

The Marketable Titles Act

Notes Prepared for the Property Conference March 5th, 1999
Catherine S. Walker, Q.C. and John R. Cameron

At the spring conference in 1996, the effective date for the extinguishment provisions appeared to be a long way off. There were some that were of the view that the Act did not really come into its own until July 1, 1999. Well, now that date is upon us, and it may be useful to review once more the extinguishing provisions of the Act contained within section 4(4). A discussion of this section also entails a review of Section 5 of the Act which provides for the filing of a Notice of Claim, and which if filed in accordance with the provisions of the Act, may prevent the extinguishment provisions from being triggered.

Attached to these notes as Appendix "A" is a description of the elements for extinguishment, and for those of you who have not brought with you a copy of the *Marketable Titles Act*, attached as Appendix "B" is also a copy of Sections 4, and 5 of the Act.

I. Section 4 (4)- Extinguishment

1. What interests are subject to the extinguishment provisions of the Act?

At the outset it is important to remember that the only interests which are capable of being extinguished under section 4(4) of the Act are interests which *have not* vested pursuant to a registered instrument.

2. Is an unregistered interest in land subject to being extinguished if there is no one whose interest is adverse to that of the unregistered interest holder?

No. A prerequisite for the extinguishment provisions to be triggered, is that there must be a chain of title which is marketable, and also one which is *adverse* to the unregistered interest.

3. Once the relevant time frames under s.4(4)(a) through (d) have expired, is the unregistered interest extinguished?

No. The passage of time in and of itself, is not sufficient to extinguish an unregistered interest under s. 4(4) of the Act. For the extinguishment to be effective, there must be an instrument registered in the competing chain by a person who has "marketable title" under the Act. It is only upon registration of this instrument, extinguishment takes place .

4. What if the time frames in s. 4(4)(a) through (d) have expired. Are there any means of preserving the interest from extinguishment?

Yes. If the time frames have expired, but there has not yet been any registration of an instrument by a person in the competing chain of title, then filing a Notice of Claim under Section 5(1) may prevent the extinguishment provisions of Section 4(4) from being triggered. However, it must be remembered that *the filing of a Notice of Claim cannot validate an otherwise invalid interest*. See Section 5(4).

A sample case setting out a situation that will invoke this section of the Act is included as Appendix "C" to assist you in working through each of the elements of Section 4(4) of the Act.

II. Section 5- Notice of Claim

John Cameron has included in his notes a discussion of the issues involved in filing Notices of Claim, so I will restrict my comments simply a summary of this Section of the Act.

- s.5
- (1) Persons *whose interests might be extinguished under s. 4(4)* may, by a positive act, preserve their interest if they register a notice of claim.
 - (2) The notice of claim shall be in the form prescribed.
 - (3) The notice of claim shall include the information set out in this subsection.
 - (4) A notice of claim cannot revive an interest that is extinguished under s.4(4), an interest that has expired, or is invalid.
 - (5) Notices of claim can be renewed.
 - (6) Absence from the province does not extend the period of time within which a notice of claim may be registered.

III. Regulations

Attached to these notes are the regulations made pursuant to the Act, which have been secured from the Registrar of Regulations.

IV. Sample Notices of Claim as filed at the Registry of Deeds- See Attached Appendix "D"

We will discuss the issues that we have identified with regard to these examples, in particular with respect to sections 4, and 5 of the Act.

Marketable Titles Act

We are discussing the issue of "Notices of Claim" at this conference because at midnight on June 30 this year any interest that can be extinguished will be extinguished. That is, an interest in land that has not vested pursuant to a registered instrument for example, under an unrecorded will or the interest of an heir on an intestacy, is extinguished by a registered instrument (not including a will) executed by a person with marketable title after the latest of 1) twenty years after the interest vested; 2) ten years after the person with the interest attains the age of majority; 3) forty years after the interest vested in the case of a person of unsound mind; 4) three years after the coming into force of the Act (which was July 1, 1996). (Section 4 (4))

The only thing that can avoid this extinguishment is a valid notice of claim, under Section 5. So, what is a notice of claim? Most of us have not seen these let alone bothered to put them on record. Why (apart from our tendency to want to clean up the title rather than to mess it up)? Maybe we have not come across a need for them. After all, we are dealing with fairly abstruse issues. How many people walk into our offices wanting to enforce forty year old claims on intestacy? At least ones that they haven't lost to someone else's adverse possession? But there may be some cases we should be looking at.

The notice of claim must be in the form prescribed by the regulations. The regulations (N.S.Reg. 119\96) follow the requirements of the statute: include name of claimant, address, everyone who appears to have an interest in the land, ownership from the LIS database, PID number, description, nature of the interest claimed and the basis for the claim, chain of title and registered instrument on which claim is founded. Note that failure to include some of this information may

invalidate the notice of claim: Reg. 6. Although the information about other known claimants is required, only the claimants signing the notice of claim are protected: Reg. 7. A notice of claim is a statutory declaration; I hope we have better luck than the English judge who commented "Sometimes the truth will out, even in an affidavit."

This notice of claim is of generally limited importance in protecting interests in land, but the free ride for very old interests does end this year. If you know of any old clients with potential interests, now is the time to see if they need to be protected.

The question came up in my own practice recently. Out of the thirty-five part owners of a piece of woodland (intestacy run riot), one has an interest because of the death of his father in 1952. Does that need protecting? No, because his interest did not vest until the death of his uncle in 1991 (and then of his aunt in 1997; there are three 0.092 % interests). The other reason is that no one has a marketable title in the land at the moment; that is what we are trying to create.

Note that a notice of claim only protects interests that can be extinguished. If there are parallel chains of title, for example, both parties claim under a registered instrument. Since the only interests that can be extinguished are those that are not registered, a notice of claim has no effect and is not authorized under the Act.

"Because such documents are held to be without force and effect, and may be liable to be struck from the records of the Registry of Deeds, it follows that they are not notice of any facts they might contain." Freeman, L.J.S.C. in *Blades and Quinlan v. Atwood* (1990), 95 N.S.R. (2d) 348 at 353. The document in question was a statutory declaration that suggested a prior deed was executed by the grantor without understanding the nature of the document and under undue influence, and that the declarant's mother intended to renounce the conveyance. No action was ever commenced to rescind the deed in the eight years after the declaration was put on record.

"If a person considers that they have a claim against a parcel of land, then their proper course of action is to commence a court action to sustain their claim." Macdonnell, L.J.S.C. in *Lemorand Projects Limited v. Old Sack Holdings Limited and Grace* (1987), 80 N.S.R. (2d) 133 at 135. The statutory declaration in that case claimed an actual interest in the land.

Clearing a Notice of Claim

Judging from the cases, where there is an illegal notice of claim (in the nature of a caveat), you can ignore it. Obviously the course of prudence is an application to have it struck from the records. Based on Mr. Justice Freeman's comments, such an application is highly likely to succeed. He could not recall ever seeing a caveat or a statutory declaration that amounted to a caveat upheld. A Vendors' and Purchasers Act application is seemingly sufficient even though the declarant is not notified.

The logic is strong that one person should not be able to unilaterally impair a title by claiming an interest in it of some kind unless there is specific statutory authority for the claim, as in the *Mechanics' Lien Act* or section 5 of the *Marketable Titles Act*. If you are claiming an interest in land, proceed to the courts. If you think the land will be sold, get an attachment order or a restraining order of some kind.

What about valid notices of claim, for example from a widow for an old dower interest that still exists? Here the usual remedy of a quit-claim deed from the genuine claimant is about all we can do. If the claim is real, pay up (or at least try to talk the claimant out of it).

As a final comment, I would suggest that the extinguishment provisions of Section 4 (4) of the *Marketable Titles Act* will help simplify conveyancing a bit, especially about leftover dower interests that we know vested more than forty years ago. If we know the husband died before 1959, we no longer care whether he was married when he conveyed Blackacre in 1951.

APPENDIX "A"
REQUISITE ELEMENTS
FOR EXTINGUISHING OF INTERESTS
SECTION 4(4)

PREAMBLE:

1. **THE INTEREST IN LAND HAS NOT VESTED PURSUANT TO A REGISTERED INSTRUMENT;**
2. **THERE IS A COMPETING, AND THEREFORE ADVERSE CHAIN OF 'MARKETABLE TITLE';**
3. **THERE IS AN INSTRUMENT REGISTERED IN THE COMPETING CHAIN OF TITLE WHICH IS EXECUTED BY A PERSON WITH 'MARKETABLE TITLE'("THE EXTINGUISHING INSTRUMENT");**

AND

TIME FRAMES 4(4)(a) THROUGH (d):

4. **THE LATEST OF THE TIME FRAMES IN 4(4)(a) THROUGH (d) HAVE EXPIRED;**

AND

NOTICE OF CLAIM SECTION 5(1):

5. **THERE HAS BEEN NO VALID NOTICE OF CLAIM REGISTERED PRIOR TO THE REGISTRATION OF THE EXTINGUISHING INSTRUMENT**

APPENDIX "B"

4 (1) A person has a marketable title to an interest in land if that person has a good and sufficient chain of title during a period greater than forty years immediately preceding the date the marketability is to be determined.

(2) A chain of title commences with the registered instrument, other than a will, that conveys or purports to convey that interest in the land and is dated most recently before the forty years immediately preceding the date the marketability is to be determined.

(3) A chain of title may commence before or after the coming into force of this Act.

(4) Notwithstanding the *Intestate Succession Act* and the *Descent of Property Act* but subject to Section 5, an interest in land, whether arising before or after the coming into force of this Act, that has not vested pursuant to an instrument that is registered is extinguished by a registered instrument, other than a will, that conveys or purports to convey that interest in the land and is executed by a person with a marketable title, upon the expiry of

(a) the twenty-year period immediately following the vesting of the interest;

(b) the ten-year period immediately following the attainment of the age of majority by the person with the interest;

(c) where the person with the interest is of unsound mind, the ten-year period immediately following the person ceasing to be of unsound mind or the forty-year period immediately following the vesting of the interest, whichever is earlier; or

(d) the three-year period immediately following the coming into effect of this Act,

whichever is latest.

(5) Nothing in this Section extinguishes any interest in land except as provided by subsection (4).

APPENDIX "B" CONT'D

5 (1) A person may preserve an interest in land that, but for this Section, could be extinguished by subsection 4(4) by filing a notice of claim.

(2) A notice of claim shall be in the form prescribed by the regulations.

(3) A notice of claim shall include

(a) the name of the claimant;

(b) the names of the owners of all interests in the land known to the claimant;

(c) the address of the claimant;

(d) a description of the land in which the interest is claimed;

(e) the nature of the interest in the land claimed;

(f) a summary of the basis of the claim, including the recording particulars of every instrument constituting the chain of title on which the claim is based; and

(g) such other information as the regulations prescribe.

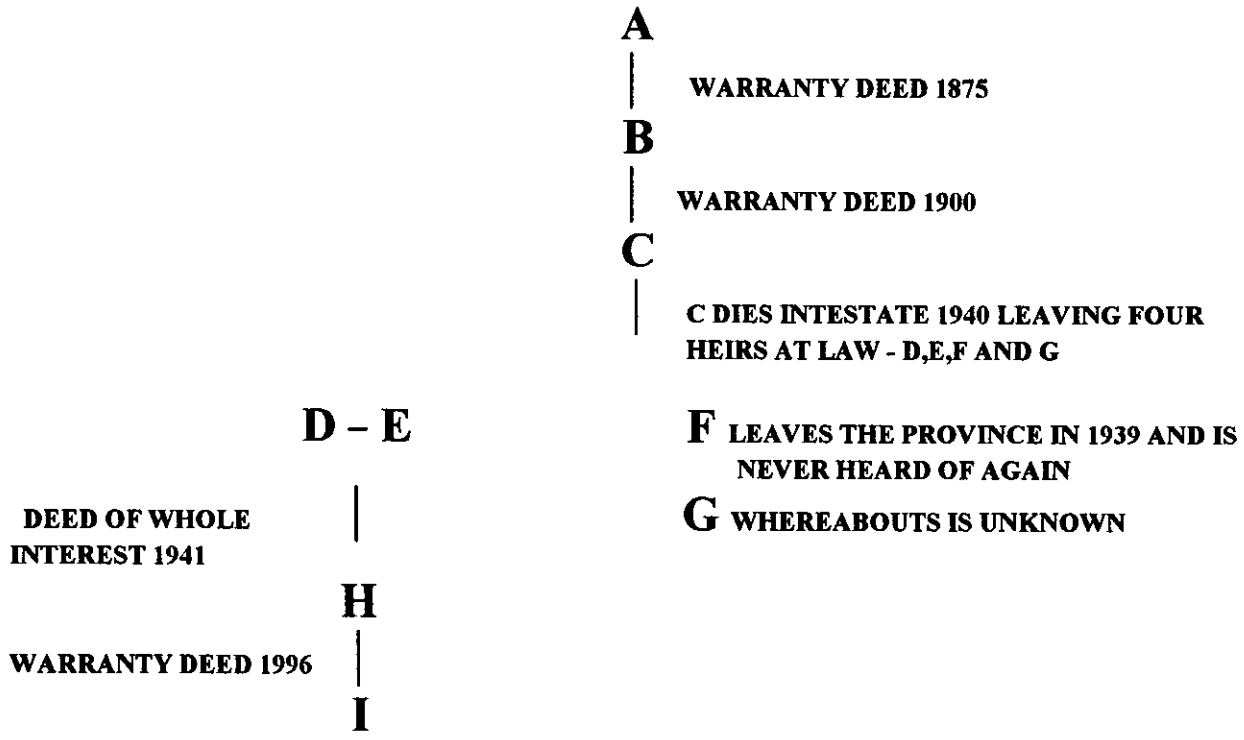
(4) A notice of claim does not validate or extend an interest that has been extinguished by subsection 4(4) or that has expired or is invalid.

(5) A new notice of claim may be registered pursuant to this Act and, for that purpose, an earlier notice of claim is the instrument on which the claim is based.

(6) For greater certainty, lack of knowledge or absence from the Province on the part of any person does not extend the period during which a notice of claim may be registered.

APPENDIX "C"

Case Sample



EFFECT OF LEGISLATION:

1. "I" HAS MARKETABLE TITLE PURSUANT TO SECTION 4(1) AND (2) OF THE ACT;
2. THE INTEREST OF "F" (UNREGISTERED) IS EXTINGUISHED BY SECTION 4(3) OF THE ACT AS OF JUNE 30,1999 UNLESS A NOTICE OF CLAIM IS REGISTERED;
3. THE INTEREST OF "G" (UNREGISTERED) IS EXTINGUISHED BY SECTION 4(3) OF THE ACT AS OF JUNE 30TH,1999 UNLESS "G" REGISTERS A NOTICE OF CLAIM PURSUANT TO SECTION 5 OF THE ACT.
4. IF A NOTICE OF CLAIM IS REGISTERED BY "F" OR "G" PRIOR TO JUNE 30, 1999, IN ACCORDANCE WITH THE ACT, SUCH REGISRATATION CANNOT OPERATE TO VALIDATE AN OTHERWISE INVALID INTEREST, (SECTION 5(4).
5. NOTE THAT UNLIKE OTHER ACTS, ABSENCE FROM THE PROVINCE IS NOT CONSIDERED A DISABILITY FOR PURPOSES OF THIS ACT(SECTION 5(6).
6. THE ROOT FOR THE CHAIN OF TITLE PURSUANT TO SECTION 4(1) AND 4(2) WILL BE THE DEED IN 1941, AS OF JULY 1, 1996.

Doc # 86

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EMM#-31139-shepp

FORM 1

For Registry Use Only	RICHMOND COUNTY REGISTRY OF DEEDS	86	196	353-369
	I certify that this document was registered as shown here. Mary Lennobardi Registrar	Document #	Book	Pages
	ML	JAN 30 1998		3:53 PM
		MM DD YYYY		Time

Claimants: Helen A. Sheppard, Kenneth George Layton, Helen White, & Margaret (Peggy) Anne Keeping Listed Owners: Margaret Morrison (PID 75118364, PID 7502067 and PID 75118331) Last Registered Instrument: Bk.H1, Pg.573; Bk.J1, Pg.220	PID Number: Lot #1 75118364; Lot #2 75062067 & Lot #3 75118331 Assessment Account Number: 03320707 (Lot #2 only) Municipal Tax Account #: 030588
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NOTICE OF CLAIM

Pursuant to the Marketable Titles Act S.N.S. 1995-96, c.9

TAKE NOTICE that we, the below listed, claim an interest in the land described in the lands described in Schedule "A" as follows:

- (a) **HELEN A. SHEPPARD**, 5570 Heatherwood Court, Unit 202, Halifax, Nova Scotia, B3K 5N7, as heir-at-law of the Estates of Margaret Chisholm and Percy Chisholm;
65 HIRES ROAD, EASTERN PASSAGE
- (b) **KENNETH GEORGE LAYTON**, of ~~175 Pinewood Crescent~~, Dartmouth, Nova Scotia, ~~B2V 2P9~~, in his capacity as heir-at-law of the Estate of Mary Layton;
B3G 1M4
- (c) **HELEN WHITE**, of P.O. Box 556, Waverly, Nova Scotia, B0N 2S0, in her capacity as heir-at-law of the Estate of Mary Layton;
- (d) **MARGARET (PEGGY) ANNE KEEPING**, of 170 Basinview Drive, Bedford, Nova Scotia, B4A 3J8, in her capacity as heir-at-law of the Estate of Mary Layton.

Handwritten signature/initials

1. The nature of the interest in the land claimed is as follows:

I, **HELEN SHEPPARD**, claim an undivided one quarter (1/4) interest plus an additional undivided one eighth (1/8) interest being my undivided one half (1/2) share of the undivided one quarter (1/4) interest of my late brother, Percy Chisholm, deceased.

I, **KENNETH GEORGE LAYTON**, claim an undivided one twelfth (1/12) interest, being my one third (1/3) share of my late mother's, Mary Layton's, one quarter (1/4) share plus an additional one twenty-fourth (1/24) interest being my one third (1/3) share of my late mother's undivided one half (1/2) share of the undivided one quarter (1/4) interest of my late uncle, Percy Chisholm, deceased.

I, HELEN WHITE, claim an undivided one twelfth (1/12) interest, being my one third (1/3) share of my late mother's, Mary Layton's, one quarter (1/4) share plus an additional one twenty-fourth (1/24) interest being my one third (1/3) share of my late mother's undivided one half (1/2) share of the undivided one quarter (1/4) interest of my late uncle, Percy Chisholm, deceased.

I, MARGARET (PEGGY) ANNE KEEPING, claim an undivided one twelfth (1/12) interest, being my one third (1/3) share of my late mother's, Mary Layton's, one quarter (1/4) share plus an additional one twenty-fourth (1/24) interest being my one third (1/3) share of my late mother's undivided one half (1/2) share of the undivided one quarter (1/4) interest of my late uncle, Percy Chisholm, deceased.

2. The basis for our claim is as follows:

I, HELEN SHEPPARD, am one of four children and all the heirs-at-law of my late mother, Margaret Chisholm, who died intestate on October 22, 1917. Margaret Chisholm was the title owner of the subject lands, more particularly described in Schedule "A" hereto, which she acquired during her lifetime as detailed in paragraph #4 herein.

Margaret Chisholm was survived by her spouse, James ~~William~~ Chisholm, my late father, who never held title ownership of the subject property and died intestate in 1959 survived my myself, my brother, Percy Chisholm, deceased, my sister, Mary Layton, deceased, and brother, James ~~W.~~ Chisholm, deceased.

Robert M.R. 3. not this
M R. T.A. 8 M.K. J.W. Ash

Percy Chisholm, James W. Chisholm and his wife, Viola Chisholm, Mary Layton and myself being "heirs of the late Mrs. James Chisholm, Sr." conveyed a 50' x 60' portion of the subject lands (north boundary of Grand Greve Road) to Lawrence Samson by Deed dated June 30, 1949 and recorded November 8, 1971 in Arichat Registry Book 10, Page 162.

The subject lands have never been divided among the heirs of Margaret Chisholm.

The above information is further supported by the following Statutory Declarations:

- (i) Statutory Declaration of Mary Layton dated November 26, 1982 and recorded November 29, 1982 in Arichat Registry Book 86, Page 315;

- (ii) Statutory Declaration of Helen Sheppard dated November 26, 1972 and recorded November 29, 1982 in Arichat Registry Book 86, Page 318;
- (iii) Statutory Declaration Percy Chisholm dated November 26, 1982 and recorded November 29, 1982 in Arichat Registry Book 82, Page 740.

My late brother, James W. Chisholm, died February 4, 1981, devising his interest to his wife, Violet Chisholm, in his Will dated March 8, 1979, and recorded February 20, 1981 in Arichat Registry Book 76, Page 531.

My late brother, Percy Chisholm, died October 18, 1991 devising his undivided one quarter (1/4) interest to myself and my late sister, ^{now} Catherine Layton, deceased, in equal shares as tenants in common, in his Will dated September 2, 1986 and recorded on December 2, 1997 in Arichat Registry Book 145, Page 77..

Handwritten initials: H.S.L. A. H.K.

We, KENNETH GEORGE LAYTON, HELEN WHITE, and MARGARET (PEGGY) ANNE KEEPING, are the surviving children and all the heirs at law of the late Mary Layton, who died intestate on April 3, 1992.

- 3. I, **HELEN SHEPPARD** state that my one quarter (1/4) interest vested on October 22, 1917 and that my subsequent one eighth (1/8) interest vested on October 18, 1991.

WE, KENNETH GEORGE LAYTON, HELEN WHITE, and MARGARET (PEGGY) ANNE KEEPING state that our individual one twelfth (1/12) and one twenty-fourth (1/24) interests vested on April 3, 1992.

- 4. The last registered instrument on which the claim is based is as follows:

LOT #1 and #3 - Warranty Deed by Catherine Groom, widow of William Groom, to Margaret Chisholm, dated February 21, 1910, and recorded on February 23, 1910 in Arichat Registry of Deeds Book J1, Page 220.

LOT #2 - Last Will and Testament of William Groom dated June 4, 1907 and recorded July 13, 1907 in Arichat Registry of Deeds Book H1, Page 573 (clause #4).

5. Our interests follows from the last registered instrument as follows:

HELEN SHEPPARD

Margaret Chisholm acquired Lots #1 and 3 by Warranty Deed from her mother, Catherine Groom in 1910 (Book J1, Page 220) and Lot #2 in clause #4 of the Will of her late father, William Groom in 1907 (Book H1, Page 573).

She still owned these lots when she died intestate October 22, 1917. I am one of four (4) children who acquired an undivided one quarter (1/4) interest as a result. The subject lands have never been divided between the heirs of Margaret Chisholm.

My late brother, James W. Chisholm, died February 4, 1981 leaving his interest to his wife, Violet Chisholm, in his Will dated March 8, 1979 and recorded February 20, 1981 in Arichat Registry Book 76, Page 531.

My late brother, Percy Chisholm, died October 18, 1991 devising his undivided one-quarter (1/4) interest to myself and my late sister, Mary Layton, deceased, in equal shares as tenants in common by his Will dated September 2, 1986 and recorded on December 2, 1997 in Arichat Registry Book 195, Page 77.

**KENNETH GEORGE LAYTON, HELEN WHITE & MARGARET (PEGGY)
ANNE KEEPING**

Our late mother, Mary Layton, died intestate April 3, 1992, leaving us as all her heirs at law each entitled to a one third (1/3) share of her one quarter (1/4) interest and of her subsequent one half (1/2) share of Percy Chisholm's one quarter (1/4) interest.

6. Particulars for every registered instrument constituting the claim of title on which the claim is based:

See annexed Abstract

7. All other owners of interest in the land described in Schedule "A" known to me are:

- (i) Violet Chisholm (sole beneficiary of Estate of James W. Chisholm lands);
- (ii) Margaret Rose Morrison (who purports to be sole owner of subject lands).

- 8. Particulars of any registered instrument known to us that are inconsistent with our claim are:
 - (i) Deed by James W. Chisholm and Violet Chisholm to Margaret Morrison dated February 8, 1979 and recorded February 16, 1979 in Arichat Registry Book 65, Page 22, purporting to convey a triangular lot of land situate south of Grand Greve Road with recitals stating, "property formally owned by William Groom, later by his daughter, Margaret Chisholm, mother of Grantor".
 - (ii) Warranty Deed by Viola (Violet) Chisholm, beneficiary of the Estate of the late James W. Chisholm, and Executrix to his Will, to Margaret Morrison dated February 25, 1982 and recorded March 2, 1982 in Arichat Registry of Deeds Book 82, Page 190, purporting to convey full title to the subject lands, but difficult to locate lots with provided descriptions.
- 9. To the best of our knowledge and belief, the interest claimed in this notice has not been extinguished, has not expired and is not invalid.
- 10. The interest claimed in this notice is solely our own interest.

AND WE MAKE this claim, under oath, conscientiously believing it to be true and to form valid interests in the property described in Schedule "A", knowing that it is of the same force and effect as if made under oath by virtue of the Canada Evidence Act.

SWORN to before me at)
 in the Province of Nova Scotia)
 this 17 day of January)
 A.D., 1998)
 _____)
 ALAN D. SHEPPARD)
 A Commissioner of the Supreme)
 Court of Nova Scotia)
 A Commissioner of the Supreme)
 Court of Nova Scotia)

 HELEN SHEPPARD

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ABSTRACT OF TITLE

LOT #1 (PID #: 75118364)

Summary of Chain

John Higgins (Grant #: 1050)
 | Will (A/5)
 | Deed (F/149) (1839)
 Lawrence Kavanagh & Maurice Kavanagh
 | Deed (N/7) (1863)
 Lawrence Kavanagh
 | Deed (A-1/403) (1895)
 William Groom
 | Will (H1/573) (1907)
 Catherine Groom
 | W. Deed (J1/220) (1910)
 Margaret Chisholm

1. WILL Will of Lawrence Kavanagh
 A/5 (Probate)
 November 24, 1801
 March 23, 1831

Devises real property to his wife, Felicity, and his children, Lawrence, Edwards and Bridget. Further codicils give proportional shares to son, James, and daughter, Katrine, and an unborn child.

2. DEED Edward Kavanagh, the younger and his wife,
 F/149 Sarah Kavanagh, Nicholas Henry Martin, and
 June 1, 1839 his wife, Bridget Martin; Maurice Kavanagh
 July 9, 1839 the elder gentlemen

- TO -

Lawrence Kavanagh, the younger and
 Maurice Kavanagh, the younger

Conveys 260 acres less one half (1/2) chain in width for road to pass along the shore, containing interalia, subject lands.

3. DEED Maurice James Kavanagh
 N/7
 September ?, 1863
 September 24, 1864
 \$400.00
 - TO -
 Lawrence Kavanagh

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- 2 -

Conveys 260 acres being the same as in F/149 and recites: "being the same lot of land conveyed to the said Maurice James Kavanagh and Lawrence Kavanagh by Edwards Kavanagh and others by Deed dated the Friday of June 1839".

4.	DEED A1/403 December 4, 1895 December 6, 1895 \$600.00	Lawrence Kavanagh - TO - William Groom
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Conveys lands at Grand Greve, Nova Scotia as follows:

BEGINNING at the Northwestern corner boundary line of lands granted to Francis Murphy;

THENCE running Southeasterly along said boundary of Francis Murphy's grant until it comes to a lot of land conveyed by the said Lawrence Kavanagh to the late John Madden containing 50 acres;

THENCE running Northwesterly along shore to Point Brule;

THENCE northeasterly along shore to place of beginning;

CONTAINING two hundred (200) acres, more or less;

RESERVING THEREFROM one half (1/2) acre, more or less, being the locus of the old French burying ground (so called);

ALSO RESERVING a right of way for the passengers between the shore and said reserve of half (1/2) an acre.

5.	WILL H1/573 June 4, 1907 July 13, 1907	Will of William Groom
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Fifth clause devises to Catherine Groom (west of Margaret Chisholm 25 acres) lands containing, inter alia, the subject lands.

6.	W. DEED J1/220 February 21, 1910 February 23, 1910 \$1.00	Catherine Groom, widow - TO - Margaret Chisholm, wife of James Chisholm
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Conveys western one half of 20 acres received by Catherine Groom from Margaret Kavanagh in F1/139 plus eastern one half of lands received from Will of William Groom in H1/573.

7. **WILL** **Last Will and Testament of Percy Chisholm**
 195/77
 September 2, 1896
 December 2, 1997

Devises all real property "...wherever situate, to [his] sisters, Helen Anne Sheppard and Mary Catherine Layton, both of Halifax aforesaid, in equal shares, share and share alike for their own use absolutely." Divides his undivided one quarter (1/4) share in the lands under search between his two named sisters.

NOTE: The above contains the particulars of the main chain of title relied upon by the declarants herein and is not intended to represent a full abstract based on a complete search of title.

LOT #2 (PID #: 75062067)

Summary of Chain

John Higgins (Grant #: 1050)
 | Will (A/5)
 | Deed (F/149) (1839)
 Lawrence Kavanagh & Maurice Kavanagh
 | Deed (N/7) (1863)
 Lawrence Kavanagh
 | Deed (A-1/403) (1895)
 William Groom
 | Will (H1/573) (1907)
 Margaret Chisholm

1. **WILL** **Will of Lawrence Kavanagh**
 A/5 (Probate)
 November 24, 1801
 March 23, 1831

Devises real property to his wife, Felicity, and his children, Lawrence, Edwards and Bridget. Further codicils give proportional shares to son, James, and daughter, Katrine, and an unborn child.

2. DEED
F/149
June 1, 1839
July 9, 1839

Edward Kavanagh, the younger and his wife,
Sarah Kavanagh, Nicholas Henry Martin, and
his wife, Bridget Martin, Maurice Kavanagh
the elder gentlemen

- TO -

Lawrence Kavanagh, the younger and
Maurice Kavanagh, the younger

Conveys 260 acres less one half (1/2) chain in width for road to pass along the shore, containing interalia, subject lands.

3. DEED
N/7
September 7, 1863
September 24, 1864
\$400.00

Maurice James Kavanagh

- TO -

Lawrence Kavanagh

Conveys 260 acres being the same as in F/149 and recites: "being the same lot of land conveyed to the said Maurice James Kavanagh and Lawrence Kavanagh by Edwards Kavanagh and others by Deed dated the Friday of June 1839".

4. DEED
A1/403
December 4, 1895
December 6, 1895
\$600.00

Lawrence Kavanagh

- TO -

William Groom

Conveys lands at Grand Greve, Nova Scotia as follows:

BEGINNING at the Northwestern corner boundary line of lands granted to Francis Murphy;

THENCE running southeasterly along said boundary of Francis Murphy's grant until it comes to a lot of land conveyed by the said Lawrence Kavanagh to the late John Madden containing 50 acres;

THENCE running Northwesterly along shore to Point Brule;

THENCE northeasterly along shore to place of beginning;

CONTAINING two hundred (200) acres, more or less;

RESERVING THEREFROM one half (1/2) acre, more or less, being the locus of the old French burying ground (so called);

ALSO RESERVING a right of way for the passengers between the shore and said reserve of half (1/2) an acre.

5. WILL Will of William Groom
 H1/573
 June 4, 1907
 July 13, 1907

Fourth Clause in Will devises 25 acres (subject lands) to Margaret Chisholm.

7. WILL Last Will and Testament of Percy Chisholm
 195/77
 September 2, 1896
 December 2, 1997

Devises all real property "...wherever situate, to [his] sisters, Helen Anne Sheppard and Mary Catherine Layton, both of Halifax aforesaid, in equal shares, share and share alike for their own use absolutely." Divides his undivided one quarter (1/4) share in the lands under search between his two named sisters.

NOTE: The above contains the particulars of the main chain of title relied upon by the declarants herein and is not intended to represent a full abstract based on a complete search of title.

LOT #3 (PID #: 75118331)

Summary of Chain

Francis Murphy (Grant #: 203)

|
William Slavin

| **Deed (R/79)(1876)**

Duncan Cameron

| **Q.C. Deed (X/167)(1883)**

Susan Slavin

| **W. Deed (B1/86)(1890)**

Lawrence Kavanagh

| **Will (3/491)(1898)**

Margaret Kavanagh

| **W. Deed (F1/138)(1903)**

Catherine Groom

| **W. Deed (J1/220)(1910)**

Margaret Chisholm

- | | | |
|----|--|---|
| 1. | DEED
R/79
June 10, 1876
June 21, 1876
\$200.00 | William Slavin and Susan Slavin

- TO -

Duncan Cameron |
|----|--|---|

Conveys 109 acres being the southwestern portion of the Francis Murphy Grant, containing, interalia, subject lands.

- | | | |
|----|--|--|
| 2. | Q.C. DEED
X/67
July 6, 1883
November 20, 1889
\$200.00 | Duncan Cameron and Ellen I. Cameron,
his wife

- TO -

Susan Slavin |
|----|--|--|

Conveys same 109 acres as in R/79.

- 7 -

3. W. Deed Susan Slavin
 B1/86
 October 30, 1890 - TO -
 December 1, 1896
 \$70.00 Lawrence Kavanagh

Conveys same 109 acres as in R/79.

4. WILL Will of Lawrence Kavanagh
 3/491 (Probate)
 November 13, 1898
 December 10, 1898

Devises all real property to sister, Margaret Kavanagh, and appoints her as Executrix of his Estate.

5. W. DEED Margaret Kavanagh, (Executrix and
 F1/138 Beneficiary under the Will of Lawrence
 May 6, 1903 Kavanagh
 September 4, 1903
 \$20.00 - TO -
 Catherine Groom, wife of William Groom

Conveys 20 acres and being a portion of the 109 acres in B1/86 being a portion of the southwestern part of the Francis Murphy grant, containing interalia, the subject lands.

6. W. DEED Catherine Groom, widow
 J1/220
 February 21, 1910 - TO -
 February 23, 1910
 \$1.00 Margaret Chisholm, wife of James Chisholm

Conveys western one half of 20 acres received by Catherine Groom from Margaret Kavanagh in F1/138 plus eastern one half of land received from Will of William Groom in H1/573.

7. WILL
195/77
September 2, 1896
December 2, 1997

Last Will and Testament of Percy Chisholm

Devises all real property "...wherever situate, to [his] sisters, Helen Anne Sheppard and Mary Catherine Layton, both of Halifax aforesaid, in equal shares, share and share alike for their own use absolutely." Divides his undivided one quarter (1/4) share in the lands under search between his two named sisters.

NOTE: The above contains the particulars of the main chain of title relied upon by the declarants herein and is not intended to represent a full abstract based on a complete search of title.

For Registry Use Only

LUNenburg COUNTY REGISTRY OF DEEDS		6066	699	64-643
I certify that this document was registered as shown here.		Document #	Book	Pages
Joan Flunfiest	Registrar	11	03	1998
		MAI	DO	YYYY
				11:29 AM
				Time

Claimants: Clara Edna Ernst
 Listed Owners: Wesley Francis Arthur Ernst, Clara Edna Ernst, Kelly Ernst and Burleigh Ernst
 Last Registered Instrument: Book 685, Page 830 and Book 689, Page 29

PID Numbers 60218435, 60421708 and 60452299
 Assessment Account Numbers 01421468 and 08239517

NOTICE OF CLAIM

pursuant to the Marketable Titles Act, S.N.S., 1995-96, c.9

TAKE NOTICE that I, Clara Edna Ernst, of Blockhouse, in the County of Lunenburg, Province of Nova Scotia, claim an interest in the land described in Schedule "A".

- The nature of the interest in the land claimed is absolute ownership in fee simple in the said lands.
- The basis for my claim is that I received a deed from Wesley Arthur Ernst dated January 22, 1958, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on July 20, 1998, in Book 689, at Page 29, under Number 3812.
- My interest in the land vested upon the execution and delivery of the conveyance to me from Wesley Arthur Ernst on or about the 22nd day of January, 1958.
- The last registered instruments on which my claim is based are with respect to the following deeds:
 - Deed from Wesley Arthur Ernst to Clara Edna Ernst dated January 22, 1958, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on July 20, 1998, in Book 689, at Page 29, under Number 3812.
 - Deed from Kevin W. Ernst to Clara Edna Ernst dated October 11, 1984, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on October 22, 1984, in Book 350, at Page 674.
- My interest follows from the last registered instrument as follows:
 - Deed from Wesley Arthur Ernst to Clara Edna Ernst dated January 22, 1958, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on July 20, 1998, in Book 689, at Page 29, under Number 3812.
 - Deed from Kevin W. Ernst to Clara Edna Ernst dated October 11, 1984, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on October 22, 1984, in Book 350, at Page 674.
- Particulars of every registered instrument constituting the chain of title on which my claim is based commencing at least 40 years ago:

Deed from Wesley Arthur Ernst to Clara Edna Ernst dated January 22, 1958, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on July 20, 1998, in Book 689, at Page 29, under Number 3812.

Deed from Kevin W. Ernst to Clara Edna Ernst dated October 11, 1984, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on October 22, 1984, in Book 350, at Page 674.

- 7. There are no other owners of interests in the land described in Schedule "A" known to me.
- 8. Particulars of any registered instruments known to me that are inconsistent with my claim are:

Deed from Wesley Francis Arthur Ernst to Burleigh Ernst and Kelly Ernst dated June 18, 1998, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on June 19, 1998, in Book 685, at Page 830, under Number 3159.

- 9. To the best of my knowledge and belief, the interest claimed in this notice has not been extinguished, has not expired and is not invalid.
- 10. The interest claimed in this notice is solely my own interest.
- 11. I am advised by Wesley Francis Arthur Ernst that he received no consideration or value from the execution of the deed from himself to Burleigh Ernst and Kelly Ernst referred to above.
- 12. At the time that Burleigh Ernst and Kelly Ernst received the deed from Wesley Francis Arthur Ernst dated June 18, 1998, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on June 19, 1998, in Book 685, at Page 830, under Number 3159, neither Burleigh Ernst or Kelly Ernst were bona fide purchasers for value without notice with respect to my ownership of the land described in Schedule "A".
- 13. At the time that Burleigh Ernst and Kelly Ernst received the deed from Wesley Francis Arthur Ernst dated June 18, 1998, and recorded at the Registry of Deeds, Bridgewater, Nova Scotia, on June 19, 1998, in Book 685, at Page 830, under Number 3159, I was the spouse of Wesley Francis Arthur Ernst and did not consent to this disposition to Burleigh Ernst and Kelly Ernst and would not have consented had I been approached to do so.

AND I make this claim under oath, conscientiously believing it to be true and to form a valid interest in the property described in Schedule "A", knowing that is of the same force and effect as if made under oath by virtue of the *Canada Evidence Act*.

SWORN TO before me, at Blockhouse,)
in the County of Lunenburg, Province of)
Nova Scotia, this 18th day of September,)
A.D., 1998)


A Commissioner of the Supreme Court)
of Nova Scotia)

MICHAEL G BAKER


Clara Edna Ernst)

554

Example #

554

2634

but ok to protect if rest - fine 126

97.0454

FORM 1

For Registry Use Only Province of Nova Scotia
 County of Antigonish

I hereby certify that the within Instrument was recorded in the Registry of Deeds Office at Antigonish in the County of Antigonish, N. S., at 11:08 o'clock A. M., on the 11th day of *October* A.D., 1996 in Book No. 319 at Pages 554 - 556 as Document Number 2634

Marius M. Stephens
 Registrar of Deeds for the Registration District of Antigonish County.

Claimant(s): Ann Faith Somers

Listed Owners: Cornelius B. MacNeil

Last Registered Instrument

Book Page

PID Number: 01210350

Assessment Account Number: 02929694

Municipal Tax Account Number: 02929694

NOTICE OF CLAIM

Pursuant to the Marketable Titles Act S.N.S. 1995-96, c. 9

TAKE NOTICE that I, Ann Faith Somers presently of 145 Bisley Street, Beaconsfield, Province of Quebec, H9W 1G5 claim an interest in the land described in Schedule "A".

1. The nature of the interest in the land claimed is a one fifth undivided interest .
2. The basis for my claim is: My late husband, Bernard Somers, was one of the five children and heirs-at-law of Alexander M. Somers who died intestate on October 21st, 1931. At the time of his death Alexander M. Somers owned the lands described in Schedule "A" hereto annexed.
3. My interest in the land vested upon the death of Alexander M. Somers on October 21st, 1931.
4. The last registered instrument on which the claim is based is on the Deed from Matthew Sallenger to Alexander M. Somers dated August 29th, 1885 and recorded in Book 38 at Page 484.

- 2 -

5. My interest follows from the last registered instrument as follows: On October 21st, 1931 Alexander M. Somers died intestate leaving as his heirs-at-law his daughters Mary J. MacNeil and Elizabeth Somers and his sons Bernard Somers, John Somers and Alexander Somers. I am the widow of Bernard Somers and by virtue of the provisions of my husband's Will I am entitled to his entire estate.

6. Particulars of every registered instrument constituting the chain of title on which the claim is based:

Deed dated August 29th, 1885 and recorded in Book 38 at Page 484, whereby Matthew Sallenger conveyed the lands to Alexander M. Somers.

7. All other owners of interests in the land described in Schedule "A" known to me are:

- a) Cornelius B. MacNeil.
- b) Heirs of Alexander Somers (son of Alexander M. Somers.
- c) Roy MacNeil, James MacNeil and John MacNeil, three of the heirs at law of Mary J. MacNeil who was in turn an heir at law of Alexander M. Somers.

8. Particulars of any registered instrument known to me that is inconsistent with my claim:

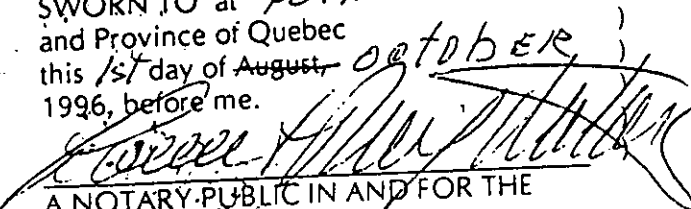
I am not aware of any such registered instrument.

9. To the best of my knowledge and belief, the interest claimed in this notice has not been extinguished, has not expired and is not invalid.

10. The interest claimed in this notice is solely my own interest.

AND I MAKE this claim, under oath, conscientiously believing it to be true and to form a valid interest in the property described in Schedule "A", knowing that it is of the same force and effect as if made under oath by virtue of the Canada Evidence Act.

SWORN TO at POINTE-CARLE
and Province of Quebec
this 1st day of August OCTOBER
1996, before me.


A NOTARY PUBLIC IN AND FOR THE
PROVINCE OF QUEBEC

Ann Faith Somers
ANN FAITH SOMERS