



W. T. HENDERSON, K. C.  
CITY SOLICITOR

October 22nd, 1927.

Miss Winifred Matheson, B.A.,  
Secretary, Brantford Public Library Board,  
City.

Dear Madam:

I am in receipt of your favour of the 19th inst. with which are enclosed two communications from Mr. E. R. Read and a copy of the resolution of the Board referring these letters to me for my opinion and report.

It is set forth in these letters that the property of the Brantford Public Library Board has appurtenant to it a right-of-way of twelve feet in width extending from its property to Darling Street, and that this right-of-way is contained in the deed to the Board of its property in the following words:

"Together with a right of way from the  
"lands hereby conveyed to Darling Street  
"over the south half of said Lot 15 as  
"recorded in conveyance of the said  
"south half to William Cochrane, said  
"right of way being twelve feet in  
"width."

In the deed of the property to William Cochrane and also in the deed from him, the right of way is reserved as follows:

"Reserving to the Rev. Abraham Nelles  
"and his heirs and assigns as a right  
"of way the most easterly portion of  
"that portion of said Lot 15, being  
"twelve feet in width and extending  
"from Darling Street to the north half  
"of said Lot 15."

I have made enquiry from the Water Commissioners and find that the only record they have is to the effect that in September 1902 an application signed by the late R. S. Schell on behalf of the Trustees was made for a water connection to the Free Library, and it would appear that the connection was made by a pipe running under the

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right of way in question, as there then existed no water main on George Street between Darling and Wellington Streets, nor is there now any such main.

I am further informed that when the recent additions were made to the Park Baptist Church this pipe was found to be running through the land, and a temporary connection was made and the location of the pipe was altered so that it now runs over the floor close to the rear wall of the basement of the Church and I believe is covered up by the Church's coal supply.

The grant of a right of way over the south half of the lot would not, in my opinion, carry with it a right to instal and maintain a water main beneath the surface of the land, nor would it, in my opinion, confer the right to carry water pipes or other service pipes over the surface of the land, such not being usually contemplated in the grant of a right of way and being contrary to the essential idea of a right of way.

I am not advised as to whether any arrangement was made, or under what circumstances the location of the pipe was changed.

It would appear to me to be manifestly an unwise thing for the Free Library Board to enter into an agreement by which it would guarantee the Church property against damages in the event of a break occurring in this water pipe. It is not at all clear to me that in any event such a guarantee would come within the jurisdiction of the Trustees of the Free Library to enter into.

It would seem to me in the present circumstances to be a sufficient answer to the suggestion made, that it is beyond the powers of the Trustees of the Free Library to enter into such an agreement.

If it becomes necessary to do so, a water connection can be provided from Darling Street along George Street to the front of the Library property. No doubt this would be a considerable expense, but it would appear, in my view, very much preferable to your giving a guarantee such as asked for, even if you could do so.

Yours very truly,

*W. T. Hudson*