

LAND TITLES

THE NEW BRUNSWICK INITIATIVE

**D. HAYWARD AITON
STEWART McKELVEY STIRLING SCALES
SAINT JOHN, N.B.**

The Background

Prior to the introduction of land titles, which is presently underway, the New Brunswick land registry system was a registry act system similar in most respects to that of the other Atlantic Provinces.

The origin of the present revision of land registration occurred in the early 1970s when the three Maritime Premiers formed the Council of Maritime Premiers. One of the first programs in New Brunswick was the establishment of a grid co-ordinate and a property mapping system. These efforts in New Brunswick became the responsibility of the New Brunswick Geographic Information Corporation (NBGIC), a New Brunswick crown corporation formed for the purpose of overseeing the surveying, mapping and the land registry system in New Brunswick.

In the late 1980s the government of the day, which was business orientated and entrepreneurial in outlook, mandated NBGIC to utilize the information that had been collected over the previous ten years and as a result, NBGIC in 1989 formulated a land information policy. The purpose was to improve the available information systems to the public which included a modernization of land information systems, the land registry, the parcel index and a long-range plan to introduce a system of land titles. The political reasoning behind the decision to expand the role of NBGIC was to bring the surveying and land registry systems into a modern context and to permit land transactions to proceed without the necessity (and the attendant cost) of lengthy title searches.

NBGIC initiated a search for a development program and a software package that would accomplish these objectives. At the same time the government significantly expanded the role of NBGIC and it became responsible to market to the public a wide range of government services including such things as vital statistics, Corporate Affairs, marriage licenses, etc. As a result of this expanded role, the name was changed to Service New Brunswick (SNB).

In the early 1980s the Law Society of New Brunswick (the Society) as a result of suggestions from property lawyers, formed a committee to attempt to codify the requirements for title searches. Local customs and practises flourished and there was no objective standard to determine marketability of title. After much discussion and debate, the committee submitted its proposals to the Society and in 1983 the Society approved the first real property search standards. The search standards required a sixty year search of title from an acceptable root and they advised and commented on various matters and requirements for a title search. At the same time NBGIC instituted a program of land titles in Albert County. Albert County was chosen because it was small in size, had a relatively small population and was largely rural. The land titles system was to run concurrently with the registry act system. A lawyer migrating a title to land titles had to submit to the registry office a typed abstract of a sixty year search together with all relevant title information. If the title was deemed acceptable by registry office staff, the title was migrated to land titles. If it was not acceptable for land titles, registration was continued under the registry act system. Albert County was intended to be an experiment and if workable it was

intended that it would be expanded throughout New Brunswick but that never occurred. The requirement of the submission of abstracts and their subsequent review tended to delay the implementation period and it subsequently took up to eight months (in some cases) to complete the process.

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The SNB Business Plan - 1996

As the role of SNB continued to expand, and the design and development of the software progressed, SNB issued, in 1996, a five year business plan, the object of which was to implement a fully automated integrated land information management system with a paperless registry office providing electronic registration as a key component. A key objective of SNB was to reduce the cost of the registry offices (fifteen in New Brunswick) and the staff required to operate and maintain them. SNB also wanted to establish and maintain a land registry system which was simple, quick, accurate and possibly produce a product that could be sold to other jurisdictions, of which Eastern Europe and Latin America were potential markets. SNB wanted a rapid conversion of the entire province without significant cost to the public. At the same time SNB realized that it had to maintain the integrity of the registry act system which had in many respects served so well since 1785.

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The Opportunity - and the Responsibility

In 1996 the Society established the Property Law Advisory Committee (PLAC) to act as an advisory committee to the Society and the property bar with respect to matters relating to property law. One of the first initiatives was to review the search standards which had been adopted in 1983. Some were obviously outdated and new standards for some matters were required. At the same time SNB approached the Society to advise of the significant changes which it was proposing for the land registry system. SNB wanted to radically reform the land registry system but it did not want to be responsible for maintaining and operating the system, particularly when it becomes fully electronic in the future. An offer was made by SNB to the Society to transfer to the Society the eventual responsibility for the operation and maintenance of the land registry system. However, one of the SNB requirements was that the integrity of the land registry system on a go forward basis had to be of the highest standard. After a period of discussion and negotiation, it was agreed that SNB would, over time, withdraw from the operation of the land registry system and the responsibility would be transferred to the Society.

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The Master Agreement

The agreement reached between SNB and the Society was documented by a master agreement dated November 9, 1999 (copy attached). Some significant aspects of the agreement are:

- (a) a lawyer certifying title to SNB will be responsible for claims arising from negligence for a period of ten years but thereafter the member has no responsibility whatsoever;
- (b) if a lawyer certifying title has conducted a title search in accordance with the property standards, and a claim arises, SNB has no recourse against the lawyer;
- (c) lawyers are required to carry professional liability insurance to a maximum of \$5,000,000.00 but has no obligation beyond that amount regardless of the amount of the claim;
- (d) adjudicators are appointed and if a lawyer has a concern about a possible title matter, it can be referred to an adjudicator who will make a final determination. If the adjudicator decides that the problem does not affect the marketability of title, the lawyer can issue a title certificate to SNB and is not responsible for a subsequent claim that arises out of the matter;
- (e) the issue of fraud was of concern to SNB and after extensive negotiations, it was agreed that the Society will be responsible for a maximum of \$100,000.00 per claim and a cap of \$250,000.00 for claims in any one year.

During this period of negotiation, PLAC revised and updated the property standards. One significant change was that the search requirement of sixty years was, at the suggestion of SNB, reduced to forty years. The property standards were submitted to SNB for their approval and the revised property standards were issued on April 1, 1999, just prior to adoption of the master agreement on November 9, 1999.

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The Subscription Agreement

Since SNB had agreed that it would rely upon certificates of title issued by property lawyers, SNB required confirmation that the titles, which they would accept without independent verification, were good titles and they required assurance that lawyers would conduct their searches in accordance with the property standards. This resulted in a subscription agreement (copy attached) which is a schedule to the master agreement.

The subscription agreement is a contract between the individual lawyer and SNB. All members of the Society are eligible to enter into a subscription agreement but (fortunately) most lawyers who do not have a property practise have not signed. The eligible member confirms that he will conduct searches and submit titles to SNB in accordance with the property standards and that he carry liability insurance to a maximum of \$5,000,000.00. If a member defaults on any obligation, SNB is entitled to revoke the participation of that member and the member will be reported to the Society for discipline.

Only eligible members are entitled to access the system although there are certain exceptions for government employees and surveyors, but certificates of title can only be issued by eligible members.

One of the key provisions of the subscription agreement is the proof of execution which includes the following:

- (a) the necessity of maintaining the integrity of the registry system;
- (b) the expanding role of the notary public in the registration process including, inter alia, attesting to the appropriateness of property descriptions, proving due execution of instruments and compliance with prescribed naming conventions, and certifying the legal effective instruments to be registered in archiving registered documents; and
- (c) the benefit of legal advice being provided at the time of execution.

This requirement was important to SNB as they wanted to ensure that only a notary public would be eligible to take signatures and participate in the system. Unlike the New Brunswick **Personal Property Security Act**, where any person can make entries, SNB, with a view to the maintenance of the integrity of the system, did not want untrained personnel to have access to the system.

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The Adjudication Process

As mentioned above, one of the provisions of the master agreement is that it provides for an adjudication process. Lawyers can rely upon advance rulings by an adjudicator where the lawyer has a concern about a title matter which would otherwise probably lead to a requisition upon another lawyer. One of the overriding principles of SNB is "risk assessment" in determining marketability of title. The preface to the property standards refer to "common sense and professional judgment". If, based upon these principles, an adjudicator decides that there is no realistic expectation that a third party will advance a legitimate claim against the title, the title

is considered marketable notwithstanding that it does not comply with all of the requirements of the property standards. Another provision of the master agreement is with respect to claims which are made against SNB which might result in a claim of negligence against the lawyer. SNB and the Society have agreed that for claims which do not exceed \$250,000.00 a panel of three adjudicators will determine the issue and the decision will be binding on both SNB and the Society's insurance fund. This procedure is intended to settle, in a practical way, many issues which now involve litigation, the time and expense of which, in some cases, exceed the value of the property. The guidelines for adjudication are also attached.

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The implementation of land titles is the most significant change in the land registry system since 1785. All of the forms which lawyers have used in property matters have been changed to conform with the requirements of land titles. Attached are samples of some of the forms. This paper has not dealt with the details of the **Land Titles Act** but one of the most significant features of it is that once a title is certified to SNB, SNB guarantees the quality of that title and the title need never be searched again. More than a few lawyers have advised me that this is very comforting indeed.

CONSOLIDATED MASTER AGREEMENT

Law Society of New Brunswick

CONSOLIDATED MASTER AGREEMENT

MEMORANDUM OF AGREEMENT made the 9th day of November, 1999.

B E T W E E N:

LAW SOCIETY OF NEW BRUNSWICK, a body corporate under and by virtue of the laws of the Province of New Brunswick having its head office at the City of Fredericton, in the Province of New Brunswick, (hereinafter referred to as the "Law Society"),

OF THE FIRST PART,

- and -

SERVICE NEW BRUNSWICK, a body corporate under and by virtue of the laws of the Province of New Brunswick, having an office at the City of Fredericton, in the Province of New Brunswick, (hereinafter referred to as the "Corporation"),

OF THE SECOND PART.

WHEREAS:

- (a) the Law Society was constituted for the purpose, *inter alia*, "of advancing and maintaining the standard of legal practice in the Province of New Brunswick as well as governing and regulating the legal profession in New Brunswick";
- (b) in March of 1989, the Province of New Brunswick adopted a Land Information Policy in which one of the stated objectives was: "to improve available information services to the public (modernization of land information systems - land registry, parcel index, land titles)";
- (c) the Corporation recognized as a goal and priority in its Business Plan 1996-2001, the requirement to implement a fully automated, integrated, land information management system, with a paperless registry office providing electronic registration as a key component;

- (d) the Province of New Brunswick and its citizens will benefit greatly from the cost effectiveness and economic benefits which will flow from the rapid conversion of title from the present grantor/grantee registry to a Land Titles System;
- (e) to that end, the *Land Titles Act*, Acts of New Brunswick, 1981, C.L-1.1, has been amended to permit its application to all areas of the Province of New Brunswick;
- (f) subsection 11(2) of the *Land Titles Act* has been amended to require an application to be accompanied by a certificate of title in the prescribed form certified by a member of the Law Society authorized to practise law;
- (g) the Law Society and the Corporation wish to enter into this Agreement to facilitate the project for conversion to a province-wide land titles system and, pursuant to section 76.01 of the *Land Titles Act*, in order to govern claims against members of the Law Society insured by the Law Society;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

1. Interpretation

1.1 In this Agreement

- (a) "Advance Ruling" means a determination made by an adjudicator in accordance with the terms and conditions of the Subscription Agreement and the Rules and Guidelines for Adjudication referred to in clause 4.1;
- (b) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- (c) "Certificate of Title" means a certificate of title issued under paragraph 11(2)(b) of the *Land Titles Act*;
- (d) "Effective Date" means the Effective Date referred to in clause 14.1;
- (e) "eligibility" means the status of an eligible member;

- (f) "eligible member" means a practising member
 - (i) who is not suspended,
 - (ii) who has not been disbarred,
 - (iii) who is not in arrears respecting the payment of money to the Law Society,
 - (iv) who has paid the requisite fee for mandatory liability insurance coverage under section 83 of the *General Rules under the Law Society Act, 1996*; and
 - (v) whose practice has not been made subject to any restriction or condition imposed by the Law Society or one of its committees under Part 10 (Discipline and Competence) of the *Law Society Act, 1996* that precludes the member from practising property law;
- (g) "Implementation Committee" means the committee referred to in article 7;
- (h) "member" means a member of the Law Society;
- (i) "Standards" means the standards, rules and practices and policies established and published by the Law Society and from time to time in force that are applicable to the practice of property law; and
- (j) "Subscription Agreement" means an agreement made between the Corporation and an eligible member in the form annexed hereto as Schedule A.

1.2 Headings are inserted in this Agreement solely for the convenience of the parties and are not intended to be used as an aid in the interpretation of this Agreement.

1.3 All amounts or sums of money referred to in this Agreement are stated in Canadian dollars.

1.4 Where the context requires, words in the singular include the plural, and words in the plural include the singular, and words imparting the masculine gender include the feminine and neuter genders.

2. Exchange of Information

2.1 On the Effective Date, the Law Society shall provide to the Corporation a list of all eligible members, assigning a unique identification number to each eligible member. The Law Society shall thereafter notify the Corporation of each person who subsequently becomes an eligible member.

2.2 Following the Effective Date, the Law Society shall promptly notify the Corporation in writing of the following:

- (a) any change in the eligibility of members on the list of eligible members by virtue of suspension, disbarment, cessation of insurance or practice restriction;
- (b) any change in the Standards;
- (c) any change in the Law Society practices regarding audit and enforcement of the Standards;
- (d) any change in the mandatory insurance coverage that affects insurance coverage for negligence in issuing Certificates of Title; and
- (e) any change in the compensation fund policy that affects reimbursement of victims of dishonesty or fraud on the part of eligible members in the issuance of Certificates of Title.

2.3 On the Effective Date, the Corporation shall provide the Law Society with a list of the members who have signed Subscription Agreements with the Corporation.

2.4 Following the Effective Date, the Corporation shall promptly notify the Law Society in writing of the following:

- (a) termination of any Subscription Agreement;
- (b) the names of any members who have signed Subscription Agreements subsequent to the date of this Agreement; and
- (c) any claim or potential claim against a member who has signed a Subscription Agreement when such claim or potential claim comes to the attention of the Corporation.

2.5 Upon request by the Law Society, or, if a mutually acceptable schedule has been agreed upon between the parties, then in accordance with that schedule, the Corporation agrees to provide to the Law Society details of Certificates of Title issued by members.

2.6 For the purpose of paragraph 2.2 (a), the Corporation shall establish an electronic register of the names of members and shall grant to the Law Society exclusive access to that register in which the Law Society shall electronically record any alteration in a member's eligibility, whether commencement, cessation or reinstatement of eligibility.

3. Limitation of Liability of Members

3.1 The Corporation acknowledges and agrees that any claim against an eligible member, whether under section 76 of the *Land Titles Act* or otherwise, in respect of a Certificate of Title issued by the member to the Corporation pursuant to the terms of the Subscription Agreement signed by that member shall be limited as follows:

- (a) no claim shall be made in any of the following three cases:
 - (i) after the date that is ten (10) years after the date of the Certificate of Title;
 - (ii) where the member has certified title in accordance with the Standards and was not negligent;
 - (iii) where, pursuant to the Rules and Guidelines for Adjudication, an Adjudicator has made an Advance Ruling authorizing the member to certify, or proceed, notwithstanding the issue giving rise to the claim.
- (b) no claim shall exceed the least of the following amounts:
 - (i) \$5.0 million;
 - (ii) the fair market value of the parcel of land and all improvements at the date of the claim determined as if the negligence giving rise to the claim had not occurred; and
 - (iii) the amount paid as compensation by the Corporation in respect of the deficient Certificate of Title.
- (c) in the case of claims for recovery of an amount of \$250,000 or less, the liability of the member shall not exceed the amount determined by the panel of Adjudicators under clause 4.3.

3.2 The Corporation agrees that if the claim arises out of the dishonesty, fraud or criminal conduct of an eligible member in the issuance of a Certificate of Title and is not covered by the member's professional liability insurance, the claim shall be limited as follows:

- (a) a maximum of \$100,000 per claim;
- (b) a maximum of \$250,000 for all eligible members as a group per fiscal year and shall be non-cumulative; and for this purpose, the fiscal year will be from May 1 to April 30th and the date of a claim shall be the date that the claim, in writing, is received by the Corporation.

3.3 Where the eligibility of a member who has entered into a Subscription Agreement has terminated, only those claims made by the Corporation against that member in respect of Certificates of Title that were accepted by the Corporation from the member before the Law Society had given notice to the Corporation of the termination of the member's eligibility are governed by this Agreement.

4. Adjudicators

4.1 In consultation with the Law Society, the Corporation shall appoint eligible members to serve as Adjudicators in each Judicial District of the Province and promulgate rules and guidelines for the term of their appointment, the allocation of work among them, the procedure for their decision-making, reimbursement of their expenses, remuneration (if any), indemnification, removal and such other matters as the parties consider necessary. All such rules and guidelines shall be considered a part of this agreement upon acceptance by the parties (Schedule "B" added November 9, 1999).

4.2 An eligible member who has entered into a Subscription Agreement shall be entitled to the benefit of adjudication as set out in the Subscription Agreement and the Rules and Guidelines for Adjudication.

4.3 Where the claim by the Corporation against an eligible member in respect of a Certificate of Title is for recovery of an amount not exceeding \$250,000, liability of the eligible member or of the Corporation shall be determined by a panel of three (3) Adjudicators selected at random from the Adjudicators appointed under clause 4.1 and the decision of the majority of the panel shall be binding on both the Corporation and the Law Society. For this purpose, the panel may apportion liability if the parties consent in advance. The Corporation shall give the Law Society reasonable advance written notice of the hearing to determine liability of the eligible member or the Corporation under this clause.

5. Compensation Fund

5.1 The Law Society, together with eligible members, shall co-operate with the Corporation in the establishment and administration of a compensation fund to compensate the Corporation (subject to the limits set out in clause 3.2) for losses incurred by the Corporation as a result of dishonesty, fraud or criminal acts in the issuance of Certificates of Title by eligible members who have signed Subscription Agreements.

6. Co-operation

6.1 The parties agree to co-operate with one another in facilitating the implementation and operation of the *Land Titles Act* and in enabling the Corporation to achieve a fully paperless system.

6.2 The parties agree to co-operate in the establishment of a procedure by which, after the creation of a fully paperless land titles system, eligible members will be the only persons, other than the Crown in right of the Province of New Brunswick and surveyors who are members in good standing of the New Brunswick Association of Land Surveyors, permitted to:

- (a) register instruments electronically;

and eligible members will be the only persons, other than the Crown in right of the Province of New Brunswick, permitted to:

- (b) adjudicate upon and archive data under the *Land Titles Act*; and
- (c) issue certificates of registered ownership under the *Land Titles Act*.

7. Implementation Committee

7.1 Each party to this Agreement shall appoint an equal number of members to a committee (the "Implementation Committee"), the meetings of which shall be chaired alternately by a representative of the Law Society and the Corporation.

7.2 The Implementation Committee shall meet as required and shall act as a forum for discussion and communication to ensure that each party is well informed of the requirements of the other, to identify issues common to the parties with respect to the implementation of this Agreement and the *Land Titles Act* and to work toward the resolution thereof.

7.3 Each party shall submit the minutes of each meeting of the Implementation Committee to its governing board (the board of directors, in the case of the Corporation; the Council and its Insurance Management Committee, in the case of the Law Society) for consideration at the meeting of that governing body next following the distribution of the minutes by the Implementation Committee.

8. Arbitration

8.1 Either party (the "Complainant") may refer any dispute as to the construction, interpretation or application of this Agreement to arbitration by giving the other party ("Respondent") hereto notice of the dispute and a brief description thereof. Each party shall name an arbitrator within twenty (20) business days of the notice of dispute being given to the Respondent. The Respondent shall respond to the notice of dispute within fifteen (15) business days of receiving it from the Complainant. The two arbitrators shall within fifteen (15) business days of the appointment of the second arbitrator appoint a third arbitrator. The arbitrators shall specify time limits by which acts are to be done in order to have the dispute dealt with expeditiously. The arbitration shall be conducted in accordance with the *Arbitration Act*, Acts of New Brunswick, 1992, c. A-10.1, as amended. Such arbitration shall be held in Fredericton and the decision by a simple majority of the panel of arbitrators shall be final and binding on the parties and may be enforced in a court of competent jurisdiction. The arbitration shall be conducted in accordance with the Rules of Court of New Brunswick except to the extent the parties otherwise agree. The costs of arbitration shall be borne equally by the parties.

8.2 For greater certainty, the liability of a member to the Corporation in respect of a Certificate of Title issued by the member is not a dispute contemplated for resolution by the arbitration provisions of clause 8.1.

8.3 In the event that either party fails to take any action within the time limits specified in this article or any time limits specified by the arbitrators, such party shall be deemed to be in default and the dispute may be decided in favour of the party not in default.

9. Agreement to Benefit Eligible Members

9.1 Eligible members who have entered into a Subscription Agreement shall be the only members

- a) entitled to the benefit of this agreement, or
- b) who may rely on it.

10. Complaint

10.1 The parties acknowledge that the Corporation may, if it is of the opinion that

- a) an eligible member who has entered into a Subscription Agreement has failed to comply with the terms and conditions of that agreement; or
- b) the continued practice of the eligible member as provided for in a Subscription Agreement may be harmful to the Corporation, to the public or to the registry system,

file a complaint with the Registrar of Complaints under section 41 of the *Law Society Act, 1996*.

11. Governing Law

11.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the Courts of the Province of New Brunswick as the final and proper forum for determination of any dispute hereunder.

12. Changes to the Agreement

12.1 Any modifications to this Agreement shall be in writing and signed by the duly appointed officers of both parties.

13. Termination

13.1 This Agreement shall terminate on the earliest of the following dates:

- (a) January 1, 2020; or
- (b) the date that is ten (10) years following the date of the full conversion of all parcels of land to the Land Titles System; or
- (c) the date that is specified in a notice of termination given by either party to the other, provided that the date specified in any such notice of termination shall not be less than 180 days after giving of the notice of termination to the party to whom it was directed; or

- (d) the date that is thirty (30) days following the giving of notice by the Corporation to the Law Society that in the opinion of the Corporation the Standards or then current audit and enforcement practices of the Law Society materially diminish the reliability of Certificates of Title.

13.2 Upon termination of this Agreement, neither party shall be entitled to make upon the other any claim or demand whatsoever for damages, costs or losses suffered or incurred, or to be suffered or incurred, whether direct or consequential, arising out of, or in any manner related to, the termination of this Agreement.

13.3 Notwithstanding termination of this Agreement, the limitations on liability set out in article 3 of this Agreement shall survive such termination with respect to Certificates of Title issued before such termination.

14. Notice

14.1 Any notice or document required or permitted to be given by this Agreement to a party hereto shall be in writing and is sufficiently given if served in the manner provided for personal service under the Rules of Court of New Brunswick or if transmitted by facsimile transmission or by electronic mail, to such party addressed as follows:

in the case of the Law Society to:

Law Society of New Brunswick
1133 Regent Street, Suite 206
Fredericton, New Brunswick
E3B 3Z2
Attention: Executive Director
Fax no. 506-451-1421
E-mail: mcarrier@lawsociety.nb.ca

with a copy to the Insurance Management Committee:

Insurance Management Committee
Law Society of New Brunswick
1133 Regent Street, Suite 206
Fredericton, New Brunswick E3B 3Z2
Attention: Claims Manager
Fax no. 506-451-1421
E-mail: jlee-white@lawsociety.nb.ca

in the case of the Corporation to:

Service New Brunswick
P.O. Box 1998
985 College Hill Road
Fredericton, New Brunswick
E3B 5G4
Attention: Vice President, Legal
Fax no. 506-453-3898
E-mail: roderick.mackenzie@snb.gov.nb.ca

and a notice so served personally shall be deemed given at the time of delivery and a notice sent by facsimile or electronic mail transmission shall be deemed given on the first business day after such transmission provided that a copy of the notice has been sent, within 24 hours of the transmission, by ordinary prepaid mail.

14.2 Notwithstanding the provisions of clause 14.1 permitting notice to be given by facsimile or electronic transmission, any notice to be given pursuant to clause 3.3 shall not be effective unless either personally served in accordance with clause 14.1 or recorded in the manner contemplated by clause 2.6. In the latter case, the notice shall be deemed to be effective at the time the entry is made in the electronic register.

15. Effective Date

15.1 This Agreement comes into force on the date agreed upon by the parties as the Effective Date.

16. Time

16.1 Time is of the essence of this Agreement.

17. Assignment

17.1 Neither party may assign this Agreement without the prior written consent of the other which consent shall not be unreasonably withheld or delayed.

18. No Agency or Partnership

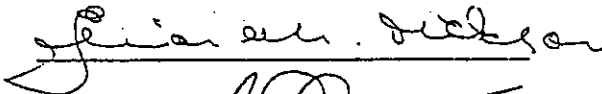
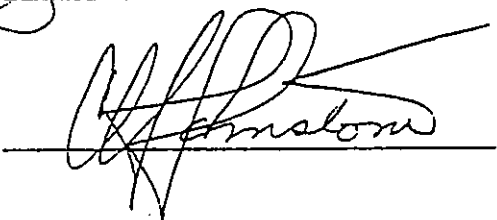
18.1 Nothing in this Agreement shall be construed to constitute one party as an agent, associate or partner of the other party.

19. Entire Agreement

19.1 This Agreement, including the Schedules hereto embodies the agreement of the parties hereto with regard to the matters dealt with herein, and that no understanding or agreements, oral or otherwise, exist between the parties except as herein expressly set out.

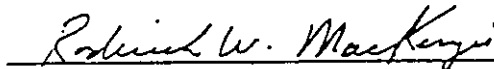
IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as under seal by their respective proper officers in that behalf as of the day and year first above written.

LAW SOCIETY OF NEW BRUNSWICK

SERVICE NEW BRUNSWICK





Schedule "A"

SUBSCRIPTION AGREEMENT

MEMORANDUM OF AGREEMENT made the ____ day of _____, _____.

B E T W E E N:

[NAME OF LAWYER], a member of the Law Society of New Brunswick, carrying on the practice of law at [Address] in the Province of New Brunswick, (hereinafter referred to as the "Subscriber"),

OF THE FIRST PART,

- and -

SERVICE NEW BRUNSWICK, a body corporate under and by virtue of the laws of the Province of New Brunswick, having an office at the City of Fredericton, in the Province of New Brunswick, (hereinafter referred to as the "Corporation"),

OF THE SECOND PART.

WHEREAS:

- (a) the Law Society of New Brunswick (the "Law Society") and the Corporation have entered into an agreement dated February 4th, 1999, as amended (the "Master Agreement") regarding the participation of the Law Society and its practising insured members in the implementation of a land titles system in the Province of New Brunswick under the *Land Titles Act*;
- (b) the Master Agreement contemplates that eligible members of the Law Society will enter into subscription agreements with the Corporation defining the relationship between, and the obligations of, the subscriber and the Corporation and setting out the terms and conditions by which subscribers will submit to the Corporation applications and certificates under the *Land Titles Act*;

- (c) the Subscriber and the Corporation agree that the terms and conditions hereinafter set forth shall govern applications, procedures and the issuance of certificates as contemplated in the Master Agreement and herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT for and in consideration of the premises and the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

1. Interpretation

1.1 In this Agreement

- a) "Act" means the *Land Titles Act*, c.L-1.1 of the Revised Statutes of New Brunswick, as amended by c38 of the Statutes of New Brunswick, 1998;
- b) "Agreement" means this Agreement and any agreement that is supplementary to or in amendment or confirmation of this Agreement;
- c) "Apparent PID" means the PID which an eligible member believes identifies the parcel of land affected by an instrument or application;
- d) "Certificate of Legal Effect" means a statement to be provided by a subscriber with the registration of every instrument under the Act certifying the effect of the instrument on the existing Certificate of Registered Ownership;
- e) "Certificate of Title" means a certificate of title issued under paragraph 11(2)(b) of the Act;
- f) "Digital Property Map" means the graphical depiction of parcels of land as compiled by the Corporation on a continuing basis according to the New Brunswick Property Mapping Standards, contained in chapter 6 of the New Brunswick Land & Water Information Standards;
- g) "eligibility" means the status of an eligible member;
- h) "eligible member" means a practising member
 - (i) who is not suspended,
 - (ii) who has not been disbarred,

- (iii) who is not in arrears respecting the payment of money to the Law Society,
 - (iv) who has paid the requisite fee for mandatory liability insurance coverage under section 83 of the *General Rules under the Law Society Act, 1996*, and
 - (v) whose practice has not been made subject to any restriction or condition imposed by the Law Society or one of its committees under Part 10 (Discipline and Competence) of the *Law Society Act, 1996* that precludes the member from practising property law;
-
- i) "member" means a member of the Law Society;
 - j) "Parcel Attribute Database" means a database containing parcel location information, interest holder names, instrument information and other related data for a PID;
 - k) "PID" means a parcel identifier which identifies a parcel of land on a Digital Property Map or in the Parcel Attribute Database;
 - l) "property law" means the law relating to real property;
 - m) "Standards" means the standards, rules and practices and policies established and published by the Law Society and from time to time in force that are applicable to the practice of property law by members;
 - n) "Statement of Appropriateness" means a statement on an application under subsection 10.1(2) of the Act by a Subscriber to associate a description of a parcel of land with its parcel identifier, indicating that the Subscriber has examined the current Digital Property Map for the parcel and is satisfied that the Digital Property Map appears to depict appropriately the description of the parcel of land in the application;
 - o) "Subscriber" means an eligible member who has entered into a Subscription Agreement;
 - p) "Subscription Agreement" means an agreement between a Subscriber and the Corporation substantially similar to this Agreement; and
 - q) "Web-based" means electronically communicated via the Internet.

1.2 Headings are inserted in this Agreement solely for the convenience of the parties and are not intended to be used as an aid in the interpretation of this Agreement.

1.3 All amounts or sums of money referred to in this Agreement are stated in Canadian dollars.

1.4 Where the context requires, words in the singular include the plural, and words in the plural include the singular, and words importing the masculine gender include the feminine and neuter genders.

2. Representations of the Subscriber

2.1 The Subscriber covenants, warrants and represents to the Corporation that the Subscriber:

- (a) is an eligible member and that he or she will maintain his or her eligibility;
- (b) is familiar with and that he or she will comply with the Standards; and
- (c) will maintain excess professional liability insurance for claims by the Corporation against the Subscriber under clause 3.1 of the Master Agreement.

2.2 The Subscriber acknowledges that failure to comply with the terms and conditions of this Agreement and the Rules and Guidelines for Adjudication contemplated under clause 4.1 of the Master Agreement, may

- (a) disentitle the Subscriber to some or all of the protection and benefits of the Master Agreement, including but not limited to the acceptance by the Corporation of Certificates of Legal Effect and the right to submit Web-based documentation such as Applications for PID Approval under section 10.2 of the Act, and Applications for First Registration under subsection 11(1) of the Act; and
- (b) form the basis of a complaint by the Corporation against the Subscriber to the Registrar of Complaints under section 41 of the *Law Society Act 1996*.

3. Web-based Documentation

3.1 Applications for PID Approval under subsection 10.1(2) of the Act and Applications for First Registration under subsection 11(1) of the Act shall be submitted by the Subscriber as Web-based documentation.

3.2 Web-based documentation submitted by a Subscriber shall contain a declaration that the Subscriber has obtained all affidavits and other documents required under the Act, the *Registry Act* or the Regulations thereunder. Said declaration shall be conclusive and shall have the same force and effect as if made under the *Evidence Act*, R.S.N.B. 1973, c. E-11.

3.3 The parties hereto agree that PKI (encrypted signatures) or similar technology may be used by the Corporation as part of Web-based documentation.

4. Parcel Descriptions and Parcel Identifiers

4.1 By submitting an Application for PID Approval in respect of a parcel of land under subsection 10.1(2) of the Act, the Subscriber certifies:

- a) that the description of the parcel meets the prescribed standards for descriptions under the Act; and
- b) that a transfer of the entirety of the parcel would not contravene the *Community Planning Act*.

4.2 If the Subscriber cannot certify in accordance with paragraph 4.1 a) or b), the Subscriber shall not submit an Application for PID Approval under subsection 10.1(2) of the Act until such time as any deficiencies have been resolved.

4.3 Subject to clause 4.4, a Statement of Appropriateness shall form part of the Web-based submission for each application by a Subscriber under subsection 10.1(2) of the Act and shall be worded as follows:

"I have examined the current Digital Property Map for the parcel associated with this application and I am satisfied that the Digital Property Map appears to depict appropriately the description of the parcel of land in the application."

4.4 A Statement of Appropriateness is not required for an Application for PID Approval with respect to a condominium parcel or an air space parcel.

5. Certificate of Legal Effect

5.1 Each instrument or a set of instruments affecting the same PID presented for registration under the Act by the Subscriber shall be accompanied by a Certificate of Legal Effect certifying the legal effect of the instrument or set of instruments on the existing Certificate of Registered Ownership.

5.2 The Certificate of Legal Effect may take the form of a draft of the Certificate of Registered Ownership to be issued immediately following the registration of an instrument or set of instruments.

5.3 The new Certificate of Registered Ownership resulting from the registration of an instrument or set of instruments shall be based on the Certificate of Legal Effect submitted by the Subscriber.

5.4 Notwithstanding clause 5.3, the Registrar General may issue a Stop Order under section 36 of the Act.

6. Proof of Execution for Registration Purposes

6.1 The parties to this Agreement recognize the historical value of the role of the Notary Public in proving execution of documents to be registered in the Registry Office, and the parties acknowledge:

- a) the necessity of maintaining the integrity of the registry systems;
- b) the expanding role of the Notary Public in the registration process, including, inter alia, attesting to the appropriateness of property descriptions, proving due execution of instruments in compliance with prescribed naming conventions, and certifying the legal effect of instruments to be registered and archiving registered instruments; and
- c) the benefit to the public of legal advice being provided at the time of execution.

Therefore, notwithstanding subsection 55(2) of the Act allowing proof of execution by an individual to be made by an Affidavit of Execution or a Certificate of Execution, the Subscriber, when preparing and when proving instruments intended for registration, shall utilize a Certificate of Execution in the prescribed form rather than an Affidavit of Execution, except in occasional circumstances, the reasons for which shall be documented.

6.2 The Subscriber shall not present for registration any instrument that is not accompanied by a Certificate of Execution in the prescribed form, except in occasional circumstances, the reasons for which shall be documented.

6.3 Clause 6.1 and clause 6.2 apply only to instruments identified in section 3 of the *General Regulation - Land Titles Act* as a trigger for conversion to land titles, or instruments that would have triggered a conversion if the subject land were not already registered land, and do not apply to instruments executed by a corporation or an attorney acting under a power of attorney.

7. Acceptance

7.1 Subject to the terms and conditions of this Agreement and the Master Agreement, the Corporation shall accept Statements of Appropriateness, Certificates of Legal Effect and Certificates of Title issued by the Subscriber in conformity with the Act.

8. Procedures

8.1 The Subscriber acknowledges that the Mechanics' Lien Index, Employees' Lien Index and the Condominium Corporations Index shall be located in the registration index.

8.2 The Subscriber shall include, either as part of the heading or the legal description, the Apparent PID of each parcel being affected by the registration of an instrument intended to be registered under the *Registry Act*.

8.3 Notwithstanding subsection 2 (4) of the Act, the Subscriber agrees not to present for registration under the *Registry Act* any instrument identified in section 3 of the *General Regulation - Land Titles Act* as a trigger for conversion to land titles.

8.4 For each transfer of a parcel to which a residential tax credit is applicable, the Subscriber shall annex a completed Application for Residential Tax Credit to the Affidavit of Value (Affidavit of Transfer).

8.5 The Subscriber confirms that the Web-based documentation submitted to and relied on by the Corporation shall be conclusive and will have the same force and effect as if made under the *Evidence Act*, R.S.N.B. 1973, c. E-11.

9. Compensation Fund

9.1 The Subscriber shall co-operate with the Law Society and the Corporation in the establishment and administration of a compensation fund to compensate the Corporation (subject to the limits set out in clause 3.2 of the Master Agreement) for losses incurred by the Corporation as a result of dishonesty, fraud or criminal acts in the issuance of Certificates of Title by Subscribers.

10. Release of Member Information

10.1 The Subscriber hereby authorizes and directs the Law Society to promptly notify the Corporation of particulars of any change in the Subscriber's eligibility.

10.2 The Subscriber hereby appoints the Corporation attorney for the Subscriber to notify the Law Society of any claim or potential claim against the Subscriber in respect of the practice of property law.

10.3 The Subscriber authorizes the Corporation to notify the Law Society that the Subscriber has entered into this Agreement and to provide the Law Society with particulars of Certificates of Title issued by the Subscriber after the signing of this Agreement.

10.4 The Subscriber authorizes the Corporation to provide, and the Corporation shall provide to the Subscriber a list of the members who have signed Subscription Agreements with the Corporation.

11. Limitation of Liability of Subscribers

11.1 The Corporation acknowledges and agrees that any claim against a Subscriber arising from an Application for PID Approval under subsection 10.1(2) of the Act, an Application for First Registration under subsection 11(1) of the Act, a parcel description, a Statement of Appropriateness, or a Certificate of Legal Effect, submitted by a Subscriber, shall be limited in the same spirit and manner as set out in article 3 of the Master Agreement with respect to a Certificate of Title and shall be dealt with in the same spirit and manner as a claim against a Subscriber in respect of a Certificate of Title under clause 4.3 of the Master Agreement.

11.2 Where the eligibility of the Subscriber has terminated, only those claims made by the Corporation against the Subscriber in respect of Application for PID Approval under subsection 10.1(2) of the Act, an Application for First Registration under subsection 11(1) of the Act, a parcel description, a Statement of Appropriateness, a Certificate of Legal Effect or a Certificate of Title that were accepted by the Corporation from the Subscriber before the Law Society had given notice to the Corporation of the termination of the Subscriber's eligibility are governed by this Agreement.

12. Arbitration

12.1 Either party (the "Complainant") may refer any dispute as to the construction, interpretation or application of this Agreement to arbitration by giving the other party ("Respondent") hereto notice of the dispute and a brief description thereof. Each party shall name an arbitrator within twenty (20) business days of the notice of dispute being given to the Respondent. The Respondent shall respond to the notice of dispute within fifteen (15) business days of receiving it from the Complainant. The two arbitrators shall within fifteen (15) business days of the appointment of the second arbitrator appoint a third arbitrator. The arbitrators shall specify time limits by which acts are to be done in order to have the dispute dealt with expeditiously. The arbitration shall be conducted in accordance with the *Arbitration Act*, Acts of New Brunswick, 1992, c. A-10.1, as amended. Such arbitration shall be held in Fredericton and the decision by a simple majority of the panel of arbitrators shall be final and binding on the parties and may be enforced in a court of competent jurisdiction. The arbitration shall be conducted in accordance with the Rules of Court of New Brunswick except to the extent the parties otherwise agree. The costs of arbitration shall be borne equally by the parties.

12.2 For greater certainty, the liability of the Subscriber to the Corporation in respect of a claim by the Corporation under article 11 is not a dispute contemplated for resolution by the arbitration provisions of clause 12.1.

12.3 In the event that either party fails to take any action within the time limits specified in this article or any time limits specified by the arbitrators, such party shall be deemed to be in default and the dispute may be decided in favour of the party not in default.

13. Changes to the Agreement

13.1 No modification to this Agreement shall be effective unless it is in writing and

- (a) signed by the parties; or
- (b) has been proposed by the Corporation and approved by the Law Society after not less than 30 days notice has been given to the Subscriber.

14. Termination of Agreement

14.1 This Agreement shall terminate immediately upon the first to occur of the following:

- a) termination of the Master Agreement; and
- b) termination of the Subscriber's eligibility.

14.2 Where this Agreement has terminated under paragraph 14.1(b), this Agreement shall, at the option of the Subscriber, be revived upon the Subscriber re-establishing his or her eligibility.

14.3 Notwithstanding termination of this Agreement, the limitations on liability set out in article 11 of this Agreement shall survive such termination.

15. Notice

15.1 Any notice or document required or permitted to be given by this Agreement to a party hereto shall be in writing and is sufficiently given if served in the manner provided for personal service under the Rules of Court of New Brunswick or if transmitted by facsimile or electronic mail transmission, to such party addressed as follows:

in the case of the Subscriber:

Subscriber,
[address]
E-mail:

in the case of the Corporation to:

Service New Brunswick
P.O. Box 1998
985 College Hill Road
Fredericton, New Brunswick
E3B 5G4,
Attention: Vice President, Legal
Fax no. 506-453-3898
E-mail: roderick.mackenzie@snb.gov.nb.ca

and a notice so served personally shall be deemed given at the time of service and a notice sent by facsimile or electronic mail transmission shall be deemed given on the first business day after such transmission provided that a copy of the notice has been sent, within 24 hours of the transmission, by ordinary prepaid mail.

15.2 Notwithstanding the provisions of clause 15.1 permitting notice to be given by facsimile or electronic transmission, any notice to be given pursuant to clause 11.2 shall not be effective unless either personally served in accordance with clause 15.1 or recorded in the manner contemplated by clause 2.6 of the Master Agreement. In the latter case, the notice shall be deemed to be effective at the time the entry is made by the Law Society in the electronic register.

16. Time

16.1 Time is of the essence of this Agreement.

17. Assignment

17.1 Neither party may assign this Agreement.

18. No Agency or Partnership

18.1 Nothing in this Agreement shall be construed to constitute one party as an agent, associate or partner of the other party.

19. Governing Law

19.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the Courts of the Province of New Brunswick as the final and proper forum for determination of any dispute hereunder.

20. Entire Agreement

20.1 This Agreement embodies the agreement of the parties hereto with regard to the matters dealt with herein, and that no understanding or agreements, oral or otherwise, exist between the parties except as herein expressly set out.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED, SEALED & DELIVERED

in the presence of

))))))))))

Witness

[Subscriber]

SERVICE NEW BRUNSWICK

November 9, 1999

RULES AND GUIDELINES FOR ADJUDICATION

~~Version dated April 24, 2000~~

1. General

1.1 In these Rules and Guidelines for Adjudication, the following terms shall have the respective meanings ascribed to them below:

- a) "Appeal Panel" means the panel of Adjudicators selected to determine an appeal pursuant to article 6;
- b) "Applicant" means a Subscriber referred to in article 2;
- c) "Claim" means a claim by the Corporation against a Subscriber in respect of a Certificate of Title where the amount sought to be recovered does not exceed \$250,000;
- d) "Claims Panel" means a panel of Adjudicators selected to determine Claims under Part B;
- e) "Loss" means the amount of compensation to which the Corporation claims it is entitled as damages for the act or omission of the Respondent;
- f) "Master Agreement" means the Master Agreement entered into between the Law Society and the Corporation on February 4, 1999, as amended and supplemented from time to time, and includes all schedules thereto;
- g) "Respondent" means the Subscriber whose Certificate of Title is the subject of a Claim.

1.2 Unless defined in these Rules and Guidelines for Adjudication, the definitions set out in the Master Agreement shall apply.

1.3 An Adjudicator is expected to exercise the "common sense and professional judgment" referred to in the Preface to the Standards for the Practice of Real Property Law dated January 26, 1999. *adopted by the Law Society on April 1, 1999, as amended and supplemented from time to time.*

1.4 The normal rules regarding conflicts of interest shall apply to the disqualification of Adjudicators with respect to any particular proceeding, subject to the following:

- a) the fact that an Applicant is on the list of Adjudicators shall not be sufficient reason to disqualify the applicant from applying for an Advance Ruling; and

- b) the fact that a Respondent is on the list of Adjudicators shall not be sufficient reason to preclude the adjudication of a Claim against the Respondent.

1.5 Provided an Adjudicator has acted in good faith in the performance of his or her duties, the Adjudicator shall be indemnified by the Corporation for any claims against the Adjudicator for services performed under the Master Agreement.

1.6 The appointment of an Adjudicator may be terminated by the Corporation in consultation with the Law Society.

1.7 These Rules and Guidelines for Adjudication may be amended at any time by agreement between the Corporation and the Law Society.

1.8 Part A of these Rules and Guidelines for Adjudication applies to Advance Rulings and Part B applies to Claims.

1.9 All Claims shall be determined under these Rules and Guidelines for Adjudication unless the Corporation, the Respondent and the Law Society otherwise agree in writing.

PART A – ADVANCE RULINGS

2. Who May Apply

2.1 Where a Subscriber is of the opinion that title to a parcel of land is marketable, although strict application of the Standards would not permit the issuance of a Certificate of Title, the Subscriber may submit an application to an Adjudicator for a determination as to its marketability.

2.2 A Subscriber may submit an application to an Adjudicator for a determination of an issue affecting an Application for PID Approval under subsection 10.1(2) of the Act, a Statement of Appropriateness, or a Certificate of ~~Legal~~ Effect.

3. Application Procedure

3.1 An application to an Adjudicator shall be in writing and shall include the following:

- a) the date of the application, the name of the Applicant and the PID of the parcel of land;
- b) a concise statement of the issue to be determined; and
- c) copies of all documents, plans and other information pertinent to the issue;

and shall be accompanied by the fee provided for in clause 7.1.

4. Determination

4.1 The Adjudicator shall provide to the Applicant a written determination of the issue within a reasonable time.

4.2 Upon receiving a determination from an Adjudicator that title to a parcel is marketable notwithstanding a title flaw or an issue raised under clause 2.1, an Applicant relying on that determination may certify title to the parcel affected by the title flaw or issue, and the Applicant shall receive the benefit of limited liability pursuant to article 3 of the Master Agreement.

4.3 Upon receiving a favourable determination from an Adjudicator on any submitted issue under clause 2.2, an Applicant relying on that determination may proceed, and the Applicant shall receive the benefit of limited liability pursuant to article 3 of the Master Agreement.

4.4 Upon receiving an unfavourable determination from an Adjudicator on any submitted issue, the Applicant shall not certify title, or proceed with an Application for First Registration, an Application for PID Approval, or the issuance of a Statement of Appropriateness or a Certificate of ~~Legal~~ Effect, as the case may be, until such time as any deficiencies have been resolved.

4.5 Where an application is submitted by an Applicant for the determination of an issue resulting from a requisition made by another Subscriber, the Adjudicator may award to the applicant costs against the requisitioning Subscriber not to exceed the fees provided for in clause 7.1, if in the opinion of the Adjudicator the requisition was frivolous. Costs shall be paid forthwith.

5. Record of Application

5.1 The Applicant and the Adjudicator shall keep a Record of Application, consisting of

- a) the application; and
- b) the written determination of the Adjudicator.

5.2 The Adjudicator shall, forthwith upon making a determination, make available to the Corporation, the Law Society and to other Adjudicators, the Record of Application, including the topic or topics under which it should be indexed.

5.3 An index of the Records of Application, sorted by PID, topic and name of Adjudicator, shall be maintained by the Corporation.

6. Appeals

6.1 Following an unfavourable determination by an Adjudicator, the Applicant may appeal to an Appeal Panel consisting of three other Adjudicators selected by the Applicant for a determination of the same issue.

6.2 The appeal application shall consist of the Record of Application and the fee provided for in clause 7.2.

6.3 The decision of the majority of the Appeal Panel shall be provided to the applicant in writing within a reasonable time, and the provisions of clause 4.2, clause 4.3 and clause 4.4 shall apply with respect to the decision.

6.4 Where an appeal application is submitted by an Applicant for the determination of an issue resulting from a requisition made by another Subscriber, the Appeal Panel may award to the Applicant costs against the requisitioning Subscriber not to exceed the aggregate of the fees provided for in clauses 7.1 and 7.2, if in the opinion of the majority of the Appeal Panel members the requisition was frivolous. Costs shall be paid forthwith.

6.5 The Applicant and the Appeal Panel shall keep a Record of Appeal, consisting of

- a) the Record of Application; and
- b) the written decision of the Appeal Panel.

6.6 The Appeal Panel shall, forthwith upon making a determination, make available to the Corporation, the Law Society and to other Adjudicators, the Record of Appeal, including the topic or topics under which it should be indexed.

6.7 An index of the Records of Appeal, sorted by PID, topic and names of the members of the Appeal Panel, shall be maintained by the Corporation.

7. Fees

7.1 The fees payable by the applicant to an Adjudicator for a determination of issues

- a) with respect to a Certificate of Title, shall be \$150 + HST; and
- b) with respect to a parcel description, Statement of Appropriateness or Certificate of Legal Effect, shall be \$100 + HST.

7.2 The fees payable by the Applicant for an appeal application are the same as under clause 7.1, but are payable to each of the three members of the Appeal Panel.

PART B – CLAIMS

9. Panel

9.1 In respect of each Claim, a Claims Panel consisting of three Adjudicators shall be selected at random from the list of Adjudicators maintained by the Corporation in consultation with the Law Society under clause 4.1 of the Master Agreement.

9.2 If an Adjudicator chosen in accordance with the random selection process referred to in the preceding clause has a conflict of interest, another Adjudicator shall be randomly selected to replace the one who has the conflict of interest.

9.3 The Corporation shall pay the Claims Panel members the fees specified in article 15. Upon completion of the determination by the Claims Panel, the Law Society shall reimburse the Corporation for such portion of the fees of the Claims Panel as the Claims Panel may determine. Failing allocation of the fees by the Claims Panel, the Law Society shall reimburse the Corporation for one-half of the fees.

10. Claims Procedure

10.1 The Claim shall be in writing and shall include the following:

- a) the name of the Respondent, date of the Claim and PID number of the parcel of land that is the subject-matter of the Claim;
- b) a concise statement of the error, defect in title, omission or other matter that allegedly gave rise to the Loss;
- c) the amount of the Loss and a breakdown of the elements of the Loss;
- d) a waiver by the Corporation of any portion of the Loss exceeding \$250,000;
- e) an outline of the status of proceedings by or against the Corporation that are related to the Claim; and
- f) copies of all documents, plans and other information pertinent to the issue.

10.2 The Claim shall be served on the Law Society, the Respondent and the members of the Claims Panel.

11. Conduct of the Adjudication

11.1 Subject to these Rules and Guidelines for Adjudication, the Claims Panel shall determine the procedure to be followed in the adjudication of the Claim.

11.2 The parties to the adjudication are the Corporation and the Respondent.

11.3 The Law Society is entitled to notice of all proceedings related to the adjudication and has standing as a party with respect to any matter affecting its interests under the Master Agreement.

11.4 All parties shall be treated equally and fairly and each party shall be given an opportunity to present its case and to respond to every other party's case.

11.5 The Claims Panel shall admit all evidence that would be admissible in a court, may admit other evidence that it considers to be relevant to the issues in dispute and may determine the manner in which the evidence is to be presented.

11.6 The Claims Panel shall determine the time, date and place of the adjudication, taking into consideration the parties' convenience and any other circumstances that the Claims Panel considers relevant.

11.7 The Claims Panel may conduct the adjudication on the basis of documents or may hold hearings for the presentation of evidence and for oral argument; however, the Claims Panel shall hold a hearing if a party so requests it.

11.8 The Claims Panel may conduct its proceedings by conference telephone or other communications facility that permits all the participants to hear the others.

11.9 A party who submits a statement to the Claims Panel or supplies any other information to the Claims Panel shall at the same time communicate it to the other parties.

11.10 If a party fails to appear at a hearing or to produce documentary evidence, the Claims Panel may, unless the party offers a satisfactory explanation, continue the adjudication and make a determination on the evidence before it.

11.11 The provisions of the *Arbitration Act*, R.S.N.B. 1973, c. A-10.1, shall apply to the adjudication except to the extent inconsistent with the provisions of these Rules and Guidelines for Adjudication and the Master Agreement.

12. Determination

12.1 The Claims Panel shall make its determination in writing and shall state the reasons on which it is based.

12.2 The decision of the majority of the members of the Claims Panel is the decision of the Claims Panel.

13. Record of Claim

13.1 The Claims Panel shall prepare or cause to be prepared a Record of Claim, consisting of the following:

- a) the Claim;
- b) a list of all written statements and other documents upon which the Claims Panel's determination was based and indicating where copies of the statements or documents may be reviewed; and
- c) the determination of the Claims Panel

13.2 Forthwith upon making its determination, the Claims Panel shall make available to the parties, to the Law Society and to other Adjudicators, the Record of Claim, including the topic or topics under which it should be indexed.

13.3 An index of Records of Claim, sorted by PID and topic shall be maintained by the Corporation.

14. Appeals

14.1 A party may appeal a determination to The Court of Queen's Bench on a question of law with leave of that court in the circumstances mentioned in subsection 45(1) of the *Arbitration Act* but in no other case.

15. Fees

15.1 The fees payable to each Claims Panel member shall be:

- a) \$150 per hour for preparation, hearing and determination;
- b) \$75 per hour of necessary travel time;
- c) out-of-pocket expenses according to the Law Society scale from time to time; and
- d) the cost of meeting room facilities, as required.

SERVICE NEW BRUNSWICK

SCHEDULE OF SELECTED LAND TITLES FORMS

Form 1	Application for First Registration of Title
Form 2	Affidavit of Applicant
Form 3	Certificate of Title
Form 11	Amendment
Form 12	Postponement
Form 13	Transfer
Form 14	Easement
Form 15	Mortgage
Form 15.1	Collateral Mortgage
Form 16	Application for Optional Mortgage Covenant
Form 19	Lease (and Option)
Form 23	Assignment
Form 56	Debenture

Form 1

APPLICATION FOR FIRST REGISTRATION OF TITLE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.11

Parcel Identifier: PID _____

Owner¹: name² _____
address _____
UNREGISTERED INTEREST or instrument type and registration
particulars _____

Manner of Tenure: NOT APPLICABLE or joint tenants, tenants in common, nothing
specified, or description of variable interests

Encumbrances³: NONE or provide _____
name of owner of interest _____
address _____
interest type _____
UNREGISTERED INTEREST or instrument type and registration
particulars _____

(Agent for Owner: name _____
address _____)

Solicitor Certifying
Title: name _____
address _____

Title Certification Date
and Time: _____

¹ Multiple instances are allowed.

² The owner name shall be specified both according to the *Naming Conventions Regulation - Land Titles Act* and as shown on the instrument by which that owner acquired that interest, if the name appears differently on that instrument.

³ Multiple instances are allowed. A leasehold interest is shown with the lessor as the owner and the lessee as an encumbrance. A life estate is shown with the remainderman as the owner and the life tenant as an encumbrance. Unregistered encumbrances, such as easements to a public utility, must also be shown.

The owner applies to have the title to the specified parcel registered under the *Land Titles Act* in the name of the owner specified, by virtue of the instrument(s) specified, in the manner of tenure specified, and subject to the encumbrances specified.

Date: _____

Authorized signature¹: _____

¹ The authorized signature must be that of the owner or agent for the owner.

Form 3

CERTIFICATE OF TITLE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.11

I, name of solicitor, of address hereby certify and declare as follows:

1. That the information contained in the attached Application for First Registration of Title is a true and correct statement of the title information:
 - (a) disclosed by the records on file in the office of the Registrar of Deeds for the county where the land lies, and
 - (b) registered with respect to the land described in the application by parcel identifier.
2. That the information contained in the application includes any necessary reference to an unregistered interest in or encumbrance on the land identified by the applicant or of which I am aware.
3. That there are no encumbrances affecting the title to the land except those specified in the application.
4. That a title search with respect to the land described in the application by parcel identifier has been conducted in accordance with the current standards for the practice of real property law, promulgated from time to time by the Law Society of New Brunswick.
5. That I have personally reviewed every pertinent transaction on the title to the land and inspected every relevant instrument referred to in the title search in order to issue this certificate.
6. That I have obtained all affidavits and other documents required under the *Land Titles Act*, the *Registry Act* and the regulations under those acts.

Place:

Date:

Solicitor: signature

Form 11

AMENDMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.18

Parcel Identifier: PID

Consenting Party¹: name
address

(Spouse of name of consenting
party: name
address)

Type of Instrument Amended:

Registration Particulars of
Instrument Amended:

Description of Amendment:

The instrument specified is amended as described above with respect to the specified parcel.

(The spouse of the consenting party joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:	Consenting Party:
<u>signature</u>	<u>signature</u>

(Witness:	Spouse of <u>name of consenting party</u> :	
<u>signature</u>	<u>signature</u>)

¹ Multiple instances are allowed.

Form 12

POSTPONEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.20

Parcel Identifier: PID

Owner of Interest
Postponed¹: name
address

(Spouse of name of owner
of interest postponed: name _)
address

Owner of Interest
Postponed to²: name
address

Type of Instrument
Postponed³:

Registration Particulars of
Instrument Postponed⁴:

Type of Instrument
Postponed to:

Registration Particulars of
Instrument Postponed to:

¹ Multiple instances are allowed.

² Multiple instances are allowed.

³ Multiple instances are allowed.

⁴ Multiple instances are allowed.

The owner of the interest postponed being the registered owner of an interest in the specified parcel by virtue of the specified instrument, postpones priority to that of the owner of the interest postponed to under the specified instrument.

(The spouse of the owner of the interest postponed joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:

signature

(Witness:

signature

Owner of Interest Postponed:

signature

Spouse of name of owner of interest postponed:

signature

)

Form 13

TRANSFER

Land Titles Act, S.N.B. 1981, c.L-1.1, s.21

Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

Parcel Identifier: PID

Transferor¹: name
address

(Spouse of name of
transferor: name
address)

Transferee²: name
address

Manner of Tenure: NOT APPLICABLE or joint tenants, tenants in common, nothing
specified or description of variable interests

(Limitation of Right,
Title or Interest
Transferred: specify - e.g., life estate)

(Interest to Benefit
the Parcel: specify³)

(Interest to Burden
the Parcel: specify⁴)

(Covenants and Conditions
to which this transfer

¹ Multiple instances are allowed.

² Multiple instances are allowed.

³ May be attached as a schedule.

⁴ May be attached as a schedule.

is subject: specify⁵)

(The recitals, affidavits, statutory declarations or other documents attached hereto as Schedule "D" form part of this transfer.)

The transferor conveys (subject to the limitation specified) to the transferee in the manner of tenure specified the specified parcel (together with the benefit of the interest specified) (and) (reserving to the transferor the interest specified).

(The spouse of the transferor joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:

signature

Transferor:

signature

(Witness:

signature

Spouse of name of transferor:

signature

)

(Witness:

signature

Transferee:

signature

_)

⁵ May be attached as a schedule.

Form 15

MORTGAGE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.25
Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

Parcel Identifier: PID

Mortgagor¹: name
address

(Spouse of name of name
mortgager: address)

Mortgagee²: name
address

Manner of Tenure: NOT APPLICABLE or joint tenants, tenants in common, nothing
specified or description of variable interests

(Limitation of Right,
Title or Interest
Mortgaged: specify - e.g., leasehold interest)

Principal Sum:

Interest Rate:

How Interest Calculated:

(Interest Adjustment Date:)

Term:

Payments:

Payment Dates:

Maturity Date:

Place of Payment:

Statutory Covenants and Conditions Excluded: ALL or NONE or specify by number

¹ Multiple instances are allowed.

² Multiple instances are allowed.

Optional Covenants and Conditions Included: NONE or specify by number

(The recitals, affidavits, statutory declarations or other documents attached hereto as Schedule "D" form part of this mortgage.)

The mortgagor mortgages (subject to the specified limitation) to the mortgagee in the specified manner of tenure the specified parcel to secure repayment of the principal sum with interest as well after as before maturity as specified.

The mortgagor acknowledges receipt of the text of the covenants and conditions which are contained in this mortgage by reference to a distinguishing number or by virtue of subsection 25(4) of the *Land Titles Act*, and agrees to be bound by them to the same extent as if set out at length herein.

(The spouse of the mortgagor joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:

signature

Mortgagor:

signature

(Witness:

Spouse of name of mortgagor:

signature

signature

)

Form 15.1

COLLATERAL MORTGAGE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.25

Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

Parcel Identifier: PID

Mortgagor¹: name
address

(Spouse of name of
mortgagor: name
address)

Mortgagee²: name
address

Manner of Tenure: NOT APPLICABLE or joint tenants, tenants in common, nothing specified or description of variable interests

(Limitation of Right,
Title or Interest
Mortgaged: specify – e.g., leasehold interest)

Particulars of Security: specify³

Statutory Covenants and Conditions Excluded: ALL or NONE or specify by number

Optional Covenants and Conditions Included: NONE or specify by number

(The recitals, affidavits, statutory declarations or other documents attached hereto as Schedule "D" form part of this collateral mortgage.)

The mortgagor mortgages (subject to the specified limitation) to the mortgagee in the specified manner of tenure the specified parcel as collateral security, the particulars of which are specified.

The mortgagor acknowledges receipt of the text of the covenants and conditions which are contained in this mortgage by reference to a distinguishing number or by virtue of subsection

¹ Multiple instances are allowed.

² Multiple instances are allowed.

³ May be attached as a schedule.

25(4) of the *Land Titles Act*, and agrees to be bound by them to the same extent as if set out at length herein.

(The spouse of the mortgagor joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:

signature

(Witness:

signature

Mortgagor:

signature

Spouse of name of mortgagor:

signature

)

Form 16

APPLICATION FOR OPTIONAL MORTGAGE COVENANT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.25

Applicant: name
address

Optional Mortgage
Covenant: specify¹

The Applicant applies for the assignment of a number to the specified optional mortgage covenant.

Date:

Applicant: signature

Number assigned to the specified optional mortgage covenant:

Registrar General of Land Titles

¹ May be attached as a schedule.

Form 19

LEASE (AND OPTION)

Land Titles Act, S.N.B. 1981, c.L-1.1, s.27

Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

Parcel Identifier: PID

Lessor¹: name
address

(Spouse of name of lessor: name
address)

Lessee²: name
address

(Encumbrance Holder³: name
address
instrument type and registration particulars)

(Description of the
Leased Premises, if less
than the entire parcel: specify⁴)

Duration:
Date of Commencement:
Date of Termination:
Rent:
Additional Rent:
Payments:
Payment Dates:
Place of Payment:

¹ Multiple instances are allowed.

² Multiple instances are allowed.

³ Multiple instances are allowed.

⁴ May be attached as a schedule.

Statutory Covenants and Conditions Excluded: ALL or NONE or specify by number

Optional Covenants and Conditions Included: NONE or specify by number

(The recitals, affidavits, statutory declarations or other documents attached hereto as Schedule "D" form part of this lease (and option).)

The lessor leases to the lessee the premises being (a portion of) the specified parcel on the specified conditions.

The lessee acknowledges receipt of the text of the covenants and conditions which are contained in this lease by reference to a distinguishing number or by virtue of subsection 27(2) of the *Land Titles Act*, and agrees to be bound by them to the same extent as if set out at length herein.

(The spouse of the lessor joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

(The registered holder of the specified encumbrance consents to this lease.)

Date:

Witness:

signature

Lessor:

signature

(Witness:

signature

Spouse of name of lessor:

signature

)

(Witness:

signature

Lessee:

signature

)

(Witness:

signature

Encumbrance Holder:

signature

)

Form 23

ASSIGNMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, ss.29,31 & 43

Parcel Identifier: PID

Assignor¹: name
address

(Spouse of name of
assignor: name
address_____)

Assignee²: name
address

Type of Instrument
Assigned:

Registration Particulars of
Instrument Assigned:

The assignor assigns to the assignee the specified instrument registered against the specified parcel.

(The spouse of the lessee joins in this instrument and consents to this disposition for the purpose of complying with section 19 of the *Marital Property Act*.)

Date:

Witness:

Assignor:

¹ Multiple instances are allowed.

² Multiple instances are allowed.

signature

signature

(Witness:

Spouse of name of assignor:

signature

signature

)

(Witness:

Assignee:

signature

signature

)

Form 56

DEBENTURE

Land Titles Act, S.N.B. 1981, c.L-1.1, s.26.1

Standard Forms of Conveyances Act, S.N.B. 1980, c.S-12.2, s.2

(Parcel Identifier: PID)

Corporation: name
address

Place of Incorporation:

Lender¹: name
address

Principal Sum:

Interest Rate:

How Interest Calculated:

Place of Payment:

(Payments on Principal Sum:)

(Payments on Interest:)

Covenants and Conditions

Set Out in the *Debentures*

Regulation - Standard

Forms of Conveyances Act

Included: NONE or specify by number assigned in the Regulation

Optional Debenture

Covenants Included: NONE or specify by number assigned by the Registrar General
of Land Titles

Other Covenants and

Conditions Included: See Schedule "C"

(The recitals, affidavits, statutory declarations or other documents attached hereto as Schedule "D" form part of this debenture.)

¹ Multiple instances are allowed.

For value received, the corporation promises to pay (on demand) to or to the order of the lender the principal sum and interest as specified.

As security for the payment of all money payable hereunder and the performance of the covenants and conditions herein contained, the corporation grants, mortgages and charges, as applicable, to and in favour of the lender:

DELETE INAPPLICABLE CLAUSES

- (a) as and by way of a fixed and specific mortgage and charge the specified parcel registered under the *Land Titles Act* and other lands and premises described in Schedule "A";
- (b) as and by way of a fixed and specific mortgage and charge all lands and premises now or hereafter owned or acquired by the corporation;
- (c) as and by way of a fixed and specific mortgage and charge the personal property described in Schedule "E";
- (d) as and by way of a fixed and specific mortgage and charge all equipment, machinery, vehicles and other tangible personal property now or hereafter owned or acquired by the corporation;
- (e) as and by way of a floating charge all its undertaking, both present and future, not herein otherwise specifically charged;
- (f) in accordance with Schedule "F".

This debenture contains the covenants and conditions as specified.

Date:

IN WITNESS WHEREOF the corporation has executed this debenture.

_____ (CS)

How to Identify an HST Issue in your Property Practice

What Assurances Should You Seek?

Wyman W. Webb

The purpose of this paper is to discuss the application of HST to common purchases and sales of property between parties dealing at arm's length with each other and to discuss the assurances that you should seek when acting for the purchaser or the vendor.

The application of HST to property transactions depends on the use of the property by the vendor and, if the property is a commercial property or vacant land, the status of the purchaser as a registrant. The paper will be divided into three sections - Housing (New and Used), Commercial Property and Vacant Land.

Housing (New and Used)

The common rule of thumb is that new housing will be taxable while used residential housing will be an exempt supply (and hence no HST).

However, it is possible that the sale of a new house may not be subject to the application of HST. Paragraph 2 of Part I of Schedule V to the *Excise Tax Act* (the "Act") exempts the sale of a residential complex by a person who is not the builder unless that person claimed an input tax credit in respect of the acquisition of the property or an improvement made to the property. A "builder" as defined in section 123 of the Act does not include an individual who constructs (or who engages another to construct) the residential complex otherwise than in the course of a business or an adventure or concern in the nature of trade.

Assume that a person who is a full time employee with a national company (e.g. a bank) purchases a parcel of land to use for the construction of their home. The person engages a contractor to construct the home or constructs the house themselves (which may include engaging various subcontractors). After the house is complete but before they move in, the individual is transferred to another city and must sell the house. Assuming that the individual is not in the business of building and selling houses and did not construct this house as part of an adventure or concern in the nature of trade and assuming that the individual did not claim any input tax credits in relation to the construction of the house, the sale of the house will be an exempt supply even though it is a new house that has never been occupied. Of course the individual will have paid the HST on the various goods and services that they purchased in relation to the construction of the house.

In this situation, the lawyer acting for the purchaser would need to obtain a certificate from the vendor confirming that the vendor was not the builder, i.e. that the vendor did not construct (or engage another to construct) the residential complex in the course of a business or an adventure or concern in the nature of trade of the vendor. As well the vendor will need to confirm that they

did not and will not claim an input tax credit in the relation to the acquisition of the property or the construction of the house.

This exemption for new housing does not apply to corporations and therefore if a corporation is the vendor it is irrelevant whether the corporation constructed the house in the course of a business or an adventure or concern in the nature of trade. For a corporate vendor, if none of the self supply rules have applied and the new house has never been occupied, the sale will be taxable.

A used house that has been substantially renovated will be subject to HST when sold by the builder. "Substantial renovation" is defined in section 123 of the Act as follows:

"substantial renovation" of a residential complex means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex;

In the case of *Craig W. Warnock* [1996] G.S.T.C. 86, the Tax Court of Canada considered whether certain renovations would constitute substantial renovations. The court summarized the renovations as follows:

5. The evidence is clear that the appellant added on a new 700 square foot sunroom, gutted and replaced a 300 square foot bedroom, installed a new basement bathroom, added a new veranda and put on a new roof, new hardwood and ceramic tile flooring throughout and new stucco siding over the entire house. The steps to the sunken livingroom were also replaced. Therefore a 1,500 square foot house had 300 square feet gutted and replaced, a new 700 square foot sunroom installed and a new bathroom installed in terms of interior square footage affected.

The court found that these renovations were not substantial renovations for the purposes of the Act. The Court made the following comments:

10. Because of the way in which substantial renovation is defined, it cannot even be said that a majority of the house has been removed or replaced. Even though the calculation is to be done after the renovation or alteration, the new sunroom is not a removal or replacement; so it is not included in the calculation.

In the case of *Donald S. Hole* [1998] G.S.T.C. 44, the Tax Court considered whether the following renovations were substantial renovations:

3 The renovations were to a bungalow occupied by the appellant and his wife so as to enable his mother-in-law to live with him.