accesses to the beach declared public under the Prescription Law as shown on the maps provided, and listed in the accompanying tables.

These proposals are the result of a number of supporting affidavits signed by various members of the public attesting to the continuous use of these access points over the past 20 years.

The Department supports this move and would be most grateful if you could process these affidavits, and supporting documentation through the courts, at your earliest convenience. As you are aware, the increased population and tourist arrivals result in decreased areas for residents. Ensuring that all residents are allowed to access the beach and/or sea without too much difficulty will significantly contribute to our social development.

If you have any questions or require any further information, please do not hesitate to contact the undersigned or myself.

Respectfully Yours,

Haroon Pandohie  
 Planning Assistant I  
 For Director of Planning

- Minister
- Senior Asst. Secretary
- Admin. Officer
- Assistant Secretary
- Personal Secretary
- Admin. Secretary
- Office of Telecomm.
- Mgr. Emerg. Comm Sys.



HP/hp

① you may HAVE SEEN  
 my COMMENTS ON  
 PREVIOUS CORRESPONDENCE.

②  
 05.02.03