FINAL REPORT TO PURCHASERS OF LAND REGISTERED REAL PROPERTY OR WHAT ARE WE CERTIFYING?

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Introduction

Real estate lawyers are used to reporting to their purchaser clients about numerous items, including the marketability of the title to the land being purchased. This was de rigueur for Registry of Deeds parcels and not much has changed for many lawyers over the last 5 to 7 years of dealing with the *Land Registration Act* in Nova Scotia.

In 2005, Catherine Walker, Q.C., presented a paper entitled, *Certifying Title and Qualifying Title Under the Land Registration Act,*[2] in which a form of Report on Title was provided. That form has seen some uptake since that time. I take this opportunity to thank Cathy for her contributions to the practice of real property in Nova Scotia and for sharing her thoughts on this topic with me. I also thank Wayne Howatt of Burchells LLP who kindly took the time to provide written comments to me in advance of the drafting of this paper. The form of Report to Purchaser which accompanies this paper was heavily influenced by both Cathy's and Wayne's comments and precedents.

It is necessary to fully understand the lawyer's role in a real estate purchase in order to appreciate what the lawyer is "certifying" or confirming to the purchaser client. The lawyer's duty to the client, the terms of the retainer, and the practice of the profession are examined below. The *Land Registration Act* introduced the government guarantee into the title of land, and whether and how this may affect the lawyer's Report is also examined. Finally, the content of the lawyer's Report is discussed.

My examination concludes by determining that there is no one particular form of Report which will be appropriate for every transaction or for every lawyer. Reporting to the client may take the form of many pieces of communication, including an opening letter explaining the nature of the retainer, correspondence confirming the client's instructions, and a Final Report addressing the outstanding obligations of the lawyer to the client. It is not necessary for the lawyer to certify title to the purchaser client, since the LR system does so. However, the lawyer does have various obligations to fulfill to satisfy the duty to the client, as determined by the scope of the retainer and the Practice Standards.

Lawyer's Duty to Client

The lawyer has a duty to the purchasing client to protect the client's interests while completing the transaction on the client's behalf. In *Law of Vendor and Purchaser,* by Victor DiCastri, Carswell (3rd Ed.), Volume 3 at 940, the author writes:

> The standard of care which the public has been led to expect from solicitors is that of the ordinary, diligent and prudent solicitor. While a search for this standard begins first with the contract between the solicitor and client, the ultimate goal is the prevailing general and approved practice. Consideration should be given to the standard of practice of solicitors in the area in which the solicitor practiced at the time of the alleged negligence …[3]

[2] www.nsbs.org/archives/CPD/80288.pdf
[3] As cited in *Bond v. Richardson,* 2007 NBQB 264 (CanLII), at par. 23

The courts have described the obligation of a lawyer to the client as being:

(1) To be skilful and careful.
(2) To advise the client on all matters relevant to the lawyer's retainer.
(3) To protect the interest of the client.
(4) To carry out the client's instructions by all proper means.
(5) To consult with the client on all questions of doubt which do not fall within the express or implied discretion left to the lawyer.
(6) To keep the client informed to such an extent that may be reasonably necessary according to the same criteria. [4]

Protecting the client's interests requires an understanding of the client's goals and any legal impediments to achieving those goals.

Terms of the Retainer

Absent a written retainer agreement between the lawyer and client, the lawyer runs the risk that the scope of the retainer will be interpreted in favour of the client without limitations benefiting the lawyer. [5]

To manage costs for the client, the scope of the retainer may be narrow and the client may choose to assume more risk. The retainer cannot be so limited that the lawyer fails to satisfy the minimum standards of the profession, however. Furthermore, the client needs to make an informed choice about the risk that they are prepared to accept. Choosing title insurance instead of obtaining a location certificate, tax certificate and zoning certificate is an example of one such choice. If the lawyer is not examining evidence to ensure that a possessory claim is statute barred, for example, this may be something that a client is prepared to pay to have investigated. Whether the client cares exactly what parcels benefit from a burden across the property is another issue that may or may not be of importance to the client. Many of these choices can be time consuming to educate the client about to enable them to make an informed choice.

Ideally, the lawyer will write to the client upon being retained to describe what the lawyer will do for the client and any limitations to what will be done. The letter might also list things for a client to attend to (like cancel automatic deliveries). A draft copy of a Final Report might also be provided at this time if it assists in explaining the nature of the retainer to the client, and particularly the limitations of the retainer and the risks to the client.

It is important to recognize the imbalance in the solicitor-client relationship. The purchaser is relying on their lawyer to protect their interests, but the lawyer decides how much protection to provide. If the lawyer informs the purchaser that the lawyer will not opine about zoning, survey, whether there are possible possessory claims, etc., what will the purchaser do with this information? A clear written explanation about why these things are relevant to the purchaser may assist the

[4] *Millican v. Tiffin Hldgs Ltd.*(1964), 49 D.L.R. (2d) 216 at p.219
[5] See cases cited for Practice Standard 1.5

purchaser to address them, or may lead to a request by the purchaser to have the lawyer assist with these things.

In my opinion, it is important for the benefit of the purchaser and the protection of the lawyer that the limitations of the lawyer's retainer be fully explained in writing so that the purchaser can make an informed choice about whether to undertake additional due diligence either directly or through the lawyer.

If the purchaser asks the lawyer to investigate things that the lawyer would not ordinarily investigate, and the lawyer agrees to do so, the nature of the retainer is expanded. The retainer may also be expanded as issues arise during the transaction (e.g. title problems, encroachments), if addressing these issues was not included in the scope of the original retainer.

Usually, the purchaser's lawyer is also representing a lender which is financing the purchase and securing the financing with a mortgage. The lender will require the lawyer to make certain inquiries which might otherwise have been optional for the purchaser (e.g. obtaining and reviewing a location certificate). The lender's instructions will affect the scope of the retainer between the lawyer and purchaser client, because of the lawyer's duty to advise the client on all relevant matters. If information relevant to the purchase is obtained by the lawyer through due diligence inquiries made on behalf of the lender, the information must be shared with the purchaser. [6]

The financial implications to the lawyer of a clear and complete written explanation of the retainer can be significant. In my experience, the "problems" which arise during a transaction can add substantially to the lawyer's time spent on a matter. Competition and the commoditization of property transactions has resulted in aggressive pricing to "land" the client, and such prices often assume a problem-free transaction and a minimum of investigations. However, unless the lawyer is very clear about what services are included for the price, the lawyer may complete the transaction and find it very difficult to get compensated for the additional work. Furthermore, the lawyer can also run afoul of ethics rules, if the lawyer is not careful. [7]

Practice of the Profession

Lawyers have the reasonable expectation that the general and approved practice of the profession is reflected in the *Practice Standards for Real Property Transactions in Nova Scotia.* [8]

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[6] *Sceriour v. Zazula*, 1998 ABPC 138 (CanLII)

[7] *Legal Ethics Handbook*, Chapter 12, Fees. Rule: A lawyer has a duty to: (a) stipulate, charge or accept only the fees that are fully disclosed, fair and reasonable … . Commentary 12.1 A lawyer has a duty to explain to a client the basis of **all fees**, especially where the client is unsophisticated or uninformed about the proper basis and measurement of fees. The lawyer has a duty to give the client an early and fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision. When something unusual or unforeseen occurs that may substantially affect the amount of the fee, the lawyer has a duty to forestall misunderstandings or disputes by explaining this to the client.

[8] Approved by Bar Council on November 22, 2002, and revised November 24, 2006. Located at www.lians.ca/standards/ps_stand.pdf

The Interpretation Part of the Standards states:

> With some exceptions, it has not been the intention of the Professional Standards Committee to prescribe new standards for real estate practice.
>
> However, the Committee did revise the existing Standards to meet the requirements of the *LRA*. A Standard which does not refer to the *LRA* in the text of the provision of the Standard applies both before and after the implementation of the *LRA*. Where the Standard includes a footnote to reference the *LRA*, the reference identifies the relevant provision of the *LRA* and the reference is to be read according to its wording. A Standard which expressly refers to the *LRA* in the text of the provision of the Standard is a new Standard pertaining to the *LRA* and is to be read accordingly.
>
> As with the initial version, professional judgment and common sense remain as touchstones for the use of these Standards. As was stated in the Preface to the first edition, "these standards cannot be expected to be an answer to every conceivable situation which a lawyer might find in conducting a real estate practice … professional judgment must always be exercised in problem solving and these practice standards are not intended as a substitute for the exercise of professional judgment." However, they have been developed to be a real guide to the expectations for real estate practice.
>
> …
>
> New to these written standards, but not new to practice, is the requirement for written evidence that an issue was identified, that advice was given to a client and what the client's instructions are. The advice is to be given prior to receiving instructions and some form of written notation of the process is to be produced. …

The Conclusion states:

> The *LRA* has introduced new rules and relationships among the Government, the legal profession, and the Society, requiring the revision of standards for the real estate professional. Like their predecessors, they must be viewed as a work-in-progress to be amended and altered as there is greater experience with the new regime. They must be the subject of discussion among the profession as they are interpreted and applied. …

The Standards were last amended in 2006 and I understand that they are currently under review. The Standards are integral to the examination of the lawyer's role. Excerpts from some of the Standards relevant to representing a purchaser are set out below. They are generally self-explanatory.

It is worthy of note that compliance with a number of the Standards is not required "if the lawyer determines, in the exercise of professional judgment, that compliance is not appropriate under the circumstances".[9]

Standard 1.1 involves legislative review. For the purposes of advising a purchaser, it requires the lawyer to explain legislative restrictions (e.g. *Aeronautics Act*), if appropriate, and confirm the client's instructions prior to closing.

Standard 1.3 states, in part:

> When a lawyer provides a certified opinion of title, the lawyer must explain any qualifications to the opinion to the client and confirm the explanation of the qualifications prior to closing. The lawyer must confirm the client's instructions prior to closing.

Standard 1.5 states:

> A lawyer should document in writing:
>
> (a) advice to the client, including explanations and confirmations of explanations, the lawyer's advice with respect to restrictions, if any, on the client's quiet use and enjoyment of the property and qualifications to the opinion on title; and
>
> (b) instructions received from the client including instructions limiting the lawyer's retainer and instructions arising out of the lawyer's advice described in clause (a).

Standard 1.7 requires that the lawyer ensure that the provisions of the *Matrimonial Property Act* and *Vital Statistics Act* are considered in certifying title to a buyer.

Standard 2.1 requires that the lawyer be satisfied that the legal description is accurate, and that any certificate of title clearly identifies the parcel by a metes and bounds or short form description. A PID cannot be used as the sole identifier of the parcel, since the PID number may remain the same after the boundaries are altered (as a result of subdivision or consolidation).

Access is addressed in Standard 2.3:

> A lawyer who prepares an opinion of title must confirm the nature of the access, if any, to the parcel and whether the access is public or private. [10]
>
> …

[9] See definition of "should" in the Standards.

[10] It is important to note that confirmation of access is mandatory and survives migration. It is unclear whether access is included in the government guarantee of title. If access is not included in the guarantee, this Standard only appears to require access to be confirmed if an opinion of title is being prepared. As will be seen, I suggest that an opinion of title is not required for an LR parcel.

> A lawyer should consider the implications of the legal description of a servient parcel that does not reference a private access to which it is subject.
>
> A lawyer should examine plans arising from the search and survey information affecting the parcel to ascertain whether the access granted and the actual travelled way correlate, and advise the client with regard to any material discrepancies.
>
> A lawyer must explain to the client any limitation associated with a private right of way access and confirm the client's instructions prior to closing.

Standard 2.4 states:

> In preparing an opinion of title, a lawyer must advise the client that any opinion provided to the client will be qualified as being subject to survey.
>
> A lawyer must advise the client that the lawyer does not deal with 'extent' and that boundary and location are only ascertained through a survey and recommend that the client retain the services of a surveyor to determine the extent of title to the parcel being examined.
>
> A lawyer must confirm the qualification of the opinion as subject to survey prior to closing. The lawyer must confirm the client's instructions prior to closing.

When the lawyer examines survey information, Standard 2.5 states that the lawyer should assess material encroachments on another parcel, or on the parcel being examined, and review the encroachments with the client, and:

> The lawyer should ensure that the encroachment
>
> (a) is permitted by a written agreement of the adjoiner, and any mortgagee if required; …
>
> A lawyer must explain the encroachment to the client and confirm the client's instructions prior to closing.

Land located adjacent to or beneath water is addressed in Standard 2.6:

> A lawyer must explain to the client the limits of a parcel boundary located beneath or adjacent to water. Where a parcel is bounded by water, the lawyer should include in the explanation of the limits of the parcel that there is an increased risk that all, or a portion, of the parcel is "infill". The lawyer should explain to the client how title to infilled areas may be acquired and the risk of losing the opportunity to acquire title pursuant to the provisions of the *Land Registration Act*.

> The lawyer must confirm the explanation of the limitations to the client. The lawyer must confirm the client's instructions prior to closing.

Standard 3.1 involves Abstracting, but portions of this Standard may be relevant if certifying title:

> The Nova Scotia Barristers' Society Regulations require that where a firm or lawyer certifies title to real property, the firm or lawyer must keep available … such title information or certificate of title to which the firm or lawyer relied which would justify the certification of title by a reasonably competent lawyer.
>
> Before preparing a certificate of legal effect on an application for revision under the *Land Registration Act*, a lawyer must review the parcel register records in the appropriate land registration office and document or cause to be documented the evidence of the review.

Standard 3.6 requires that the lawyer must examine restrictive covenants and similar restrictions on use in conjunction with the title and survey information to determine whether there are breaches which would affect the use of the parcel or the marketability of title. If such restrictions are identified, the lawyer must advise the client and confirm instructions prior to closing. There does not appear to be the opportunity for the lawyer to contract out of this mandatory provision.

Zoning and occupancy permits are addressed in Standard 5.1:

> When a lawyer is acting for a buyer in a conveyance of an interest in a parcel, the lawyer should inquire as to the client's intended use for the parcel and advise the client on the appropriateness of obtaining zoning and occupancy permit confirmations.
>
> When a lawyer is acting for the buyer or mortgagee of new construction, the lawyer should ensure that an occupancy permit has been issued, or that all final inspections required to ensure issuance of the permit have passed.
>
> When a lawyer is acting for the buyer or mortgagee of commercial or residential income property, the lawyer should determine whether the use and occupancy is permitted by the appropriate authorities.
>
> When the client elects to proceed without appropriate confirmations or assurances or where there is non-compliance, the lawyer must explain to the client the associated risks and confirm the client's instructions prior to closing.

The lawyer must be guided by these Standards with respect to the scope of the retainer and reporting to the client.

LRA Changes to Certification of Title

The Standards still speak as if a lawyer provides an "opinion of title" to the client (Standards 1.3, 2.3, 2.4, and 3.1). However, I suggest that a lawyer no longer needs to opine about title to an LR parcel, although there are ancillary matters identified in the Standards which the lawyer is obliged to at least raise with a purchaser.

When examining title to real property, it is instructive to keep in mind the different title systems in Canada.

The **'Torrens' system** in Canada dates back to 1861 when it was adopted by the Colony of Vancouver Island, the second jurisdiction in the world to do so.[11] The land registry in BC is managed by the Land Title and Survey Authority of British Columbia, which describes transfers of title as follows: [12]

> Under the Torrens system, legal ownership of land can only be changed by the act of registration on a public register, and the issuance of a 'Certificate of Indefeasible Title'. A title that is indefeasible cannot be defected, revoked or made void. The person who has a title has a right, good against the world, to the land. Evidence of the right to land is constituted by an indefeasible title which includes the name of the owner and a listing of any mortgages, agreements for sale, leases, easements, covenants, rights-of-way or other registered charges which may pertain to the title. There are a limited number of exceptions to the principle of indefeasibility which are set out in the *Land Titles Act* … . [13]
>
> The strength of the BC system is that it eliminates the need for exhaustive and expensive searches back through the historical chain of ownership to prove that a title is valid and unencumbered. A prospective purchaser need only examine the current title to obtain a full list and description of all interests that affect the title.

In BC, like many Torrens jurisdictions, there are two important title documents generated by the system:

(a) *Certificate of Title* which is "issued" by the Land Title Office and represents that the named owner has ownership rights to the land. The Certificate of Title stays in the system, although a Duplicate Certificate of Title may be issued to the owner which prevents a change to ownership (transfer, mortgage) until the Duplicate Certificate is surrendered back into the system.[14]

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[11] Land Title and Survey Authority of British Columbia, (www.ltsa.ca/land-title/security-of-land-title).
[12] Ibid.
[13] *Land Titles Act,* s. 23(2) lists exceptions including exceptions and reservations in the original Crown grant; lease for a term not exceeding 3 years if there is actual occupation under the lease; a highway or public right of way, watercourse, right of water or other public easement, the right of a person to show that all or a portion of the land is, by wrong description of boundaries or parcels, improperly included in the title.
[14] Land Title and Survey Authority of British Columbia (www.ltsa.ca/data/img/publication/Frequently-Asked-Questions-About-Title-Security.pdf)

(b) *State of Title Certificate* which is a copy of the title which is certified correct at the time of issue by the Land Title Office.[15]

Lawyers are called upon to interpret the state of title as disclosed by the Torrens system at any particular date.

Nova Scotia property lawyers are all fully aware of the '**Deeds Registry' system** which has existed in Nova Scotia for more than 250 years. The basic difference between the Torrens system and the deeds registration system is that the former involves registration of title and the latter involves registration of instruments. The same can be said for the difference between the *Land Registration Act* system and the Registry of Deeds system.

The *Land Registration Act* has been advertised by the Province of Nova Scotia as follows:

> The government guarantees ownership of each parcel of land that is registered in the new system. The registered owner is, by law, conclusively the owner of the parcel. In the old registry system, ownership can only be determined after a review of all relevant title documents deposited at the Registry of Deeds. Lawyers then give their opinion as to who owns and has legal rights in the property (opinion on title).
>
> …
>
> For parcels registered under the new system, the government guarantees that the person listed as the registered owner of the parcel is the person entitled to occupy and deal with the land. The government **does not** guarantee the boundaries, location or size of the parcels. The new system also provides more certainty about other interests (such as easements, rights of way, well agreements, etc.) that may affect each parcel. The system does not guarantee that interests (other than those that are registered) are valid but the system makes non-registered interests easier to identify and evaluate.[16]

An *LRA* parcel register is "a complete statement of all interests affecting the parcel as are required to be shown in the qualified lawyer's opinion of title pursuant to s. 37 …". An "interest" is defined as "any estate or right in, over or under land recognized under law, a prescribed contract or a prescribed statutory designation, …" . Section 37(9) states:

> (9) The qualified lawyer's opinion of title required in clause (4)(b) shall be prepared in accordance with the relevant Nova Scotia Barristers' Society practice standards in effect at the time of the opinion and
>
> (a) shall set out

[15] Ibid.
[16] *The New Land Registration System: How Does it Affect Landowners,* NS Service Nova Scotia and Municipal Relations (www.gov.ns.ca/snsmr/pdf/property/Land_Owners_Sheetfinal.pdf)

> (i.) the interests being registered in the parcel and, subject to Section 40, all encumbrances, liens, estates, qualifications and other interests affecting the parcel, and
>
> (ii.) the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway to the parcel
>
> as appear on the records at the land registration office in the county where the parcel is situate; …

The Practice Standards are divided into Parts. Part I is entitled "General Principles of Certifying Title". Part III is "Essential Elements in the Review of Title". These two Parts appear to be the Standards adopted by *LRA* s.37(9), although aspects of Standard 2.3 regarding title to a private access may also be intended to be included.

The Application for Registration contains an "Opinion and Certificate of Title" from the migrating lawyer to the Registrar General pursuant to s. 37. Among other things, this Opinion states:

> 6. This Application for Registration is a true and accurate summary of the registered interest [sic], benefits, burdens, qualifications on title, recorded interests, and means of access that apply to this parcel.

The LR system generates a Certified Statement of Registered and Recorded Interests. The SRRI contains the following certification:

> The Registrar certifies that this Statement of Registered and Recorded Interests contains a listing of all interests that have been registered or recorded in the register for the above noted parcel (PID #) pursuant to the *Land Registration Act*, S.N.S. 2001, c. 6 as of the date and time noted.

The SRRI certification does not specifically include access, unlike the AFR certification, but whether other differences (e.g. benefits) between the two certifications are significant is beyond the scope of this paper. The exact scope of the LR system certification is important, however, because it does not seem necessary for a lawyer to certify anything to a client which is already certified by the system. While a lawyer might choose to rely on the SRRI and extend the same certification to the client, this would appear to place the lawyer in the middle of any problems that may arise with the SRRI certification.

In at least two Torrens-type jurisdictions in Canada, a lawyer does not certify title to the client and simply passes along the certificate from the system.[17] The goals of the LR system and Torrens-type systems have been expressed by the respective governments in similar ways, and the registration of title enables certification by the system to a purchaser. There appears to be no reason why Nova Scotia lawyers should approach certification to title any differently than the Torrens-type jurisdictions.

[17] This has been confirmed by a lawyer who practices in both BC and Saskatchewan with a major law firm.

Indeed, the Report being requested by some lenders acknowledges the difference between registration-of-title systems and the registration-of-instrument systems. For example, RBC's "Report on Title and Security" includes this "Title Opinion":

> It is my opinion that the mortgagor(s) *has a good and marketable title to the mortgaged property / is the registered owner of the mortgaged property* (delete inapplicable provision), free and clear of all encumbrances, judgements [sic], liens and other charges and that there are no rights or other claims having priority over your mortgage on the mortgaged property or otherwise affecting its validity expect as noted in the Report. You have a valid [insert rank of mortgage] charge against the property, subject only to the exceptions shown below. There are no builders/mechanics/construction liens registered against the mortgaged property.[18]

I suggest that a Nova Scotia lawyer should be choosing "is the registered owner of the mortgaged property" instead of "has good and marketable title to the mortgaged property" for a mortgage on an LR parcel. If it were not for the lender's instructions, though, even this certification would be unnecessary, if a Certified SRRI is also provided to the lender showing the registered owner. The lender does need the lawyer's certification as to the priority of the mortgage, of course, since there may be other (yet-to-be-discharged) mortgages shown on the SRRI. I note that "overriding interests" should likely be noted as an "Exception" in the Report to the lender.

What's Left to Report to the Client?

If a parcel register does not show any benefits or burdens, textual qualifications or recorded interests, it is likely that the client can understand it without explanation from the lawyer. Add a mortgage from the client to their lender, and the parcel register is not any more complex. However, introduce benefits or burdens, TQs or other recorded interests, and the client likely needs assistance understanding what they have purchased and the limitations on the use they may make of the parcel. Furthermore, there are many non-title Practice Standards which must be addressed with the purchaser, the result of which should be reported, if applicable: e.g. access, boundaries on tidal/non-tidal waters, extent of title, zoning, occupancy permits, etc.

There is no requirement as to the form that the Final Report to the client must take. Indeed, a Final Report does not have to address everything canvassed with the client throughout the transaction. Depending on the issues that arose during the transaction, there could be multiple communications (written and verbal) which already address the nature of the government guarantee, zoning, access, etc. If all of the Standards and terms of the retainer have been addressed previously, and confirmed in writing, the Final Report may be nothing more than a letter enclosing the SRRI.

Having said this, it is likely appropriate even in the most straightforward of transactions to provide a Final Report to the client which explains the SRRI or the state of title as reflected in the Land Registration View of Property On-Line and the particulars and limitations of the government guarantee, including any details of any title or textual qualifications shown in the parcel register.

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[18] RBC Form 4177 (04-20-2007)

Conclusion

The LR system certifies title to the purchaser client, so there is no need for the lawyer to do so. The lawyer still retains responsibility for explaining the recorded interests to the client, assuming that an explanation is necessary. The lawyer also has various obligations to fulfill to satisfy the duty to the client, as determined by the scope of the retainer and the Practice Standards.

Attached to this paper as Appendix "A" is a Draft Report to Purchaser which is a work in progress. It is designed to be used in conjunction with an opening letter which describes the scope of the retainer. Much of the content of the Report will be irrelevant to many transactions, although the Report may still be an intimidating document for a client to receive.

APPENDIX "A"

DRAFT REPORT TO PURCHASER

[Date]

[Client]

Dear [Client]:

Re: PID No. [PID], [Civic Address]

Our retainer by you is described in an initial letter to you dated _____. This is our Final Report to you to conclude this matter.

The property that you have purchased is registered pursuant to the *Land Registration Act* (*"LRA"*). Property OnLine is the Province's electronic property system which manages the information about your property. The Land Registration View of Property OnLine is attached to this Report.

The Land Registration View provides important information about your property. This includes: "Registered Interests", "Recorded Interests" and "Parcel Description".

The **Registered Interests** show the ownership of your property. The Provincial government guarantees that these owners own the property. Therefore, we do not provide an opinion to you about this ownership.

The government's guarantee is limited by any Burdens (e.g. rights-of-way, restrictive covenants), Textual Qualifications and Recorded Interests shown in the Land Registration View. We do not provide an opinion to you about the effect or enforceability of these.

There are certain interests which may exist but do not appear in the Land Registration View. These are called "overriding interests". The government does not guarantee that overriding interests do not exist. We do not provide an opinion to you about whether overriding interests exist. The types of overriding interests are listed in Schedule "A" attached to this Report.

The **Recorded Interests** show the interests that may affect your use and occupation of the property and these interests are not guaranteed by the government. This part includes any mortgage you obtained as well as mortgages that the seller's lawyer is responsible for removing in due course. [A copy of your mortgage documents is enclosed.].

The **Parcel Description** describes your property and any benefits and burdens, and references any restrictive or building covenants. The government does not guarantee any discrepancy in the location, boundaries or extent to the property. The Parcel Description and the Provincial Mapping of the property are not conclusive as to the location, boundaries or extent of the property. We do not deal with the location of the property or boundaries, or the size of the property. Boundaries, location and size of the property can only be ascertained by a surveyor, as we previously advised you. We confirm that you decided [not] to obtain a new boundary survey of the property. [A copy of your new survey is enclosed.]

Despite the government guarantee of ownership, someone else may have an interest in the property or a portion of it as a result of adverse possession (squatter's rights) or prescription (use). Schedule "B" describes the conditions where this can occur. A survey may assist in identifying such situations.

Encroachments

Encroachments are created when something is built (e.g. a fence or deck) or used (e.g. a driveway) on one property but extends onto the neighbouring property. Up-to-date survey information is needed to determine if there are any existing encroachments by your neighbours onto your Property or by you on your neighbour's property. We have [not] examined any existing survey information for encroachments [and have determined …].

Water Boundaries [if applicable]

Your property appears to be bounded by [water body]. The law states that this boundary extends to … [state law for tidal versus non-tidal waters]. This does not include any "infill'. A survey is required to identify any potential infill. We have not made any inquiries about potential infill.

Access

The Land Registration View also indicates whether there is private or public access directly to your property. However, the government may not guarantee this access. We have [not] examined the access and [do not] confirm that it is correct in the Land Registration View. [Note: Professional Standard 2.3 requires confirmation of access if an "opinion to title" is prepared. Query whether an opinion about access is required.]

Legislative Restrictions [if applicable]

There may be non-zoning legislation which limits the use of the property, such as the *Aeronautics Act*. We have not examined whether your property is subject to such limitations.

Land Use [if applicable]

We confirm based on the zoning certificate received from the appropriate municipal unit that the property is zoned in a manner that permits the following use on the property:

[use as described by client]

We do not confirm that the property is large enough or configured in a way that it will actually accommodate this use. We have advised you to make your own inquiries of the development officer for the municipal unit.

Occupancy Permit [if applicable – particularly new construction]

We confirm that an occupancy permit has been issued [with/without] conditions. A copy is enclosed.

Property Taxes [if applicable]

We confirm based on the tax certificate received from the appropriate municipal unit that property taxes relating to the property have been paid in full until and including the [year] Interim Tax Bill, and there are no municipal improvement, betterment or other charges due and owing which form a lien on the property.

Title Insurance [if applicable]

We confirm your instructions to purchase title insurance to protect [you and] your lender, [but not you,] and your concurrent instructions:

(i.) not to confirm that property taxes and municipal charges have been paid; and

(ii.) not to obtain a zoning certificate to confirm that your intended use of the property is permitted in the zone in which the property is located.

[A copy of your title insurance policy is enclosed.]

Restrictive or Building Covenants [if applicable]

The covenants which apply to your property appear as Burdens in the Land Registration View. A copy of the covenants has previously been provided to you for your review. We have examined the title [and survey information] and there does not appear from this limited information to be any breach of the covenants which would affect the use of the parcel or the marketability of title. However, we provide no opinion about the enforceability of these covenants. We also do not provide an opinion about whether the Property or any buildings or improvements on the Property [not shown on the survey information] comply with the covenants.

Assignability

This Report is not assignable or transferable by you to anyone else. Nobody but you may rely on it.

Sincerely yours**,**

MUTTART TUFTS DEWOLFE & COYLE

Per: _____

SCHEDULE "A"

The over-riding interests as set out in Section 73(1) of the *LRA* are:

(a) an interest of Her Majesty in right of the Province that was reserved in or excepted from the original grant of the fee simple absolute from Her Majesty, or that has been vested in Her Majesty pursuant to an enactment;

(b) a lien in favour of a municipality pursuant to an enactment;

(c) a leasehold for a term of three years or less if there is actual possession under the lease that could be discovered through reasonable investigation;

(d) a utility interest;

(e) an easement or right of way that is being used and enjoyed;

(f) any right granted by or pursuant to an enactment of Canada or the Province:

(i.) to enter, cross or do things on land for the purpose expressed in the enactment;

(ii.) to recover municipal taxes, duties, charges, rates or assessments by proceedings in respect of land;

(iii.) to control, regulate or restrict the use of land; or

(iv.) to control, regulate or restrict the subdivision of land;

(g) a lien for assessments pursuant to the *Workers' Compensation Act*;

(h) an interest created by or pursuant to a statute that expressly refers to the *LRA* and expressly provides that the interest is enforceable with priority other than as provided by the *LRA*.

SCHEDULE "B"

An interest in the Property may be acquired by adverse possession or prescription where the required period of adverse possession was completed before the Property was first registered under the *LRA* and:

1. there was marketable title to the interest acquired by adverse possession or prescription pursuant to the *Marketable Titles Act* when paper title to the Property was first registered pursuant to the *LRA*; or

2. the interest is a fee simple estate and the holder of the interest registered the Property pursuant to the *LRA* prior to registration of the paper title; or

3. one of the following has been registered or recorded before the expiration of ten years after the Property is first registered under the *LRA*:

    a. a court order confirming the interest;

    b. a certificate of *lis pendens* certifying that an action has been commenced to confirm the interest;

    c. an affidavit confirming that the interest has been claimed pursuant to Section 37 of the *Crown Lands Act*; or

    d. the agreement of the registered owner confirming the interest.

Notwithstanding the provisions of the *LRA* respecting adverse possession summarized above, the owner of a parcel adjacent to the Property may acquire an interest in part of the Property by adverse possession or prescription if that part does not exceed 20% of the area of the Property.