ASSOCIATION OF NOVA SCOTIA LAND SURVEYORS
October 18, 2013 Annual General Meeting
The *Land Registration Act*,("LRA") 10 Years of Migration
Garth C. Gordon, QC, Taylor MacLellan Cochrane, and
Derik DeWolfe, NSLS, DeWolfe & Morse Surveying Limited

Title to Parcels	Access	Extent of Titles
These notes are accompanied by a separate package of Presentation Materials For Presentation of Garth C. Gordon, QC (With Derik DeWolfe, NSLS). For legal decisions interpreting Nova Scotia statutes like the *Land Registration Act*, ("LRA"), the *Marketable Titles Act* ("MTA") and the *Limitations of Actions Act*, ("LAA"), check the **Canlii NS** site and note up the section of the Act you are interested in. www.canlii.org/en/ns For current Nova Scotia Barristers Society Professional Standards For Real Estate, check the Lawyer Insurance Association of Nova Scotia, **(LIANS"), website under Real Estate - Standards**. http://www.lians.ca/real_estate/standards/. There are links to many Continuing Legal Education materials at this site. You may be particularly interested in **Part II of the Standards - Extent of Title and Access.** More resources can be found at the **Nova Scotia Barristers Society website under Library - Secondary Sources** which permits key-word searches. http://nsbs.org/secondary-sources		
Migration of title is based on one of the five alternative grounds set out in LRA. Refer to the "**Diagram - Nova Scotia Crown Interests In Land, MTA, LAA & LRA Post *Brill***" in the accompanying Presentation Materials for an overview of these grounds and the interplay among LRA, MTA and LAA.	**Title to Access** may require separate searches of title to the servient tenement parcels to the applicable standard for migration. See ***Access - Red Flag Issues under LRA (Revised March 2, 2007)***, Garth C. Gordon, QC, http://www.lians.ca/documents/AccessRedFlag.pdf This paper discusses many types of access in the LRA context including easements by implication of law.	**LRA - Location and boundaries** 21 (1) The legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel. (2) Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel. (3) A registration may not be rejected only because the location, boundaries or extent of the parcel appear to overlap the location, boundaries or extent of another parcel.
LRA, S.37(9) The qualified lawyer's opinion of title ... (a) shall set out... (i) the interests being registered in the parcel and, subject to Section 40, all encumbrances, liens, estates, qualifications and other interests affecting the parcel...**as appear on the records at the land registration office in the county where the parcel is situated;**	**LRA, S.37(9**) The qualified lawyer's opinion of title ... (a) shall set out ... (ii) the direct or indirect right of access to the parcel, if any, from a public street, highway or navigable waterway to the parcel,...**as appear on the records at the land registration office in the county where the parcel is situated**;	**Conflicts - *e.g.* "Omitted Exceptions" and parallel chains of title.** With some titles there may be conflicts between a "40 year plus a day" *Marketable Titles Act*" chain of title for a parcel and the historical extent of title information. Refer to Part 3 of the accompanying Presentation Materials - particularly the comments about the Courts' approaches to "omitted exceptions".

Title to Parcels	Access	Extent of Titles
Nova Scotia (Attorney General)* v. *Brill, 2010 NSCA 69 (CanLII) — 2010-09-09. **Refer to the accompanying Presentation Materials for more extensive comments.** In *Brill*, the Nova Scotia Court of Appeal confirmed that: 1) **LRA, S.20, is a complete statement of all interests affecting the parcel subject to the exceptions expressly noted in the LRA...** 2) By LRA, S.6 **the Crown is bound**, as is everyone. Section 73(1)(a) states that an actual reservation or exception in an actual initial Crown grant overrides... 3) **title is founded on possession not necessarily on a Crown Grant**. *Lessee of Cunard* v. *Irvine* (1853-55), 2 N.S.R. 31 (S.C. in banco), is Nova Scotia's leading authority in a line of cases that describe when a court may presume that a holder of paper title has possession of the parcel. *Brill* has an extensive discussion of the nature of the possession required for this purpose. 4) **various LRA sections provide remedies to aggrieved parties.**	**Easements by Implication of Law**. See the accompanying Presentation Materials for resources on this subject: 1) Schedule "E" in this attachment is a **checklist for identifying easements by implication of law**. 2) There are materials about, and examples of, **easements implied when a dominant tenement, "DTP", and servient tenement, "STP", held in common ownership are shown in a plan and the Dominant Tenement is conveyed without a specific grant of easement.** See also PID 55174262 (multiple STP) and PID 55012983 (multiple DTP). **This sub-set of easements implied by law is highlighted because all the information needed to show it in the parcel register appears "on the records at the land registration office in the county where the parcel is situated" without further recorded documentation like affidavits or statutory declarations.** Other subsets of easements implied by law may need to be evidenced by recorded affidavits or statutory declarations.	**Assessment - unrecorded plan** **Marterra Inc (Re)**, 2013 NSUARB 170 (CanLII) — 2013-08-27. 1) "... LRA recognizes that a legal description cannot be relied upon to be definitive as to boundaries as appears from s. 21 of the LRA." 2) The Board finds that while Mr. Whyte's evidence is persuasive regarding the infill area, the location of the OHWM, and the location of the public footpath crossing the Marterra property, the Board has no jurisdiction to determine the boundary of the property as between Marterra and the Crown. **Further, the Board concludes that it must rely on land registration records in respect of ownership of the property.** The Board observes that it is through the land registration system or other legal avenues that Marterra should seek any necessary resolution of the issues which Mr. Whyte has identified. 3) **Author's comment**: This decision turns on Subsection 38(3) the *Assessment Act*...: **"Where real property has been registered pursuant to the *Land Registration Act*, the real property shall be assessed to the person shown in the register as the owner of the fee simple."**
LRA Remedies - judicial observation. In ***Fitzgerald* v. *Brogan***, 2010 NSSC 335 (CanLII) - the Court observed that: "It would appear from the evidence that the Laffins have migrated a portion of the triangular shaped piece, which would make a claim under the *Land*	***"Knock* v. *Fouillard* Easements"** ***Knock* v. *Fouillard*** (2007), 2007 NSCA 27, 52 R.P.R. (4th) 27, 804 A.P.R. 298, 252 N.S.R. (2d) 298 (C.A.).	**RG refusal to accept PDCA upheld** ***Delport Realty Ltd.* v. *Service Nova Scotia***, 2013 NSSC 287 (CanLII) The argument is that ... the boundaries as set out in the tax deed ... cannot be mapped without it being

Title to Parcels	Access	Extent of Titles
Registration Act perhaps the more appropriate route. But I leave that determination to be made in future by anyone exerting a proper interest in that migrated parcel.	**Easements reserved in the STP chain of title for the benefit of a DTP may benefit the DTP even if not in its chain of title.** See the accompanying Presentation Materials for diagrams and the case Head Note concerning this type of easement.	completely overlapped by existing lots. The RG submitted that in this instance it would be impossible for a registrar to "create a geographical representation" of the lot or depict it "in relation to neighbouring parcels" as it appears not to exist at all being described as being bounded by lands of Gladys Moses to the south and the West Jeddore Baptist Church on the North. Other information on record shows that the boundaries of the lands of Gladys Moses and the West Jeddore Baptist Church abut such that there is no land located between them." Thus the application was not complete and the Registrar was obliged by s.37(6) of the Act to reject it. **The Registrar noted that there is a distinction between overlapping boundaries of a lot and one that does not exist at all according to the information before the Registrar: "The former can be mapped with "reasonable accuracy", "the latter cannot be mapped at all."** **The Court was satisfied that the decision of the Registrar to refuse registration is within the jurisdiction of the Registrar in the narrow circumstances of the present case.** To hold otherwise would force the Registrar to be complicit in the creation of uncertainty of title in lands in Nova Scotia.
***MacEachern* v. *Jamieson*, 2007 NSSC 42.** **Court Order respecting a post-migration adverse possession proceeding under LRA, S.74(2) - procedural matter.** (No further decision found in Canlii.)	**Evidentiary considerations** - Prescriptive Easements / Easements by Lost Modern Grant / Easements by Implication of law - *Provincial Parks Act* - tacking - evidence of claimed easement.	***De Facto* consolidations** ***Polycorp Properties Inc*. v *Halifax (Regional Municipality)***, 2011 NSSC 241 (CanLII): 1) **HRM did not have standing to contest the *de facto* consolidation.**

Title to Parcels	Access	Extent of Titles
[1] This is an application for an Order requiring the Defendant to remove the shed that is trespassing on the Plaintiff's lands, or in the alternative, granting an injunction permitting the Plaintiff to remove the shed. [2] There is a substantial dispute of fact regarding the date when the shed was first erected on the subject property. The Defendant is claiming adverse possession and says that the shed was on the property for at least 20 years prior to the registration under the Land Registration Act. The Plaintiffs maintain that the shed was in place for less than the 20 year prescriptive period. [4] **The above section [S.74] makes it clear that the Defendant has ten years after registration to attempt to establish his claim of adverse possession.** [7] Accordingly I am ordering that the application be continued in Court as if the proceeding had begun by an Originating Notice (Action)...	***Nickerson* v. *Hatfield***, 2013 NSSC 133 An interesting current case dealing with a claim for an easement. The Court dealt with a variety of claims and evidentiary considerations.	2) Alternatively, the technical breach in this case - **the Statutory Declaration did not include the facts that support the required statement that the lots were in common ownership and used together on or before April 15, 1987, and have continued to be so owned and used** - was ratified.
		Cook* v. *Podgorski, 2013 NSCA 47 (CanLII) — 2013-04-18. Considers conflicting surveys.

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Presentation Materials for Presentation of Garth C. Gordon, Q.C. (With Derik DeWolfe, N.S.L.S.)

1. *Land Registration Act* - Notes To Diagram "*Nova Scotia Crown Interests In Land, MTA, LAA & LRA Post Brill*", Garth Gordon, KCBS, January 28, 2011. For reference - these materials include:

    a. Diagram - Nova Scotia Crown Interests In Land, MTA, LAA & LRA Post *Brill*,

    b. Part 1. Excerpts from *Nova Scotia (Attorney General)* V. *Brill*, 2010 NSCA 69, Fichaud, J.A.

    c. Part 2. LRA Provisions Referenced in *Brill*, Para. 165, and Other Sections.

    d. Part 3. Excerpts from Garth C. Gordon, "*Marketable Titles Act* Working Notes and Annotations", Continuing Legal Education Society of Nova Scotia/Real Estate Lawyers of Nova Scotia, Real Estate '99 Conference, March 1999.

    e. Part 4. Federal Crown Interests in Land.

    f. Part 5. Boundaries & Extent of Title - MTA, LAA & LRA.

2. Excerpts from *Access - Red Flag Issues under LRA (Revised March 2, 2007)*, Garth C. Gordon, Q.C., http://www.lians.ca/documents/AccessRedFlag.pdf concerning Easements by Implication of Law (often referred to as "Easements Used and Enjoyed"). Included are:

    a. Schedule "E" - Supplementary Checklist & Templates, Rights of Way Used and Enjoyed - a "crib sheet" for identifying easements created by implication of law.

    b. Materials and examples relating to implied easements benefiting a parcel that is shown to be on a right of way in a plan when the common owner conveys the parcel without an express grant of easement. Included are:

        i. Diagram,
        ii. Page 36 - "ix. Roads Shown in a plan of Subdivision", and
        iii. Examples of recorded easements of this type created by implication of law - PID 55016844 and PID 85107175.

        These examples expressly deal with easements implied by law where the right of way and severed parcel are shown on a recorded plan and the ROW parcel and severed parcel were in common ownership at the time of severance. In short, all the evidence to establish the easement by implication of law is "on the record". POL staff have internal guidelines

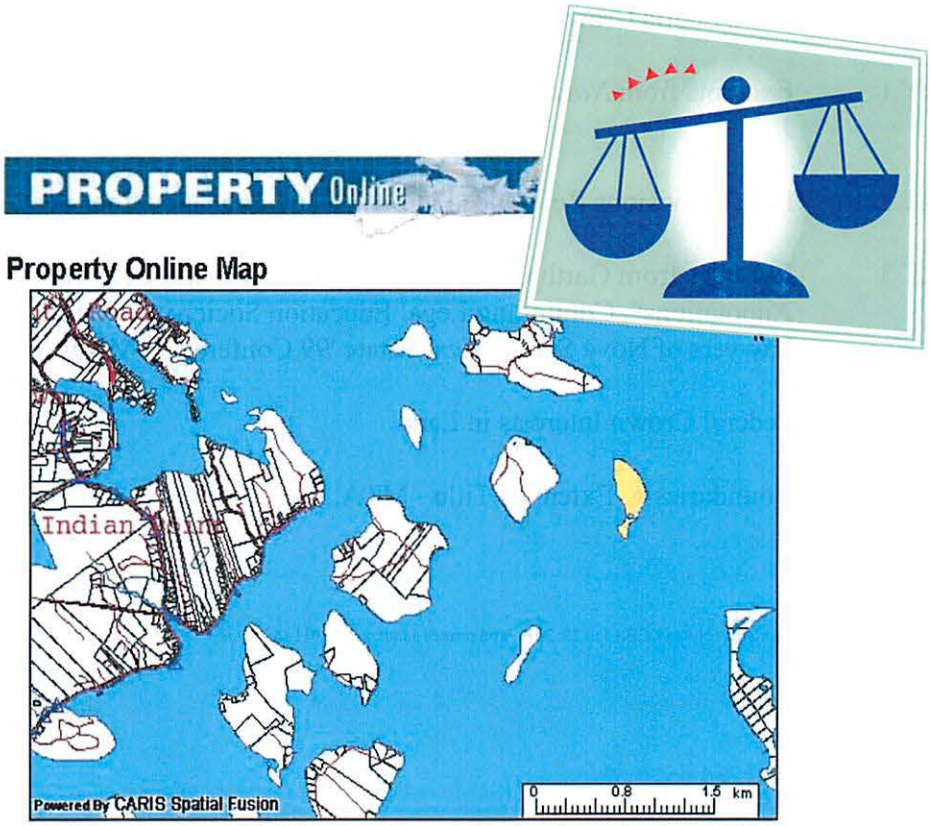
concerning "easements used and enjoyed" and are not always consistent in their approach to this subset of implied easements. Other variations of easements of necessity (implied by law) may have to be proved by recorded affidavits or statutory declarations so the evidence establishing these variations of easements is "on the record". As a general comment there is considearble confusion between prescriptive easements and easement implied by law (easements used and enjoyed). Refer to Section 9.d of the Access Paper for a discussion of this issue.

3. *"Knock* v *Fouillard* Easements" - An easement found in the chain of title of the Servient Tenement, but not in the Dominant Tenement chain of title may create an easement for the Dominant Tenement. Attached are:

   a. Diagram,
   b. Headnote, and
   c. Parallel chains of title schematic.

1. *Land Registration Act* - Notes To Diagram "*Nova Scotia Crown Interests In Land, MTA, LAA & LRA Post Brill*", Garth Gordon, KCBS, January 28, 2011.

KCBS
January 28, 2011
Brill Program



PID: 60335486 Owner: ALAN R BRILL AAN: 03281469
County: LUNENBURG COUNTY Address: BELLA ISLAND INDIAN POINT Value: $546,500 (2010 RESOURCE TAXABLE)
LR Status: PENDING LAND REGISTRATION

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [*Land Registration Act* subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

Property Online version 2.0

KCBS PROGRAM

JANUARY 28, 2011

NOTES TO DIAGRAM "NOVA SCOTIA CROWN INTERESTS IN LAND, MTA, LAA & LRA POST *BRILL*"

Garth C. Gordon, Q.C.
TMC LAW, Kentville, Nova Scotia

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DIAGRAM Nova Scotia Crown Interests In Land, MTA, LAA & LRA Post *Brill*

PART 1 Excerpts from *Nova Scotia (Attorney General)* V. *Brill*, 2010 NSCA 69, Fichaud, J.A.

PART 2 LRA Provisions Referenced in *Brill*, Para. 165, and Other Sections.

PART 3 Excerpts from Garth C. Gordon, "*Marketable Titles Act* Working Notes and Annotations", Continuing Legal Education Society of Nova Scotia/Real Estate Lawyers of Nova Scotia, Real Estate '99 Conference, March 1999.

PART 4 Federal Crown Interests in Land.

PART 5 Boundaries & Extent of Title - MTA, LAA & LRA.

G:\GCG\CLE Files\Brill\Post Brill - Notes KCBS Jan 28, 2011.wpd printed January 27, 2011 (8:20am)

Nova Scotia Crown Interests in Land, MTA, LAA & LRA Post Brill

KCBS Program - Jan 28, 2011

Nova Scotia (Attorney General) v. Brill, 2010 NSCA 69

Garth C. Gordon, Q.C.

Potential Crown interests must be considered *

Lands & interests held by Subject(s)

Parcel Granted/released by Crown?

Yes – The Crown has released or conveyed the parcel to Subject(s).

See *Brill*, [102].

Consider MTA as a defense to pre-MTA root of title claims - *Penney* v. *Hartling*, *Ontario Hydro* v. *Tkach* & *Fire v Longtin*.

No

Effect of chain of title under LAA – *Brill:* colour of title [144] -, taxes [154], "inferred grants" & "doctrine of presumptions" [121] -, ancient documents [136]-.

Does LAA apply?

Yes – there are 40 years of adverse possession (NS Crown)

No, but there are 20/25 years of adverse possession, *Brill* [99]

MTA - marketable title?

If no MTA chain of title & no possessory title

No

Parcel is Crown Land

Possession is the underpinning of title - *Brill,* [128] - ; consider this when examining titles.

Possessory title by squatting

Higher evidentiary burden

Possessory title under Colour of Title

Lower evidentiary burden

MTA has three discrete sources for marketable title, s.4(1)

Yes

Title must be determined by other means before LRA registration. See LRA, s.37(9)(b).

MTA, s.4(1) Common Law

MTA, s.4(1) Equity

MTA, s.4(1) Otherwise

Marketable title/possessory title determination Is shown above the line; modes of LRA registration are shown below the line. See *Brill* [102], [162] – [168] re LRA registration.

LRA has five discrete sources of title for registration, s.37(9)(b)

Refer to *Brill* [157] - [168] for means to challenge Parcel Registers after migration – LRA ss.33-34 (RG); ss.35, 91-92 (Courts); s.73(1)(a) (reservations); also s.74(2) (possessory interests).

LRA, s.37(9)(b) - RG "lesser standard"

LRA, s.37(9)(b) – "any other enactment"

LRA, s.37(9)(b) - LAA

LRA, s.37(9)(b) - Common law

LRA, s.37(9)(b) – MTA (Overlaps LRA Common Law source)

Always consider the extent of title. (LRA, ss.21, 75 & 76)

*** LRA, s.73 (1)(a), preserves interests of The Crown (NS) reserved in or excepted from the original fee simple grant from The Crown, or that have been vested in The Crown pursuant to an enactment.**

PART 1 Excerpts from *Nova Scotia (Attorney General)* v. *Brill*, 2010 NSCA 69

[86] Subject to the effect of the LRA on the MTA, the MTA by itself has no direct effect on the dispute to Bella Island between Mr. Brill and the Crown.

...

[99] More importantly for the Bella Island dispute, nothing in the MTA touches the evidential principles of constructive or presumptive possession from a chain of title, to support a claim under the LAA. The Province's submission assumes that, because the MTA involves a chain of title, every chain of title rule must be governed by the MTA. I disagree with this inverse logic. Claims to marketable title between a vendor and purchaser and possessory title under the LAA are parallel topics, in that the former is triggered by a chain of paper title and the latter may be assisted by a chain of paper title. But the latter is not a subset of the former, and the MTA in no way qualifies the LAA's process for determining possessory title. There is no merit to the Province's suggestion that somehow the MTA jettisons the common law's treatment of constructive or presumed possession, from a chain of title, in an adverse possession claim under the LAA. The Province did not cite an authority that connected the two statutes.

...

[102] **Further, the amended prerequisite (40 years plus a day) that triggers "marketable title" in s.4(1) of the MTA also applies to the Crown, despite s. 9 of the MTA. Section 116(1) of the LRA amended s. 4(1) of the MTA by subjecting the common law to the 40 year standard. Section 116(1) expressly binds the Crown, by s. 6 of the LRA. So the 40 year marketable title standard "at common law" binds the Crown. This is consistent with the LRA s. 115(7)'s amendment to s. 21 of the LAA, reducing from "sixty" to "forty" the period needed for adverse possession against the Crown. In terms of statutory interpretation, these are examples of the principles of coherence and consistency among related statutes (Sullivan and Driedger, p. 323). The amendment to s. 4(1) of the MTA was not in a mere omnibus enactment containing unrelated amendments to various statutes. Rather the LRA was a coherent and comprehensive reformation of land law. All the LRA's provisions, including the amendment of the MTA by s. 116(1), focus on that transformational purpose. So the LRA's amendment to s.4(1) of the MTA (60 to 40 years) binds the Crown because s.6 of the LRA says so.**

...

[105] Marketable title at common law is an in personam incident of the contract between vendor and purchaser. The vendor's remedy against a recalcitrant purchaser was available if he could deliver marketable title.

[106] Mr. Brill and the Crown are neither vendor nor purchaser, have no contract, and there is no contemplated sale of Bella Island. So the common law's concept of marketable does not determine Mr. Brill's dispute with the Crown.

...

[121] Nova Scotia's courts did not rest with these exhortations. They responded substantively to the plight of the landholder holding a chain of title. The courts' utensils were evidential presumptions to (1) infer the existence of a grant itself from longstanding possession and (2) establish possession for a claim under the LAA.

...

[128] Under the LAA, the question was - What possession is required of someone with documentary title? The answer has evolved as Nova Scotia's courts considered several approaches.

...

[144] My view is as follows. I intend this as a summary of the principles from the authorities that I have discussed.

[145] The question is - What is the effect of a chain of title under s. 21 of the LAA? The answer is not as simple as the application of the standard in s. 4(1) of the MTA. Section 4(1) cites a straightforward 40 year chain of title from a root simply defined in s. 4(2). Adverse possession under the LAA depends on textured principles that the Nova Scotian courts knitted over 140 years from *Cunard* through *Nemeskeri*. Those principles aren't reducible to a snappy axiom.

[146] The common law binds the Crown, subject to an exception for a prerogative. One former prerogative was *nullum tempus occurrit regi*. But that was superceded by the Nullum Tempus Acts of the United Kingdom and Nova Scotia, and then by Nova Scotia's LAA, currently s. 21. This conclusion is clear from *McGibbon*. As discussed earlier, I reject the Province's argument in this appeal that the MTA has resurrected the Crown's prerogative. The Crown is bound under s. 21 of the LAA by the same judge made principles that apply to others under the LAA's general provisions for adverse possession claims.

[147] The limitation against the Crown, formerly 60 years, is now 40 years under s.21 of the LAA, as amended by the LRA.

[148] Since *McGibbon*, it is clear that the times of successive possessors may be tacked and that the current s. 21 may be interpreted consistently with the intent of the more fulsomely worded 1837 Nova Scotia *Nullum Tempus Act*.

[149] *McGibbon* ruled that what is now s. 22 of the LAA applies to extinguish a Crown interest after the passage of the limitation in s. 21. Section 6(1) of the QTA has similar effect once the possessory title is quieted. In *Logan* v. *Levy and AGNS* (1975), 20 N.S.R. (2d) 500 (T.D.), ¶ 41, Justice Jones issued "an order declaring that the Crown's title to these lands has been extinguished" under the LAA.

[150] The holder of documentary title need not trace his ostensible title back to an original Crown grant to have colour of title, as discussed in *Cunard*, *Bentley*, *Tobin*, *Ezbeidy*, *Legge*, Anger & Honsberger, and the other authorities above.

[151] The title holder with colour of title who enters into occupancy of any part, however small, of the parcel gains constructive possession of the entire parcel that is described in his title instrument: *Bentley*. *Cunard* acknowledged that constructive possession is triggered by some entry. Possession is basic to title in land at common law: *Delgamuukw* v. *British Columbia*, [1997] 3 S.C.R. 1010, ¶ 149; Megarry and Wade, pp. 1004-1006; Anger & Honsgerger, ¶ 28:50; *R.* v. *Marshall*, 2003 NSCA 105, ¶ 120-121, per Justice Cromwell, appeal allowed without disturbing this general principle [2005] 2 S.C.R. 220. The paper title must be coupled with some act of dominion that signifies possession. In *Nemeskeri*, Justice Tidman said the evidence of possession was "sketchy". I take that to indicate there was some act of possession. I do not read *Nemeskeri* as repudiating the authorities that some – no matter how small – entry, occupation or act of dominion is required by the title holder to initiate constructive possession.

[152] The grant of the estate to one who enters into possession begins the entrant's possessory march under the LAA: *Bentley*. Justice Tidman's comments about constructive dispossession in *Nemeskeri* should be read in this context.

[153] The nature of the required entry into possession, or act of possession, by a paper title holder with colour of title, is an issue of fact that varies with the circumstances of the parcel and the suitable and natural use of the property: ***Halifax Power***, *Kirby*. What would be "discontinuous" or "disjointed" acts for a squatter, someone without paper title, might establish possession for someone with colour of title. That is because the paper title establishes the mental attitude of dominion, and needs only a coupling act, or evidence of it, to exercise the possession: *Ezbeidy*. Vacant land, woodland or what the cases have described as "wild" land, would require significantly less than a developed property: *Cunard, Bentley, Halifax Power, Kirby*.

[154] Mr. Brill says that he and his predecessors have for years paid the property taxes on Bella Island, which he cites as acts of possession. As I will discuss under the third issue, the application of the legal principles to the circumstances of this case is for trial. But I reiterate the view of Justices Hallett and Cromwell from *Bowater* and *MacNeil* (above ¶ 38). In a QTA dispute between only two parties with no other apparent title holder, after proper notices have been given, the practical approach is to quiet title based on the better claim. So a landholder's payment of property taxes, because he is designated "owner" by the Provincial Government's assessment office, in the circumstances might be a meaningful act of possession in a dispute between just the landholder and the Provincial Crown, with no other claimant. (See also *Halifax Power* and *Kirby*.) In this respect, the following provisions of the Assessment Act, R.S.N.S. 1989, c. 23, as amended, are pertinent. Section 5(1)(a) says that Crown land is exempt, but if the land is "occupied" the "occupant" may be assessed. Section 32 says that, except where the Act otherwise provides, "property shall be assessed as property of the owner". Section 15 gives the Province's Director of Assessment responsibility to administer the Act and the duties assigned by the Lieutenant Governor in Council or the provincial Minister of Municipal Affairs. Section 18 directs that the Director "shall ascertain by diligent inquiry and examination the names of all persons liable to be rated ..., their property within the municipality and the extent, amount and nature of the same ...". Section 25(a) says the

Director "shall prepare the assessment roll" to include "the name and address of the owner". Section 38(1) says the property "may be assessed" to the latest owner shown at the Registry of Deeds and s. 38(3) says it "shall be assessed" to the owner in fee simple listed on a parcel register under the LRA.

[155] The court looks for an entry, occupation or other act of dominion by the party with the chain of title. The inquiry is for substance, not ritual. So it is not essential to have *viva voce* evidence witnessing the title holder stride into his woodland to seize an acorn (*Cunard*). The possessory act may be evidenced by facts recited in the title documents admitted under the "ancient document" principle (Sopinka, Di Castri, *Tobias*). Section 29 of the *Evidence Act*, R.S.N.S. 1989, c. 154 (as amended by the LRA, S.N.S. 2001, c. 6, S. 105) says that certified copies of registered LRA documents are admissible as proof of their contents.

...

(g) Effect of LRA

[157] I have been discussing the judge made presumptions that follow from a chain of title. The final question, addressed at length in the submissions on this appeal, is how those principles are affected by Nova Scotia's new land title system under the LRA.

[157] **Mr. Brill and the NSBS say** that the LRA has shifted the paradigm. They submit that s. 20 gives in rem effect to the statement of title on the parcel register. The parcel register derives from the solicitor's certificate upon which the Registrar General is entitled to rely by s. 18(3). Section 37(9) states that the certificate of title is based on the current NSBS practice standards, and shall show a chain of title based on the standard in the MTA, LAA, any other enactment, the common law, or to a lesser standard that the Registrar General approves. The NSBS practice standard refers to marketable title and the common law.

[158] **The NSBS and Mr. Brill submit** that the in personam application of the MTA and common law of marketable title, between vendor and purchaser, is now by statute an in rem standard. So a 40 year chain of title, either by s. 4 of the MTA or by the common law of marketable titles as amended by the MTA s. 4(1), without any act of possession, defines title against the world. The world includes the Crown, which by s. 6 of the LRA is bound by the parcel register.

[159] **The NSBS and Mr. Brill** submit that this result makes eminent sense. They describe as inherently irrational the notion that a vendor may force a "marketable title" on a purchaser to land that is still owned by the Crown, because there was no initial Crown grant. Marketable title is to be "free from litigation, palpable defects and grave doubts and couples a certainty of peaceful possession with a certainty that no flaw will appear to disturb its market value" (Di Castri ¶ 339, quoted above ¶ 104). How, Mr. Brill and the NSBS ask figuratively, can there ever be such a marketable title from a 40 year chain if the Crown nonetheless may recover the land, as ungranted centuries before the recorded chain? They point to the following passage from the decision of the Ontario Court of

Appeal, under somewhat differently worded legislation, in *Fire* v. *Longtin* (1994), 112 D.L.R. (4th) 34 (O.C.A.), at p. 42, appeal dismissed for the reasons of the Court of Appeal, [1995] 4 S.C.R. 3:

> With respect, I find it difficult to understand how it can be said that a title searcher and the solicitor certifying title can safely rely upon instruments within the forty-year period, and then say that a grantee taking within that period gets no title if his grantor had no title to convey. That is merely saying that a solicitor certifying title is saved from a negligence claim, but that the grantee who relies on the certification gets no title. That is not what the legislation says, and that is not what this court said in the *Tkach* case and in the *Algoma* case. In both of those cases, the root of title on which the successful party relied was one where a grantor, as a result of some form of error, purported to convey title which he did not have. Indeed, if the decision of this court in *National Sewer Pipe* is correct — that the grantor under a conveyance which constitutes a root of title must have had a good title to convey — then it follows that the only safe search is one back to the original grant from the Crown.

[160] **The NSBS and Mr. Brill refer to** s. 4(2) of the MTA that starts the 40 year chain from a registered instrument that "conveys or purports to convey" title. This, they say, replicates the courts' view under the LAA that a defective instrument may still establish colour of title. They submit that the LRA has incorporated these principles into the architecture of the parcel register that binds the world, including the Crown.

[161] My comments on the submissions of Mr. Brill and the NSBS are these.

[162] **By s. 20, "a parcel register is a complete statement of all interests affecting the parcel". This is subject to the exceptions expressly noted in the LRA, such as overriding interests and challenges to the contents of the parcel register that may be resolved by the Registrar General and the Court. By s. 6, the Crown is bound, as is everyone. Section 73(1)(a) states that an actual reservation or exception in an actual initial Crown grant overrides, but says nothing about a dispute whether there was an initial Crown grant.**

[163] **The LRA involves the mirror, curtain and insurance principles of land title systems. These mean, respectively, that the register should accurately reflect the title, the register is the only source of title information, and there is indemnity to those who suffer a loss because of a flaw in the land registration system. Anger & Honsberger, ¶ 30:40.30. MacIntosh, Nova Scotia Real Property Practice Manual, ¶ 16-2.**

[164] In *C.P.R. and Imperial Oil Ltd.* v. *Turta*, [1954] S.C.R. 427, at p. 443, Justice Estey for the majority adopted this passage from an earlier decision:

> The cardinal principle of the statute is that the register is everything and that, except in cases of actual fraud in the part of the person dealing with the registered

> proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against the world.

Justice Estey continued (pp. 443-444):

> The foregoing preamble and quotations, as well as others to similar effect, emphasize that the Torrens system is intended "to give certainty to the title" as it appears in the land titles office.

[165] **I agree that the parcel register under Nova Scotia's LRA would have in rem effect against the world, including the Crown, subject to the exceptions expressly prescribed in the LRA. I agree that there is no such exception, expressed in the LRA, governing a dispute whether there was an initial Crown grant. I also agree that, by s. 37(9), the standards under the MTA or common law, including the common law of marketable title, are among those that may generate the parcel register.**

[166] **But that is as far as I can take the submissions of Mr. Brill and the NSBS on this appeal. Bella Island has not been migrated to the LRA, and has no parcel register. Section 37(9)(b), offers a menu of standards to generate the parcel register, including the MTA, LAA, any other enactment, common law or "such lesser standard as the Registrar General may approve". It cannot be predicted now what standard eventually may determine Bella Island's ultimate parcel register.**

[167] **Once there is a parcel register, the LRA provides a process for consideration of objections. The Registrar General may act under ss. 33-34, or the court under ss. 35 and 91-92.**

[168] This is not a proceeding under the LRA to consider the accuracy of a parcel register. So I will not express a view how this court might handle a possible appeal from a future decision of the Supreme Court on a prospective challenge to a hypothetical parcel register. That currently abstract issue will have to await another day when his court has an appeal with a record containing a Supreme Court ruling, possibly a determination by the Registrar General, and an actual parcel register for Bella Island.

PART 2 LRA Provisions Referenced in Brill, Para. [165], and Other LRA Sections.

Location and boundaries

21 (1) The legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel.

(2) Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel.

(3) A registration may not be rejected only because the location, boundaries or extent of the parcel appear to overlap the location, boundaries or extent of another parcel.

(4) repealed 2004, c. 38, s. 7.

2001, c. 6, s. 21; 2004, c. 38, ss. 7, 26.

Corrections and amendments to register

33 (1) The Registrar General may correct errors and omissions in a parcel register in the circumstances and in the manner prescribed in regulations made by the Minister.

(2) The Registrar General may amend any information in a register to bring a parcel register into conformity with regulations made by the Minister, as amended from time to time. 2008, c. 19, s. 15.

Request for correction

34 (1) A person who objects to and is aggrieved by a registration, a recording or other information contained in a parcel register may submit a request in writing to the Registrar General seeking correction of the registration, recording or information objected to.

(2) The Registrar General shall investigate the facts surrounding the person's request and may, after consideration of written or oral submissions,

(a) correct the registration, recording or information as requested in the circumstances and in the manner prescribed in regulations made by the Minister;

(b) deny the person's request in whole or in part; or

(c) direct the person to pursue a remedy available under this Act, including taking a proceeding under this Act, before continuing with the request. 2008, c. 19, s. 15.

Proceeding to correct registration

35(1) A person who objects to and is aggrieved by a registration in a parcel register may commence a proceeding before the court requesting a declaration as to the rights of the parties, an order for correction of the registration and a determination of entitlement to compensation, if any.

(2) Subject to Section 92A, and unless otherwise ordered by the court, the following are parties to any proceeding pursuant to this Section:

(a) all registered owners of the parcel in question

(i) at the time of the registration objected to, and

(ii) at the time that the proceeding is commenced; and

(b) the person aggrieved.

(3) A person commencing a proceeding pursuant to this Section shall provide written notice, at the time the proceeding is commenced, to all interest holders appearing in the parcel register.

(4) The court shall determine the rights of the parties according to law, subject to the following principles:

(a) the person aggrieved may have the registration corrected;

(b) any correction of the registration shall preserve the right to compensation of a person who obtained a registered interest from a registered owner who registered the interest objected to; and

(c) the court may, where it is just and equitable to do so, confirm the registration.

(5) Where the court corrects the registration objected to, but the correction of the registration cannot fully nullify the effects of the registration, or where the court determines that it is just and equitable to confirm the registration, the court shall determine which of the parties suffered loss by reason of the registration and order

(a) that any party who suffered loss be compensated in accordance with subsection (7) and Sections 85 and 86; or

(b) payment of damages by one party to another.

(6) In determining whether it is just and equitable to confirm the registration objected to, the court shall consider

(a) the nature of the ownership and the use of the parcel by the parties;

(b) the circumstances of the registration;

(c) the special characteristics of the parcel and their significance to the parties;

(d) the willingness of any of the parties to receive compensation in lieu of an interest in the parcel;

(e) the ease with which the amount of compensation for a loss may be determined; and

(f) any other circumstances that, in the opinion of the court, are relevant to its determination.

(7) A registered owner is not entitled to compensation or to retention of any of the benefits of a registration made in error unless that owner

(a) believed that the registration was authorized by law;

(b) had no knowledge of the facts that made the registration unauthorized; and

(c) gave consideration for the registered interest or detrimentally relied upon the registration. 2008, c. 19, s. 15.

Priority of certain interests

73 (1) Notwithstanding anything contained in this Act, the following interests, whether or not recorded or registered, and no other interests, shall be enforced with priority over all other interests according to law:

(a) an interest of Her Majesty in right of the Province **that was reserved in or excepted from the original grant of the fee simple absolute from Her Majesty, or that has been vested in Her Majesty pursuant to an enactment;**

Adverse possession and prescription

74(2) Any interest in a parcel acquired by adverse possession or prescription before the date the parcel is first registered pursuant to this Act is absolutely void against the registered owner of the parcel in which the interest is claimed ten years after the parcel is first registered pursuant to this Act, unless

(a) an order of the court confirming the interest;

(b) a certificate of lis pendens certifying that an action has been commenced to confirm the interest;

(c) an affidavit confirming that the interest has been claimed pursuant to Section 37 of the *Crown Lands Act*; or

(d) the agreement of the registered owner confirming the interest,

has been registered or recorded before that time.

Limit on land acquired

75 (1) The owner of an adjacent parcel may acquire an interest in part of a parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act, if that part does not exceed twenty per cent of the area of the parcel in which the interest is acquired.

(1A) An owner of an undivided interest in a parcel may acquire the whole interest in the parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act.

(2) For the purpose of this Section, adverse possession and prescription include time both before and after the coming into force of this Act. 2001, c. 6, s. 75; 2002, c. 19, s. 33.

Lasting improvements

76 (1) In this Section, "person" includes a person and that person's heirs, executors, administrators, successors or assigns.

(2) Where a person makes lasting improvements on land under the belief that it is the person's own, the court may, on the application of either the person making the improvement or the person to whom the land belongs,

(a) require the person making the improvement to remove it or abandon it;

(b) require the person making the improvement to acquire an easement, either limited in time or not, from the person to whom the land belongs, in the amount and on such terms as the court thinks just;

(c) require the person making the improvement to acquire the land on which it was made from the person to whom the land belongs, in the amount and on such terms as the court thinks just; or

(d) require the person to whom the land belongs to compensate the person making the improvement for the amount by which the improvement has enhanced the value of the land to the owner of it, in the amount and on such terms as the court thinks just.

(3) Where it is found that a building on land encroaches on adjoining land the court may, on the application of either the registered owner of the land on which the building is located or the registered owner of the land on which the building encroaches,

(a) require the owner of the building to remove or abandon the encroachment;

(b) require the owner of the building to acquire an easement, either limited in time or not, from the person to whom the land belongs, in the amount and on such terms as the court thinks just;

(c) require the owner of the building to acquire the land on which it was made from the person to whom the land belongs, in the amount and on such terms as the court thinks just.

(4) An acquisition of land pursuant to this Section is not a subdivision within the meaning of the Municipal Government Act.

(5) Any application to the court pursuant to this Section shall include a plan of survey of the lands that are the subject of the application. 2001, c. 6, s. 76.

Application for direction

91(1) The Registrar General may apply to the court for directions with respect to any matter concerning the duties of the Registrar General or of a registrar pursuant to this Act.

(2) On an application pursuant to subsection (1), the court may give any direction and make any order that it thinks just. 2001, c. 6, s. 91.

Court orders

92 (1) Subject to this Act, in any proceeding with respect to a parcel registered pursuant to this Act, the court may order a registrar to

(a) record an interest;

(b) cancel a recording;

(c) revise the priority of recordings;

(d) revise a registration;

(e) take any other action that the court thinks just.

(2) Any order pursuant to subsection (1) shall be recorded in the register of any affected parcel. 2001, c. 6, s. 92; 2008, c. 19, s. 33.

PART 3 **Excerpts from notes on MTA, s.4(1) and (2) from my *Marketable Titles Act Working Notes and Annotations*, Continuing Legal Education Society of Nova Scotia/Real Estate Lawyers of Nova Scotia, Real Estate '99 Conference, March 1999.**

1. MTA, ss.4(1) and (2)

   a. ***"Good and sufficient chain of title".*** In *Penney v. Hartling (1999),*177 N.S.R.(2d) 378, Justice Carver found that there was marketable title in a "forty year plus a day deed notwithstanding that the Grantor held only a one-third interest in the parcel under an earlier intestacy. "Applying s.4 in this case, there will be marketable title if there is *"good and sufficient chain of title"* extending back for more than 40 years (40 years plus one day)." The grantor was one of three heirs under a pre-1929 intestacy. Another heir, the grantor's sister, quit claimed her 1/3 interest to the third heir, another sister, on May 13, 1953. But "What happened to that two-thirds interest remains a mystery." The grantor "purported to convey" the whole interest in the parcel by warranty deed dated November 24, 1951 to Purchaser 1; the grantor later gave a confirmatory warranty deed to Purchaser 1 on January 6, 1953. Purchaser 1 later conveyed the lands by warranty deed to Purchaser 2 on November 17, 1956. Justice Carver accepted that each of the November 24, 1951, January 6, 1953 and November 17, 1956 deeds purported to convey the whole interest in the parcel. All three deeds were initially registered in the wrong county but were recorded in the correct county in 1999 correcting that problem.

   b. It is no coincidence that the Nova Scotia legislators used the expression "... *a good and sufficient chain of title during a period greater than forty years immediately preceding the [date]..."* in s.4(1) these words are identical to those in then s.105(1) of the Ontario Act considered in *Fire v. Longtin* (1994), 112 D.L.R. (4th) 34 at pp 36, 39 and 42.

2. **Ontario Case law on corresponding sections**

   a. **The omitted exception.**

      i. This problem occurs when a smaller parcel of land was conveyed out of a larger parcel more than forty years before the conflict arose (deed 1) and the remaining parcel was later conveyed, more than forty years before the conflict arose, using the original description without excepting the smaller parcel (deed 2). Deeds 1 and 2 create two roots of title under the *Marketable Titles Act.* If the instruments comprising the subsequent chains of title to both parcels purport to convey the smaller parcel and the original description respectively for forty years plus a day each owner will have have marketable title to the smaller parcel. Which owner wins in a contest between them for title to the smaller parcel when it is unoccupied with no visible indication of the other party's possession? The Ontario Court of Appeal and the Supreme Court of Canada dealing with this issue under the Ontario legislation upon which section 4(1) of the *Marketable Titles Act* is based indicate that the party who defends his or her title will prevail.

ii. In *Ontario Hydro V. Tkach*[1] the Ontario Court of Appeal considered the effect of an omitted "Reserving and Excepting..." paragraph in a deed description. Ontario Hydro had a 1906 deed to a 1.57 acre parcel of land conveyed to its predecessor in title by Tkach's predecessor in title out of a large parcel of farmland. Tkach's predecessor in title failed to except Hydro's 1.57 acre parcel from a 1934 deed of the remaining parcel to Tkach's next predecessors in title. This omission continued in subsequent deeds. Tkach's deed encompassed both his 78 acres and the 1.57 acres conveyed to Hydro's predecessor in title in 1906. In 1989 Hydro commenced action for a declaration that Tkach had no right or title in the 1.57 acre parcel. Hydro lost. The decision deals with then section 105(1) of the Ontario *Registry Act* on which s.4(1) of our *Marketable Titles Act* is based:

> "A person dealing with land shall not be required to show that he is lawfully entitled to the land as owner thereof through ***a good and sufficient chain of title during a period greater than forty years immediately preceding the*** day of such dealing, except in respect of a claim referred to in subsection 106(5)." [The italics show language identical to that in our s.4(1); s.106(5) deals with exceptions corresponding to, but different from, s.7 in our Act.]

iii. **The Ontario Court of Appeal[2] approached this issue from the perspective: "Does Tkach have a defence to the action by virtue of the *Investigation of Titles Act*?" rather than "does Hydro have the right to the declaratory relief it seeks?"** Grange, J.A., at page 20 states "...the essential question is whether the Appellant [Tkach] can claim good title by reason of the 40-year limit on the search of title imposed first by the *Investigation of Titles Act*...incorporated into the *Registry Act*..." At page 21 he states that "...I think one must view the appellant's [Tkach's] title as of the moment it comes under attack." Later on page 21 he states "It is my view that the question is whether a hypothetical purchaser from the appellant [Tkach] at that time could obtain good title." Therefor the *Registry Act* in effect at the time of the challenge was the relevant statute.

iv. Tkach had undisputed possession of the subject property at all material times. A fence that had separated the properties was removed in the 1940s before Tkach was an owner. Although Hydro paid taxes on the subject lands nothing in Tkach's tax bill indicated the properties were separate. Hydro had not exercised any physical rights of possession of the subject lands. When Tkach bought the subject lands it was fenced in as part of Tkach's lands. Tkach had no personal knowledge of Hydro's claim to the land. Before registering Tkach's deed his lawyer obtained actual knowledge of Hydro's 1906 deed from the Registry Office; the lawyer relied on the 1934 deed to Tkach's predecessor in title as a good root of title under the statute.

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1 (1992), 95 D.L.R. (4th) 18

2 at pages 19-21.

v. The Court of Appeal quoted MacKay, J.A., in *Algoma Ore Properties Ltd. v Smith*[3], at p.350 made referring to an earlier Ontario provision:

> "I am of the opinion that the *Investigation of Titles Act* requires a search only to the first root of title prior to the 40-year period. The purchaser is entitled to rely on the form of the instruments registered and is not bound to inquire into their substance and if the instrument on which he relies as a root of title prior to the 40-year period is on its face sufficient to convey the fee, including the mineral rights, he is entitled to rely on it."

Although this passage refers to an earlier version of the Ontario Act the section considered was close to ours in effect thus this statement will assist in understanding the background of our sections 4(1) & 4(2)[4].

vi. The Ontario Court of Appeal concluded that

> **"For all these reasons, I have reached the conclusion that Hydro's claim against Tkach must fail. <u>It therefore becomes unnecessary to consider whether Hydro's title is in any event extinguished</u>."**

Section 105(1) - the search period - provided a successful defence to the action **without reference to s.106(1) of the Ontario Act that extinguished claims in land on the expiration of a "notice period". The conclusion of the court in *Tkach* clearly makes section 105(1), on which our section 4(1) is based, a shield against a competing interest even if it does not extinguish that competing interest. This supports our argument that section 4(1) will have the same effect.**

vii. Subsequent to *Tkach* a different panel of the Ontario Court of Appeal decided *National Sewer Pipe Ltd. v. Azova Investments Limited*[5] which brought *Tkach* into question. The majority decision, Osborne, J.A. dissenting, stated at page 22:

> "...I do not think the *Registry Amendment Act*, 1981, is retroactive to validate titles which were otherwise deficient prior to August 1, 1981. Certainly it cannot have the effect of creating an ownership in land where formerly there was none."

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3 [1953] 3 D.L.R. 343 (Ont. C.A.).

4 *Penney v. Hartling (1999)*,177 N.S.R.(2d) 378 at page 381. Carver, J. held that section 4 of the *Marketable Titles Act* means that an instrument comprising the root of title need only purport to convey the interest; underlying good title prior to the statutory root is not required

5 (1993), 105 D.L.R. (4th) 1.

viii. The Supreme Court of Canada decided that *Tkach*, not *National Sewer Pipe Ltd.*, was the correct approach in *Fire v. Longtin*[6] a case appealed from yet another panel of the Ontario Court of Appeal.

ix. *Fire v. Longtin* again dealt with competing interests under the Ontario *Registry Act*'s forty year search period and with s.106(1) that operated to extinguish the Fire's fee simple interest. Although the Appeal Court and the Supreme Court of Canada found that Fire's title in the fee simple was extinguished by s.106(1) of the Ontario *Registry Act*, the Courts focussed most of their attention on the uncertainty of the 40-year search limit after the decision in *National Sewer Pipe Ltd.* At page 42 of the Ontario Appeal Court decision Justice McKinlay stated:

> "Indeed, if the decision of this court in *National Sewer Pipe* is correct - that the grantor under a conveyance which constitutes a root of title must have had a good title to convey - then it follows that the only safe search is one back to the original grant from the Crown."

x. By adopting the reasons of the Ontario Court of Appeal in *Fire v. Longtin* the Supreme Court of Canada confirmed the approach of the Ontario Court of Appeal in *Tkach* effectively overruling *National Sewer Pipe Ltd.* putting an end to the uncertainty that case created.

b. **Conflicting interests found in instruments registered prior to the 40 year search limit.**

i. In *Ontario Hydro v. Tkach* (1992), 95 D.L.R. (4th) 18, the defending owner's solicitor had actual knowledge of the competing claim but, as that knowledge came from an instrument registered outside the 40 year statutory period, such notice did not defeat his title established within the 40 year period within the Registry Office records. The Ontario Court of accepted this as the correct approach in *Tkach* and in *Fire* as to do so would defeat the intended purpose of the Act. The Supreme Court of Canada confirmed this approach in *Fire*.

ii. As to "Actual notice" see the differences between the majority and dissenting decisions in *National Sewer*, below, on the issue of actual notice. The majority held that one party had "actual notice" by virtue of instruments registered before the required search period. Osborne, J.A., dissenting, reasoned at page 33 that the party had no "actual notice" by reason of instruments registered before the 40-year search period:

> "If the title search period is 40 years, as it manifestly is under Part III of the Act, it must follow that instruments registered outside the 40-year period

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6 [1995] 4 S.C.R. 3

cannot be the source of actual knowledge referred to in Part I of the *Registry Act...*"

In *Fire v. Longtin*, below, at page 42 of the Ontario Court of Appeal decision, it, and by adoption, the Supreme Court of Canada stated, *obiter dicta*, referring to *National Sewer*, that "I agree with the full and compelling dissenting reasons of Osborne, J.A., on this issue..."

iii. At page 42 of the Ontario Appeal Court decision in *Tkach* (adopted in its entirety by the Supreme Court of Canada on *Tkach*), Madame Justice McKinlay stated:

> "Indeed, if the decision of this court in *National Sewer Pipe* is correct - that the grantor under a conveyance which constitutes a root of title must have had a good title to convey - then it follows that the only safe search is one back to the original grant from the Crown."

PART 4 Federal Crown Interests in Land

***Federal Real Property and Federal Immovables Act*, S.C. 1991, c. 50. s.14**

From the "Guide to the Federal Real Property Act and Federal Real Property Regulations"

"Section 14 - No Title by Prescription

No title by prescription

14. No person acquires any federal real property by prescription.

Notes

Section 14 states that adverse possession, or "squatters' rights," does not apply to federal real property. This provision is essentially unchanged from the previous legislation.

This section was first enacted in 1950 to bring federal real property in line with provincial real property in several provinces, where title by prescription had been abolished under provincial land titles legislation. There are also other reasons why the section is beneficial. As a matter of policy, federal real property is to be used for the benefit of the people of Canada. Therefore, one person should not be able to gain an interest in federal real property at the expense of all other Canadians without the Crown's knowledge and approval. Also, as a practical matter, the nature of much federal real property would make policing of "squatters" both impractical and expensive.

Title by prescription on federal real property may still be possible if the chain of possession started on or before June 1, 1890 and the prescriptive title was acquired before June 1, 1950. This is because before enacting this section in 1950, a person needed a 60 year period of adverse possession to obtain title by adverse possession against the federal Crown.

Source

Modification of section 5 of the Public Lands Grants Act, which read:

" 5. No right, title or interest in or to public lands is acquired by any person by prescription.""

PART 5 Boundaries & Extent of Title - MTA, LAA & LRA

1. What lands are protected by LRA & MTA?

2. Is the extent of a parcel protected by MTA?

   a. Title-wise MTA only protects marketable title to lands within the extent of the parcel description to which there is marketable title. In *MacNeil* v. *Nova Scotia (Attorney General) et al.* Cromwell, J.A., referring to MTA, s. 6, states at paragraph 22 that:

      > "The statute only protects the title of land described in the deed. If, and as the trial judge found, the description does not include the subject lands, the statute does not assist the appellant."

   b. Refer to comments on *Tkach* in Part 3, respecting the operation of the language in MTA, s. 4(1), interpreted by the Ontario Court of Appeal and the Supreme Court of Canada in the "missing exception" situation.

3. Is the extent of a parcel protected by LRA?

   a. Subsections 21(2) and particularly (3) of LRA govern this situation:

      "Location and boundaries

      21

      (1) **The legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel.**

      (2) **Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel.**

      (3) **A registration may not be rejected only because the location, boundaries or extent of the parcel appear to overlap the location, boundaries or extent of another parcel.**

   b. Migration does not create title nor does it permit unilateral expropriation - there are provisions in LRA which enable aggrieved parties to have parcel registers corrected - see sections 33-35, 91-92 and *Brill* [157]-[168].

2. Excerpts from *Access - Red Flag Issues under LRA (Revised March 2, 2007)*, Garth C. Gordon, Q.C.

Schedule "E" - Supplementary Checklist & Templates
Rights of Way Used And Enjoyed (Section 9.d.)

1. Introduction

a. If the parcel you are searching has an *ungranted* right of way with any of the following sets of characteristics, the right of way *may* be a "... right of way that is being used and enjoyed" protected as an overriding interest under LRA, s.73(1)(e). It is not a prescriptive right of way.

b. "DTP" means dominant tenement parcel and "STP" means servient tenement parcel.

c. For an Affidavit dealing with these issues see Document 86566081 recorded in the Kings County LRO/Registry Office on November 7, 2006.

2. Rights of way of necessity[77] - s.9.d.viii - Template 1

a. A way of necessity may be acquired by an implied grant in favour of the grantee of lands over the lands of the grantor when landlocked lands are granted which are physically inaccessible unless the grantee is permitted to use the surrounding land of the grantor as an approach.

b. Similarly a way of necessity may by implication be reserved to the grantor over the lands of the grantee when landlocked lands are retained.

c. A way of necessity will only be implied where it is actually necessary for the use of the land retained or granted and not where it is for the more convenient enjoyment of the land granted or retained.

d. A way of necessity will be implied where the landlocked parcel is acquired by a devise.

e. The right to a way of necessity will cease when the right is no longer required in order to render the grant or reservation effectual.

f. Carefully consider potential alternate water access particularly over non-tidal waters - **s.8.c.**

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[77] *B.O.J. Properties Ltd. v. Allen's Mobile Home Park Ltd.* (1980), 36 N.S.R. (2d) 362 (C.A.).

3. **Parcels abutting roads shown in recorded plans - s.9.d.ix(2) - Template 1**

   a. The sale of a parcel according to a registered plan in which the parcel is shown as abutting a private lane, may convey an implied easement over the lane to the purchaser. The parcel and the lane must be in common ownership when the parcel is conveyed.

4. **Parcels said to be bounded by streets or ways - s.9.d.ix(2) - Modify Template 1**

   a. Where a grantor conveys land described as bounded by a street or way, the grantor cannot deny the existence of the street or way. The grantee acquires a perpetual easement or right of passage upon and over the street or way by the conveyance. The parcel and the street or way must be in common ownership when the parcel is conveyed.

5. **MGA, s.280(2) - s.9.d.ix(1) - See Template 1 (Comment after paragraph 16)**

   a. MGA, s.280(2) states "The owners of lots shown on a plan of subdivision as abutting on a private right of way are deemed to have an easement over the private right of way for vehicular and pedestrian access to the lot and for the installation of electricity, telephone and other services to the lot." This section is not considered retroactive; it became effective April 1, 1999 on enactment of MGA.

6. **Easement by implied grant on severance by a common owner - s.9.d.vii - Template 2**

   a. When the DTP was conveyed a *quasi* easement benefitting the DTP and STP became an easement benefitting the DTP because the following conditions were met:

      i. the DTP & STP had the same owner;

      ii. the *quasi* easement was such that it might become an easement;

      iii. the *quasi* easement was necessary to the reasonable enjoyment of the DTP;

      iv. the *quasi* easement was, and had been, used by the owner of the DTP and STP for the benefit of the entirety of the DTP and STP (*i.e.* it was a continuous and apparent *quasi* easement); and

      v. the DTP and STP were not subject to a mortgage.

   b. The form of words used to transfer this type of implied right of way in the chain of title may be critical. The words *'together with all ways now **used** or **enjoyed** therewith'* will pass this type of implied right of way; the words ". . . together with all the . . . ways . .

.to the same belonging." will not. The *Conveyancing Act*, s.13(d) may eliminate this issue in transfers after it came into effect on April 11, 1956[78].

7. **Proprietary Estoppel - s.9.d.xi**[79].

   a. When A to the knowledge of B acts to his detriment in relation to his own land in the expectation, encouraged by B, of acquiring a right over B's land, such expectation arising from what B has said or done, the court will order B to grant A that right on such terms as may be just. A right of way on this grounds is rare and probably should be based on a recorded court order not on affidavit or statutory declarations alone.

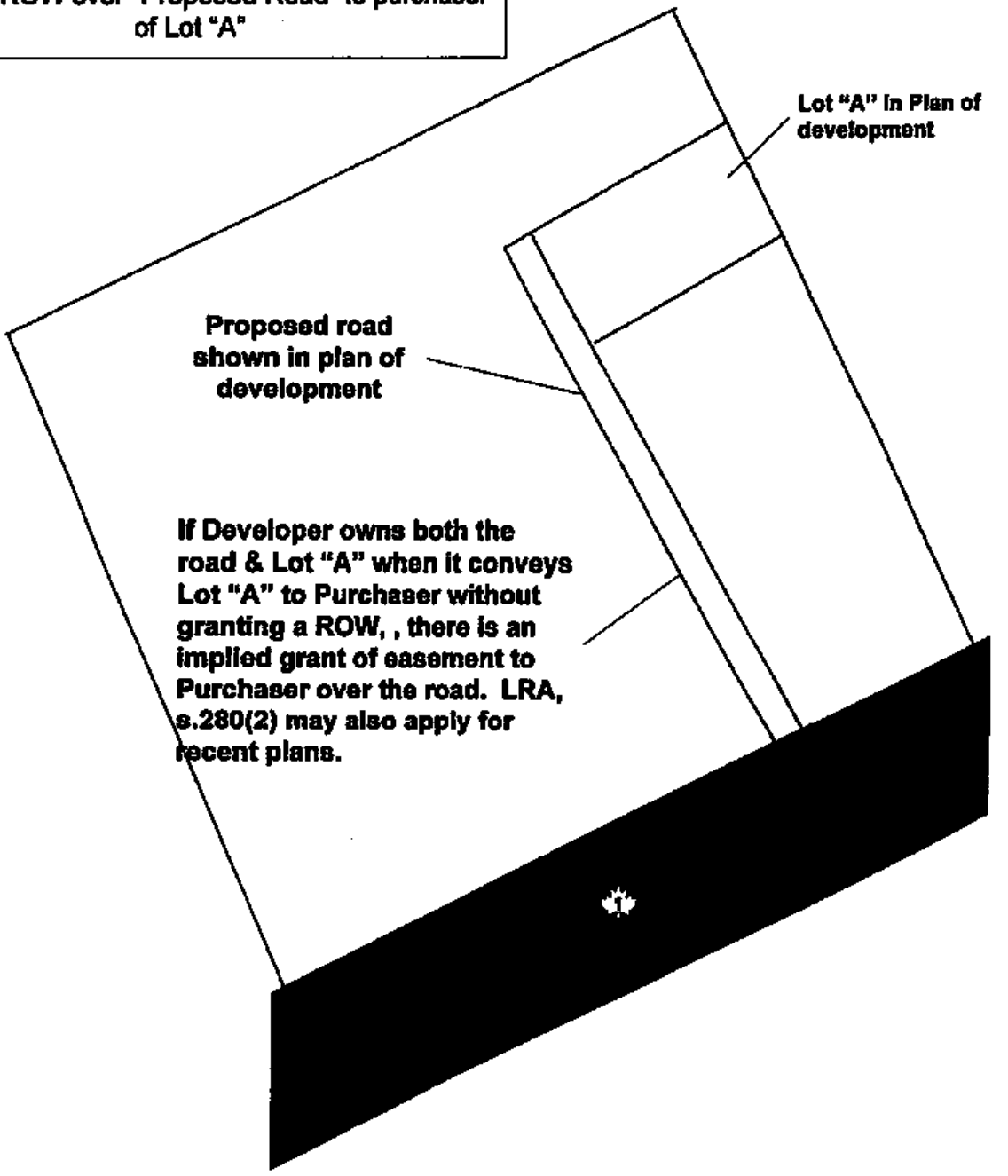
---

78 *Aspotogan Ltd.* v. *Lawrence* (1972), 4 N.S.R. (2d) 313, 30 D.L.R. (3d) 339 1972 CarswellNS 67, paragraphs 51-55.

79 *Maritime Telegraph & Telephone Co.* v. *Chateau Lafleur Development Corp.* (2001), 2001 NSCA 167, 45 R.P.R. (3d) 209, 207 D.L.R. (4th) 443, 2001 CarswellNS 425

7

IMPLIED GRANT
Lot & Road Shown in Plan of Development
*
Developer owns Lot "A" & "Proposed Road" but does not grant ROW over "Proposed Road" to purchaser of Lot "A"



ix. **Roads shown in plans of subdivision**

(1) MGA, s.280(2), now deems easements as follows:

> "s.280(2) The owners of lots shown on a plan of subdivision as abutting on a private right of way are deemed to have an easement over the private right of way for vehicular and pedestrian access to the lot and for the installation of electricity, telephone and other services to the lot."

This section is not considered retroactive so would be effective April 1, 1999 on enactment of MGA.

(2) If a road is shown in a plan of subdivision and access over that road was not conveyed with a parcel on the road, the parcel may have either or both a right of way of necessity[54] or an implied grant of right of way if the parcel and the road are in common ownership when the parcel is conveyed. In *Collins* v. *Speight*[55] the court stated:

> "17 The law relating to rights of way by estoppel has been long recognized. Ritchie, E.J., stated the principle of right of way by estoppel after a review of earlier case law in Pugh v. Peters et al (1876), 11 N.S.R. 139:
>
> > In these cases it is broadly laid down that where a grantor conveys land bounded on a street or way, he is estopped to deny the existence of such a street or way, and the grantee acquires by conveyance a perpetual easement or right of passage upon and over it, from the full enjoyment of which he can never afterwards be excluded.
>
> 18 The Appellate Division of the Ontario Supreme Court recognized the same principle in Nantais v. Panzer, [1926] 4 D.L.R. 605. It is summarized in the headnote as follows:
>
> > The sale of a lot according to a registered plan upon which such lot is shown as abutting a strip of land marked private lane, conveys to the purchaser an easement over such lane appurtenant to the lot.
>
> 19 In Phillips v. Ross, [1926] 1 D.L.R. 605 Harris, C.J.N.S. stated:
>
> As estoppel is the basis of the rule which prevents a grantor who bounds a lot on a street from saying thereafter that there is no street that estoppel must of necessity arise by the deed and is available only to the grantee or those claiming under or through him."

---

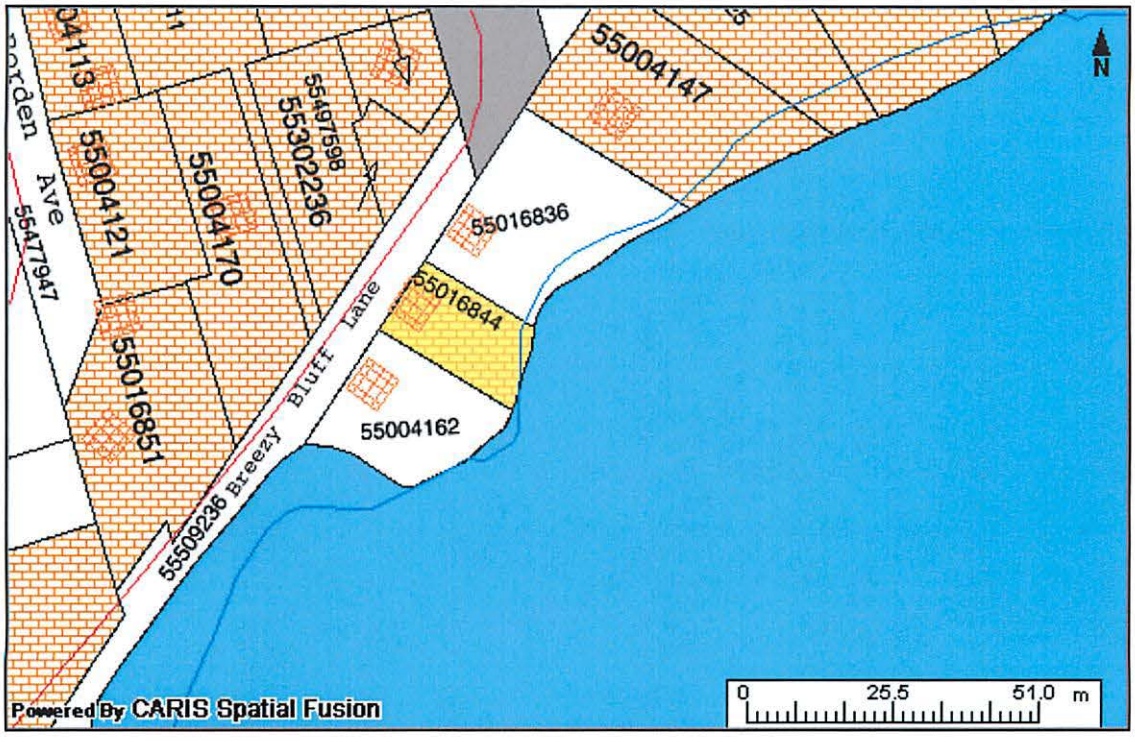
54 See *B.O.J. Properties Ltd.* v. *Allen's Mobile Home Park Ltd.* discussed above under "Private (Openly Used and Enjoyed)".

55 (1992),116 N.S.R. (2d) 201, 320 A.P.R. 201; 1992 CarswellNS 578. See also *Harris* v. *Kyle*, [1951] O.W.N. 18; 1950 CarswellOnt 387 (Ont C.A.).

PROPERTY Online NOVA SCOTIA

Property Online Map

Date: **Oct 9, 2013 11:20:43 AM**



PID:	55016844	Owner:	RHONDA HEATHER LOCSIN	AAN:	04957849
County:	KINGS COUNTY	Address:	14 BREEZY BLUFF LANE KINGSPORT	Value:	$59,100 (2013 RESIDENTIAL TAXABLE)
LR Status:	LAND REGISTRATION				

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [*Land Registration Act* subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

Property Online version 2.0

PROPERTY Online NOVA SCOTIA caris powered

Search | Provincial Map | Bulletin Board | Help

Land Registration View

* Indicates interests inherited on subdivision or re-configuration of parcel

PID	55016844	Parcel Type	STANDARD PARCEL	Status	ACTIVE
Area	4413.0 SQUARE FEET	Parcel Access	PRIVATE (OPENLY USED AND ENJOYED)	Manag. Unit	MU1104
Lot		Created	Oct 15, 1993 12:00:00AM		
PDCA Status	APPROVED	Municipal Unit	MUNICIPALITY OF THE COUNTY OF KINGS	Manner of Tenure	NOT APPLICABLE
LR Status	LAND REGISTRATION	LR Date	Jun 07, 2013 04:30:15PM		

Location	County	Primary Location	Source
14 BREEZY BLUFF LANE KINGSPORT	KINGS COUNTY	Yes	Assigned by Municipality

Comments

MAP:0245150064360
MAP:1045150064300

Assessment Account	Value	Tax District	Tax Ward	Tax Sub
04957849	$59,100 (2013 RESIDENTIAL TAXABLE)	010	000	

Back to Results | Details View | Parcel Archive View | Map View

Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date	NS Non-Res?
RHONDA HEATHER LOCSIN	FEE SIMPLE	10 FIRST ST ROTHESAY NB CA E2H 1L5	DEED	2013	103232246 View Form View Doc		Jun 13, 2013	No

Farm Loan Board - Occupants & Mailing Addresses

Name	Interest Holder Type	Mailing Address
No Records Found		

Benefits to the Registered Interests

Benefit Details	Interest Holder Type	Type	Year	Doc #	Book/Page/Plan	Registration Date
TOGETHER WITH AN EASEMENT / RIGHT OF WAY	EASEMENT / RIGHT OF WAY HOLDER (BENEFIT)	DEED	1930	0	Book 150 Page 301	Nov 04, 1930
55509236	SERVIENT TENEMENT PID	DEED	1930	0	Book 150 Page 301	Nov 04, 1930

Burdens on the Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Textual Qualifications on Title

Qualifications Text

THE EASEMENT/RIGHT OF WAY OVER PID 55509236 BENEFITTING THIS PID 55016844 WAS CREATED BY IMPLICATION OF LAW ON THE SEVERANCE OF THE DOMINANT TENEMENT AND SERVIENT TENEMENT PARCELS BY THEIR COMMON OWNER BY THE DEED DATED AUGUST 17, 1921 RECORDED IN THE REGISTRY OFFICE FOR KINGS COUNTY, NOVA SCOTIA, IN BOOK 150 AT PAGE 301 ON NOVEMBER 4, 1930. THE COMMON OWNER OF THE TWO PARCELS AT THE TIME OF SEVERANCE (JAMES LORIMER ILSLEY BY DEED REGISTERED ON AUGUST 5, 1921 IN BOOK 131, PAGE 749) CAUSED A PLAN SHOWING BOTH LOT NO. 5 (OF WHICH THIS PARCEL IS THE EASTERN HALF) AND THE RIGHT OF WAY PARCEL TO BE RECORDED AS PLAN A-9 ON AUGUST 13, 1921.

Tenants in Common not registered pursuant to the *Land Registration Act*

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Recorded Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
No Records Found							

Parcel Description

ALL that certain lot or parcel of land formerly owned by the Supply Company Limited, situate at Kingsport in the County of Kings and Province of Nova Scotia, and South of the Highway running East and West leading from the iron bridge to the pier, and more particularly bounded and described as follows:

BEGINNING at the Northwest corner of Lot Number Four on Plan No. M.483 of Breezy Beach prepared by William Rand P.L.S. and filed on August 13, 1921 at the Court House at Kentville in the said County (see Plan filed as A-9);

THENCE Westerly along the South side of Borden Avenue, so-called, now known as Breezy Bluff Lane, a distance of Fifty (50) feet;

THENCE Southerly in a line parallel to the Western boundary of Lot No. 4 to the shore of Minas Basin;

THENCE Easterly along the shore of Minas Basin to Lot No. 4;

THENCE Northerly along the Western boundary of Lot No. 4 to the place of BEGINNING.

BEING the Eastern half of Lot No. 5 on the said Plan.

THE ABOVE BEING AND INTENDED TO BE the same lands and premises conveyed by Elizabeth M. Williams to Donna Lynn Jean-Louis Livingston by Warranty Deed dated September 4, 1996 and recorded on September 17, 1996 in the Kings County Registry of Deeds in Book 1075 at Page 668 as Document No. 8151.

BENEFIT

TOGETHER WITH AN EASEMENT/RIGHT OF WAY (BENEFIT) created by implication of law on the severance of the ownership of the dominant tenement parcel and the servient tenement parcel by the common owner of both parcels by the Deed dated August 17, 1921 recorded in the Land Registration Office for Kings County, Nova Scotia in Book 150 at Page 301 on November 4, 1930. The common owner caused a Plan showing both Lot No. 5 (of which this parcel is the Eastern half) and the right of way parcel to be recorded as Plan A-9 on August 13, 1921.

*** Municipal Government Act, Part IX Compliance ***

Not Subject To:

The parcel was created by a subdivision that predates subdivision control or planning legislation or by-laws in the municipality and therefore no subdivision approval was required for creation of this parcel.

Non-Enabling Documents

Inst Type	Inst No	Year	Type	Book/Page	Registration System	Registration Date

No Non Enabling Documents Found

Non-Enabling Plans

Inst Type	Inst No	Year	Type	Plan Name	Drawer Number	Registration Date

No Non Enabling Plans Found

AFR Bundles

Inst Type	Inst No	Year	Type	Filing Reference	Instrument Date

No AFR Bundles Found

Parcel Relationships

Related PID	Type of Relationship

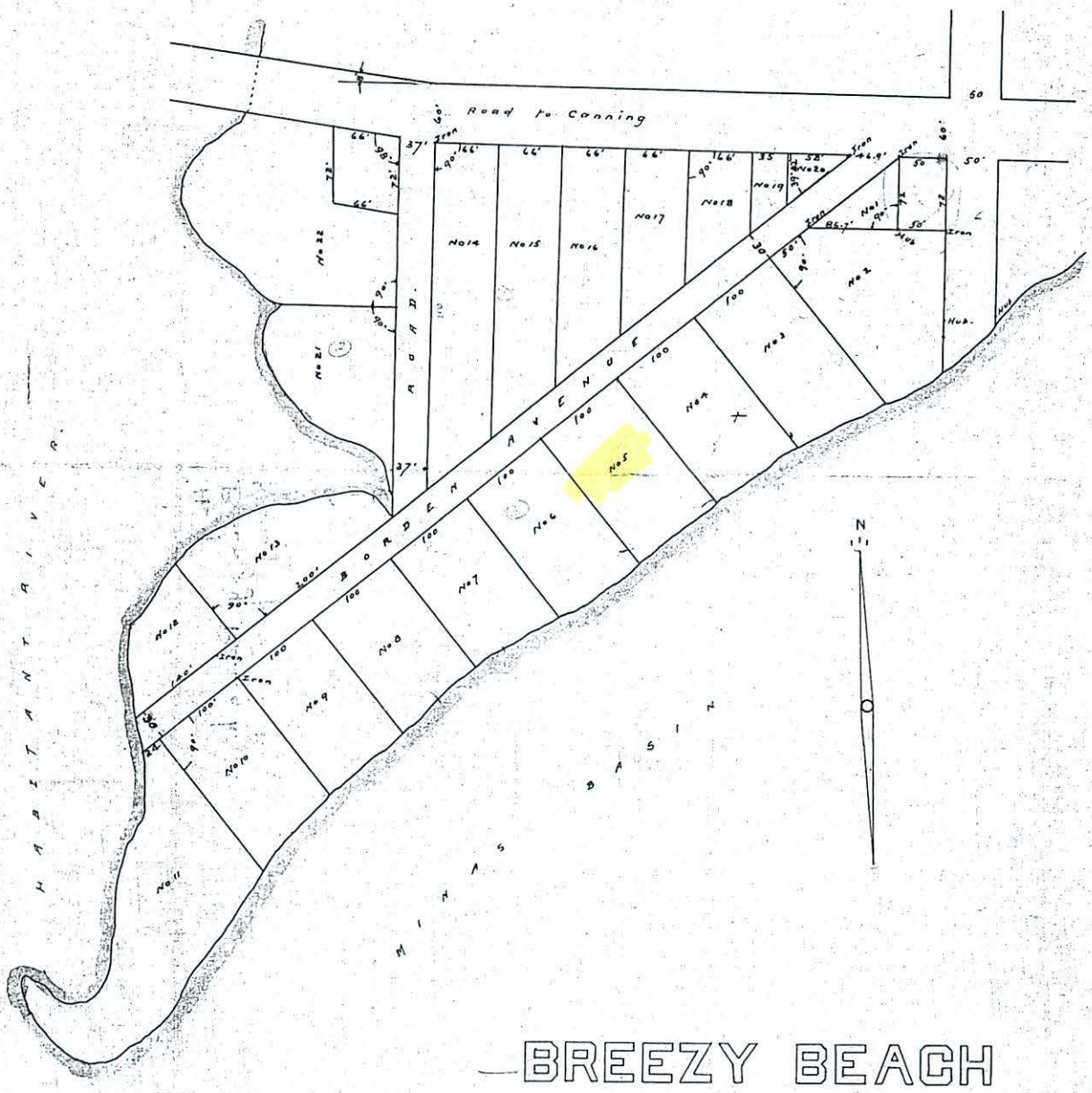
No Related PIDs Found

Back to Results | Details View | Parcel Archive View | Map View

This parcel IS REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

Boundary/Area Problem | General Problem | Municipal Tax Query



BREEZY BEACH

KINGSPORT.

Scale: 1" = 80 Ft.

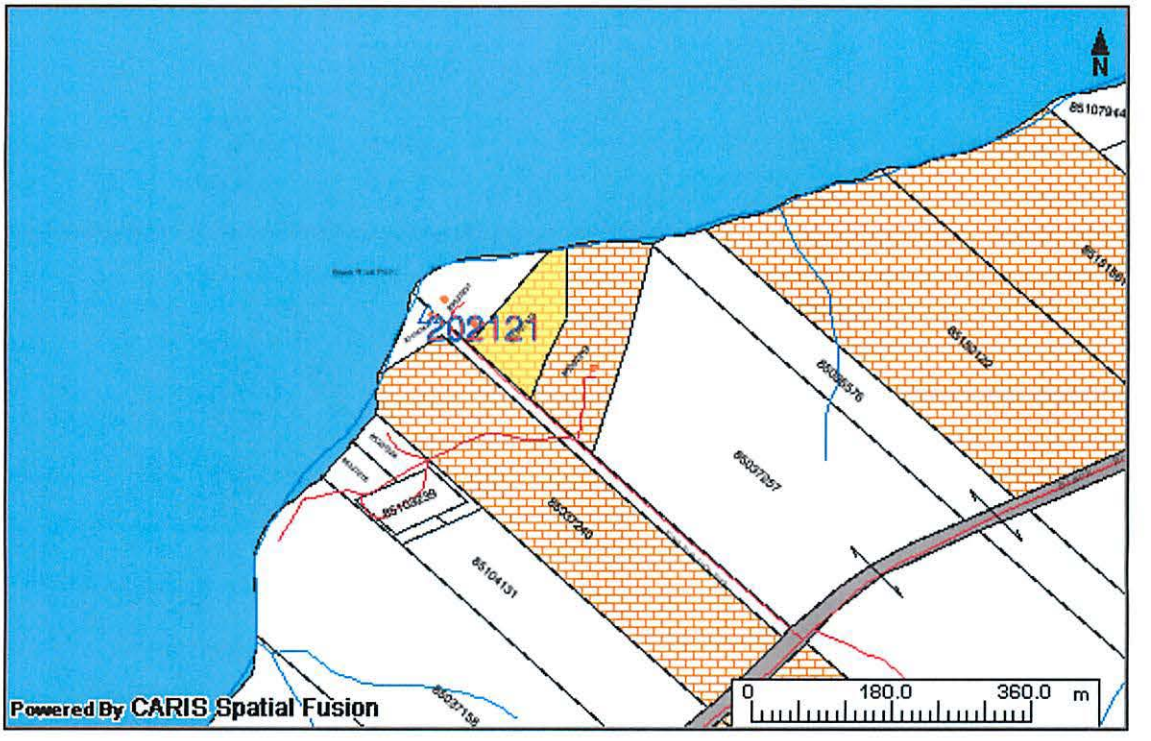
H. E. Rand P.L.S.

H. E. Rand P.L.S. Aug. 1921.

PROPERTY Online NOVA SCOTIA

Property Online Map

Date: **Oct 9, 2013 12:50:43 PM**



PID:	85107175	Owner:	SEAN TAYLOR-COLE JAMES COLE	AAN:	09014527
County:	VICTORIA COUNTY			Value:	$240,400 (2013 RESIDENTIAL TAXABLE)
LR Status:	LAND REGISTRATION	Address:	100 BLACK ROCK LIGHT ROAD BLACK ROCK		

The Provincial mapping is a graphical representation of property boundaries which approximate the size, configuration and location of parcels. Care has been taken to ensure the best possible quality, however, this map is not a land survey and is not intended to be used for legal descriptions or to calculate exact dimensions or area. The Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel [*Land Registration Act* subsection 21(2)]. THIS IS NOT AN OFFICIAL RECORD.

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Land Registration View

* Indicates interests inherited on subdivision or re-configuration of parcel

PID	85107175	Parcel Type	STANDARD PARCEL	Status	ACTIVE
Area	2.73 ACRE(S)	Parcel Access	PRIVATE (OPENLY USED AND ENJOYED)	Manag. Unit	MU0315
Lot	LOT 96-1	Created	Jan 06, 1997 12:00:00AM		
PDCA Status	APPROVED	Municipal Unit	MUNICIPALITY OF THE COUNTY OF VICTORIA	Manner of Tenure	JOINT TENANTS
LR Status	LAND REGISTRATION	LR Date	Mar 02, 2010 01:59:35PM		

Location	County	Primary Location	Source
100 BLACK ROCK LIGHT ROAD BLACK ROCK	VICTORIA COUNTY	Yes	Assigned by Municipality

Comments

Assessment Account	Value	Tax District	Tax Ward	Tax Sub
09014527	$240,400 (2013 RESIDENTIAL TAXABLE)	070	000	

Back to Results | Details View | Parcel Archive View | Map View

Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date	NS Non-Res?
SEAN TAYLOR-COLE	FEE SIMPLE	100 BLACK ROCK LIGHT RD BLACK ROCK NS CA B1X 2A3	DEED	2013	102898682 View Form View Doc		Apr 26, 2013	No
JAMES COLE	FEE SIMPLE	100 BLACK ROCK LIGHT RD BLACK ROCK NS CA B1X 2A3	DEED	2013	102898682 View Form View Doc		Apr 26, 2013	No

Farm Loan Board - Occupants & Mailing Addresses

Name	Interest Holder Type	Mailing Address

No Records Found

Benefits to the Registered Interests

Benefit Details	Interest Holder Type	Type	Year	Doc #	Book/Page/Plan	Registration Date
TOGETHER WITH AN EASEMENT/RIGHT OF WAY	EASEMENT / RIGHT OF WAY HOLDER (BENEFIT)	DEED	1882	4178 View Doc	Book K Page 259	Jan 01, 1882
85076784	SERVIENT TENEMENT PID	DEED	1882	4178 View Doc	Book K Page 259	Jan 01, 1882

Burdens on the Registered Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date

No Records Found

Textual Qualifications on Title

Qualifications Text

Tenants in Common not registered pursuant to the *Land Registration Act*

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date

No Records Found

Recorded Interests

Interest Holder (Qualifier)	Interest Holder Type	Mailing Address	Type	Year	Doc #	Book/Page/Plan	Registration Date
THE TORONTO-DOMINION BANK	MORTGAGEE	4750 RUE LA SAV ANE. MONTREAL QC CA H4P 1T7	MORTGAGE	2013	103190477 View Form View Doc		Jun 05, 2013

Parcel Description

Schedule A

Place Name: Black Rock Light Road, Black Rock
Designation of Parcel on Plan: Lot 96-1
Title of Plan: Plan of Subdivision of land of David Reynolds and Gale Mitcham, Black Rock, Victoria County, Nova Scotia
Registration of District: Victoria County

Registration Reference of plan: 1587
Registration Date: December 12, 1996

TOGETHER WITH an easement/right of way, created by implication of law on the severance of the ownership of the dominant tenement parcel with the servient tenement parcel by the common owner of both parcels on the 4th day of March, 1873, by deed dated 4th March 1873, recorded in the Registry of Deeds for Victoria County, Nova Scotia, as document No. 4178 on the 12th day of December, 1882. The location of this right of way is shown on Plan of Subdivision of Land of David Reynolds & Gale Mitcham, Black Rock, Victoria County, Nova Scotia, dated September 24, 1996 and filed at Baddeck Registry of Deeds and registered as Plan 1587 on December 12, 1996. The location of this right of way is the exact location of the right of way as was granted to The Government of the Dominion of Canada and Their Successors in Office on the 12th day of August, 1868 and recorded in book F, page 266 on the 9th day of December 1868 and described as "Together with a right of way of the width of twenty feet in and of that part of those premises adjoining the said Dougald McDonald to the main road."

The parcel complies with the subdivision provisions of Part IX of the Municipal Government Act.

Non-Enabling Documents

Inst Type	Inst No	Year	Type	Book/Page	Registration System	Registration Date

No Non Enabling Documents Found

Non-Enabling Plans

Inst Type	Inst No	Year	Type	Plan Name	Drawer Number	Registration Date

No Non Enabling Plans Found

AFR Bundles

Inst Type	Inst No	Year	Type	Filing Reference	Instrument Date

No AFR Bundles Found

Parcel Relationships

Related PID	Type of Relationship
85037208	PARENT PARCEL NUMBER

Back to Results | Details View | Parcel Archive View | Map View

This parcel IS REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

Boundary/Area Problem | General Problem | Municipal Tax Query

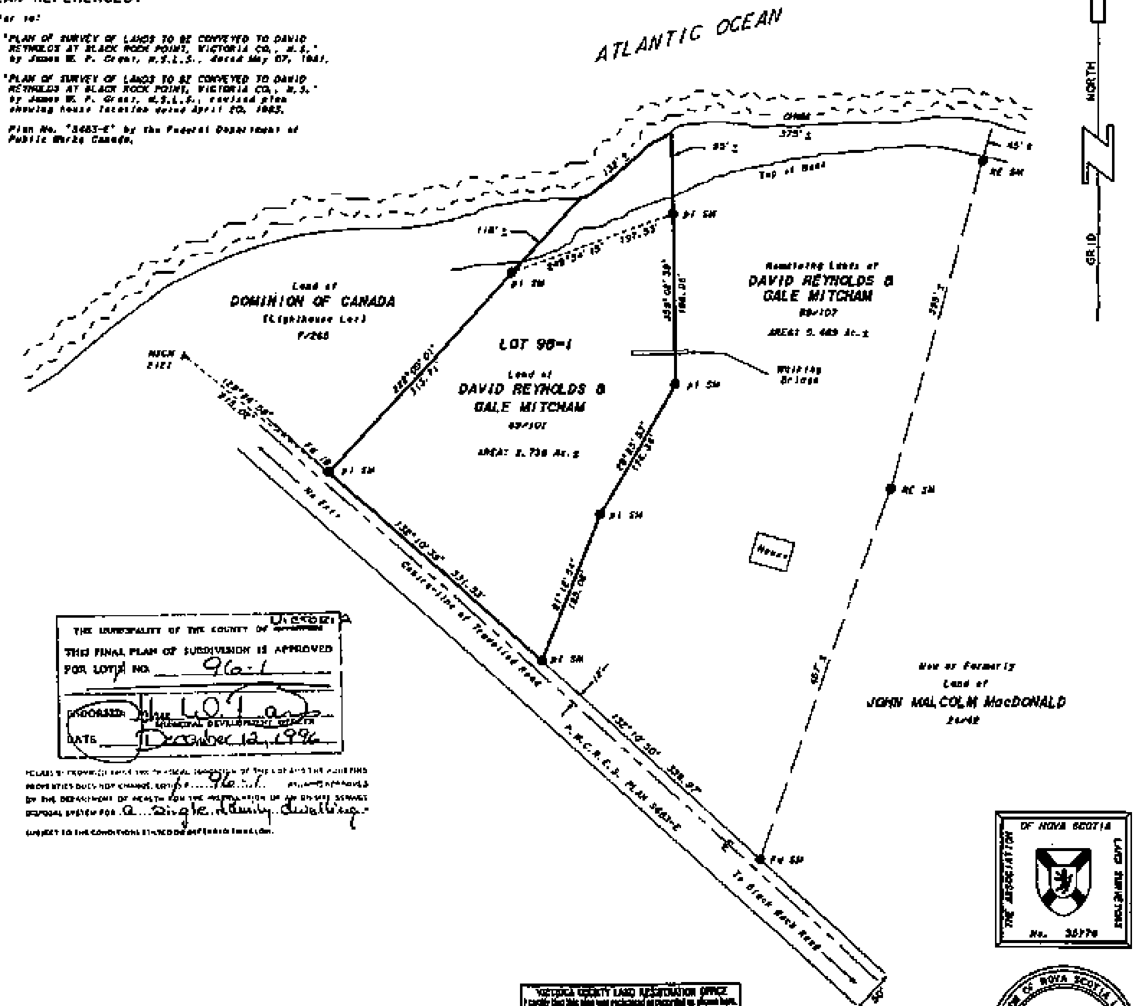
POINT NORTHING EASTING DESCRIPTION

2121 [illegible] [illegible] NSCM
2122 [illegible] [illegible] NSCM

PLAN REFERENCES:

Refer to:

1. "PLAN OF SURVEY OF LANDS TO BE CONVEYED TO DAVID REYNOLDS AT BLACK ROCK POINT, VICTORIA CO., N.S." by James W. P. Grant, N.S.L.S., dated May 07, 1981.
2. "PLAN OF SURVEY OF LANDS TO BE CONVEYED TO DAVID REYNOLDS AT BLACK ROCK POINT, VICTORIA CO., N.S." by James W. P. Grant, N.S.L.S., revised plan showing house location dated April 20, 1983.
3. Plan No. "5463-E" by the Federal Department of Public Works Canada.



LEGEND:

SURVEY MARKER	SM
NOVA SCOTIA COORDINATE MONUMENT	NSCM
POINT OF CURVATURE	PC
POINT OF TANGENCY	PT
IRON BAR	IB
IRON PIPE	IP
UNMONUMENTED POINT	UP
REPORTED	RE
PLACED	PL
FOUND	FD
CALCULATED	(C)
ORDINARY HIGH WATER MARK	OHWM
REGISTRY BOOK AND PAGE REFERENCE	000/000
TIE LINE	
LAND DEALT WITH BY THIS PLAN	
OTHER LAND	
CENTRE LINE	℄

NOTES:

ALL AZIMUTHS ARE GRID AND WERE DERIVED FROM NOVA SCOTIA COORDINATE MONUMENTS 2121 AND 2122, BASED ON THE NOVA SCOTIA 3° MODIFIED TRANSVERSE MERCATOR PROJECTION, ZONE 4, CENTRAL MERIDIAN AT 61°30' WEST LONGITUDE. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES. ALL DISTANCES ARE IN FEET. COMPASS RULE ADJUSTMENT USED. COORDINATE VALUES DATED JULY 1979.

TOPOGRAPHIC FEATURES WERE PLOTTED FROM FIELD DATA AND RESOURCE MAP NO 11K/08-R4.

CLOSURE OF SURVEY: 1/10,700
FIELD BOOK(S): BOOK 16 AT PAGES 31 TO 38.
DRAFTED BY: CLARK NICHOLSON, OCTOBER 11, 1996.

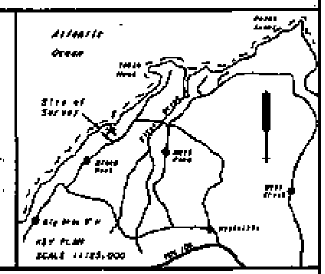
THE MUNICIPALITY OF THE COUNTY OF VICTORIA
THIS FINAL PLAN OF SUBDIVISION IS APPROVED FOR LOT(S) NO. 96-1
ENDORSED: [signature] MUNICIPAL DEVELOPMENT OFFICER
DATE: December 12, 1996

SURVEYOR'S CERTIFICATE

I, LESTER R. TINGLEY, Nova Scotia Land Surveyor, hereby certify that the survey represented by this plan was conducted under my supervision, and that the survey and plan were made in accordance with the Nova Scotia Land Surveyors Act and the regulations made thereunder.

Dated this 11th day of October 1996.

[signature] N.S.L.S.



PLAN OF SUBDIVISION OF LAND OF

DAVID REYNOLDS & GALE MITCHAM

BLACK ROCK
VICTORIA COUNTY, NOVA SCOTIA

SCALE: 1" = 100'

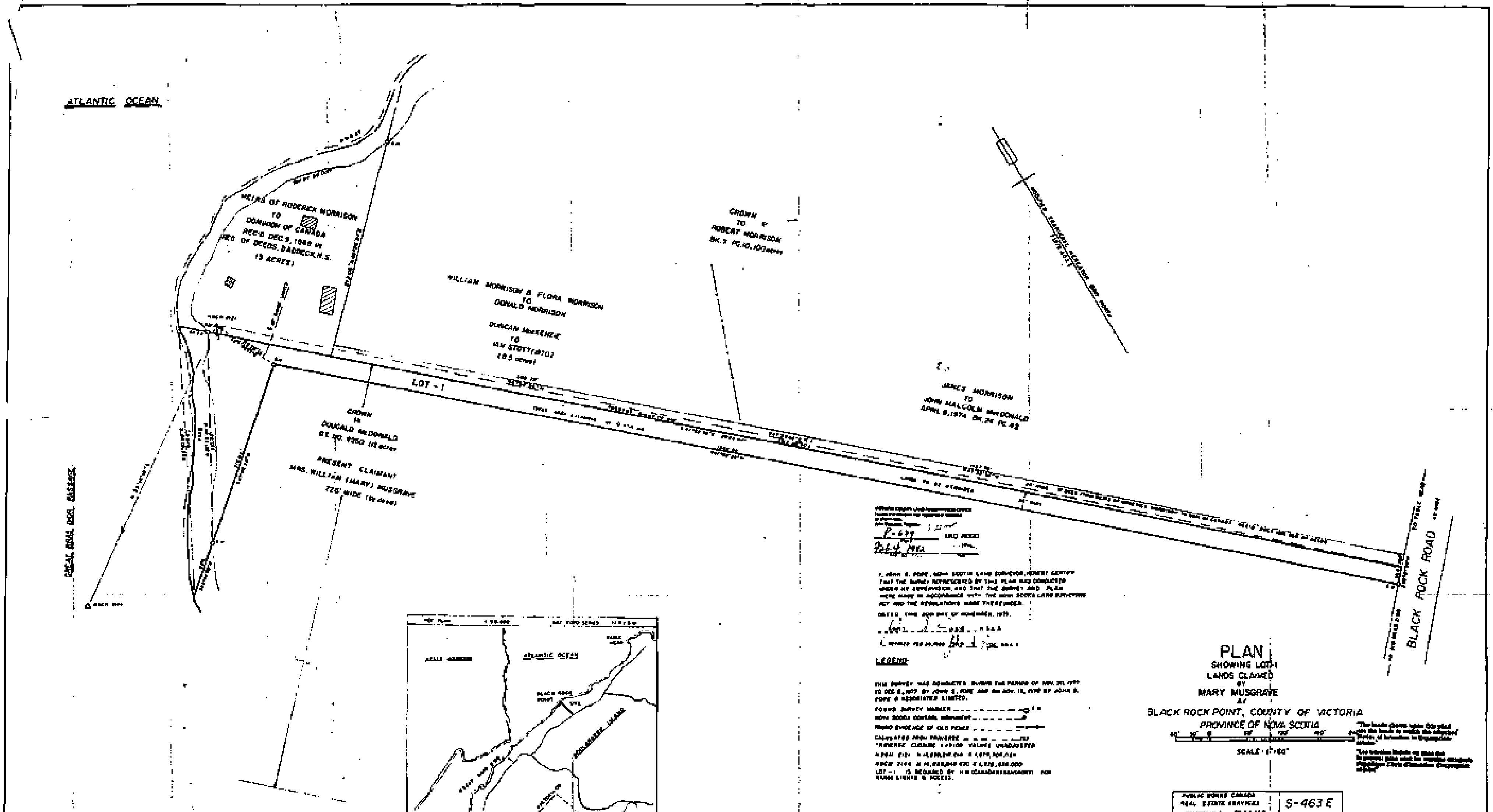
FIELD SURVEY CARRIED OUT SEPTEMBER 24, 1996.

C.L.F.S. SHEET	CB 83	PLAN NO. R-96010
RESOURCE MAP NO.	11K/08-R4	

VICTORIA COUNTY LAND REGISTRATION OFFICE
I certify that this plan was registered or recorded as shown here.
Plan # 1587
Dec 17 1996

100 0 100 200 300
GRAPHIC SCALE - FEET

LESTER R. TINGLEY N.S.L.S. PHONE 295-2179
PO BOX 412 BADDECK N.S. FAX/MOD 295-2179

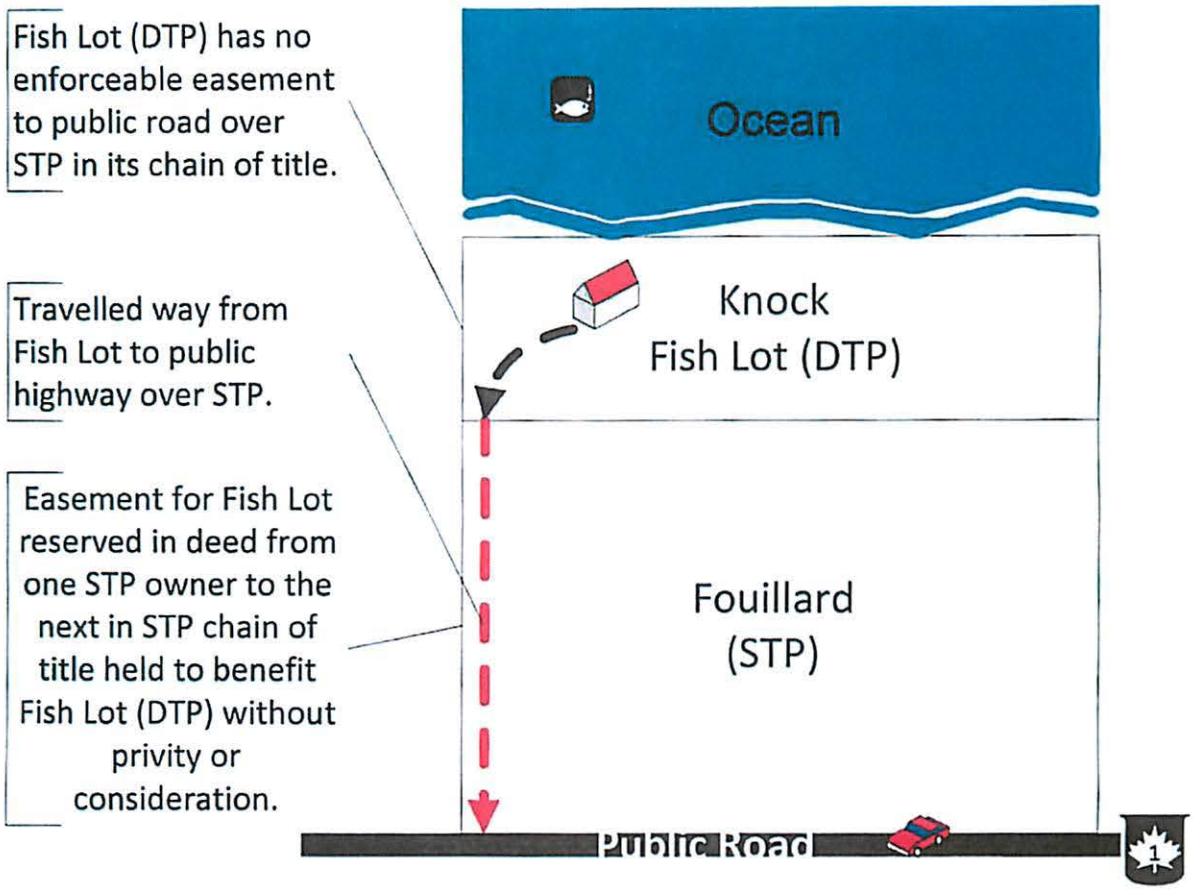


ATLANTIC OCEAN
HEIRS OF RODERICK MORRISON
TO
DOMINION OF CANADA
REC'D DEC 9, 1868 IN
REG. OF DEEDS, BADDECK, N.S.
(3 ACRES)
WILLIAM MORRISON & FLORA MORRISON
TO
DONALD MORRISON
DUNCAN McKENZIE
TO
H.H. STOTT (1970)
(85 acres)
CROWN
TO
ROBERT MORRISON
JAMES MORRISON
TO
JOHN MALCOLM McDONALD
APRIL 8, 1874 BK. 24 PG. 42
LOT - 1
CROWN
to
DOUGALD McDONALD
PRESENT CLAIMANT
MRS. WILLIAM (MARY) MUSGRAVE
BLACK ROCK ROAD
ATLANTIC OCEAN
LEGEND
PLAN
SHOWING LOT-1
LANDS CLAIMED
BY
MARY MUSGRAVE
AT
BLACK ROCK POINT, COUNTY OF VICTORIA
PROVINCE OF NOVA SCOTIA
PUBLIC WORKS CANADA
REAL ESTATE SERVICES
S-463 E

3. *"Knock* v *Fouillard* Easements"

Knock v. *Fouillard* Easements

Knock v. ***Fouillard***, 2007 NSCA 27, 2007 CarswellNS 83



Knock* v. *Foulliard (2007), 252 N.S.R. (2d) 298, 804 A.P.R. 298, 52 R.P.R. (4th) 27, 2007 NSCA 27, (C.A.)

2007 CarswellNS 83

Heard: January 24, 2007
Judgment: February 28, 2007
Docket: C.A. 267440

Real property — Easements — Particular easements — Right of way — Miscellaneous

Plaintiff owned small vacant oceanfront property ("fish lot") — Defendants owned adjacent residential property ("homestead property") separating fish lot from public highway — Plaintiff claimed right-of-way over portion of homestead property to highway, asserting that right-of-way permitted him to cut trees, stake and construct vehicular road — Defendants claimed right-of-way did not exist — Trial judge dismissed plaintiff's claim for injunction and ruled there was no right-of-way — Plaintiff appealed — Appeal allowed in part — Until 1993, no title document to homestead property mentioned right-of-way to serve plaintiff's fish lot — 1993 deed to homestead property contained paragraph stating that it was subject to "perpetual, free and uninterrupted right-of-way for all purposes" over homestead property to and from fish lot — Trial judge erred in law in finding that this wording did not give plaintiff right-of-way by grant — 1993 deed objectively manifested intention to grant right-of-way; identified vendor, plaintiff and property; met formal requirements for execution of deed; and satisfied prerequisites for easement — Deed was unclear as to mode of usage of right-of-way — Plaintiff granted right-of-way over homestead property, in terms described by 1993 deed, to benefit fish lot as dominant tenement — Trial judge's findings did not support contention that plaintiff was entitled to motor vehicular usage for which he could stake and construct road.

Knock v. *Fouillard* Easements

Knock* v. *Fouillard, 2007 NSCA 27, 2007 CarswellNS 83