



More Overriding Interests in Land!

In January of 1976, Volume 2, Number 3 of the Law News contained an article entitled "Overriding Interests in Land" by C.W. MacIntosh, Q.C. and M. Lynne Gavin. In that article some 32 overriding interests were identified. Upon review, it seems that at this point none of those listed can be safely struck from the list. Indeed, we must now add more to the growing list of matters affecting real property of which the practitioner must be aware and take heed when representing a landowner or potential landowner.

The owner or purchaser of rental property in our province is now faced with three distinct pieces of "consumer protection" legislation which might significantly affect the value of his investment and his right to dispose of the property. By virtue of Regulation 221/84 made pursuant to the *Rent Review Act*, S.N.S. 1975, c. 56, a landlord may increase rent by only 5% for any 1985 rental period. The *Rental Property Conversion Act*, S.N.S. 1982, c. 14, by regulation thereunder, prohibits the conversion of existing rental property to other than rental property, i.e., specifically condominiums. Recent amendments to the *Residential Tenancies Act*, S.N.S. 1970, c. 13, have granted tenure to tenants who have resided in residential premises for five consecutive years or more. As well, in the new year all residential tenancy relationships will be subject to a standard form lease and a landlord and tenant may no longer contract out of the statutory periods for notices to quit. Under the Act the owner of a mobile home park will find new statutory conditions which are applicable and also particular and special time periods for notices to quit.

Anyone who has looked at a deed prepared since 1980 can readily see that the *Matrimonial Property Act*, S.N.S. 1980, c. 9, has made a significant impact on the practice of law as it relates to real property. Without the swearing of the proper affidavits at the time of the transfer of real property, whether the transferor be a corporate citizen or private individual, the purchaser runs the risk that the transaction might later be overturned in favour of a non-

consenting spouse whose potential interests at the time of sale may be vested later by the court under section 1 (1) of the Act. (See *Mills v. Andrewes* (1982), 54 N.S. (2d) 394).

Living in Nova Scotia we might have the pleasure of owning a property which has some special historical or architectural or cultural value. However, should such property be designated under the *Heritage Property Act*, S.N.S. 1980, c.8, ownership of it is subject to the obligation not to demolish it or substantially alter its exterior appearance without the appropriate approval.

Any person wishing to develop a shopping center in Nova Scotia may only do so after having obtained approval as required under the *Shopping Centre Development Act*, S.N.S. 1978-79, c. 74.

Although not guaranteed to be exhaustive, we now present the following as a list of interests, potential interests or restrictions on real property:

1. Civic Tax Lien
2. Civic Betterment Charge
3. Estate Tax Lien re deaths within a particular time frame
4. Land Tax Lien
5. Non-resident Income Tax Lien
6. Nova Scotia Power Corporation Bill Lien
7. Lien under the Workers' Compensation Act
8. Liens under the Labour Standards Code
9. Mechanics' Liens during unexpired registration period
10. Unpaid Vendor's Lien
11. Dower Rights re property conveyed prior to the coming into force of the Matrimonial Property Act
12. Public Highways
13. Abandoned Highways
14. Restrictions under the Public Highways Act
15. Necessary Rights of Way — The Private Ways Act
16. Crown Rights of Expropriation, Access and User

continued on page 4

Overriding Interests *continued from page 29*

17. Utility Corporation Easements to Maintain Overhead Wires
18. Watercourses — The Water Act
19. Marshland Reclamation
20. Rights of Access and To Fish — The Angling Act
21. Flooding Rights
22. Beaches Preservation and Protection
23. Treasure Trove
24. Mining Leases and Licenses — The Mineral Resources Act
25. Prospecting and Drilling Licenses — The Petroleum and Natural Gas Act
26. Salvage Yards Act
27. Title by improvements by adjoining owner
28. Adverse Possession and Prescription
29. Condemnation under the Public Health Act
30. Street Tree Lien
31. Quieting Titles and Land Titles Clarification Application
32. Airport Zoning Regulations
33. Restrictions on Rental Property
34. Interests under the Matrimonial Property Act
35. Heritage Property Act restrictions
36. Approvals required by the Shopping Center Development Act

Anybody have a heart attack yet?

— *Charles W. MacIntosh, Q.C., and
Rosalind C. Penfound*

We extend our thanks for their help with this issue to Alastair Bissett-Johnson, John Cameron, Innis Christie, Larry Hayes, Hugh Kindred, Douglas Mathews, Carman McCormick, Joel Pink and David Ritcey.

To Obtain Decisions

All the decisions summarized in this issue may be obtained from the Librarian of the Nova Scotia Barristers' Society. Call Barbara Campbell at 422-1491, or write the Nova Scotia Barristers' Society, 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7.

NOVA SCOTIA LAW NEWS

Editor: **Mary Burbidge Helleiner**
Law News Committee

Daniel M. Campbell, Chairman
Ralph E. Hennigar, Q.C., Vice-chairman
Charles W. MacIntosh, Q.C.

Nova Scotia Law News is published 6 times a year by the Nova Scotia Barristers' Society, 1815 Upper Water St., Halifax, Nova Scotia B3J 1S7. The opinions expressed are those of the contributors or the editorial staff and do not necessarily reflect the official views of the Nova Scotia Barristers' Society.

The publication of *Nova Scotia Law News* is assisted by a grant from the Law Foundation of Nova Scotia.

SUBSCRIPTIONS

The subscription price for *Nova Scotia Law News* is \$35.00 per year. A special rate of \$15.00 per year is available for students. *Nova Scotia Law News* is sent free to members of the Nova Scotia judiciary, to practising members of the Nova Scotia Bar, to members of the faculty of Dalhousie Law School, and, on request, to non-practising members of the Nova Scotia Barristers' Society.

Second Class Mail Registration No. 6138.