

Mr. A (the Purchaser) agreed to purchase a property in rural Halifax County from a mortgagee vendor (Vendor) who had bought in the property at foreclosure sale. The property consisted of a single family dwelling located on a large four acre lot which had been subdivided from a larger lot and a copy of the approved plan was on file at the Registry of Deeds (the Property). The lot in question had considerable frontage on a Provincial Highway.

The agreement of sale stipulated that conveyance would be by Quit Claim Deed and the Purchaser **arranged financing** through a chartered bank whose instructions to solicitor indicated that a survey "satisfactory to solicitor" was required. The bank also stipulated that it did not want a copy of the location certificate to be sent to it. The Vendor company, through its solicitor, provided a copy of a fiveyear old location certificate which showed the footings of the dwelling to be located approximately 600 **feet from the boundary** line of Provincial Highway No. 1 and approximately 25 feet from the north boundary of the lot. No other physical attributes of the Property were shown on the certificate and it clearly indicated on its face that it was prepared at a time when footings only were in place. The solicitor claims to have discussed the possibility of preparing an updated location certificate with the Purchaser, and following those discussions, he, the solicitor, agreed to accept the location certificate received from the Vendor as sufficient for his purposes. No letters or confirmations of advice or discussions with the client were prepared by the solicitor.

On the closing date, the transaction closed without incident.

**Approximately** six months following the closing, the Purchaser arrived at his home to discover a large load of rock had been dumped in, his driveway preventing access to the home located some 600 feet from **the road**. Having left his car at the roadside and walked to his house, the Purchaser discovered a note in the door notifying him that he was using the roadway access to his house without permission and the person claiming ownership to that roadway had placed the load of rock in the driveway to prevent further use. The Purchaser then retained a lawyer other than the individual who represented him on the closing who proceeded to investigate circumstances leading to these events,

The Purchaser's solicitor learned that the Vendor had become aware of the fact that the driveway serving the dwelling was not in fact located on the subject lot. In an effort to correct the situation, an employee of the Vendor made inquiries of the Assessment Office and obtained the name and address of the assessed owner of the adjacent property. Contact was made with that individual who agreed to grant a right-of-way across his land for use by the Vendor and its assigns in exchange for \$5,000.00. A solicitor was retained by the Vendor to prepare the right-of-way agreement and to record it at the Registry of Deeds; however, no instructions were given at any time by the Vendor to carry out a search of title to determine if the **party** granting the right-of-way was the registered owner. No mention was made by the Vendor to any party interested in the transaction that it had acquired the right-of-way nor indeed that the driveway was not located on the lot. Upon carrying out a title search, the Purchaser's new lawyer discovered that the adjacent land was owned by three individuals including the person who granted the right-of-way, the person who dumped the rock and the person who had built the home and mortgaged it to the Vendor. Shortly after building his home, this individual sold his interest in the adjacent lot to the other two individuals.

The party who dumped the rock was asking \$20,000 in exchange for which he would sign a right-of-way. In the alternative, the estimated cost to build a new driveway from the highway to the dwelling was in the vicinity of \$14,000.