

Materials Prepared for CLE Conference January 19, 1993

NOTE: Much of the text of these materials was gleaned from the article, Quieting Titles Act: Chambers Practice, by A. Lawrence Graham, Nova Scotia Law News, 1988 Volume 15, No. 2, October 1988.

The process of obtaining a Certificate of Title under the Quieting of Titles Act, R.S.N.S. 1989 c.382, can be divided into three parts:

1. the statement of claim;
2. the application for directions; and
3. the application for a certificate.

Statement of Claim (Section 5 of the Act)

The statement of claim is very specific and its contents will form the basis of the application for directions. The contents of the statement of claim must be confirmed by affidavit filed with the statement of claim. The following is a list of the information which should be included in the statement of claim:

1. join as defendants all persons who are "asserting an active claim";
2. set out all facts, including the title history. (The particulars with respect to the title can be in the legal abstract);
3. include a legal description of the property;
4. state the named of abutting landowners or occupiers;
5. state whether the plaintiff is in actual or constructive possession;
6. who is the assessed owner;
7. set out all property interests admitted by the plaintiff;
8. set out all claims to rights known to the plaintiff even though not admitted (this will help the chambers judge at the time of the application for directions;

9. attach a registerable plan or survey with the property in question marked in red;
10. attach an affidavit confirming "every material particular" (s.5(3) of the Act);
11. attach an abstract of title (s.6 of the Act) which follows the guidelines as set forth by Mr. Justice Nathanson in Ratto et al v. Rainbow Realty Limited et al (1984), 68 N.S.R. (2d) 44 at p.51.

The affidavits of verification and a copy of the abstract of title must be served with the originating notice (action) and statement of claim (s.7(1) of the Act).

Application for Directions (s.7(2) of the Act)

You must prepare a notice, affidavit and proposed order, as well as a prehearing memorandum. The prehearing memorandum is the most important document and should contain the following information:

1. explain briefly the nature of the title problem;
2. outline the basis of your client's claim;
3. list the abutters and confirm that your order provides for notification to them;
4. confirm that you have joined all those who are actively asserting a claim or name them now and confirm that your order joins them as defendants;
5. list those persons who may have an interest and confirm that your order provides that they be sent notices of right to intervene with a copy of the plan (with property marked in red). List them even though you hope your action will ultimately wipe them out. They have a right to be heard and the judge wants them to know this;

6. confirm that you have searched the registries of deeds and probate and anywhere else that might provide relevant information;
7. confirm that you have filed an affidavit proving service of the pleadings and documents for this application on all defendants and have provided counsel for the Attorney General with a copy of this memorandum;
8. confirm that your order provides for four advertisements for four consecutive weeks and point out any variations from the usual form including a short form legal description.

Counsel representing the Attorney General in recent years has taken a more active role in helping the court. The Attorney General's representative may object to the application if it does not satisfy the requirements of the Act.

Application for Certificate (s.12(1) of the Act)

If you have advertised and served all of the parties required to be served in the application for directions and no interventions or defences have been filed, you can now proceed to make application for a certificate of title.

At this stage the most important document will be the affidavit (or affidavits) supporting the requirements set forth in s.12(2) of the Act as well as confirming the terms of the order with directions.

The following is a checklist to be followed at this stage of the proceedings:

1. confirm that all defendants have been added as ordered;
2. confirm that no defences have been filed;
3. confirm that all notices to intervene have been served;

4. confirm, with exhibits, compliance with advertising requirements;
5. confirm that inquiries have been made with the Attorney General and that the Crown does not claim any interest in the property;
6. confirm satisfaction of all other terms of the directions order;
7. as required by s.12(2) prove that:
 - (a) plaintiff or predecessors have been in possession for twenty years;
 - (b) any other person having an interest has not, during that time, (1) received any benefit, (2) paid any expense, or (3) exercised any proprietary right.

The affidavit is very important because under the Quieting of Titles Act there is no default. Even if added defendants fail to file any pleadings, this element of evidence under s.12(2) must be satisfied.

If you have not satisfied the requirements of this section, you will not be entitled to a certificate of title.

Counsel for the Attorney General in recent years have taken a more active role and have defended actions where counsel for the Attorney General is not satisfied that the requirements of s.12(2) have not been met.

At this stage, you should include another prehearing memorandum with your application noting anything unusual and summarizing where in your affidavits' the required proof are located.

Attached to this paper are some precedents that may be useful in the preparation of an application. Included are a statement of claim, an order for directions and a proposed order for a certificate of title.

1992

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

ORDER FOR DIRECTIONS

BEFORE THE HONOURABLE MR. JUSTICE D. MERLIN NUNN, SUPREME
COURT, TRIAL DIVISION, PRESIDING IN CHAMBERS:

UPON HEARING on behalf of the Plaintiffs with
David P. S. Farrar, appearing on behalf of the Defendant, The Attorney General for the
Province of Nova Scotia, and consenting hereto:

AND UPON REVIEWING the documents on file, and it appearing that
the Statement of Claim and the supporting materials disclose all the persons and
interests likely to be affected by the Certificate of Title;

IT IS ORDERED that the Plaintiffs shall forthwith advise the following
persons that they may intervene in this action by personally serving or mailing to each
person by registered prepaid postage at their last known address, a true copy of the
Statement of Claim herein, with a plan attached outlining in red the lands which are
the subject of this action, and a true copy of the Notice of Right to Intervene, a copy of
which is attached hereto as Schedule "A":

Drive,

IT IS FURTHER ORDERED that the Plaintiff publish an Advertisement of its claim for Certificate of Title once a week for four (4) consecutive weeks, commencing with the week of August 5th, 1992, and such advertisement shall be published in the Halifax Chronicle Herald/Mail Star in each of the first and third of such weeks and in the Daily News in each of the second and fourth of such weeks and shall be in the following form:

1992

S.H. No. 82484

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

ORDER FOR DIRECTIONS

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

NOTICE OF CLAIM

claim a certificate of
title as owner in fee simple of the following lands:

ANY person who fears that he or she may be adversely affected by the Certificate may contest the claim by applying to a Judge of this Honourable Court to be added as a Defendant not later than the 2nd day of September, 1992.

1992

S.H. No. 82484

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

NOTICE OF CLAIM

DATED at Halifax, Nova Scotia, this 29th day of July, 1992

A. MARTIN SMITH, Q.C.
PROTHONOTARY
The Law Courts,
1815 Upper Water Street
Halifax, Nova Scotia
B3J 1S7

1992

S.H. NO. 82484

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

NOTICE OF RIGHT TO INTERVENE

TAKE NOTICE that the above-named Plaintiffs have commenced an action to obtain a Certificate of Title under the Quieting Titles Act as owner in fee simple of the following lands:

IF you are in possession of the lands or any part of them or have any property right in the lands or if you may be in any way adversely affected by the certificate of title, you have the right to contest the claim of the Plaintiffs by applying to a Judge of this Honourable Court to be added as a defendant.

IF you do not apply to the Court to be added as a defendant within fourteen (14) days after the service of this notice upon you, the Plaintiffs may enter judgment and obtain a certificate of title of the right which they claim in the land despite your possession of right or interest and may thereby bar any claim that you have in the land.

DATED the 29th day of July, 1992.

A. MARTIN SMITH. Q.C. PROTHONOTARY

1992

S.H. No. 82484

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

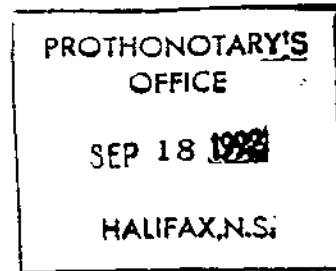
DEFENDANT

NOTICE OF RIGHT TO INTERVENE

1992

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:



PLAINTIFFS

- and -

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE GORDON TIDMAN, IN CHAMBERS:

UPON IT APPEARING that the Plaintiffs have made application for a Certificate of Title to the lands described in Schedule "A" attached to this Order;

AND UPON READING all affidavits and documents on file herein;

AND UPON IT APPEARING that no person has applied to this Honourable Court to be added as a Defendant;

AND UPON HEARING _____ solicitor for the Plaintiffs, with David P.S. Farrar, solicitor for the Defendant, The Attorney General of the Province of Nova Scotia, consenting hereto;

NOW UPON MOTION

IT IS ORDERED that a Certificate of Title in conformity with the provisions of the Quieting of Titles Act, R.S.N.S. 1989, c. 382, as amended, and in the form attached to this Order, as Schedule "A" be issued in favour of the Plaintiffs, confirming their entitlement to the lands described in such certificate as joint tenants, in fee simple.

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AND IT IS FURTHER ORDERED that the Plaintiffs shall pay the costs of the Attorney General of the Province of Nova Scotia, fixed by the parties in the amount of \$

DATED at Halifax, Nova Scotia this ^{OK} 17 day of September, 1992.

J. MacArthur

PROTHONOTARY

CONSENTING HERETO:

DAVID P. S. FARRAR
Solicitor for the Defendant, The Attorney
General of the Province of Nova Scotia

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the Seal of the Court, is a true
copy of the original document on file herein.
Dated the 18 day of Sept A.D., 1992
J. MacArthur

Prothonotary

SCHEDULE "A"

1992

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

- AND -

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

CERTIFICATE

THIS IS TO CERTIFY pursuant to the Quieting of Titles Act, that
are entitled to ownership, as joint tenants,
in fee simple, of the following lands:

DATED at Halifax, Nova Scotia, this day of , 1992.

PROTHONOTARY

1992

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

- AND -

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

ORDER FOR CERTIFICATE

ORIGINATING NOTICE (ACTION)

1992

S. H. No.

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:



Plaintiffs

- and -

ATTORNEY GENERAL FOR THE PROVINCE
OF NOVA SCOTIA

Defendant

Service of the within documents
is hereby acknowledged on be-
half of the Attorney General of
Nova Scotia this 10th day of
June 1992.

TO THE DEFENDANT:

TAKE NOTICE that this proceeding has been brought by the Plaintiffs against you, the Defendant, in respect of the claim set out in the Statement of Claim annexed to this notice.

AND TAKE NOTICE that the Plaintiffs may enter judgment against you on the claim, without further notice to you, unless within **TEN** days after the service of this originating notice upon you, excluding the day of service, you or your solicitor cause your defence to be delivered by mail or personal delivery to:

(a) the office of the Prothonotary, at 1815 Upper Water Street, in Halifax, Nova Scotia, and

(b) to the address given below for service of documents on the Plaintiffs:

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of (or such sum as may be allowed on taxation) for costs to the Plaintiffs or their solicitor within six days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the 9th day of June 1992.

TO: THE DEFENDANT
Its solicitor or agent

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

- AND -

ATTORNEY GENERAL FOR THE PROVINCE OF
NOVA SCOTIA

DEFENDANT

ORIGINATING NOTICE - ACTION

AFFIDAVIT OF SERVICE

I, _____, of Halifax, in the County of Halifax, and Province of Nova Scotia, make oath and say that I did on _____, the _____ day of January, 1992, before the hour of _____ o'clock in the _____ noon, serve A. James Flemming, Senior Solicitor with the Attorney General for the Province of Nova Scotia, with the within originating notice and statement of claim annexed thereto, by leaving a true copy of both documents with A. James Flemming, personally at Halifax, and that I endorsed the date of the service thereon on the _____ day of _____, 1992.

SWORN TO before me at _____)
in the County of Halifax, and Province of _____)
Nova Scotia, this _____ day of _____)
1992 _____)

A Commissioner of the Supreme Court of Nova Scotia

ENDORSEMENTS

RECEIVED on _____ the _____ day of _____, 1992.

This originating notice and statement of claim annexed thereto was served by me on the Defendant at Halifax, on _____ the _____ day of _____, 1992, before the hour of _____ o'clock in the _____ noon.

ENDORSED on _____ the _____ day of _____, 1992.

SIGNED

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

AND

THE ATTORNEY GENERAL FOR THE
PROVINCE OF NOVA SCOTIA

DEFENDANT

STATEMENT OF CLAIM

PARTIES

1. The Plaintiffs reside at _____ Halifax County, Nova Scotia.
2. The Defendant is the Attorney General for the Province of Nova Scotia and is joined in this proceeding pursuant to the provisions of section 4 of THE QUIETING TITLES ACT, R.S.N.S 1989, c. 382, as amended.

LANDS

3. The Plaintiffs have commenced this action for a Certificate of Title to lands known as _____, and 3.4 acre lot of land on the east side of the _____.
The lands claimed are more particularly described in Schedules "A", "B", and "C" attached hereto.

ABSTRACT OF TITLE

4. Attached to this statement of claim as Schedule "D" is an Abstract of Title, setting forth the history of the title of the lands claimed. The legal title of the claimed property is traced to a _____, identified as document number one in the Abstract.

ASSESSMENT

5. The Plaintiffs say that they are assessed by the Municipality for the County of Halifax as owner of the lands claimed and have been so assessed since 1988. Their predecessors in title, were assessed as owners for as long as assessment records exist for the area.

HISTORY OF POSSESSION

6. The Plaintiffs say that they and their predecessors have exclusively possessed the lands since at least [redacted]. The period and nature of possession of the Plaintiffs' predecessors are more particularly described in a statutory declaration of [redacted] abstracted as [redacted] in Schedule "D", hereto, and reproduced in full as Schedule "E" hereto, and a certified copy of which declaration is filed with these pleadings.

TITLE QUESTIONS

7. The following title deficiencies are disclosed by the Abstract:

1. There is no record of a transfer of the interest of the Crown grantee, [redacted] or a transfer of the interest of [redacted] that of his heirs.
2. There is no record of how [redacted] acquired his interest in any of the parcels under search.
3. There is no clear record of a transfer of the interest of [redacted] although certain deeds are interpreted as creating such a transfer.
4. There is no root of title to any of the parcels prior to [redacted] in the case of Lot 1 and Lot 2, and [redacted], in the case of the 3.4 acre parcel.

ABUTTING OWNERS

9. The Plaintiffs say that the lands are abutted on all sides as follows:

INTEREST OF OTHERS

10. The Plaintiffs say that no evidence exists that any interest has ever been claimed by anyone other than the Plaintiffs and their predecessors in title and possession.

RELIEF SOUGHT

11. The Plaintiffs repeat the foregoing and claim a Certificate of Title certifying that they are the owners in fee simple of the lands described in Schedule A, B and C pursuant to the provisions of the Quieting Titles Act aforesaid.

DATED AT DARTMOUTH, NOVA SCOTIA, this *9th* day of *June*, 1992.

TO: The Attorney General for the Province of Nova Scotia
P. O. Box 7,
5151 George Street
Halifax, N. S.
B3J 2L6
Defendant

1992

S. H. No.

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

B E T W E E N:

PLAINTIFFS

- AND -

ATTORNEY GENERAL FOR THE PROVINCE OF
NOVA SCOTIA

DEFENDANT

STATEMENT OF CLAIM
