



NOVA SCOTIA  
BARRISTERS' SOCIETY

## MEMORANDUM TO COUNCIL

**From:** Lisa M. Wight and the Professional Standards (Real Estate) Committee

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**Date:** June 14, 2024

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**Subject:** Professional Standards (Real Estate) Standard 2.6 - Tidal Waters

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**For:**      **Approval**       **Introduction** **X**      **Information**

DATE June 14, 2024	Council	Introduction
	Council	Approval

### Recommendation/Motion:

This is the introduction to Council of a revised Standard 2.6 – Tidal Waters / Non-Tidal Waters– by the Professional Standards (Real Estate) Committee. This standard will be concurrently sent to the Equity Committee for review and comment in accordance with the Society’s Equity Lens Application in Policy Development guideline. Following introduction to Council, the standard will be circulated to the membership for review and consultation. The RESC will review any comments received by members and the Equity Committee, and then present the final form, amended if necessary, to Council for approval. An equity lens was applied while revising this standard.

### Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. After annual review, the Committee determined the standard should be updated.

### Exhibit:

Standard 2.6 – Tidal Waters / Non-Tidal Waters - with rationale for the revisions.

## Tidal Waters / Non Tidal Waters – RESC Standard 2.6

Existing Standard	Proposed Standard	Rationale
<p><b>STANDARD</b></p> <p>A lawyer must explain to the client the limits of a parcel boundary located beneath or adjacent to water. Where a parcel is bounded by water, the lawyer should include in the explanation of the limits of the parcel that there is an increased risk that all, or a portion, of the parcel is “infill”. The lawyer should explain to the client how title to infilled areas may be acquired and the risk of losing the opportunity to acquire title pursuant to the provisions of the <a href="#">Land Registration Act</a>.</p> <p>The lawyer must confirm the explanation of the limitations to the client. The lawyer must confirm the client’s instructions prior to closing.<sup>1</sup></p> <p><b>FOOTNOTES</b></p> <p>1. <a href="#">Standard 1.5 – Documentation of Advice and Instruction</a></p> <p><b>ADDITIONAL RESOURCES</b></p> <ul style="list-style-type: none"> <li>• Caselaw on Qualifications: <a href="#">Ravina and A &amp; R Properties Ltd. v. Stern</a> (1987),</li> </ul>	<p><b>STANDARD</b></p> <p>A lawyer must explain to the client the limits of a parcel boundary located beneath or adjacent to water. Where a parcel is bounded by water, the lawyer should include in the explanation of the limits of the parcel that there is an increased risk that all, or a portion, of the parcel is “infill”. The lawyer should explain to the client how title to infilled areas may be acquired and the risk of losing the opportunity to acquire title pursuant to the provisions of the <a href="#">Land Registration Act</a>.<sup>1</sup></p> <p>The lawyer must confirm the explanation of the limitations to the client. The lawyer must confirm the client’s instructions prior to closing.<sup>2</sup></p> <p><b>FOOTNOTES</b></p> <p>1. <a href="#">Land Registration Act</a>, S.N.S. 2001, c. 6, ss 74-75</p> <p>2. <a href="#">Standard 1.5 – Documentation of Advice and Instruction</a></p> <p><b>ADDITIONAL RESOURCES</b></p> <ul style="list-style-type: none"> <li>- Caselaw on Qualifications: <a href="#">Ravina and A &amp; R Properties Ltd. V. Stern</a> (1987),</li> </ul>	<p>The Committee determined that it would be prudent to update the Standard to better align with current practice, case law and legislation. The Revised Standard is intended to provide guidance and assistance to lawyers with respect to practices concerning real property, waterlots and tidal waters.</p>

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## Plans and Surveys Standard – RESC Standard 2.4

<p>1987 Carswell NS 348, 77 N.S.R. (2d) 406, 191 A.P.R. 406 (C.A.)</p> <ul style="list-style-type: none"> <li>• G.V. LaForest <i>Water Law in Canada</i> (Information Canada, 1970) and K.H.A. Robinson, “<a href="#">Alteration of a Water Course</a>” in Real Estate (C.L.E.S.N.S., April 1994)</li> <li>• Vesting of watercourses: <a href="#">Environment Act</a>, S.N.S. 1994-95, c. 1, s. 103</li> <li>• Acquisition of an interest in a watercourse by adverse possession or prescription: <a href="#">Environment Act</a>, S.N.S. 1994-95, c. 1, s. 108, as am. <a href="#">Land Registration Act</a>, S.N.S. 2001, c.6, s. 103(3)</li> <li>• Chapman, Anthony L. / Of Wharves, Water Lots and Kings – <a href="#">Paper</a> and <a href="#">Schedule</a> (2005)</li> <li>• Gordon KC, Garth C./ <a href="#">Water Lots, Watercourses &amp; Wetlands (Nova Scotia): an Aide Memoire for Reviewing Title and Uses</a> (June 2010)</li> </ul> <p><b>Approved by Council on November 22, 2002</b></p>	<p>1987 Carswell NS 348, 77 N.S.R. (2d) 406, 191 A.P.R. 406 (C.A.)</p> <ul style="list-style-type: none"> <li>- Caselaw on riparian rights: <a href="#">Corkum v. Nash</a>, 1990 CanLII 4127 (NS SC); See also <a href="#">Water Law in Canada – The Atlantic Provinces</a> (Ottawa: Queens Printer, 1973) by Gerald V. LaForest</li> <li>- K.H.A. Robinson, “<a href="#">Alteration of a Water Course</a>” in Real Estate (C.L.E.S.N.S., April 1994)</li> <li>- Caselaw on adverse possession of water lot: <a href="#">Nickerson v. Canada (Attorney General)</a>, 2000, NSSC 9 (CanLII)</li> <li>- Chapman, Anthony L. / <a href="#">Of Wharves, Water Lots and Kings</a> – Paper and Schedule (2005)</li> <li>- Gordon KC, Garth C./<a href="#">Water Lots, Watercourses &amp; Wetlands (Nova Scotia): an Aide Memoire for Reviewing Title and Uses</a> (June 2010)</li> <li>- Definition of watercourse and vesting of watercourses: <a href="#">Environment Act</a>, S.N.S. 1994-95, c. 1, ss. 3(be), 103</li> <li>- Acquisition of an interest in a water lot, wharf, watercourse or infill by adverse possession or prescription: <a href="#">Environment Act</a>, S.N.S. 1994-95, c. 1, s. 108(2). See also <a href="#">Federal Real Property and Federal Immovables Act</a>, S.C. 1991, c. 50, s.14, <a href="#">Crown Lands Act</a>, R.S.N.S. 1989, c. 114, ss. 39(1), 51(1)(k), <a href="#">Real Property Limitations Act</a>, R.S.N.S. 1989, c. 258, ss. 21-22, and <a href="#">Land Registration Act</a>, S.N.S. 2001, c.6, ss. 74-75.</li> <li>- Acquisition of interest by grant, release,</li> </ul>	
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## Plans and Surveys Standard – RESC Standard 2.4

easement, licence or lease from Crown: [Federal Real Property and Federal Immovables Act](#), S.C. 1991, c. 50, s.4, [Fishing and Recreational Harbours Act](#), R.S.C. 1985, c. F-24, [Crown Lands Act](#), R.S.N.S. 1989, c. 114, s. 51, [Beaches and Foreshores Act](#), R.S.N.S. 1989, c. 33, s. 2

- Determination of beach area: [Beaches Act](#), R.S., c. 32, s. 5(1)
- Approval, permit or licence requirements for development or activities: [Environment Act](#), S.N.S. 1994-95, c. 1 and its Regulations, [Canadian Navigable Waters Act](#), R.S.C. 1985, c. N-22, [Fisheries Act](#), R.S.C. 1985, c. F-14 and its Regulation entitled Maritime Provinces Fishery Regulations (SOR/93-55), [Fisheries and Coastal Resources Act](#), S.N.S. 1996, c. 25, Fishing Regulations made under the [Wildlife Act](#), R.S.N.S. 1989, c. 504, [Angling Act](#), R.S.N.S. 1989, c. 14

### PRACTICE NOTES

It is advisable for a lawyer to recommend a survey to the client to determine the boundaries of the client's parcel of land abutting tidal or non-tidal waters or to suggest the client obtains title insurance coverage, and to document such recommendations. See [Ravina and A & R Properties Ltd. V. Stern](#) (1987), 1987 Carswell NS 348, 77 N.S.R. (2d) 406, 191 A.P.R. 406 (C.A.). See also [Standard 2.4 – Plans and](#)

## Plans and Surveys Standard – RESC Standard 2.4

	<p><u>Surveys.</u></p> <p>When searching title to a wharf, water lot, foreshore, watercourse or land no longer covered by water claimed by a client, careful consideration is to be taken by a lawyer in providing their opinion for the purpose of registration of the title pursuant to section 37(9)(b) of the <i>Land Registration Act</i>, including and not limited to the location, description and nature of the interest, its ownership in 1867, its conveyances and any evidence of adverse possession. It is more likely that the federal and or provincial Crowns have jurisdiction over these interests and have legislative protective provisions for its usage. See Gordon KC, Garth C./<a href="#"><u>Water Lots, Watercourses &amp; Wetlands (Nova Scotia): an Aide Memoire for Reviewing Title and Uses</u></a> (June 2010). See also Practice Tools below.</p> <p><b>PRACTICE TOOLS</b></p> <p>Checklist for water lots, wharves, infills and waterfront lots</p>	
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