

**Discussion Paper Prepared For
Nova Scotia Barristers' Society & The Association of Nova Scotia Land Surveyors
By The Working Group Respecting Parcel Description Questions.
Revised January 15, 2008
Incorporating responses from members of the Professions
to the Draft Discussion Paper dated September 5, 2007.**

1. Mandate of the Committee.
 - a. To prepare a report for The Association of Nova Scotia Land Surveyors ("ANSLS") and the Nova Scotia Barristers' Society ("NSBS") respecting matters of mutual concern about the preparation and amendment of parcel descriptions in the context of the *Land Registration Act* System.
 - b. To provide recommendations to ANSLS, NSBS and Service Nova Scotia & Municipal Relations on these matters.
2. Scope of this Report.
 - a. The *Land Surveyors Act* and the *Legal Profession Act* support interpretations that both land surveyors and lawyers are involved in preparing and amending parcel descriptions. The functions of the two professions overlap. This report recommends
 - i. the demarcation of certain tasks in preparing and amending parcel descriptions as being exclusively those of surveyors, exclusively those of lawyers and those which are shared,
 - ii. "First Principles" for exercising professional judgment when preparing and amending parcel descriptions,
 - iii. "Best Practices" in preparing and amending parcel descriptions, and
 - iv. certain statutory, regulatory and procedural amendments to the *Land Registration Act* system to remove elements within it which work against maintaining the survey fabric in Nova Scotia.
3. Input from ANSLS & NSBS members solicited.
 - a. The draft of this Discussion Paper was circulated to members of the Property Bar, members of ANSLS and the Registrar General, Service Nova Scotia & Municipal Relations for discussion, comment and response. This Discussion Paper incorporates and, where appropriate, responds to the comments received from that circulation. It is hoped that this Discussion Paper and its attachments will be a useful resource for members of both professions.

Response. One lawyer who is both a NSBS LRA Auditor and POL instructor reported that he used the circulated draft of this Discussion Paper as a teaching tool for recent NSBS LRA Training.

Response: One lawyer recommended that this discussion paper not be shared with Service Nova Scotia but rather a joint recommendation be submitted to which Service Nova Scotia could respond. The responder stated this may avoid a confusion of roles where SNS is impacting a practice for which it has no legal responsibility.

WG reply: The Discussion Paper had already been distributed to the two professions and to the Registrar General before this response was received. When the Draft Discussion Paper was distributed SNS&MR was reviewing its PDCA-related processes; it was considered important that the Registrar General be aware of the thrust of the Working Group's thinking so SNS&MR could consider the impact, if any, the recommendations would have on PDCA processes.

4. Approach.

- a. The authors have based their recommendations on a functional analysis of each parcel description-related task reviewed. Functions that principally determine the location and extent of boundaries have been identified as surveyors' tasks. Functions that principally deal with legal rights other than the location and extent of boundaries have been identified as lawyers tasks. For guidance in the area of shared responsibility between these two exclusive areas there are "first principles" and a series of example situations with commentary. Although this has been a function-based analysis, the approach is based on the applicable underlying law which mandates a focus on public safety – in this case maintaining the integrity of the survey fabric in Nova Scotia.

5. The Law.

- a. The Courts apply two principles of construction when interpreting statutes governing self-regulating professions¹:
 - i. the Acts must be interpreted in accordance with their primary purpose which is the protection of the public; and
 - ii. statutes creating professional monopolies which protect their members against any competition must be strictly applied – anything which is not clearly

¹ *Pauzé v. Gauvin* (1953), [1954] S.C.R. 15 (S.C.C.), the key provision of which was translated into English and adopted in *Laporte v. Collège des pharmaciens (Québec)* (1974), [1976] 1 S.C.R. 101 (S.C.C.); *R. v. Nomm* (1983), 57 N.S.R. (2d) 66, 120 A.P.R. 66 (N.S. Co. Ct.); *R. v. K.W. Robb & Associates Ltd.* (1991), 101 N.S.R. (2d) 216 (N.S. C.A.) and *Nova Scotia Real Estate Commission v. Lorway* (2006), 241 N.S.R. (2d) 374, 767 A.P.R. 374, 2006 NSSC 76.

prohibited may be done with impunity by anyone not a member of these closed associations.

6. Parcel Descriptions (legal, property, boundary, deed descriptions).

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

7. First Principles.

- a. Subject to the principles of case law set out above, the functions included within the statutory definition of "professional land surveying" are the exclusive domain of surveyors. The Nova Scotia *Land Surveyors Act*, s.2(1)(j) states:

"professional land surveying" means the advising on, the reporting on, the supervising of and the conducting of surveys to determine the horizontal and vertical position of any point and the direction and length of any line required to control, establish, locate, define or describe the extent or limitations of title;"

In *R. v. K.W. Robb & Associates Ltd.*² this definition was not narrowly interpreted but was held to include the traditional role of the land surveyor in laying out road allowances. At paragraph 7 the Court stated

"The Crown has urged that the practice of land surveying should be confined to the measurement of existing features of the landscape, including boundaries. In laying out subdivisions, a land surveyor should start by having a professional engineer establish centre line profiles for proposed roads. With respect, this approach is too narrow and leaves out of account the traditional role of the land surveyor in proposing new boundaries and laying out road allowances, a role which can only be diminished by the clear language of a statute. It may be noted, for example, that S. 11(1) (a) of the *Public Highways Act* deems "all allowances for highways made by surveyors for the Crown" to be common and public highways."

While this definition does not preclude lawyers from preparing or making certain changes in parcel descriptions, as a matter of public safety lawyers must not make changes that change the extent or limitations of title of a parcel unless the changes are based on a plan of survey.

² *ibid.*

- b. Subject to the principles of case law set out above, the functions included within the statutory definition of the "practice of law" are the exclusive domain of lawyers. Under the *Legal Profession Act*³ The practice of law is

"the application of legal principles and judgement with regard to the circumstances or objectives of a person that requires the knowledge and skill of a person trained in the law, and includes any of the following conduct on behalf of another:

(a) giving advice or counsel to persons about the persons legal rights or responsibilities or to the legal rights or responsibilities of others;

(b) selecting, drafting or completing legal documents or agreements that affect the legal rights or responsibilities of a person;

(c) representing a person before an adjudicative body including, but not limited to, preparing or filing documents or conducting discovery;

(d) negotiating legal rights or responsibilities on behalf of a person."

As a matter of public safety surveyors should not draft or complete documents that affect the legal rights or responsibilities of a person – for example, drafting the terms of an easement.

- c. Surveyors and lawyers must recognize that a parcel description may contain elements deemed exclusive to each and common to both. They must collaborate when necessary to ensure that the intentions and requirements of a parcel description are met. Examples of circumstances requiring collaboration include:
- i. determining the extent of prescriptive easements,
 - ii. new descriptions in *de facto* consolidations, and
 - iii. documenting boundary line agreements.
- d. This Discussion Paper focuses on the allocation of parcel description-related tasks between lawyers and surveyors. Nothing in this Discussion Paper is intended to

³ Subsections 2(ac) and 16(1).

recommend or lead to steps by either profession that would restrict the lawful activities of third parties⁴.

8. Allocation of tasks between Surveyors and Lawyers.
 - a. There are many elements of a parcel description which may be drafted or amended by either or both surveyors and lawyers. These are discussed in **Schedule "B"**.
9. Best Practices in Drafting/Amending Parcel Descriptions.
 - a. Best practices in drafting/amending parcel descriptions are discussed in **Schedule "C"**.
10. Current Circumstances and Practices Which Work Against Maintaining the Survey Fabric in Nova Scotia.
 - a. *Land Registration Act* System Elements.
 - i. The requirement for a single parcel description for the infant parcels resulting from the *de facto* consolidation of parent parcels.
 - (1) Under present *Land Registration Act* System policy, each parcel description (PDCA) must contain only one description except those parcels of land having received final endorsement on a plan of consolidation where the perimeter of the newly created parcel is not shown.
 - (2) With this exception *de facto* consolidations require a single new parcel description for the infant parcel. In some cases this *Land Registration Act*, "LRA", requirement requires property owners to have their land surveyed to create a compliant parcel description. This defeats the goal of *de facto* consolidations.
 - (3) In several cases this requirement has caused lawyers to draft improper new parcel descriptions. Four of the twenty-seven survey-related complaints to the Registrar General result from lawyer-prepared parcel descriptions in *de facto* consolidations.
 - (4) The LRA System should permit surveyors and lawyers to describe the infant parcel in a *de facto* consolidation using the existing parcel descriptions with a notation that they are consolidated as one parcel. These "chained" descriptions do not change the external perimeter of the combined parent parcels and maintain the survey fabric. This should not be

⁴ Refer to *FCT Insurance Company v. Law Society of New Brunswick* 2007 NSQB 347 (October 19, 2007) in which certain professional standards of the Law Society of New Brunswick were struck down for attempting to limit others from performing tasks expressly permitted by the governing enactment. See also *Hebb v. Woods* (1996), 150 N.S.R. (2d) 16 (N.S.S.C.) which considered the effect of the NSBS Profession Standards.

a significant burden on the LRA System as no changes in the external boundaries of the consolidated parcel are required. On the other hand combining and eliminating elements of two previously separate descriptions can alter boundary retracement.

- ii. LRA Sec.37(8) provides that a parcel that cannot be located with reasonable accuracy or for which the legal description does not permit the creation of a geographical representation of the parcel shall not be registered. This section occasionally results lawyers or surveyors changing descriptions to “get the parcel description in”. When a parcel cannot be located with reasonable accuracy or a legal description does not permit the creation of a geographical representation of the parcel the PDCA Submitter should have sufficient survey work done to locate and adequately describe the parcel.

Comment: In some cases an attempt is made to locate the parcel based on adjoiningers. The LRA excludes the use of property mapping to identify adjoiningers as Property Mapping is acknowledged to be erroneous in many cases. Instead the LRA requires the PDCA Submitter to rely on the landowner to correctly identify the ownership of neighbouring properties. This is an inadequate approach as often the owner relies on property mapping for this information. In these cases any attempt to "update" adjoiningers could further confuse the situation. This is especially true if existing property mapping is used by the landowner to "update" adjoiningers. *Any change in descriptions would further complicate an already confusing situation.* In these cases the original descriptions should simply be used “as is”. Any edits would be confined to textual qualifications. A statement in the textual qualifications area could be used to flag the fact that ambiguities exist with respect to parcel location and consequently the original un-edited parcel description has been used.

Response: One lawyer responded that "...if the description cannot be located, it should not be included in the system. This was an essential element of the mappers requirements for the LRA."

WG reply: We agree. As stated above, sufficient survey work will be required to adequately locate and describe the parcel before its PDCA is submitted for approval.

- iii. The use of short form descriptions eliminates an opportunity to provide clarification to the physical extent of the property and it's easements. The use of a long form description can go a long way to clarifying situations on a survey plan that are otherwise left up to the interpretation of the viewer of the plan. One example is the interpretation of easements, say in the case of flag lots, which can contain several easements per lot for access, services, drainage, signage, etc. These easements can overlap each other potentially creating confusion as to extent and assignment of benefits. The long form description can easily be used to clarify any ambiguous plan features. Short form descriptions do not address

the validity of an easement that must be created through a formal grant of easement or subsequent deed that properly grants rights. “ The plan does not create the easement”. Another circumstance in which the short form description creates problems is when used on a parcel of land described in a older registered plan. Often these plans are illegible due to time and use over the years or simply missing altogether (i.e. lost from the Registry).

Response: One lawyer responded that "I completely agree that the use of short form descriptions has gotten out of hand. In my opinion a description should tell the owner what he/she has without the necessity of referring to some other document."

- b. Foreclosures can reverse consolidations of a mortgaged parcel if the original mortgaged parcel is altered by consolidation with another parcel after the security is recorded without substituting the revised description for the original description⁵ by amending agreement. This problem could be prevented by either or both
 - i. enacting and proclaiming a *Municipal Government Act* provision like the repealed section 119(3) of the original *Land Registration Act*⁶ ; and
 - ii. lawyers, by practice, recording security amending agreements after the consolidation of parcels charged by mortgages.
- c. Lawyers' Practices.
 - i. Gross Errors - for example:
 - (1) Recording a *de facto* consolidation purporting to consolidate parcels that are not contiguous.
 - (2) Incorrectly matching PID numbers and parcel descriptions.
 - (3) Amending parcel descriptions to include lands that were not included in the original description (or title) without recording any instrument in the Registry/Land Registration Office supporting the addition – *i.e.* not first recording a statutory declaration proving possessory title to the added parcel then a *de facto* consolidation or other instrument consolidating the parent parcels.
 - (4) Revising boundary dimensions without benefit of survey.

⁵ *Central & Eastern Trust Co. v. King* (1979), 41 N.S.R. (2d) 270, 76 A.P.R. 270, 107 D.L.R. (3d) 374 (Nova Scotia Supreme Court, Cowan, C.J.T.D.). *Continental Bank Realty Corp. v. Woodbury* (1984), 63 N.S.R. (2d) 119, 141 A.P.R. 119, 8 D.L.R. (4th) 340 (Nova Scotia Supreme Court, Nathanson, J.).

⁶ S.N.S. 2004, c.38, s.25.

- ii. Not recording adequate evidence in the Registry/Land Registration Office proving the foundation of possessory interests in parcels.
- d. Surveyors' Practices
- i. Gross Errors - for example:
 - (1) Showing a private roadway across third parties' lands as a "right of way" for the benefit of a parcel vs. "as a traveled way" when no easement was granted, reserved, created by implication of law or created by prescription.
 - (2) Showing part of a servient tenement parcel as part of the dominant tenement parcel where no transfer of title to the affected part of the servient tenement parcel was recorded.
 - (3) Adding an additional piece of land to an existing parcel by a Boundary Line Agreement without subdivision approval when the "conventional line" doctrine did not apply - *i.e.* attempting to work around the *Municipal Government Act* subdivision approval requirements⁷. Consider the footnoted papers and the cases cited in the Siebrasse paper carefully when dealing with boundary line agreements.
11. Since this Discussion Paper was first circulated the Supreme Court of Nova Scotia rendered its decision in *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*⁸. Lawyers and surveyors should consider the Crown's ownership of watercourses when reckoning the extent of parcels when the parcel descriptions of those parcels purport to include watercourses. As in *Silver Sands* this is especially so when taking advantage of the 10 hectare parcel exemption from subdivision approval under Section 268(2)(a) of the *Municipal Government Act*.
12. Suggested Regulatory/Proccdural Changes In The Land Registration System
- a. Permit use of multiple existing parent parcel descriptions in the description of infant parcels in *de facto* consolidation - *i.e.* "chaining" of existing parcel descriptions - to preserve the survey fabric. This would not prevent parties from obtaining a surveyor-prepared new description for the infant parcel.
 - b. Respecting parcels affected by easements, require the submitters of parcel descriptions to identify

⁷ Norman Siebrasse, "The Doctrine of Conventional Lines", (1995) 44 University of New Brunswick L.J. 229. On the application of statutory provisions respecting subdivision of lands refer in particular to pp.250-250, Section G. Statute of Frauds. Christine McCulloch, "Subdivision Problems and the Planning Act", (Paper presented at The Continuing Legal Education Society of Nova Scotia conference Real Estate, October 9, 1992 at page 35.

⁸ 2007 NSSC 291

- i. the legal foundation of the easements - e.g. by grant, by implication of law, by operation of statute, by prescription or by other specified means;
- ii. the date on which the easement was first created if known or, if found in the root of title, to so state.
- iii. the date and recording particulars of the first recorded instrument within the *Marketable Titles Act* marketable titles period, if any, evidencing the easement in the Registry/Land Registration Office;

Response: One lawyer responded that "it is unclear whether an easement included in a document that is the MTA root of title is acceptable even if it is not the origin of the easement, or if (unlike titles) it is necessary to search an easement back to its beginning even if there are adequate words later in the chain. While I believe that it is essential to have the exact words of the easement, and this frequently means going back to the beginning, sometimes it does not if an exceptional lawyer has preserved the words. As long as the easement has a marketable title, its priority is protected. Apart from that exception, I completely agree with the importance of a full search."

WG reply: The intent of this recommendation is to ensure that a searcher will be able to determine the priority of the easement vis-a-vis mortgages, judgments and other interests which may, particularly if realized, terminate or diminish the easement. Some unrecorded easements like "easements used and enjoyed" may have priority over subsequent recorded interests. In all cases a careful analysis of the competing interests is required and this analysis is facilitated by full disclosure of all facts material to this determination in the parcel register / parcel description.

- iv. subject to changes in POL processes suggested by the response noted below, if the easement is subject to a prior interest in the servient tenement that affects the priority or the use of the easement, require the Submitter to enter a textual qualification with the details of the prior recorded interest in the parcel register of the dominant tenement parcel.

Response: One lawyer responded that "I would prefer to see a way to record the charge in the details of the easement; in either case the release of the prior charge should release the qualification."

WG reply: We concur with this suggestion and recommend that the POL system be modified to accommodate this recommendation in lieu of using textual qualifications.

This could be done by requiring submitters to identify the first recorded instrument evidencing the easement as the enabling instrument but this will not always be

possible or appropriate. Easements created by implied grant are valid from the time they are created so for them and like easements an appropriate BITB in the PDCA description of the interest or a textual qualification may be the preferred method.

- c. Define "easements used and enjoyed" as used in s.73(1)(e) of the *Land Registration Act*.

Response: One lawyer responded that "I see no need to define "easements used and enjoyed". Note that this matches the MTA wording. There are problems in the application, primarily because many lawyers pay no attention to the fact that there has to be an easement - by whatever means - and that the use of a driveway for three weeks last summer is not use of an easement, just trespass unless there is an easement by prescription, grant or otherwise."

WG reply: Lack of definition will leave this expression open to wider interpretation than it would be if defined.

- d. Publish procedures by which

- i. the holder of a prescriptive easement protected by s.75 of the of the *Land Registration Act* may record the easement in the parcel register of a registered servient tenement; and
- ii. the holder of an unrecorded easement that is recognized in law - e.g. an easement implied by law such as an easement of necessity - may record the easement in the parcel register of a registered servient tenement.

- e. Consider either setting the LRA migration system, or requiring migrating counsel to disclose in the parcel register when an interest in or benefitting a registered parcel is based on adverse possession or prescription. The notice should remain visible for a period of ten years from the date the possessory interest was migrated - to cover the limitation period under section 74(2) of the *Land Registration Act*. Under the present system a party could easily acquire an interest in such a parcel and, without warning, be subject to an action by a prior paper title holder of the possessory interest under LRA s.74(2).

Response: One lawyer responded that "I disagree that either title to the parcel or to one of its attributes (benefit or burden) should be explicitly expressed as being subject to divestment (even though this is so) simply because the certainty of title is in my view the most important aspect of the LRA system. If done for easements, it must also be done for title."

WG reply: The risk of divestment by a "paper title holder's" action exists whether disclosed or not in the parcel register. Disclosure will prevent "ambushes" of unsuspecting purchasers by providing a party acquiring an interest in the parcel to assess the risk of a claim and take any steps the party feels are necessary to protect themselves. Disclosure should lead to a higher standard of care in

migrating parcels on the basis of possessory interest and due consideration of settling possessory interests by judicial process. Disclosure will give an interest acquirer the opportunity to either avoid the risk by not acquiring the interest or ensure the risk of claim remains with the migrating owner by contractual arrangements. In our view this will lead to greater certainty of title in the long run.

- f. Municipal Development Officers, POL Mappers and Provincial Assessment authorities should be alerted to the lessons learned in the *Silver Sands* case so they do not inadvertently permit parcel owners to think that the parcel owners have any property interest in watercourses except as permitted under Section 108(2) of the *Environment Act* or other lawful authority. Watercourses should not be assessed to parcel owners for real property tax purposes.
13. The Working Group strongly recommends that NSBS collaborate with Service Nova Scotia & Municipal Relations to strengthen standards and procedures for proving possessory interests in parcels. The standards and procedures should be designed to ensure proper legal foundations for interests migrated on the basis of adverse possession or prescription. The goal of this recommendation is to reduce the risk of actions by displaced "paper title holders" to recover their interests under Sections 63, 74(2) or 90 of the *Land Registration Act* which actions could erode public confidence in the Land Registration System.

Response: One lawyer responded that "The standards for possessory titles are acceptable, but seldom followed. The Professional Standards are intentionally not very prescriptive, but I would agree that some way to require what is recommended is needed."

WG reply: Refer to our response in the previous subparagraph. NSBS in particular could enhance awareness of recent continuing legal education papers on this subject by simply referring to the papers in the "below the line" Notes and Additional Resources sections of Professional Standards, Real Property Transaction in Nova Scotia - Standards 3.2 (Possessory Title) and 3.3 (Prescriptive Rights). These standards do not refer readers to these current papers particularly one written about legal and procedural and evidentiary issues arising in claims for adverse possession and another written specifically to address the concerns expressed to NSBS by ANSLs and DNR about deficiencies of affidavits and statutory declarations recorded to prove possessory interests. Both papers are found in the materials for the RELANS CLE session held February 2, 2006. NSBS should also take steps to make lawyers more aware of the NSBS Library Service's "Secondary Sources" database of continuing legal education papers. The Secondary Sources database would be an even better resource if CBANS could be persuaded to provide all papers from its CLE sessions to this resource. It must be noted that this resource is available for the use of anyone who wishes to access it.

14. One verbal response from a surveyor recommended that the two professions collaborate in developing either or both

- a. an extra-judicial vehicle for resolving boundary line disputes - perhaps through voluntary submission to a joint arbitration panel comprising surveyors and lawyers, or
- b. in consultation with the Courts, a means of referring boundary disputes to a joint panel of surveyors and lawyers for recommendations to the Courts.

The Working Group endorses this recommendation.

15. The Working Group also recommends that NSBS & ANSLs periodically review the Schedules to this report to ensure the information remains current.

All of the above, together with the attached schedules is respectfully submitted by the authors.

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Schedule A - Anatomy of a Parcel Description

Component	Content	Based on old description	Determined by Surveyor	Determined by Lawyer	Comments LSR = Land Survey Regulations DTP = Dominant tenement PID STP = Servient Tenement PID
Schedule Designation	Designation of Schedule - e.g. Schedule "A"	Sometimes	Either	Either	Document specific, not part of parcel description. Best not included in PDCA.
PID	PID	No	Neither	Neither	Mappers assign PID.
Preamble	Introduction to description - states general location & often plan/parcel details.	Often	Either	Either	LSR s.69 prescribes Preamble requirements.
Point of beginning	States physical point of beginning of description	Often	Yes	No	LSR s.70 prescribes requirements for locating starting point.
Thence para.- Metes	Describes direction, length & in good practice, identification of the abutting parcel	Often	Most often	No	LSR s.71-73; s.75. N/A Short Form description - see plan.
Thence para. - Bounds	Describes abutting parcels (owners/identifiers), natural boundaries	Often	Often	No	Frequently not current, N/A short form description - see plan.
Thence para. - Bearing note	Identifies reference meridian for bearings	Often	Yes	No	N/A Short Form Descriptions - see plan.
Area Statement	States area of parcel.	Often	Often	No	LSR s.74 requires statement of area. N/A short form description - see plan. Often inaccurate in older descriptions.
BITB (Survey details)	Identification of boundary survey particulars	No	Yes	Yes	LSR s.69(b) specifies requirements.
BITB (Back Title)	Historical information for locating relevant prior instruments	Often	Yes	Yes	LSR s.76 requires statement when information is readily available.

Component	Content	Based on old description	Determined by Surveyor	Determined by Lawyer	Comments LSR = Land Survey Regulations DTP = Dominant tenement PID STP = Servient Tenement PID
Exceptions	Description of, or reference to, exceptions to title - generally referring to parcels conveyed out of the foregoing description	Often	Yes	Yes	Based on title search.
Reservations	Description of, or reference to, reservations from title - often referring to parcels or other interests reserved out of the parcel by a previous owner	Often	Yes	Yes	Based on title search.
Benefits ("Together With...") - extent	Description of easements benefitting the described parcel	Often	Yes	No	Ideally would state DTP, STP, extent, terms, limits if benefitting only part of a consolidated parcel, legal foundation (<i>e.g.</i> - grant, prescription, implied grant <i>etc.</i>) & date created.
Benefits ("Together With...") - legal rights	Description of easements benefitting the described parcel	Often	No	Yes	Ideally would state DTP, STP, extent, terms, limits if benefitting only part of a consolidated parcel, legal foundation (<i>e.g.</i> - grant, prescription, implied grant <i>etc.</i>) & date created.
Burdens ("Subject to...") - extent	Description of easements or covenants burdening the described parcel	Often	Yes	No	Ideally would state DTP, STP, extent, terms, legal foundation (<i>e.g.</i> - grant, prescription, implied grant <i>etc.</i>) & date created.
Burdens ("Subject to...") - legal rights	Description of easements or covenants burdening the described parcel	Often	No	Yes	Ideally would state DTP, STP, extent, terms, legal foundation (<i>e.g.</i> - grant, prescription, implied grant <i>etc.</i>) & date created.
Boundary Line Agreement reference	Reference to boundary line agreement(s) settling boundaries	Partly	Yes	Yes	

Component	Content	Based on old description	Determined by Surveyor	Determined by Lawyer	Comments LSR = Land Survey Regulations DTP = Dominant tenement PID STP = Servient Tenement PID
MGA Compliance Statement	Statement confirming the parcel complies with MGA subdivision regulations.	No	Yes	Yes	<p><i>Response: Three surveyors responded to this MGA Compliance Statement item. The following comment is representative: "In Schedule "A" -Anatomy of a Parcel Description and in Schedule "B" - Allocation of Parcel Description Tasks it states that the MGA Compliance Statement is determined by a lawyer. If this is the case, a surveyor would not be able to submit any PDCA's without legal advice. I hope this isn't the intention. Normally, MGA Compliance is easy to determine but if in doubt I do discuss this with the lawyer doing the migration prior to submitting the PDCA.</i></p> <p><i>WG reply: We have changed the recommendation recognizing that surveyors are permitted by law to submit PDCA's and neither profession can restrict that by professional standards - see footnote 4. above.</i></p>

Component	Content	Based on old description	Determined by Surveyor	Determined by Lawyer	Comments LSR = Land Survey Regulations DTP = Dominant tenement PID STP = Servient Tenement PID
Other comments:					
1	<p><i>One of three surveyors responding on this issue stated that "From this discussion paper, I am also not clear whether a surveyor will be able to submit a PDCA with benefits and burdens. As a caretaker of [Company's] legal documents and plans involving right of ways and easements, and knowing the usage of [Company] lands, I have always included the benefits and burdens to the best of my knowledge in my PDCA submissions, however, in the comments field of the PDCA submission I have included the statement "The full title search has not been completed and an amending PDCA will be submitted if amendments are required based on the title search results." Benefits and burdens are discussed with the migrating lawyer prior to my PDCA submission and any additional wording, apart from the Deed reference, needed to describe the specific legal rights of [Company] or an adjoiner with respect to the burdens and benefits in the PDCA is provided to me by the migrating lawyer. I hope the intention is not to prevent the surveyor from submitting a PDCA that includes burdens and benefits.</i></p> <p><i>WG Response: There is no intent to prevent a surveyor who is preparing a PDCA from incorporating "legacy" benefits or burdens in the parcel description. The thrust of this Discussion Paper is that the creation of new benefits or burdens in a legal description will require a surveyor to create the parts related to "extent" and a lawyer to create the parts related to "legal rights" as the responder indicates that he does.</i></p>				
2	<p><i>One surveyor responded that: "There is a statement being included in some PDCA's which troubles me. A typical example is seen in L.R Doc 83925322. It reads "I certify that this legal description is intended to describe the same parcel as represented by PID 882316." Who is purporting to certify? It's not followed by a signature or even a name. What is being certified? Of course the answer would be "the intention". I contend the average person would mistake this as a certification of the description and would further suggest that this may be a calculated deception. There are already too many people with the mistaken belief that migration guarantees their boundaries. Certainly would like to hear your comments."</i></p> <p><i>WG Response: This statement was required by POL for certain amended parcel descriptions under section 1.7 of the Parcel Description Certification Application Process Steps Document # 20 / September 28, 2003. The currently posted version of this document dated July 29, 2004 does not contain this requirement.</i></p>				
3	<p><i>A lawyer responded that "...using the same comment for both parts of the benefit and burden "anatomy" does not sufficiently distinguish between the roles of the surveyor and lawyer."</i></p>				

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

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

#	Task	Does this determine/change parcel extent or limitation of title?	Can this change the parcel description?	Surveyor Function?	Lawyer Function?	Impact on System Integrity - Risks to Public/Comments?
1.	Preparation and submission of Parcel Description Certification Approval applications.	No	Normally not as this process transfers legacy descriptions with existing benefits and burdens to the LRA System.	Yes	Yes	Both authorized lawyers and surveyors are expressly permitted to prepare and submit PDCA applications under LRA and regulations thereunder.
2.	Determining the boundaries/extent of a new parcel or amending the boundaries/extent of existing parcels	Yes	New parcel - N/A Existing parcel - Yes	Yes	No	Impacts owner & affected abutters
3.	Determining the boundaries/extent of an area of a parcel subject to a claim of title by adverse possession that is not the whole of a parcel with an existing parcel description	Yes	Yes	Yes	No	Impacts owner & affected abutters
4.	Determining the extent of an easement established by grant, prescription, "use and enjoyment" or otherwise that does not affect the whole of a parcel which has an existing parcel description	Yes (limitation of title)	Yes	Yes	No	Impacts owner & affected dominant tenement PID

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5.	Drafting a written description of the physical extent of a parcel based on a plan of survey of the parcel prepared by a NSLS	No	Yes	Yes	Yes	Puts NSLS determined extent in words. BITB statement recommended to clarify connection with or variations from previous parcel description.
6.	Drafting a written description of the physical extent of a parcel based on NSLS prepared surveys (multiple plans) of all abutting parcels when the subject parcel is not surveyed?	No	Yes	Yes	No	Surveys are not uniformly based on the same reference points or meridians - e.g. some are based on grid North, others on Magnetic north. This could make the use of bearings and distances from different plans confusing if not contradictory. It is better to use existing descriptions with reference to plans of adjoining parcels.
7.	Drafting a written description of the physical extent of a parcel based on NSLS prepared surveys of all abutting parcels except public road frontage (described as a "bounded on the {North} by Name Road") when the subject parcel is not surveyed?	No	Yes	Yes	No	Same comment as 5.

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8.	Drafting a new "bounded by" written description of the physical extent of a parcel based on the names of the current owners of abutting parcels where no subdivision/consolidation has altered extent of title.	No	Yes	Yes	Yes	Requires sufficient Registry/LRO and field work to identify the abutting owners. Original descriptions should be used, current owners as textual qualifications or added in parenthesis (now...).
9.	Drafting a new "bounded by" written description of the physical extent of a parcel based on the names of the current owners of abutting parcels where subdivision/consolidation has altered extent of title.	No	Yes	Yes	No	Requires sufficient Registry/LRO and field work to identify the abutting owners. Original descriptions should be used with saving and excepting paragraphs and current owners on unchanged boundaries as textual qualifications or added in parenthesis (now...).
10.	Setting standards for "best practices" in the preparation of written legal descriptions - <i>i.e.</i> content and format?	No	No	Both		Ideally both professions will agree on best practices to ensure clarity & precision
11.	Changing degree, minute & second symbols in an existing parcel description to words for PDCA. <i>E.g.</i> "N 10 degrees 15 minutes 20 seconds E"	No	Yes	Yes	Yes	No effect. No risk. One lawyer responded "...changing degree etc. symbols has some risk. Any change to a description incurs risk." The lawyer also stated that the system should have been designed to accept these symbols.

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12.	Correcting an obvious typographical error in a parcel description - <i>e.g.</i> a reversed bearing.	No	Yes	Yes	Yes	Improves integrity.
13.	Adding, amending or removing a BITB statement in a parcel description	No	Yes	Yes	Yes	Improves integrity.
14.	Adding a MGA compliance statement to a short form parcel description generated by mappers.	No	Yes	Yes	Yes	<p>Addition of MGA statement is not required until subsequent changes in the parcel description are made. Compliance is evident by the Development Officer's approval.</p> <p>This item was amended in response to the input of three surveyors. See Schedule "A" under MGA Compliance.</p>
15.	Adding particulars of benefits and burdens as required by LRA to a short form parcel description generated by mappers based on a NSLS prepared survey.	No	Yes	Yes as to extent of easement	Yes as to terms of easement	Improves integrity.
16.	Drafting a written description of the physical extent of the course of an easement over a parcel - no NSLS plan.	Yes	Yes	Yes	Normally not	Determines or changes limitation on title. If easement is of fixed width along a unique feature a lawyer may prepare the description of the course of the easement <i>e.g.</i> an easement 10 feet each side of an existing waterline, poleline, boundary, etc.

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17.	Drafting a written description of the physical extent of the course of an easement over a parcel - based on the parcel owner's sketch - no NSLS plan.	Yes	Yes	Yes	No	Great care and sufficient Registry, LRO & field work is required to confirm the owner's sketch is consistent with both the chain of title and the extent/limitation of title. See 15, above, for exception. One lawyer responded: "...this is so common that your recommendation will be regarded as idealistically impractical. I think you should recommend that a lawyer not attempt to create the description, but append the sketch instead. In rethinking this one, I realize you have approached it from an allocation point of view, in which case you are correct, but I still think there will be problems unless you include (perhaps as a separate number) the option of using the owner's sketch, with reasons why a lawyer ought to avoid trying to turn it into words.
18.	Drafting a written description of the physical extent of the course of an easement over a parcel - based on a NSLS prepared survey.	No	Yes	Yes	Yes	Improves Integrity

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19.	Drafting language describing the legal attributes of an easement over a parcel	No	Yes	No	Yes	Improves integrity
20.	Drafting a written description of the physical extent of a parcel for a remaining parcel created by the parent parcel being split by a public highway, watercourse or railway using the original description of the parent parcel but excepting the public highway, watercourse or railway and lands on the opposite side of it - e.g. "Excepting Name Road, a public highway, and all lands in the foregoing description west of Name Road."	Yes	Yes	Yes	Yes	Improves integrity. The safety here is that the dividing boundary is a physical entity the extent of which is readily determinable.
21.	Drafting a written description of the extent of possessory title for a portion of an existing parcel.	Yes	No - creates new descriptions	Yes	Not unless based on survey.	Extent should be based on survey; lawyer may draft written description based on NSLS survey.
22.	Drafting a written description for a parcel made up of an existing parcel and a portion of an adjoining parcel (possessory title).	Yes	Yes	Yes	Not unless based on survey.	Existing parcel based on existing description; Description of portion of adjoiner based on survey. Both descriptions included (see comments <i>re defacto</i> descriptions)
23.	Sufficiently proving the basis of title to possessory interests in parcel registers by preparing and recording affidavits or statutory declarations proving the interest asserted.	If asserting possessory title to part of an existing parcel - Yes	If asserting possessory title to part of an existing parcel - Yes	No	Yes	Improves integrity if properly done. If not, risks include LRA, s.63, 74(2) & s.90, challenges to LRA registered ownership and recorded interests.

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24.	Drafting a written description of the physical extent of an infant parcel resulting from the <i>de facto</i> consolidation of parent parcels when the exterior boundaries of the infant parcel are based on a NSLS prepared survey of the parent parcels and only the line or lines shown in the plan dividing the parent parcels is or are removed by the consolidation.	No, <i>de facto</i> consolidation implies common ownership of parent parcels).	Yes	Yes	Yes	Improves integrity. The external boundaries have already been determined by a NSLS.
25.	Identification of the date on which an easement was created. One lawyer responded: I do not think the difference between possession and implied grant/operation of law that is attempted here is valid. The principles in 25 would appear to also apply to 24. That is, a lawyer determines whether an easement exists (and when it started); only a surveyor can determine precisely where it is.	Not the physical extent or limitation.	Yes (paragraph describing the easement)	Yes - when based on possession.	Yes - when based on implied grant or operation of law.	Caution - this may determine the priority of the easement vis-a-vis other material recorded interests. Prior interests affecting the easement in the servient tenement parcel register should be noted in the dominant tenement parcel register.
26.	Identification of the precise legal grounds by which an easement was created.	Not the physical extent or limitation	Yes (paragraph describing the easement)	No	Yes	This may determine the effect, if any, of LRA, ss.73-76 on the easement.

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27.	<p>Drafting a written description of the physical extent of a parcel based on exceptions from the original descriptions.</p> <p>A lawyer responded: "A lawyer can also draw the description for a remainder if there is sufficient information on a survey plan - as there often is."</p> <p>WG response: We agree.</p>	Yes	Yes	Yes, see comment	Yes, see comment	If the "remainder description" is based on the original description excepting the various descriptions of excepted parcels a lawyer may draft the parcel description. If the "remainder description" is a new description of the remainder parcel that does not list the exceptions but describes the remainder parcel using either "bounded by" or metes and bounds of the exceptions a surveyor should draft the new description. See 5-8, above.
28.	<p>Drafting a written description of a parcel incorporating a Boundary Line Agreement.</p> <p>Caution: When preparing boundary line agreements consider the application of "conventional line" principles⁹ and subdivision approval requirements under the <i>Municipal Government Act</i>.</p>	Yes	Yes	Yes	Yes if based on NSLS survey	Original descriptions to be used for unchanged boundaries, reference to documentation (plan) to support new line must be included. Being and intended to be should be included to link to original description.
29.	Adding Benefits & Burdens to adjacent lands consequential to migration pursuant to LR Administrative Regulations 13-16.	Yes - limitation of title	Yes	No	Yes	April 3, 2007 LRAR addition to improve system integrity

⁹Norman Siebrasse, "The Doctrine of Conventional Lines", (1995) 44 University of New Brunswick L.J. 229. On the application of statutory provisions respecting subdivision of lands refer in particular to pp.250-250, Section G. Statute of Frauds.

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30.	Amendment of legal description and parcel register on Subdivision of Condominium Unit Creation pursuant to LR Administrative Regulation 9.	Yes - limitation of title	Yes	No	Yes	April 3, 2007 LRA Regulation addition to improve system integrity

Schedule C - Best Practices

1. Lawyers migrating parcels with descriptions amended in the migration process must ensure
 - a. there is underlying title to all parts of the newly described parcel; and
 - b. the consolidation complies with Part IX of the *Municipal Government Act*.

Response: One lawyer responded "1.b and 2.b: consolidation "or other change" - it is not just an illegal consolidation you may be dealing with. There may be a piece left out in error."

2. Surveyors should approach the survey of parcels with descriptions amended in the migration process carefully. Ensure
 - a. there is underlying title to all parts of the newly described parcel; and
 - b. the consolidation complies with Part IX of the *Municipal Government Act*.

Response: One lawyer responded "1.b and 2.b: consolidation "or other change" - it is not just an illegal consolidation you may be dealing with. There may be a piece left out in error."

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

Response: One lawyer responded "While I usually use the names and numbers of roads on survey plans (occasionally adding the name from a prior description if different), I am uncertain as to how "unchanging" these numbers are. That is, are they permanent? Not likely, since Highway 1 west of Bridgetown was unnumbered, then 1A; Highway 1 is now 201.

5. When "Grantor", "Grantee" or another designation is used to refer to a party creating an interest in an earlier instrument, identify that original party in the PDCA - e.g. revise "... conveyed by the Grantor to the Grantee..." to "... conveyed by the Grantor (John Doe, Book 123, Page 987) to the Grantee (Jane Smith et al)..."
6. When there is a typo in a bearing or distance in the current description - for example "East" is incorrectly used instead of "West" in a bearing - fix it in the PDCA as follows: Change "North 10 minutes East" to "North 10 minutes West (incorrectly shown as East in previous instruments - refer to plan P-0001 noted below). The same procedure would apply to correcting a parcel description based on a typo in a survey - with reference to the error.
7. When converting an ancient "bounded by" description and you want to show the name of the current adjoining owner, maintain the original description but add the current adjoining owner's name parenthetically - for example: "Bounded on the West by Ezekiel Settler (now, 2007, by Joan

Newowner);" do so only after sufficient Registry/LRO and field work to determine the name(s) of the current adjoining(s).

Response: One lawyer responded: "How does field work help to determine the names of current abutters? Occupiers, maybe?"

WG reply. Surveyors report situations in which property owners have not been aware of subdivisions creating new adjoining parcels - nor of changes in ownership of adjoining parcels hence the need to confirm the names of adjoining owners as indicated.

8. When a place name or road name has changed indicate the change parenthetically in the parcel description - for example:
 - a. Change "Thence Northerly by the East road limit of Hardscrabble Mountain Road" to "Thence Northerly by the East road limit of Hardscrabble Mountain Road (now, 2007, commonly known as the West Brooklyn Mountain Road)"
 - b. Change "All that certain ...parcel of land in Kings County..." to "All that certain ...parcel of land in Kings County (now incorporated within the town limits of the Town of Berwick by annexation as evidenced by plan P-12345 recorded on [date])..."

Response: One lawyer responded: "Since Berwick is in Kings County, I think your example is unclear. How about "near Berwick in the County of Kings?"

WG reply. In this example, lands originally within the boundaries of the Municipality of the County of Kings were annexed by the Town of Berwick. We have amended the example for clarity.

9. When entering information about easements in parcel descriptions (particularly private rights of way) indicate when and how the easement was created. Examples:
 - a. For a private granted right of way: "Being and intended to be the right of way first granted by Amy Grantor to Harry Grantee [by][before] the instrument dated [date] recorded on [date] in Book #, Page # as Document #."
 - b. For a private ungranted right of way created by implication of law: "Being and intended to be the right of way created by implication of law by the deed granted by Amy Grantor to Harry Grantee dated [date] recorded on [date] in Book #, Page # as Document #."
 - c. For a prescriptive easement: "Being and intended to be the prescriptive right of way evidenced by the statutory declarations of Amy Deponent dated [date] recorded on [date] in Book #, Page # as Document # and Harry Disinterested dated [date] recorded on [date] in Book #, Page # as Document #."

It is extremely important for searchers to know when private easements were first created and recorded as this enables searchers to determine the priority of the easements relative to other interests in the servient tenement. It is also important for the searcher to know how an ungranted easement was created. Section 74(2) of the *Land Registration Act* can void prescriptive easements unless they come under section 75 - the "wandering boundary line" exception. Easements created

by implication of law are not made void by section 74(2). "Easements used and enjoyed" may be protected by section 73(1)(e) of the *Land Registration Act* but these are not defined - these may include easements created by implication of law.

Response: One lawyer responded: "The words clearly include any easement. Definition is unnecessary; understanding or explanation is necessary."

WG reply. We believe it is necessary to distinguish between prescriptive easements and easements created by implication because prescriptive easements may be subject to challenge under LRA s.74 while easement created by implication of law are likely protected by LRA s.73(1)(e) as "an easement or right of way that is being used and enjoyed".

10. When entering details of an easement over a parcel describe the location and the extent of the easement on the servient tenement if possible.
11. NEVER refer to prescriptive easements as "easements used and enjoyed" in a parcel description. Prescriptive easements may be made void by section 74(2) of the *Land Registration Act* while section 73(1)(e) of the Act protects "easements used and enjoyed". Classifying a prescriptive easement benefiting a parcel as an "easement used and enjoyed" may cause a person acquiring an interest in the dominant tenement to innocently accept an easement that will become void ten years from migration under section 74(2) of the Act. "Easements used and enjoyed" are not defined in the Act but may include easements created by implied grant or by statute. Easements other than those created by prescription - *e.g.* those created by implied grant - are not subject to being made void by section 74(2) so it is important to determine and state the legal grounds by which an easement was created. It is also important to disclose the date on which an easement was created and the date on which it was first recorded if it is recorded; these dates enable a searcher to determine the relative priority of the easement and other competing interests in the servient tenement.

Response: One lawyer responded: "...recommend a change in the AFR to delete the access type "used and enjoyed"."

WG reply. For the reasons stated above we believe this access type provides a category for easements created by implication of law and, as such, is required.

12. Survey plans should distinguish between
 - a. "proposed easements" - easements to be created by a grant of easement based on the survey;
 - b. "existing easements" - easements created by grant, implication, operation of law, prescription or otherwise established by appropriate recorded evidence; and
 - c. "apparent easements/traveled ways/existing pipe lines/etc." - physical indicia for apparent easements or ways *etc.* for which there is no recorded evidence by which one can establish that the legal foundation for an easement exists.
13. Surveys of servient tenements should identify the dominant tenement(s) and the extent of the easement.

14. Surveys and parcel descriptions of consolidated parcels should identify the area of a parent parcel benefitting from an easement when the other parent parcel or parcels comprising the consolidated parcel did not benefit by the easement before the consolidation. One cannot extend the benefit of an easement merely by consolidating the benefitting parcel with other parcels.
15. The use of traditional BITB paragraphs noting
 - a. the conveyance in which the parcel description was first used, and
 - b. the root of title,

is encouraged to assist surveyors to maintain the survey fabric.

16. It is good practice to format parcel descriptions (PDCAs) in a style which provides clear visual separation of the elements of a legal description for ease of reading and distinguishing the various elements. For Example"

[Text of parcel Description]

EXCEPTIONS

FIRST EXCEPTION

...

SECOND EXCEPTION, *etc.*

...

BENEFITS

...

FIRST BENEFIT

...

SECOND BENEFIT, *etc.*

...

BURDENS

...

FIRST BURDEN

...

SECOND BURDEN, *etc.*

...

MGA COMPLIANCE STATEMENT

...

17. Do not incorporate "Schedule A" references in PDCAs submitted to POL - the schedule references are instrument specific. For example one lender's mortgage may call for the parcel description to be Schedule "A" while another may call for the parcel description to be "Schedule B"
18. Before consolidating a parcel with title based on adverse possession or a benefit based on prescription with another parcel first record proper evidence proving title to that interest - *e.g.* a *Quieting Title Act* order or sufficient affidavits/statutory declarations.
19. Never extend a legal description to include additional land without first ensuring that

- a. there is underlying title to the additional part evidenced in the Registry Office records, and
 - b. the parcels are either properly consolidated or approval of their consolidation is not required - in either case ensuring that the consolidation and the legal foundation of the consolidation is evidenced in the Registry Office records.
20. Remainder parcel descriptions. Descriptions for remainder parcels are being written based on unsurveyed data. If the original deed did not use dimensions and simply used adjoiners to describe the property any attempt later to assign dimensions to the remainder parcel is speculative at best. A better alternative is to use the original deed description and except out the surveyed lots. Short form descriptions are permitted for remainders so long as a system determined amount of information is shown on the plan. This generally consists of owners of all adjoining lands. Obviously the current adjoiners may bear no resemblance to the original description. Reference to the original deed should be cited so a link to the wording of the original description can be maintained (being and intended to be).
21. Parcel description changes made during the migration of parcels from *Registry Act* registration to *Land Registration Act* registration may affect prior security agreements. If migration results in changes to the extent or limitation of title of a parcel - for example *de facto* consolidations or the creation of new descriptions for parts of a parcel split by a public highway - lawyers must consider amending the descriptions in the security to avoid a foreclosure from "undoing" the changed descriptions.

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