

Checklist for water lots, wharves, infills and waterfront lots (To accompany Standard 2.6)

Although some of the following considerations may not form part of the lawyer's opinion on title, it is good practice to educate the client and inform them of any relevant parts that may apply to their situation.

1. **Boundary limits of the waterfront lot.** A survey is recommended to determine the boundaries of any possible infill that would not be part of the waterfront lot. When representing a client purchaser, a lawyer should either advise their client to obtain a survey or location certificate for the subject area, obtain title insurance coverage, or make it clear to the client that the certificate of title is subject to survey.¹
2. **Ownership of a water lot, public or private harbour, or wharf.** It is important for a lawyer to determine if the water lot, harbour or wharf was part of a public harbour and vested into the federal Crown in 1867, or granted by the provincial Crown before Confederation, or subject to a claim of adverse possession or prescription for 60 years prior to June 1, 1950 if under the federal jurisdiction or for 40 years if under the provincial jurisdiction, or is part of a designated beach. If title vested pursuant to the *Constitution Act, 1867* and was not divested by the federal Crown, the party claiming ownership today may have a defective title, subject to rights acquired by adverse possession.²
3. **Vesting of a watercourse.** A watercourse vested in the Province includes “(i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and (ii) all groundwater”.³
4. **Tools for searching root of title.** A search of title forward from the date of grant of the subject area to the current date is recommended to ascertain the identity of ownership of the water lot, public or private harbour, wharf, foreshore (between the highwater mark and the low water mark), watercourse within lands, and infilled lands. Verification of the grant can be made from the indexes of the Land Registration Office or from the grant maps of the Crown Land Information Management Centre website. If unable to locate a grant, verify whether the area is considered as part of a public port or private harbour.⁴

¹ 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.)

² See Gordon KC, Garth C./ *Water Lots, Watercourses & Wetlands (Nova Scotia): an Aide Memoire for Reviewing Title and Uses* (June 2010) in the Additional Resources for more details. See also *Nickerson v. Canada (Attorney General)*, 2000, NSSC 9 (CanLII)

³ See sections 3(be) and 103 of the *Environment Act*, S.N.S. 1994-95, c.1.

⁴ See Crown Land Information Management Centre website: <https://novascotia.ca/natr/land/grantmap.asp>

5. **Overlapping jurisdictions.** Sometimes there are overlapping jurisdictions of federal and provincial Crowns when it comes to identifying the ownership of a water lot, wharf and infill and the different departments involved in any development or activities in relation to them.⁵
6. **Lists of ports in Nova Scotia.** To verify the location of a public harbour, existing public ports for commercial activities in Nova Scotia overseen by Transport Canada currently include but may not be limited to Bridgewater, Digby, Hantsport, Louisbourg, Lunenburg, Mulgrave, North Sydney, Pictou, Port Hawkesbury, Pugwash, Shelburne, Sydney and Yarmouth. There are also over 170 Nova Scotia small craft harbours for fishing or recreational purposes managed by harbour authorities and under the direction of Fisheries and Oceans Canada.⁶
7. **Riparian rights.** The owner of land adjoining water has riparian rights, such as a right of access to the water, a right of drainage, and a right with respect to the quality and use of the water. However, there are some limitations to these rights, such as public rights and certain restrictions as provided by federal and provincial legislation.⁷
8. **Public rights.** Ownership of a water lot or interest in waterfrontage does not prohibit the public right to navigate and the public right to fish, which are also activities governed by legislation. Someone other than the landowner may be accessing the water. Determine whether there are concerns of acts of trespass or adverse possession.⁸
9. **Ownership of land no longer covered by water or infilled land.** Illegal infilling is prohibited. Verify if that section of land was acquired from the provincial or federal Crown or claimed by adverse possession or prescription. The chain of title to the infilled land, just like to a water lot, harbour and wharf, is often different than the one to the waterfront lot. Address the issue as to whether the infilled land can be consolidated with the waterfront lot, is to remain a separate lot claimed by the client or is owned by the federal or provincial Crown.⁹

⁵ See Chapman, Anthony L./ Of Wharves, Water Lots and Kings – [Paper](#) and [Schedule](#) (2005) in the Additional Resources.

⁶ For list of public ports, see: <https://tc.canada.ca/en/marine-transportation/ports-harbours-anchorage/list-ports-owned-transport-canada> or in [Schedule 1 of the Public Ports and Public Port Facilities Regulations](#) (SOR/2001-154) pursuant to the [Canada Marine Act](#), S.C. 1998, c.10, s.65. For small craft harbours, see <https://www.dfo-mpo.gc.ca/sch-ppb/list-liste/harbour-list-liste-port-eng.html> or in [Schedule 1 of the Fishing and Recreational Harbours Regulations](#) (SOR/78-767) pursuant to the [Fishing and Recreational Harbours Act](#), R.S.C., 1985, c.F-24, s. 9.

⁷ See [Corkum v. Nash](#), 1990 CanLII 4127 (NS SC). See also [Water Law in Canada – The Atlantic Provinces](#) (Ottawa: Queens Printer, 1973) by Gerald V. LaForest.

⁸ See the [Beaches Act](#), R.S.N.S. 1989, c. 32, the [Canadian Navigable Waters Act](#), R.S.C. 1985, c. N-22, the [Angling Act](#), R.S.N.S. 1989, c.14

⁹ See [Environment Act](#), S.N.S. 1994-95, c.1, ss.103, 108(2), [Land Registration Act](#), S.N.S. 2001, c. 6, ss.74, 75, [Federal Real Property and Federal Immovables Act](#), S.C.1991, c. 50, s. 14, [Crown Lands Act](#), R.S.N.S. 1989, c. 114, ss. 38(1)(c), 39(1), 51(1)(k), [Real Property Limitations Act](#), R.S.N.S. 1989, c.258, ss. 21-22. See also the comments made to this subject in the papers prepared by Robinson, Chapman and Gordon listed in the Additional Resources.

10. **Proposed usage of the water by the landowner.** A waterfront landowner should contact the appropriate authorities on any activities they plan on doing, including acquisitions of interest by deed, easement, licence or lease. Some permits from different bodies of government (Department of Natural Resources, Department of Environment and Climate Change, Fisheries and Oceans Canada and local authorities issuing building permits) are required for constructions, expansions, repairs and continued usage of wharves and other structures such as boat ramps, and for activities such as mooring a boat, infilling and fishing. Procedures, exemptions and other required approvals as well as a list of applicable legislative authorities, including federal laws, are available online.¹⁰
11. **Altering a watercourse.** The Department of Environment and Climate Change can authorize, restrict or prohibit alteration or infilling of a watercourse in conjunction with other provincial and sometimes federal departments, Its Guide to Altering Watercourses provides for best practices to minimize the impact on changes to the bed and bank of watercourses and water flow, when dealing with wharves and docks, boat launch and slipways, erosion protection and bank stabilization, water intake for irrigation, firefighting and other uses, best structures for crossing a watercourse, and removal of material such as a beaver dam or dredging. When the work required will involve an alteration to a watercourse, hiring experts is recommended.¹¹
12. **Wetlands, swamps, marshes, fens and bogs.** A landowner should not proceed to infill wetlands or construct a dock or a bridge without verifying with the local, provincial and federal authorities, if applicable. Such activities like altering a watercourse need approvals or notifications or may be exempted. Penalties and orders to remove material can be imposed for non-compliance with some legislation.¹²

¹⁰ See web site of Nova Scotia Permits Directory, Department of Natural Resources at <https://novascotia.ca/sns/paal/ndxdnr.asp> with selections to choose from, such as Crown Lands and Beaches, Boats and Wharves, and Fishing. The Anglers' Handbook can be found online at <https://beta.novascotia.ca/documents/anglers-handbook>. See also *Federal Real Property and Federal Immovables Act*, S.C.1991, c. 50, *Crown Lands Act*, R.S.N.S. 1989, c.114, ss. 5,16(1)(a), 38, 39, *Beaches and Foreshores Act*, R.S.N.S. 1989, c. 33, *Beaches Act*, R.S.N.S. 1989, c. 32 and Regulations, *Environment Act*, S.N.S. 1994-95, c. 1, the *Canadian Navigable Waters Act*, R.S.C. 1985, c. N-22, the *Fisheries Act*, R.S.C. 1985, c. F-14, s. 23, and its Regulation entitled *Maritime Provinces Fishery Regulations* (SOR/93-55), the *Fisheries and Coastal Resources Act*, S.N.S.1996, c. 25 and the *Fishing Regulations, NS Reg 29/88* made under the *Wildlife Act*, R.S.N.S. 1989, c.504, ss 53(2), 113.

¹¹ The *Guide to Altering Watercourses* made under *Environment Act*, S.N.S. 1994-95, c. 1, ss.8A(1)(c), 25, 66 from its Regulation entitled *Watercourse Alteration Standard Order, N.S. Reg. 214/2015* can be viewed online with regulatory requirements, forms and materials at <https://novascotia.ca/nse/watercourse-alteration/> or can be obtained by contacting the *Department of Environment and Climate Change*. See *Activities Designation Regulations, N.S. Reg 47/95*; and *Approval and Notification Procedures Regulations, N.S. Reg 17/2013* under *Environment Act*, S.N.S. 1994-95, c. 1, s. 66. See also sections 159 and 159A of the *Environment Act* regarding penalties for non-compliance. See also K.H.A. Robinson, "*Alteration of a Water Course*" in *Real Estate (C.L.E.S.N.S., April 1994)* included in the *Additional Resources*.

¹² Verify compliance with the *Environment Act* and its Regulations and see *Activities Designation Regulations, N.S. Reg 47/95*; and *Approval and Notification Procedures Regulations, N.S. Reg 17/2013* under *Environment Act*, S.N.S. 1994-95, c. 1, s. 66.

13. **Risk of erosion and or flooding.** Before purchasing or planning on erecting a structure on a waterfront lot, have the client consider the risk of erosion or flooding by making inquiries such as viewing for evidence of past erosion or for low lying areas prone to flooding, asking questions to the previous owners or local people who may have some knowledge of the history of the waterfront lot, looking at maps or surveys for comments or changes to the outline of the lot, or researching past documented data on this topic in the area. Coastal climate change with higher risks of coastal erosion, flooding, storm surges and rising sea levels is a factor to consider for owners who may need to take extra measures to secure and preserve their coastline, land and any developments. Consult the Coastal Hazard Map available online as a tool for the protection of property from climate change in Nova Scotia.¹³
 14. **Zoning by-laws.** Check the applicable by-laws for any development restrictions to the waterfront lot.¹⁴
 15. **Severance of land by a waterway or body of water owned by the federal or provincial government.** Depending on the nature and usage of the waterway or body of water lying within the lands of the landowner, the waterway or body of water may act as a natural boundary creating separate lots without the requirement of a subdivision procedure.¹⁵
 16. **Opinion on registration of title.** When registering the title to a water lot, harbour, wharf, foreshore, infilled lands or watercourse pursuant to s. 37(9)(b) of the *Land Registration Act*, S.N.S. 2001, c.6, determine which standard best addresses the basis of the title: *Marketable Titles Act*, S.N.S. 1995-96, c.9, *Real Property Limitations Act*, R.S.N.S. 1989, c. 258, any other enactment, common law or such lesser standard as the Registrar General may approve.¹⁶
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¹³ See the *Environmental Goals and Climate Change Reduction Act*, S.N.S. 2021, c.20. The Coastal Hazard Map can be viewed online at: <https://novascotia.ca/coastal-climate-change/>

¹⁴ See zoning by-laws covering the area.

¹⁵ See *Municipal Government Act*, S.N.S. 1998, c.18, s. 268B(1), *Environment Act*, S.N.S. 1994-95, c.1, s.103, and *Land Registration Administration Regulations*, ss.7(16), 7(17) under the *Land Registration Act*, S.N.S. 2001, c.6.

¹⁶ See overview diagram contained in Gordon KC, Garth C./ *Water Lots, Watercourses & Wetlands (Nova Scotia): an Aide Memoire for Reviewing Title and Uses* (June 2010) in the Additional Resources.