

# WHERE'S THE LINE

## **Surveyors, Lawyers and The Land Registration Act**

ASSOCIATION OF NOVA SCOTIA LAND  
SURVEYORS

AND

NOVA SCOTIA BARRISTERS SOCIETY

APRIL 22, 2008

# HOW DID WE GET HERE?

- Land Registration Act proclaimed on March 24, 2003.
- Colchester County first to implement migration of properties into the new land registration system
- Subsequently the land registration system was rolled out across the province county by county until the last counties were implemented on March 1, 2005.

- To facilitate dialogue between three of the major stakeholders, Surveyors, Lawyers and Service Nova Scotia, a working group with representation from all three organizations was formed. Originally termed Advisory Working Group (AWG) later downsized and renamed Procedures Advisory Committee (PAC)
- Monthly meetings to discuss issues arising from implementation of LRA.

- October 19, 2005 : ANSLS Land Titles Committee presented (to PAC) concerns with parcel descriptions being submitted as part of the PDCA process. Three major issues:
  - Descriptions being changed from registered documents that potentially effected **extent** of title
  - No acknowledgement of what was changed, who changed it, why it was changed.
  - Important historical information pertinent to **boundary retracement** was being lost.
- Discussed at PAC level: regulating practice would be difficult, education would be a better avenue to explore.

- October 3, 2006, ANSLS made presentations to the Minister (Service Nova Scotia and Municipal Relations), Deputy Minister, Assistant Deputy Minister & Registrar General
- October 18, 2006 PAC Committee Meeting: An education campaign would be best designed and delivered by the ANSLS and NSBS in co-operation.
- October 25, 2006 ASNLS made presentations to the Conservative, Liberal and NDP Caucuses

- November 8, 2006 Registrar General presented to ANSLS a series of **suggestions** that could be implemented to address issues including:
  - education
  - statistical analysis of occurrences
  - system revisions to identify changes to descriptions
  - scrutiny of revised descriptions
- November 30, 2006 Registrar General and Chairman of ANSLS Land Titles Committee were interviewed on CBC radio.

- January 24, 2007, a joint meeting ANSLS/NSBS was held to discuss issues surrounding changes being made to parcel descriptions. Working Group formed to assess Lawyers'/Surveyors' role in preparation of Parcel Descriptions.
- September 5, 2007, discussion paper presented to both associations for review and comments.
- January 31, 2008, final discussion paper (containing comments) presented.

- April 22, 2008:

***WHERE IS THE LINE?***



# PDCA's, PARCEL DESCRIPTIONS and THE LAND REGISTRATION ACT AND REGULATIONS

## ELEMENTS OF THE LAND REGISTRATION ACT RELATED TO PARCEL DESCRIPTIONS:

### Purpose of Act

2 The purpose of this Act is to

- (a) provide certainty in ownership of **interests** in land;
- (b) simplify proof of ownership of **interests** in land;

### Location and boundaries

21 (1) The legal description of a parcel in a register is **not conclusive** as to the location, boundaries or extent of the parcel.

(2) Provincial mapping is **not conclusive** as to the location, boundaries or extent of a parcel.

## Application for registration

37 (7) Where the registrar cannot locate the parcel, the registrar may require the applicant to provide such further information concerning the size and location of the parcel as will permit the registrar to determine the parcel identification number for the parcel and a ***geographical representation*** of the parcel, showing it in relation to neighbouring parcels ***with reasonable accuracy***.

(8) A parcel that cannot be located with reasonable accuracy or for which the ***legal description*** does not permit the creation of a geographical representation of ***the parcel shall not be registered***.

## ELEMENTS OF THE LAND REGISTRATION ADMINISTRATIVE PROCEDURES RELATED TO PARCEL DESCRIPTIONS:

### **Parcel description certification application (PDCA) and application to amend legal description**

- 7** (4) Subject to subsection (5), a PDCA must be submitted by
- (a) an authorized *lawyer*; or
  - (b) an authorized *surveyor*

7 (10) Unless the description is for a unit as defined in the *Condominium Act*, every **legal description** submitted to a registrar must be accurate and complete and **must contain**

- (a) a description of the location, boundaries and **extent of the parcel**
- (b) a description of all **benefits, burdens** and all parcels excepted out of the legal description
- (c) **all information pertinent to the use of easements**
- (d) a **statement** that the parcel complies with, is exempt from, or is not subject to the subdivision provisions of Part IX of the *Municipal Government Act*; and
- (e) if exempt from or not subject to the subdivision provisions of Part IX of the *Municipal Government Act*, a **statement** of the exemption relied upon and the facts supporting the exemption, or an explanation of why the parcel is not subject to the subdivision provisions, as applicable.

**7 (17)** If, after considering the nature and use of both a watercourse and the land through which it flows, a PDCA submitter determines that the watercourse creates a natural boundary,

(a) the watercourse is deemed to subdivide the parcel or parcels through which it flows; and

(b) the parcel owner must make a request for PID assignment in Form 1 and provide such information as will enable the preparation of an electronic geographical representation of the parcel ***before making a PDCA.***

## Creation of legal description on subdivision

- 8 (1) If a parcel registered under the Act is subsequently subdivided, ***a legal description must be created for each subdivided parcel and the remainder lands.***
- (2) The ***registrar may***
- (a) ***create a short form legal description*** for one or more of the subdivided parcels and the remainder lands if the details shown on the plan of survey or approved plan of subdivision for a parcel referred to in subsection (1) are sufficient; or
  - (b) require the registered owner of the parcel referred to in subsection (1) to submit the ***full text*** of the information required in subsection 7(10) by submitting a PDCA under subsection 7(1) for each subdivided parcel and the ***remainder lands.***

# Parcel Description Certification Application

## Statement of Compliance:

*Please note: If the authorized submitter has confirmed the information below, staff of the authorized submitter may submit the PDCA on the authorized submitter's behalf. The authorized submitter is submitting this PDCA for approval and confirms that:*

- The owner applicant has authorized him/her to submit this application.
- ***The authorized submitter has reviewed the legal description included in this application and checked the provincial property mapping graphics. If the graphics do not match the legal description, any apparent discrepancies have been noted in the comments field of this application.***

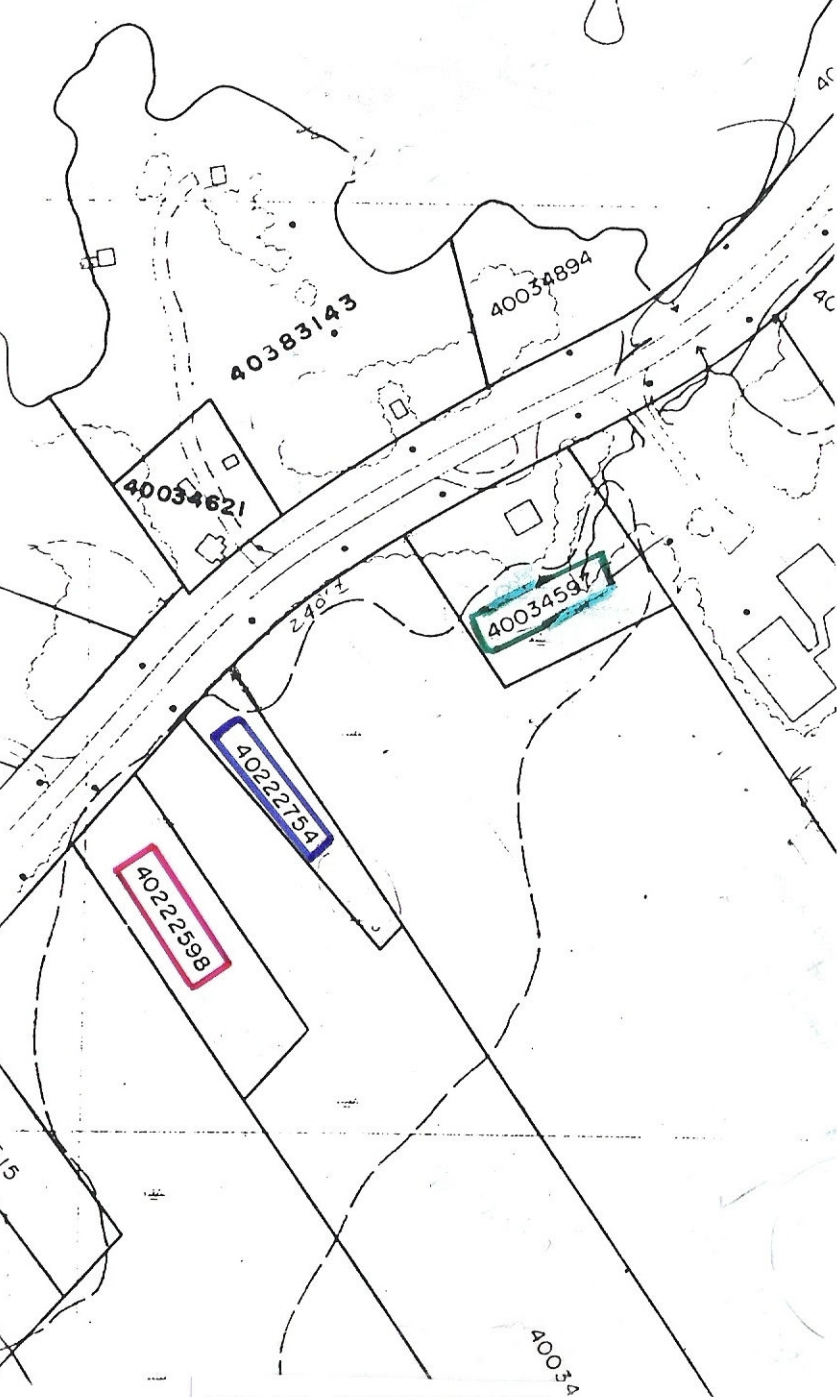
- ***The legal description is accurate and complete*** and complies with the Land Registration Administration Regulations, professional standards regarding legal descriptions and the PDCA standards as set out in the PDCA checklist.

Before an application for registration is submitted in final form the authorized submitter will confirm with the owner that ***the graphics identified by the PID appear to match the legal description for the PID.***

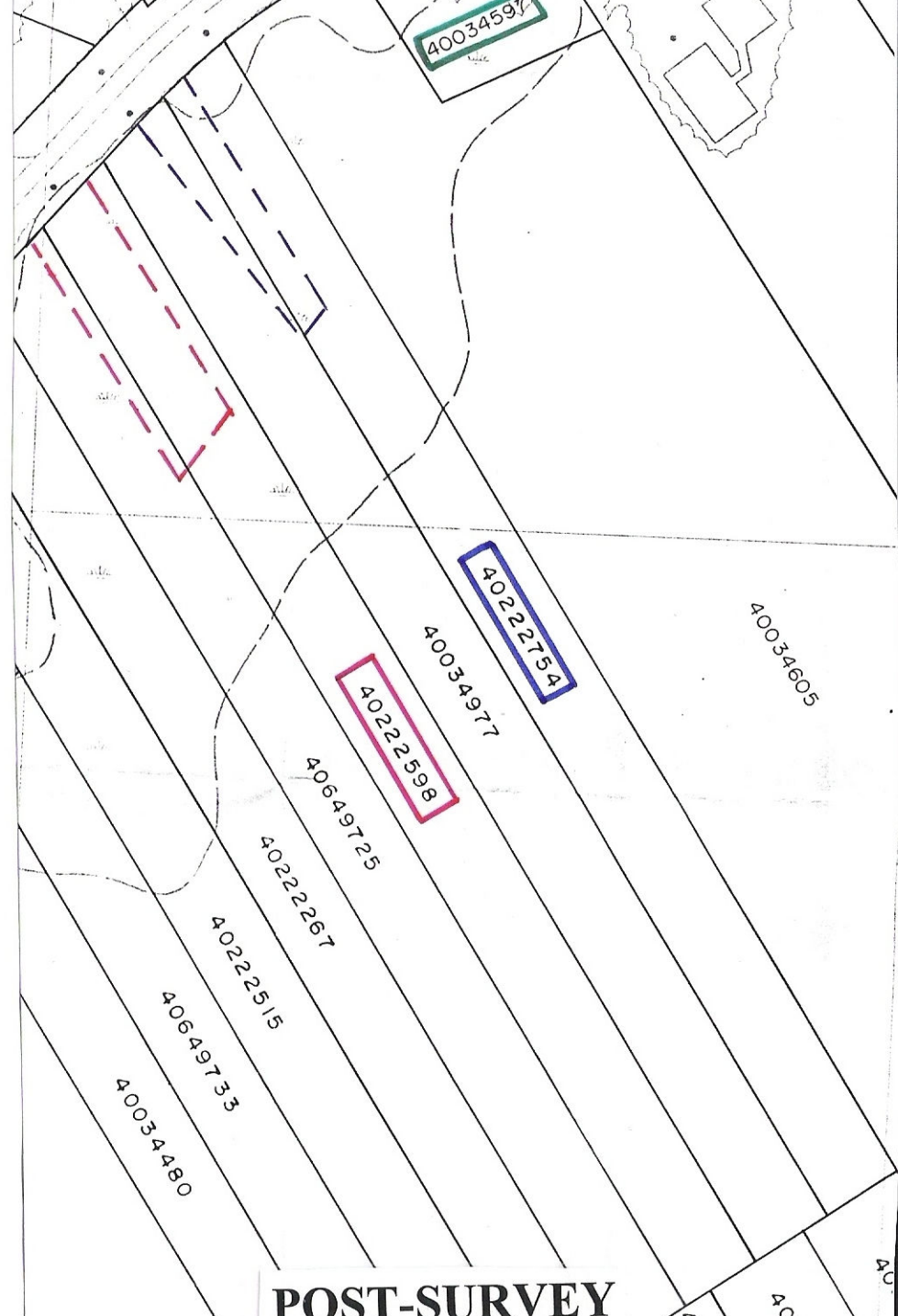


PID 40222754 PID 4022598

“four lots of woodland, two lots of which lie between Boutilier’s Lake and the main road and the other two which are known as the Beech Hill lot and the Six Acre lot respectively; ALSO.....one pasture lot and one cultivated lot,”



**PRE-SURVEY**



**POST-SURVEY**

Discussion Paper Prepared For  
Nova Scotia Barrister's Society & The Association of Nova  
Scotia Land Surveyor's  
By the Working Group Respecting Parcel Description  
Questions.

Revised January 15, 2008

Incorporating Responses from Members of the Professions  
to the Draft Discussion Paper dated September 5, 2007

# **OVERVIEW OF DISCUSSION PAPER**

**Garth C. Gordon, Q.C.**

## **MANDATE OF THE COMMITTEE**

- a. To prepare a report for The Association of Nova Scotia Land Surveyors ("ANSLS") and the Nova Scotia Barristers' Society ("NSBS") respecting matters of mutual concern about the preparation and amendment of parcel descriptions in the context of the *Land Registration Act* System.
- b. To provide recommendations to ANSLS, NSBS and Service Nova Scotia & Municipal Relations on these matters.

## **APPROACH**

The authors have based their recommendations on a functional analysis of each parcel description-related task reviewed. Functions that principally determine the location and extent of boundaries have been identified as surveyors' tasks. Functions that principally deal with legal rights other than the location and extent of boundaries have been identified as lawyers tasks.

## **THE LAW**

The Courts apply two principles of construction when interpreting statutes governing self-regulating professions:

- i. the Acts must be interpreted in accordance with their primary purpose which is the protection of the public; and
- ii. statutes creating professional monopolies which protect their members against any competition must be strictly applied – anything which is not clearly prohibited may be done with impunity by anyone not a member of these closed associations.

## PARCEL DESCRIPTIONS

The term "parcel description" is often used loosely to refer to one or more of the elements comprising a parcel description. **Schedule A** is an "Anatomy of a Parcel Description" which shows typical elements found in parcel descriptions. By using this "anatomy" it is easier to distinguish elements which are principally related to the extent of the parcel from elements which are principally related to legal interests in a parcel.



# Anatomy of a Parcel Description (Short Version)

Component	Content
Schedule Designation	Designation of Schedule -e.g. Schedule "A"
PID	Parcel Identification Number
Preamble	Introduction-states general location & often plan/parcel details.
Point of beginning	States physical point of beginning of description.
Thence paragraph - Metes	Describes direction and length of boundaries, often abutter.
Thence paragraph - Bounds	Describes abutting parcels (owners, identifiers, natural bounds).
Thence paragraph - Bearing Note	Identifies reference meridian for bearings.
Area Statement	States area of parcel.
BITB (Survey details)	Identification of boundary survey particulars.
BITB (Back Title)	Historical information for locating relevant prior instruments.
Exceptions	Description of, or reference to, exceptions to title.
Reservations	Description of, or reference to, reservations from title.
Benefits ("Together With...") - extent	Description of extent of benefits.
Benefits ("Together With...") – legal rights	Description of legal rights of benefits.
Burdens ("Subject To...") - extent	Description of extent of burdens.
Burdens ("Subject To...") – legal rights	Description of legal rights of burdens.
Boundary Line Agreement	Reference to boundary line agreement(s) settling boundaries
MGA Compliance Statement	Statement confirming compliance with subdivision regulations or exemptions

## Schedule B - Allocation of Parcel Description Tasks Between Surveyors and Lawyers

Land Surveyors Act, s.2(1)(j) "professional land surveying" means the advising on, the reporting on, the supervising of and the conducting of surveys to determine the horizontal and vertical position of any point and the direction and length of any line required to control, establish, locate, define or describe the extent or limitations of title;

#	Task	Does this determine/change parcel extent or limitation of title?	Can this change the parcel description ?	Survey or Function?	Lawyer Function?	Impact on System Integrity - Risks to Public/Comments?
1)	Determining the boundaries/extent of a new parcel or amending the boundaries/extent of existing parcels	Yes	New parcel - N/A Existing parcel-Yes	Yes	No	Impacts owner & affected abutters
2)	Determining the boundaries/extent of an area of a parcel subject to a claim of title by adverse possession that is not the whole of a parcel with an existing parcel description	Yes	Yes	Yes	No	Impacts owner & affected abutters
3)	Determining the extent of an easement established by grant, prescription, "use and enjoyment" or otherwise that does not affect the whole of a parcel which has an existing parcel description	Yes (limitation of title)	Yes	Yes	No	Impacts owner & affected dominant tenement PID

[Continues]

**Schedule C - Best Practices**  
**Draft Discussion Paper Prepared For**  
**Nova Scotia Barristers' Society & The Association of Nova Scotia Land Surveyors**  
**By The Working Group Respecting Parcel Description Questions.**  
**August 21, 2007**

Lawyers migrating parcels with descriptions amended in the migration process must ensure

- a there is underlying title to all parts of the newly described parcel; and
- b the consolidation complies with Part IX of the *Municipal Government Act*.

John Cameron, Sep 30/07- Page 17, 1.b and 2.b: consolidation "or other change" - it is not just an illegal consolidation you may be dealing with. There may be a piece left out in error.

Surveyors should approach the survey of parcels with descriptions amended in the migration process carefully. Ensure

- a there is underlying title to all parts of the newly described parcel; and
- b the consolidation complies with Part IX of the *Municipal Government Act*.

Refer to the adjoining owner's name in the description of a boundary – e.g. "THENCE North 10 minutes East 200 feet by the West boundary of [Lot 1, plan P-2345][lands of John Smith (Book 111, Page 222)];" This will resolve any error if a future survey of the adjoining land is given a different bearing or there is a later typo in this parcel description.

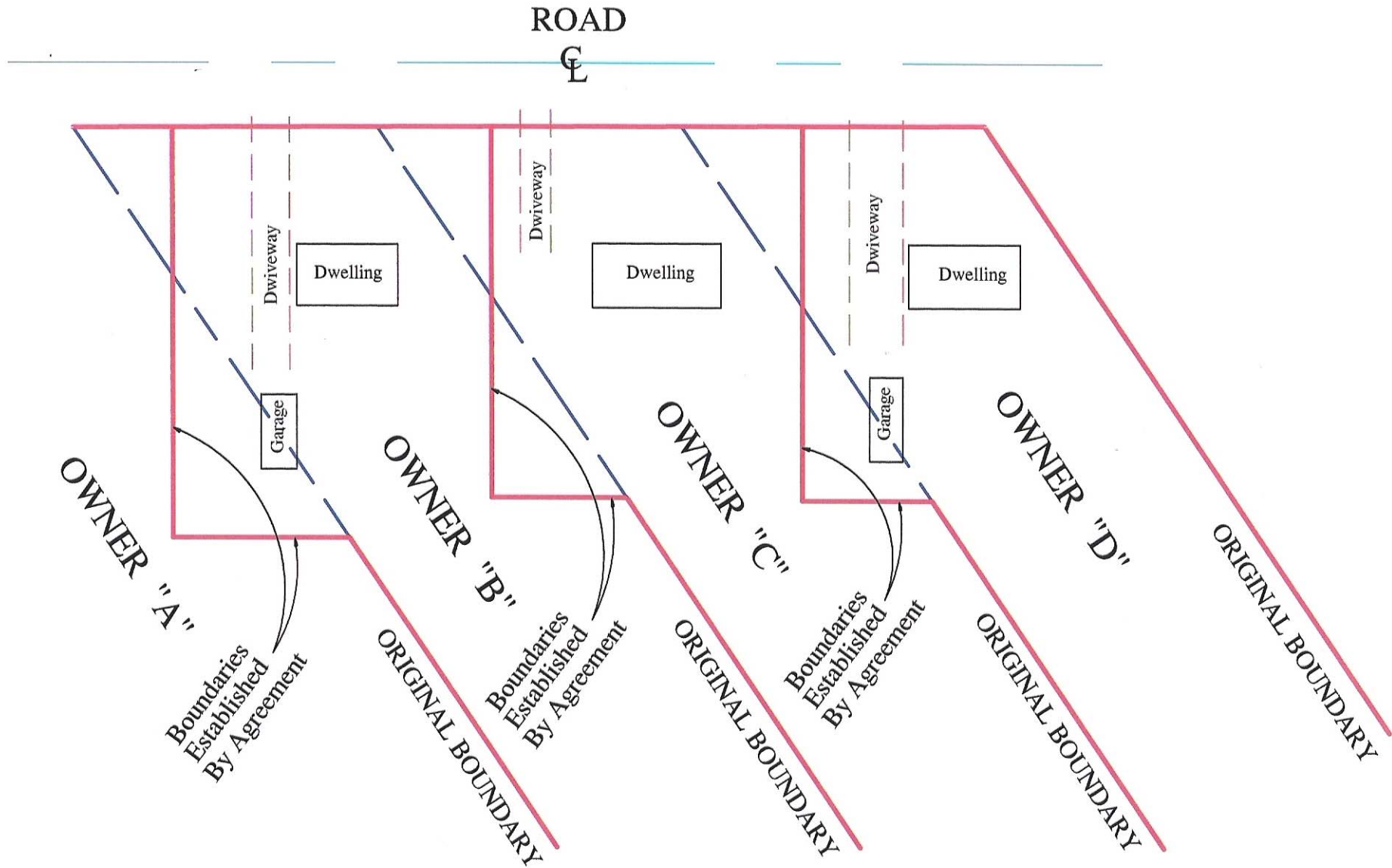
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# SUMMARY

- 1 The Discussion Paper includes these reference materials for your use:
    - a. Schedules "A" - a functional "anatomy" of parcel descriptions,
    - b. Schedule "B" - a suggested allocation of lawyers' & surveyors' tasks re: descriptions, and
    - c. Schedule "C" - suggested best practices,
  - 2 The body of the Discussion Paper includes:
    - a. Background information, and
    - b. Recommendations for improving the legislative framework for land registration.
- The legislative framework recommendations are with our Professional Organizations for consideration.
- We will now have a discussion of particular matters arising from the Discussion Paper.

**EXAMPLES**

# DISCUSSION POINTS FOR SURVEY OF BOUNDARY LINE AGREEMENT



**Consolidating an Unregistered Possessory Title Parcel with a Marketable Title Parcel**



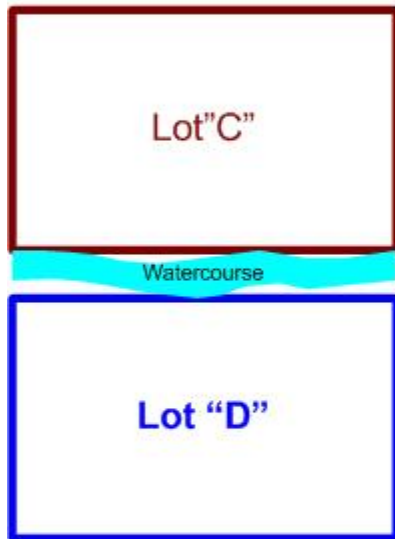
Gordon, Garth C., Q.C., "Affidavit Templates & Comments for Documenting Possessory Interests", Real Property Conference: Crown Interests and Due Diligence under LRA: "The Sophomore Year", February 2006.

Hickman, Leslie, "De Facto Consolidations", 2007 RELANS Conference: Year III: The Junior Year, March 2, 2007.

Follow the *Discussion Paper* guidelines to ensure there is a proper description for the consolidated parcel: Hartlen, Carl K., N.S.L.S., DeWolfe, Derik, N.S.L.S. and Gordon, Garth C., Q.C., "Discussion Paper Prepared For Nova Scotia Barristers' Society & The Association of Nova Scotia Land Surveyors By The Working Group Respecting Parcel Description Questions. January 15, 2008."

Also refer to POL, "PDCA Standards for Descriptions of Existing Consolidated Parcels.", online resource.

## ***De Facto Consolidation*** **Examples of Limited Application**



Original Lots "C" & "D"

- divided by water-course between them.
- Probably cannot consolidate b/c they are not contiguous.



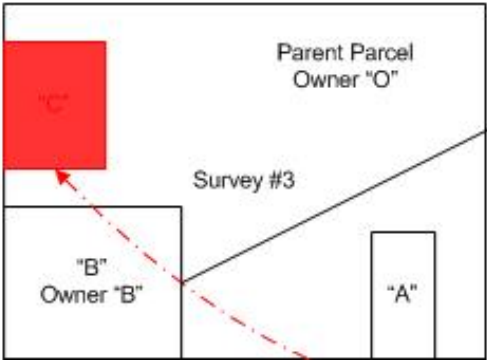
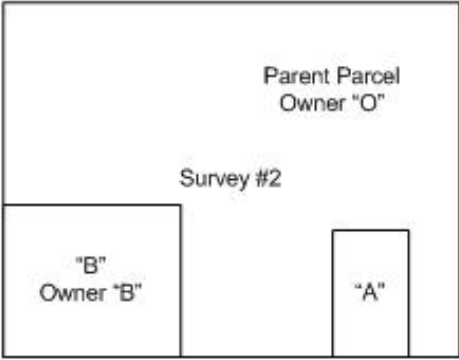
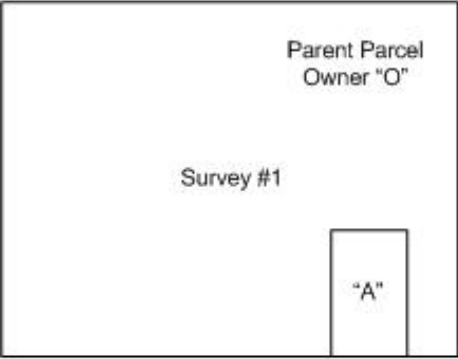
Lots "E" & "F" are contiguous, "G" is not.

- "E" & "F" could be consolidated if other conditions are met.
- "G" cannot be consolidated with "E" or "F" as it is not contiguous with either.



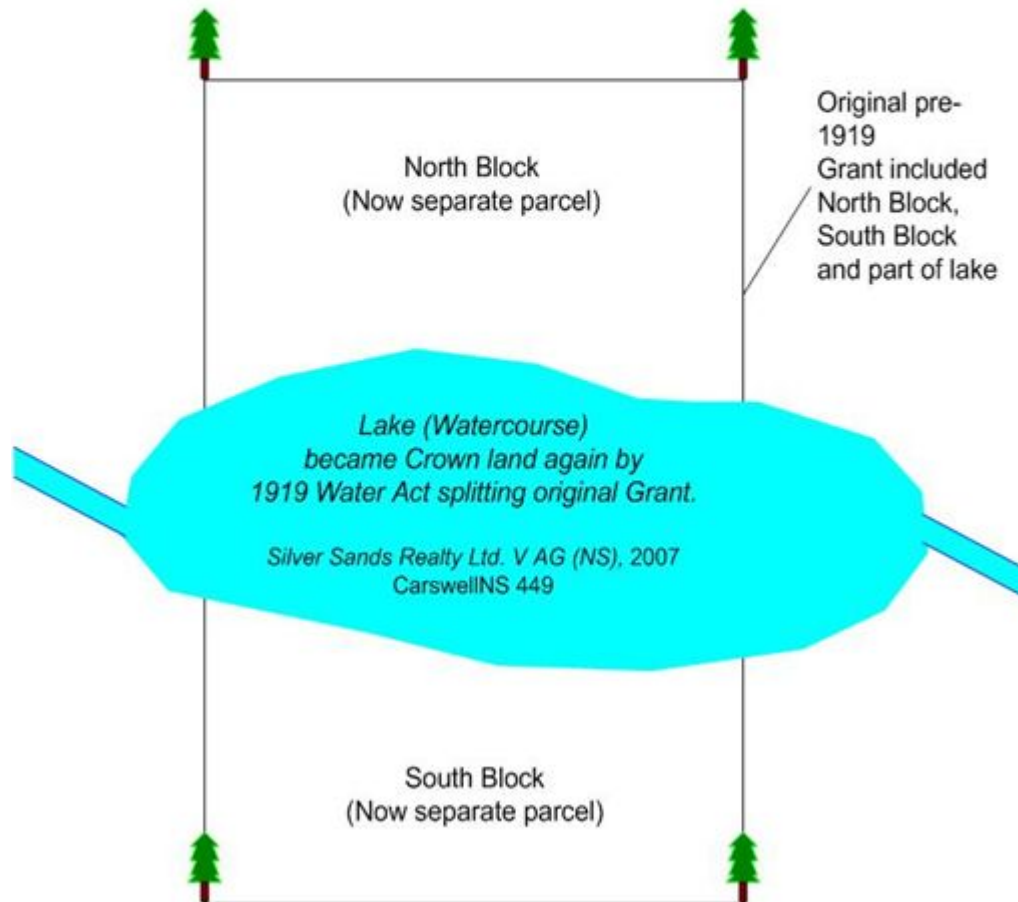
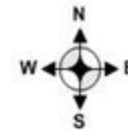
Easement For Parcel "C"

Progression of Parcels from Parent Parcel



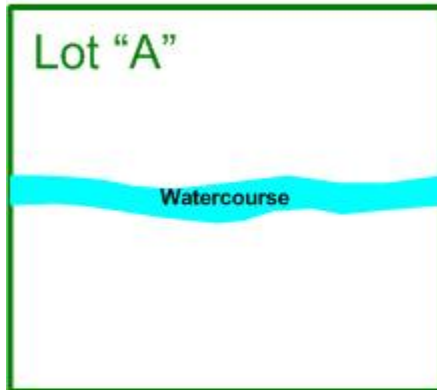
Easement for benefit of "C" shown across "B" in survey of "C" without any deeded easement from "B"

*Nova Scotia Water Act, 1919*  
"Claw back" of previously  
granted watercourses



# PDCAs & Watercourses

## LRAR April 3, 2007, ss.7(16), (17)

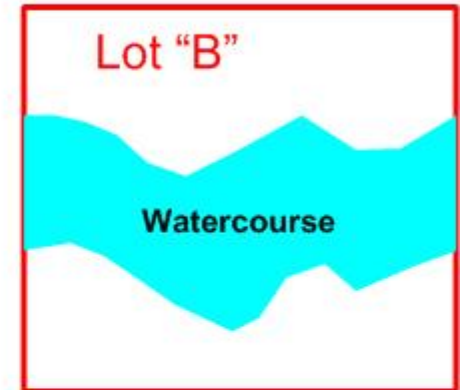


**Original Lot "A"**

- split by small water-course
- Submitters choice whether parcel split for PDCA.

From the RG 2006 re parcel divided by a watercourse:

The administration regulations try to put a reasonable framework around an interesting subdivision issue--the contention that parcels separated by an intervening owner (HMQ in the case of watercourses) are to be considered as subdivided. This was the view in some quarters-- that a puddle (exaggeration) represents an intervening landowner (HMQ) and therefore subdivides a parcel. Since there are no guidelines in the *Municipal Government Act*, some surveyors and lawyers have been using the "can I jump across it?" test. The regs permit a judgment call when dealing with a parcel that is, for example, intersected by a brook or a small watercourse. On the other end of the spectrum, the Avon River cannot reasonably be considered as not subdividing a parcel.



**Original Lot "B"**

- split by larger water-course
- Submitters probably must split for PDCA.

Land Registration Administration Regulations, April 3, 2007

- 7(16) Subject to subsection (17) and notwithstanding that watercourses are vested in the Crown by virtue of Section 103 of the *Environment Act*, a watercourse is deemed not to subdivide the parcel or parcels through which it flows.
- (17) If, after considering the nature and use of both a watercourse and the land through which it flows, a PDCA submitter determines that the watercourse creates a natural boundary,
- (a) the watercourse is deemed to subdivide the parcel or parcels through which it flows; and
  - (b) the parcel owner must make a request for PID assignment in Form 1 and provide such information as will enable the preparation of an electronic geographical representation of the parcel before making a PDCA.

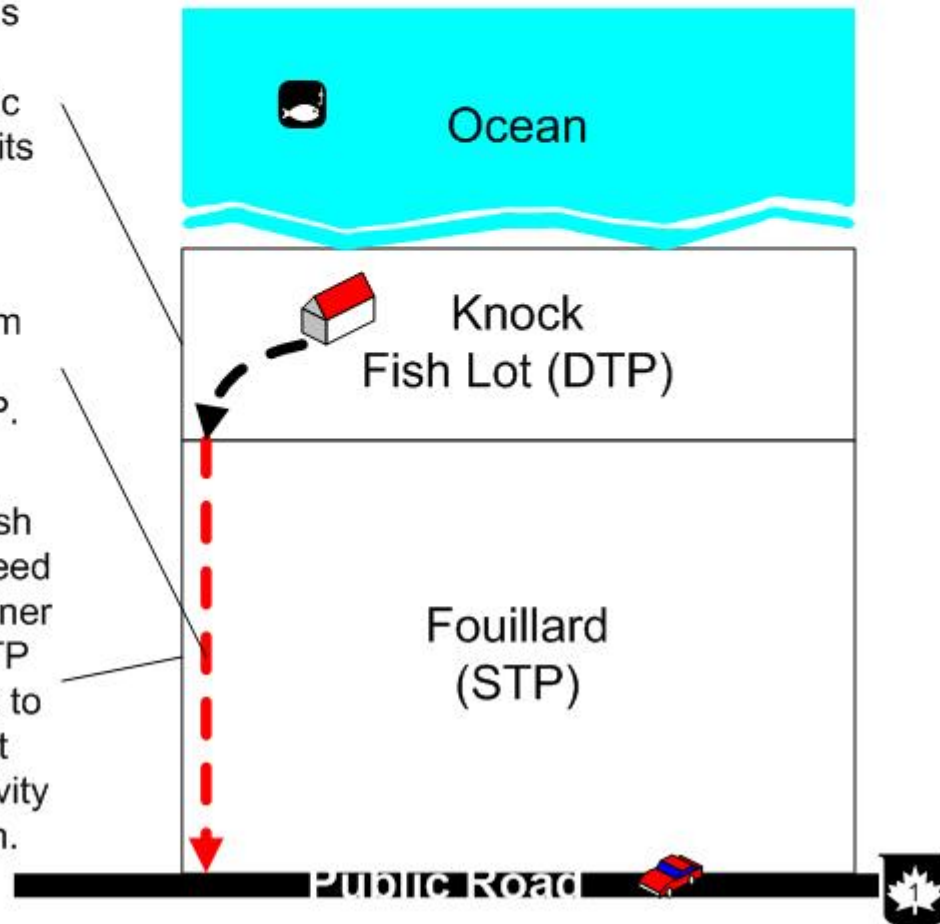
# Knock v. Fouillard Easements

*Knock v. Fouillard*, 2007 NSCA 27, 2007 CarswellNS 83

Fish Lot (DTP) has no enforceable easement to public road over STP in its chain of title.

Travelled way from Fish Lot to public highway over STP.

Easement for Fish Lot reserved in deed from one STP owner to the next in STP chain of title held to benefit Fish Lot (DTP) without privity or consideration.



**BREAK**

A surveyor and a lawyer were asked to assist neighbours with respect to a dispute over their land.

The landowners asked what each of them could offer to help resolve the situation.

The lawyer stated: “I can tell you if you own the land”.

The surveyor stated: “I can tell you where your land is”.

The landowners then proceeded to ask what each of their fees would be.

Upon hearing their answers the landowners looked at each other and muttered:

“ We weren’t asking you to buy it!!”

# Q & A Panel: Where to From Here?

Catherine Walker, Q.C., President-NSBS

Russell MacKinnon, President-ANSLS

Mark Coffin, Registrar General, SNC and MR

Ed Hingley, NSLS, Wagner Forest Management Ltd.

Moderator: Erin O'Brien Edmonds, Q.C., Burchell  
MacDougall