

**SURVEYS, SURVEYORS, LAWYERS and MAPPERS**  
**Where do we go from here?**

Presented by Blair MacKinnon, B.A., LL.B. - February 21, 2003

**INTRODUCTION:**

This paper will examine the specific sections of the Act relating to parcel identification the Professional Standards which apply to this process and the property identification issues raised in the case study.

The focus of this presentation will be to examine the relationship between the Lawyer, the Surveyor and the Mapper when migrating property under the Land Registration Act (LRA). The LRA identifies some very specific criteria which must be met before the Registrar will accept a property for registration under the LRA. I am indebted to Nancy Saunders, Valerie George and Fred Hutchinson for their assistance in discussing the survey and parcel identification issues under the new Act.

**PANEL:**

Nancy Saunders is Business Coordinator for Registry 2000 and is in charge of training. Nancy will discuss the process itself for registering a parcel under LRA and review the standards.

Valerie George is the Regional Manager for the Southern Region for the Registry and Information Management Services. Valerie will bring a mappers perspective to the presentation and review the standards as they presently exist and relate and compare those against the standards under LRA.

Fred Hutchinson is the Executive Director of the Association of Nova Scotia Land Surveyors. Fred will discuss the role of the Surveyor for the property registry and parcel identification against legal descriptions.

**SECTIONS IN LRA OUTLINING STANDARDS TO BE MET FOR PARCEL MIGRATION:**

Section 21(1) of the LRA is careful to ensure that any parcel migrated under the Registry system cannot be taken as a warranty for the location, boundaries or size of the parcel. Section 21(1) states:

“The description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel.”

Section 21(2) provides that:

“Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel.”

Section 37(4) of the LRA sets out the requirements that the Registrar must consider before allowing title to be migrated. Subsection (g) of Section 37(4) requires the matching of the PID number to the description

of the parcel. This subsection provides that:

“the property identification number of the parcel **certified by the registrar** to match the description of the parcel...”.

Once the Registrar is satisfied with this requirement together with other requirements set out in Section 37(4), then pursuant to Section 37(5) :

“... the registrar shall register the parcel subject to any limitations, additions or encumbrances specified in the opinion of the qualified solicitor.”

You will note that this section triggers the requirement for the solicitor, when conducting a search, to determine “... any limitations, additions or encumbrances...”. I would suggest that great care must be taken to ensure that if there are limitations, additions or encumbrances which do not appear in the legal description but appear in the chain of title, an investigation must be conducted to determine whether these encumbrances have been extinguished or still apply to the parcel. If these encumbrances or limitations do apply to the parcel, then it is recommended that the appropriate change be made to the description. The matter of unregistered limitations such as easements by prescription, etc., will be discussed in other presentations.

I would also draw your attention to Section 37(6) which requires the Registrar to reject an application if the Registrar cannot locate the parcel. Section 37(7) states as follows:

“Where the registrar cannot locate the parcel, the registrar may require the applicant to provide such further information concerning the size and location of the parcel as will permit the registrar to determine the parcel identification number for the parcel and a geographical representation of the parcel, showing it in relation to neighbouring parcels with reasonable accuracy.”

If the Registrar does reject a parcel under section 37(6) because the requirements of Section 37(7) have not been met, it will in all likelihood require the Lawyer to assist the client in retaining the services of a Surveyor to assist in attempting to identify the deficiencies in the parcel which need to be rectified before it can be registered.

Section 37(4) places the onus on the Lawyer to identify the interests affecting the parcel and to identify the access to the parcel, if any. A determination must be made therefore as to the nature of the access to the parcel, which is no different than our obligation currently.

**PROFESSIONAL STANDARDS FOR REAL PROPERTY TRANSACTIONS:**

Standard 1.1. requires that the Lawyer be familiar with the legislation affecting title in order to properly advise their client of the restrictions which apply when acquiring a parcel. In addition, it is the responsibility of the Lawyer to discuss and review with the client the implications of migrating a parcel of land under the LRA.

Standard 2.1 deals specifically with the legal descriptions and requires that the Lawyer be satisfied that “the description is a proper and complete description of the parcel;” and that it “identifies the parcel; and” if there is a plan of survey that the parcel shown on the plan corresponds to the description.

**CASE STUDY:**

In the package of documents provided, there is a case study dealing with two parcels of land and a number of objections to title.

Objection number eight relates to the vagueness of the descriptions of the property. The description, Schedule B, being the wood lot, borders on the Balcom Road. It is recommended that title investigation should determine whether the Balcom Road is a public or private road and if it is a private road, whether or not there is an outright grant of a right-of-way or whether it was acquired by prescription.

The Cottage Lot, being Schedule A, is more problematic because there is no reference to a public road. It is suggested that Section 37(4)(b) requires the solicitor to investigate what means of access is available to the cottage lot. Title investigation will require the necessity of comparisons of each of the descriptions against the PID identification and the solicitor, before presentation of the application, will need to be satisfied that the descriptions correspond sufficiently with the PID number to allow the Registrar to register the parcel.

In conclusion, we as lawyers working under LRA will be asked to:

- a) assist our clients in the identification of their parcel sufficiently to ascertain its location on the property online mapping “relative” to other parcels;
- b) review the legal description for purposes of the PCDA process and ensure it is complete - referencing restrictive covenants and appurtenances that affect the parcel;
- c) identify the access, if any, to the parcel; and
- d) work with surveyors and mappers to further improve the quality of the information migrated into the new LRA.

Our certificates will still be subject to survey, and we are entitled to qualify our opinion accordingly.