



Land Titles Clarification Act Lunch and Learn

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Role of Clear Land Ownership

- Certainty of land ownership plays a critical role in the economic and social well being
 - Land can be developed or mortgaged
 - Land can be sold to others
 - Resolves disputes between neighbours
- Proof of ownership in land can be proven legally by different means, including
 - Possession for required periods of time
 - Registration of title documents, wills

Legislative Tools

- *Land Registration Act (2003)*
 - Allows individuals to register title based on use and occupation of land anywhere in NS
- Owner Unknown Provisions (MGA)
 - Tax sale or acquisition by DNR to clear title
- *Land Titles Clarification Act - Part I (LTCA)*
 - Allows government to designate areas which need title clarification process
 - Helps residents obtain clear title to their land based on use and occupation; oral history

Land Titles Clarification

- *Land Titles Clarification Act - Part I (LTCA)* was created to assist residents in designated areas of NS to obtain title to land through claims based on proof of possession and occupation
 - Original Act: the *Community Land Titles Clarification Act* was passed in 1963
- Between 1964 and 1990, thirteen land titles clarification areas were designated
 - Required approval of municipalities

Why Were Lands Designated?

- The LTCA designated areas typically include lands with poorly documented title history, lack of wills, unclear boundaries, and confusion/disputes re land ownership
- Unclear ownership can result in tax assessment issues, loss of homes for not paying taxes, inability to mortgage and upgrade properties, limitations on economic development opportunities

Thirteen Designated Areas

- Cape Breton County
 - Little Lorraine
- Guysborough County
 - Drumhead, Lincolnville, Little Dover, Seal Harbour, and Sunnyville
- Halifax County
 - Cherry Brook, East Preston, New Road Settlement (North Preston), Oldham, and Terence Bay & Lower Prospect
- Richmond County
 - Sampsons Cove - Little Anse
- Victoria County
 - Neils Harbour - New Haven

A Bit of LTCA History

- The Department of Natural Resources (DNR) has responsibility for the LTCA
- When the Act was introduced, resources were hired by government to help residents complete applications
 - Surveyors and lawyers
- Over time, budget cuts led to elimination of LTCA staff resources
- Now DNR just processes the applications

Other Title Clarification Legislation

- Since the *Land Registration Act* (LRA) came into force certainty in land ownership can be certified by authorized lawyers
- A certificate of legal effect under the LRA can be based on adverse possession
 - LRA 37(9)(b): lawyer’s opinion may be based on a chain of title “to the standard required pursuant to the *Limitation of Actions Act*”
- Same 20 year standard applies for LTCA

Why Use LTCA Instead of LRA?

- The LTCA doesn't set standard for proving claim to ownership, so the test could be a lesser standard than under LRA
 - DNR generally looks for 20 years use and occupation
- LTCA provides mechanisms for removing judgments, which can assist clients
- Note: Registration of an LTCA certificate of title triggers LRA migration

LTCA Practices & Procedures

- Application form for LTCA claim is available online at DNR website:
 - <http://novascotia.ca/natr/titles-clarification/>
- Application requires:
 - Description of claimed property (PID, AAN)
 - Sketch that accurately shows the location and the size of the parcel (acres or hectares) in relation to neighbours and other local features
- Applicant must be resident of Nova Scotia

LTCA Practices & Procedures (cont.)

- DNR staff check to see if the claimed land is in a designated area and ensure that it has not been registered under LRA
- Information package is sent to claimant requesting additional information
- Help of lawyer and surveyor will normally be required to complete a claim

LTCA Practices & Procedures (cont.)

- The claimant will be asked to provide the following information to support the claim
 - A statutory declaration from the claimant explaining how they have used the land, over what period of years, and what steps they have taken to let people in the community know that the land is theirs
 - A statutory declaration from a disinterested person with information that supports the claim
 - An abstract of title
 - Information on judgments and encumbrances
 - Information of any other claimants of the land

Test for Proving LTCA Claim

- The test for proving an LTCA claim is similar to the standard used for proving adverse possession
 - **Actual Possession:** The land must have been actually used and occupied by the claimants without someone else's approval. Isolated and separate acts of trespass do not establish possessory title – the claimant needs to use land as a rightful owner would use it

Test for Proving LTCA Claim (cont.)

- **Open and Notorious:** The use and occupation must take place in an open and visible manner so that others, in particular the true owner, might know of or could regularly observe it. The use and occupation will generally be widely known by others in the area. The degree of notoriety will be consistent with the nature of the area in which the land is located.

Test for Proving LTCA Claim (cont.)

- **Continuous:** The possession must be continuous for the duration of the 20 years (e.g. daily, weekly, depending on the nature and location of the land). A series of adverse possessors may be linked together to make a continuous period, if previous occupiers followed each other in succession in an unbroken chain

Test for Proving LTCA Claim (cont.)

- **Exclusive:** The possession must be exclusive, not only with regard to the true owner, but also all others. Random acts of possession by various individuals will not meet the exclusive requirement for a possessory claim. Others must be kept off the property by the claimant or have been required to seek permission from the claimant to use the land.

Locating the Land With Certainty

- It is possible that a survey plan or a drawing prepared by a Nova Scotia Land Surveyor may be needed to prove where the land is located and to provide a legal description of the land.
- Natural Resources staff will tell the claimant if more information is needed to clearly identify the location of the land.

Evidence of Use and Occupation

- Evidence can come from many sources, and should show use over time (20 years)
 - Payment of municipal taxes
 - Permits or other permissions for work done
 - Copies of the invoices (e.g. repairs, paving)
 - Photos of the claimant's use of the land
 - Posting of 'no trespassing' signs
 - Cutting firewood or pasturing animals
 - Fences, rock walls etc. to show boundaries

After Claim Proof Submitted

- Natural Resources and Justice staff review documents to determine if claim is proven
- If so, Minister of Natural Resources may sign certificate of claim, which DNR registers at appropriate Land Registry
- DNR publishes notice of registration in local newspaper and advises neighbours
- Anyone who claims to have an interest in the land has 60 days to make a claim

If Claim Not Clearly Proven

- If proof submitted is not sufficient, Minister may appoint a barrister as commissioner to examine the claim
- Commissioner has all the powers of a commissioner under Public Inquiries Act
- Commissioner recommends issuance of a certificate of claim or reports reasons for not making this recommendation
 - Minister issues certificate of claim

Judgments and Encumbrances

- Certificate of claim may not be issued unless any lien, judgment, mortgage, encumbrance or charge (except lien for municipal taxes) has been discharged or satisfied
- Certificate of claim may be issued if the lien holder etc. consents in writing

Discharge of Unenforced Liens

- Where a lien on claimed land is registered in land registry and has been in effect for two years or longer and no payment on account or written acknowledgement has been made within one year, notice can be given to the lien holder asking that steps be taken to realize on the lien
- If no steps are taken to enforce the lien within three months after service of the notice, the lien is deemed discharged

Relief from Taxes Owed

- After a certificate of claim is issued and recorded, the claimant may apply to the council of the municipality for relief of any taxes or rates that are owing
- The council may give a discharge of all or a portion of the rates or taxes either absolutely or on the condition that a certificate of title is subsequently granted

Certificate of Title

- If no one claims an interest in the land within the 60 days, DNR Minister may issue a certificate of title
- If a notice of interest is submitted, the person has another 60 days to start a proceeding in the Supreme Court
 - Supreme Court determines the extent of everyone's interests in the land
- If no action, certificate of title issued

Supreme Court Process

- If a proceeding is started, the Court may
 - declare the interests of the parties;
 - dismiss the proceeding; or
 - make such order as the Court deems just
- After a court proceeding the Minister shall
 - grant a certificate of title;
 - revoke the certificate of claim; or
 - grant a certificate of title subject to an interest in accordance with the decision of the Court

Revocation of Certificate of Claim

- If the Minister revokes a certificate of claim the revocation is filed in the land registry
- When a certificate of revocation has been filed but any objection to the claim has been removed and sixty days have elapsed, the Minister may grant a certificate of title to the applicant
- When a certificate of title is filed, title vests in the claimant (absolute and indefeasible)

Person Adversely Affected

- A person who claims to have been adversely affected by vesting of title may apply to the Minister for compensation
- Minister shall investigate
- Where investigation determines that the applicant has been adversely affected, Cabinet may order compensation
 - Amount cannot be more than the value of the land at the time the certificate of title was filed

Costs of LTCA Applications

- DNR does not charge any fees for LTCA applications
- Claimant must pay for:
 - The services of a lawyer, title searcher or paralegal to prepare statutory declaration and abstract of title
 - The cost of any land surveying services
 - Recording the certificate of title



Preston Area LTCA Pilot Project

Working Together to Help Residents

- Nova Scotia Barristers' Society (NSBS)
 - Identifying lawyers who will provide pro bono services (property and wills)
- Nova Scotia Legal Aid
 - Providing information and initial intake
- Department of Natural Resources (DNR)
 - Processing applications
- African Nova Scotian Affairs (CCH)
 - Community connection and cultural guidance

Others with Helping Roles

- Halifax
 - Clear up property tax issues; provide tax relief
- Association of NS Land Surveyors
 - Provide advice on boundaries and surveys
- Community members/groups/churches
 - Speak to community; build trust; share info
- Lawyers' Insurance Association NS
 - Educate lawyers and create intake tools
- Service Nova Scotia Land Registry

Preston Area Pilot Project

- Coordinated effort: NSBS, NSLA, DNR, ANSA, HRM, community elders
- Start in Preston Area (North & East Preston and Cherry Brook)
- Hold community information sessions
- Build on Legal Aid intake sessions
 - Gather oral history with help of local residents
 - Refer clients to pro bono lawyers
 - Work with surveyors to identify boundaries