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Title Searching Land Registered Parcels

1. The correct starting point for an electronic subsearch is the date of migration or the last revision of ownership of the parcel, whichever is most recent. It is the date of the most recent revision of ownership as opposed to the date of the most recent recording which is relevant. Do not mistake the "updated" date appearing in the Land Registration View for the date of the most recent revision of ownership. Often they will coincide, but this is not always the case. According to Service Nova Scotia an "update" can be triggered by any change made to the parcel, including a drafting transmittal, an AFR Bundle Reference being added to the parcel, a change in parcel location or land area, assessment revisions and other factors.

2. In the case of consolidations or Grants of Probate or Administration, it is recommended that we search from the date of the Certificate of Legal Effect contained in the Form 24 rather than the date of registration. Otherwise a gap exists, as there is a period of time between the delivery of the Form 24 (to the Registrar of Probate or to the planning authority, as the case may be) until the document has been registered at the LRO. The same gap issue exists with respect to paper submission of documents and forms.

3. As pointed out by Catherine Walker in her "Certifying Title and Qualifying Title Under the Land Registration Act" paper:

> Although the lawyer who certified at the time of conversion has primary responsibility for the historic title, any lawyer who reviews the contents of a parcel register has the responsibility of due diligence for that review and ought to bring forward any concern discerned with regard to the particular attributes shown on the parcel register to the Seller's lawyer.

4. A lawyer undertaking revision or a recording has a duty to the client (including the Lender if applicable) and to the system to comply with the provisions of the Land Registration Act and other legislation and the Professional Standards. It is not enough to simply rely upon the Parcel Register and to assume that it is accurate in all respects. Each of the interests or features noted therein should be considered and examined for accuracy. For example, the identification of access as "public" does not necessarily mean that it is accurate. There may or may not be limitations upon the exercise of that access. Access which is labelled as "private" may or may not be of a nature or in the location anticipated by the client.

   While some lawyers may assume that they are entitled to rely upon the accuracy of the information set out in the Parcel Register, it is useful to bear in mind the following passage in the decision of the Supreme Court of Nova Scotia in Rice v. Condran (2012) NSSC 95. "The case law is clear that the common professional or prevailing practice is not necessarily determinative of the standard of care. That practice must also be reasonable in the circumstances of the particular lawyer/client relationship".

5. a) The enabling documents for registered and recorded interests should be examined to determine if they are correctly identified or summarized in the Parcel Register and/or parcel description. Do the enabling instruments contain words limiting the extent, nature, or term of an interest, or the ability to assign the same?

   b) It is significant to note that Section 13(3) of the Land Registration Act provides that "a reference in a register to a registered or recorded document by its identifier incorporates that document in the register". Thus it is not enough to review a Parcel Register and conclude that there must be a right of way because the enabling document is cited. That enabling document must be examined in order to assess its true legal effect rather than relying upon its characterization by the migrating or revising lawyer who placed it in the Parcel Register.

   c) If the parcel register discloses ownership enabled by Statutory Declarations, you need to examine the content and consider if the Declarations comply with the legislation, common law and Professional Standard 3.2. This does not constitute looking behind the curtain; if the Statutory Declarations are in the Parcel Register, they must be part of our search.

   d) If registered ownership is enabled, in whole or in part, by a Statutory Declaration(s) establishing possessory title, remember that tenancy cannot be joint. Similarly, remember that joint tenancy does not survive an assignment in bankruptcy (even if the Trustee has disclaimed). This is of no consequence if the present owners are being removed, but it will be of significance to the owners if you are doing a recording as opposed to a revision, or if your revision involves removing one of several joint owners, or if the revision involves a process other than removing the present owners.

6. Does the parcel description coincide with the graphic and with any available survey evidence? Do the easement benefits/burdens appearing in the Parcel Register and in the parcel description match? Do these benefits/burdens correspond with those shown in the Parcel Registers of the servient/dominant parcels? Does a review of the neighbouring parcels (even non-Land Registered parcels) (and scanned survey/subdivision plans respecting the same) reveal any inconsistencies? If the description is short form, it is particularly important to review the Plan to which it refers given that it incorporates the metes and bounds by reference. Look at the MGA compliance statement as it may lead you to a plan which could otherwise go undetected.

   While I'm not suggesting it is necessary to go this far, you may find an older retracement plan which has been registered, after the last revision of ownership, but indexed in the name of a previous owner. In fact, this is not an unusual occurrence with retracement plans. Any plan thus identified may be useful to your client.

   Remember that the parcel access identification may or may not be accurate. Just because a parcel is said to have public access does not necessarily make it so. If access is said to be over a servient parcel or parcels, you should check the flip-side of LR registered parcels for consistency.

7. Consider the extent of any easements. Does a right of way benefit extend all the way to the highway or to the Shore, as the case may be? Examine any available plan to determine the extent of the right of way. If a short-form description has been used and is preceded by a full text description, examine the full text description. Consider the possibility of a recorded interest attaching to the servient parcel at the time of the grant, thus resulting in a priority issue unless the recorded interest was subsequently released or postponed with respect to the grant.

   Remember that plans, subject to Section 280(2) of the Municipal Government Act, do not create or enable easements. Thus, the identification of a proposed easement benefit (or burden) on a plan of subdivision is not at all conclusive of creation of such an easement, the failure to include any such proposed easements in the Parcel Register and in the parcel description would merit further investigation.

   The creation of a benefit or a burden usually impacts more than one parcel and thus a "matching" process is required. Do not assume that this was done properly; in each case you must check to see if the correct match appears. For further information, see Land Registration Administration Regulation 10(14), the Registrar General's Directive respecting this Regulation, and Catherine Walker's "Notes and Commentary" prepared for the RELANS session of September 16, 2009.

8. You need to determine when an easement benefit was created so that you can determine if there are any recorded interests attaching to the servient parcel, thereby creating a priorities problem. If the servient parcel was subject to a Mortgage at the time the easement was granted, the easement will be subject to the security interest and will therefore be subject to foreclosure.

9. If the parcel you are searching has been consolidated, you need to determine the extent of any easements benefiting the pre- consolidation parcels. It may be unreasonable to take the view that the right of way is for the benefit of the entire consolidated parcel; it may be a benefit for only a portion thereof. Accordingly, a textual qualification should be added, stating that the benefit is only for a specific portion of the parcel if you determine that to be the case. Building a house on a portion of the parcel which does not have the benefit of the easement would be disastrous. Similarly, you have to consider the effect of subdivision of the dominant parcel. Will each of the infant parcels have the benefit of easements granted to the owner of the parent parcel? This may result in unreasonable expansion of the extent of the easement. The law clearly prohibits the inappropriate or unanticipated use of the benefits of the rights of way granted.

10. a) If a defacto consolidation has occurred, examine the Declaration and the description, and review any available survey fabric. Unless the parcels are contiguous, consolidation cannot occur. Remedial action may be required if the "facts that support the statement" of common usage since prior to April 16, 1987 to and including the date of the Declaration are not set out in the Declaration. The same applies to evidence of common ownership throughout the requisite period. Remember that acceptance of the Declaration by the LRO does not necessarily mean that it complies with the statutory requirements set out in Section 268A of the Municipal Government Act.

b) What if you discover, in the course of doing a revision or a recording respecting an LR parcel, the existence of a deficient Declaration registered at an earlier date by another lawyer? Some might argue that you are under no obligation to examine a Declaration purporting to effect consolidation of what was then or is now an LR parcel. However, bear in mind the fact that the government guarantee is of title and not of extent of title. Review of survey fabric and for that matter defacto consolidations remains a fundamental part of the review of the revising/recording lawyer. We cannot assume that the Declaration was done properly nor that it is effective to consolidate the parcels simply because it has been accepted by the Land Registration Office for registration purposes. Our role and our obligations go beyond satisfying or being satisfied by the requirements of the LRO. We have the responsibility of complying with legislation, the common law and the Professional Standards. Standard 2.4 has particular application in these circumstances.

c) Some of the same principles apply to the other exemptions from subdivision approval such as subdivision/consolidation by Deed, among others. Of course the significant differences are that with subdivision/consolidation by Deed neither "use together" nor common ownership (except at the time of subdivision/consolidation) is required. But there is a requirement that each resulting lot have an area in excess of 10 hectares (this requirement has varied over the years) and the consent of the Owner(s) must be evidenced.

I am aware of instances where the Registrar General has taken the position (and properly so in my opinion) that if a migrated parcel is not in compliance with Part IX of the Municipal Government Act the migrating lawyer is required to take remedial action. A Stop Order may be placed on the Parcel Register by the Registrar General.

11. Look at the graphic and at neighbouring parcels. If any of the neighbouring parcels are obviously without access, it would be good practice to mention to the client the possibility of a right of way of necessity, access by operation of law, a prescriptive or "openly used and enjoyed" easement or a future application under the Private Ways Act. This is particularly so if the topographical function applied to the graphic shows a red line extending from the public highway across your parcel and into the neighbouring parcel. This is not conclusive of anything, but it is a red flag.

In the course of reviewing neighbouring parcels check for consistency of benefits and burdens. Sometimes the flip-side is inadvertently missed, and sometimes an overriding benefit may be claimed by the owner of a neighbouring parcel but registration of this interest in your parcel may not have been properly completed.

12. You will recall that for a period of time we could view what was known as the "green layer" which flagged the possible existence of unreleased Crown interests. The Crown has undertaken the process of releasing those parcels which may not have been the subject of a Crown grant but over which it asserts no interest. For non-LR parcels check "Property Details"; for LR parcels look under "non-enabling instruments".

13. Check Plans carefully. Sometimes they will contain information which is not otherwise available. Look for proposed benefits or burdens. Of course the plan in itself does not enable the creation of such benefits or burdens but it is a useful reference. It is useful to check old world descriptions or pre-consolidation descriptions for plan references which might not appear in the approved description.

14. Consider the validity of any textual qualifications or time-limited burdens. Should they remain in the Parcel Register? Is there a good basis for their removal? If removed from the Parcel Register, they should also be removed from the parcel description, if applicable.

15. The "Details View" screen should be checked. You may discover a Plan which is not otherwise identified. Statutory Declarations establishing or purporting to establish possessory title or a prescriptive right are sometimes found in the Details View rather than in the Parcel Register. Sometimes, if a prescriptive easement is documented after migration, but for a period which precedes migration, the declaration enabling (documenting) will be in the Parcel Archive, not in Details. Any such Declarations should be examined to determine the extent and description of the area claimed by adverse possession and the nature and extent of the right of way which is claimed by prescription. Given the ten year window of opportunity set out in paragraph 74(2) of the Land Registration Act, the quality of the evidence contained in the Statutory Declarations should be considered so that those for whom you are acting can be advised appropriately. Ask the other lawyer for a copy of Form 9 along with proof of service or directions given to the lawyer by the Registrar General, or access the Form 26N by searching under "Non-Enabling Documents" in the Parcel Register.

16. Be on the lookout for "embedded interests". For example, an option may be contained within a Lease. You won't be aware of that fact unless you examine the document. Again, bear in mind the fact that Section 13(3) of the Land Registration Act provides that "A reference in a register to a registered or recorded document by its identifier incorporates that document in the register".

17. If the present Owner has made an assignment in bankruptcy, look for evidence on the public record showing that the Trustee has conveyed that interest or has disclaimed it. (See Garth Gordon's "Notes on Bankruptcy & Land Registration in Nova Scotia" and see Professional Standard 3.11).

    Remember that certain secured claims are protected pursuant to Sections 86 and 87 and subsection 178(1) of the Bankruptcy and Insolvency Act. This would include amounts owed pursuant to the Income Tax Act, The Excise Tax Act and the Workers' Compensation Act.

18. Is title based, at least in part, upon adverse possession? If so, does the description of the parcel include the area claimed by virtue of adverse possession? There are a number of instances where considerable time and effort have been devoted to documenting adverse possession, only to be followed by a description which is limited to the area to which there is paper title. Depending upon the circumstances it may be necessary to consolidate (either by Plan of Subdivision or defacto consolidation) the area to which there is paper title and that to which there is possessory title.

19. The following electronic searches should be conducted:

    1) Review of Parcel Register, bearing in mind the issues raised above. While in the Parcel Register look under the heading of "Parcel Relationships" for parent parcels or addition parcels and then check these under "Details View".

    2) The graphic. Be sure to click the "LR Parcel Shading" box to see if it reveals title, area or subdivision problems. As well, click on the "Topo" box as this is a useful starting point in terms of identifying access roads and utility lines which may affect title to the parcel.

3) Search Plan Index. Don't limit your search to the name of the present owner; the surveyor might have used a variation of that owner's name. As well, there might be an older plan which was filed at a later date, and therefore it may be indexed in the name of a previous owner. It has been suggested by some that it is not necessary to check the "Search Plan Index" if one checks "Property Details" or the "Land Registration View" and "Search Plans in Process". However, there are gaps which can be covered only by checking "Search Plan Index". There can be a significant gap between the time a plan disappears from "Plans in Process" and the time it appears in "Property Details".

   Searching that Index is complicated by the fact that, unlike the "GGI" and "Search by Name for Non-Land Registration Documents in Process" indices, searches in the Plan Index for either "Mc" or "Mac" will not return either variation. Thus, searching in the Plan Index using the name "MacKay" will not identify those plans which are indexed as "McKay".

4) Search by PID for Documents in Process on Land Registration parcels

5) Search for non-Land Registration Documents in Process (looking for documents affecting the Buyer or the Seller). This may not be as simple as it seems. When making the inquiry you should either insert the surname alone, or you should refrain from entering any name. By way of example, entering the names "John Brown" will not yield any result unless there is a registration in the surname "Johnbrown". In fact there is no need to input any name; a review of all Non-LR Documents in Process is generally easier and safer, depending upon the number of documents in that queue.

6) Search Plans in Process

7) Judgments

   a) Once the parcel is a land registered parcel, when searching judgments one only searches out of the current registered owner or owners (and of course the Buyer if acting for the Buyer). The authority for this search process is found at Regulation s.23(2). Prior to the May 15, 2005 amendment it was not clear whether it was necessary to execute a judgment search for the vendor. If you come across a property that was migrated prior to that date you may want to conduct a judgment search on the vendor at the time. Query whether parcels converted to the Land Registration system prior to May 15, 2005 require a full 20 year search of the registered owner as it appears this amendment is not retrospective.

      Authority:

      LRA Administration Regulation 23(2):

      "A parcel register is deemed to be a complete statement of all judgments recorded in the registration district which are, or may be, a charge upon the registered interests of the registered owner and any predecessor in title at the time of registration of, if subsequently revised, at the time of the last revision of the registered ownership of the parcel."

Professional Standard 3.5 (revised October 23, 2009):

"When a lawyer searches for judgments after the Land Registration Act comes into force and the search is of parcels that are registered under the Act, the lawyer must search for judgments against the names of:

a. the purchaser; and

b. the owner whose title is being searched.

When a lawyer searches for judgments after the Land Registration Act comes into force and the lawyer identifies a judgment that is recorded against a debtor whose name is not materially different than the name of the owner or the purchaser, the lawyer must determine if the judgment affects the title being examined."

The importance of conducting an exhaustive judgment search is made evident upon reading the decision of the Nova Scotia Court of Appeal in MacIsaac v. Royal Bank of Canada, 2015 N.S.C.A. 12, where the Court held that a judgment entered against a seller even after an agreement of purchase and sale has been executed attaches to the property. The Court of Appeal rejected the argument that the "relation back theory" had survived the coming into effect of the Land Registration Act.

Thus, I believe that in every case involving a form with a CLE which is paper submitted, we should be searching from the date appearing on the CLE. This would include the following:

- Consolidation Deeds
- Grants of Probate/Grants of Administration
- Deeds executed pursuant to a Power of Attorney recorded in the Parcel Register
- Deeds/documents enabling benefits/burdens
- Deeds elevating a tenant in common interest

Of course it is easy enough to determine whether or not a document was paper submitted, given the appearance of the Land Registration Office stamp showing registration date and number.

Consider the possibility of a judgment being entered after the closing has taken place but before the Deed has been registered. It may be that the parties (and consequently the lawyer for the Buyer) have the burden of proving what interest the Seller had/no longer had at the time the judgment was recorded.

b) Remember the importance of doing a full twenty year judgment search in the name of the Buyer, using all variations of the name of the Buyer, including nicknames. Check the names appearing on the Buyer's identification documentation to see if additional variations are disclosed. Watch for name changes which can create problems in terms of judgment searches. Be wary of situations where an additional Buyer is added at the last minute, as it is easy to forget to do a judgment search in those circumstances. Consider the fact that in some cultures the surname is not the last name. It is recommended that where a corporate name starts with "A", "An" or "The" that searches be conducted in all possible names, including searching by the first word other than "A", "An" or "The". As well, bear in mind the fact that search results may vary when conducting a judgment search in the name "C & F Properties Inc." on the one hand and "C and F Properties Inc." on the other hand.

Watch for registrations using what is apparently a middle name when in fact it might be part of what should be a hyphenated surname. An example would be "Sally Eva Yorke Clark". Perhaps the surname is "Yorke-Clark" in which case this would be identified only if you searched under "Yorke" or "Yorke-Clark". In other words, a judgment entered against this individual would not be identified if searching only in the surname "Clark".

c) If doing a revision, check the Deed carefully to see if the name of the Seller appearing in the Deed is identical to that appearing in the Parcel Register. For example, the existing Deed and the Parcel Register may identify "John Doe" as the Owner. However, the new Deed may describe him as "John Thomas Doe". In that case, you should conduct a judgment search in the name "Thomas". As noted above, consider the fact that in some cultures the surname is not the last name and thus each of the names ought to be searched as if it were a surname.

d) If the name of the registered owner appearing in the existing Deed differs from that in the Parcel Register, presumably a Form 21 was filed. It is then incumbent upon us to conduct judgment searches in the previously existing and present names, from the date of migration or last revision, whichever is more recent. Form 21 does not include a Certificate of Legal Effect and therefore one cannot safely assume that judgment searches have been carried out at the time it was filed. If **A** and **B** are co-owners of a parcel and their enabling Deed was registered on January 25, 2010, and **A** is now conveying her interest to **B**, the judgment searches need to cover the following timeframe:

i) in the case of **A**, from January 24, 2010;
ii) in the case of **B**, during the twenty year period preceding this revision of ownership.

If the conveyance is from **A**, to **A** and **B**, then judgment searches in the names of each of **A** and **B** must cover the full period of twenty years as each is acquiring an interest.

If you see that an ownership interest has been enabled by a Form 21, conduct a judgment search in the name of the owner (whose interest was removed by the Form 21) from the date that owner's enabling title document was registered. Depending upon the circumstances, the Form 21 may have been registered without the benefit of a Certificate of Legal Effect, meaning that one cannot rely upon a judgment search having been done at that time.

20. When searching judgments it is generally true that "less is better". For example, searching judgments in the name of "James Smith" will not identify judgments against "Jim Smith". Frank DeMont's "Material Differences" chart and Catherine Walker's "Judgments" paper (CBA Professional Development Conference, February 1, 2013) are essential tools.

21. Conduct at least two electronic searches. The first should be done when the file is opened, and another one should be done as of the time of closing. In the course of doing your search you may encounter a document which is said to have been "accepted for registration". Be wary; this designation means that while the document has been processed by the front counter staff at the LRO, it may yet be rejected, even if the notification "Parcel Register changes in process" appears.

22. It is suggested that the post-LRA Abstract should consist of at least the following:

- Land Registration View
- Graphic
- Any available survey plan/location certificate
- Copies of (or notations respecting) each of the screens viewed in the course of the electronic searches. This record can be electronic or it can be paper. A checklist wherein each of the relevant searches/inquiries is noted is sufficient for this purpose.

23. Think of the Abstract thus compiled as a snapshot in time. The Parcel Register, the description and the graphic may be revised from time to time. Consolidation or subdivision may occur. Sometimes neighbouring parcels which are dominant or servient tenements are subdivided or consolidated and this may cause confusion with respect to the identity of the servient/dominant parcels. Retirement of a PID assigned to a dominant/servient parcel can be even more perplexing when viewed at a later date. (To access information respecting a retired PID, go to the "Property Query" screen, insert the retired PID, and select "any status" from the menu in the Status field in the lower right side of the screen. Alternatively, you can submit the name of the Owner at the time the PID was retired, instead of submitting the PID.) Perhaps the only way you can prove that to which you have certified is the retention of an Abstract or record of the parcel and its characteristics as of the date of the revision/recording. If you see something and intend to rely on it whether in your client's or another Parcel Register, print or otherwise save it and put it in the file as there is no guarantee it will be there the next time you look.

24. While on the one hand you are not required to re-invent the wheel by again searching the Registry of Deeds records, there is an obligation to probe the data set out in the Land Registration View and in the parcel description, to determine if they are truly reflective of the nature and extent of the various interests.

25. Searches are required and therefore Abstracts should be compiled for any revision/recording. The requirement to compile and retain foundation documents is not limited to migration. As noted earlier, Legal Profession Act Regulation 1.1.1(ma) defines foundation documents as "information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect . . .". Bear in mind the fact that a variety of forms (including Form 6 (the AFR), Form 6A, the second part of Form 21, Form 24, Form 26, Form 27, Form 45, Form 48A and Form 49) include certificates of legal effect. Each of these constitutes an opinion on title and necessarily involves certification. We can't certify unless we conduct appropriate searches. Therefore, we need to retain evidence of those searches, whether this be a paper or electronic record or appropriate notes confirming the search results and the date and time of the searches. The requirement to retain this record is found in Legal Profession Act Regulation 8.2.3.1 which provides that where an opinion or a certificate of legal effect is given the lawyer must retain foundation documents "which a reasonably competent lawyer would rely upon . . .".

26. A lawyer may be able to accept reduced responsibility when effecting a conveyance of an non-LRA parcel. In that case, the lawyer may be relieved of the obligation of certifying title. However, once the parcel has been migrated, it makes no difference if the transfer is one for which there is no valuable consideration; the lawyer will be required to do the same searches and will held to the same standard as if it were a transaction for valuable consideration. The lawyer cannot contract out of the obligation to carry out the required inquiries and to certify to the system. Every deed, even those conveying title to a family member by way of gift and every Nova Scotia Power or other grant of easement affecting a migrated parcel is registered with a Form 24 and every Form 24 includes a certificate of legal effect. Land Registration Administration Regulation 5(2) provides that the submitter is responsible for the accuracy of the form and of the document. Given the fact that Form 24 contains a CLE, you are necessarily taking on greater responsibilities then merely preparing and registering a deed or grant of easement. You need to conduct searches in the "GGI", "Plans in Process", "Non-LR Documents in Process" and "Search by PID for LR Documents in Process" as well as reviewing the Parcel Register and the mapping graphic. Given the fact that Section 13(3) of the Land Registration Act provides that "a reference in a register to a registered or recorded document by its identifier incorporates that document in the register", you need to examine the enabling instruments. This requirement is no different if the sale price is one million dollars or the transfer is by way of a gift. The requirements and therefore the obligations and liabilities are the same. Accordingly, you need to retain evidence of the searches/investigations which were carried out as these constitute foundation documents.

The following scenarios involving migrated parcels are bound to cause distress on the part of unsuspected Buyers and their Lenders and may ultimately cause grief to the revising or recording lawyer, even in the absence of negligence:

A. The parcel access label is "public". The only road frontage is on a 100 series highway, access to which is prohibited. I would suggest identifying "public" access and I would recommend adding a textual qualification indicating that while there is frontage on a public highway, access is prohibited if indeed that is the case.

B. The parcel is in “cottage country”. The Parcel Register includes an easement benefit and identified a servient parcel. The parcel description appears to include access to the Shore. Upon closer examination the right of way does not extend all the way to the Shore, as the servient parcel is separated from the Shore by a third parcel.

C. The parcel is in “cottage country”. The graphic would suggest that there is water frontage. However, examination of the parcel description reveals that the place of beginning is a point 100 feet from the top of the bank at Shore.

D. Your client is buying two separate LR parcels. Examination of the plan of subdivision reveals that the two were consolidated prior to migration, and thus only a single parcel exists. Thus the opportunity to develop the two parcels independent of each other is lost or diminished.

E. The parcel is a consolidation of two previously existing lots. The Parcel Register includes an easement benefit giving access to the Shore or to the public highway. Examination of the document enabling the easement reveals that only a portion of the consolidated parcel enjoys the benefit of the right of way. Construction of a dwelling on that portion of the consolidated parcel which does not enjoy the benefit of the easement may result in disappointment.

F. The Parcel Register identifies an easement burden for the benefit of a single parcel. Examination of adjacent parcels identifies a second dominant parcel, thereby increasing the burden on your parcel.

G. The Parcel Register does not reveal any burdens. However, examination of adjacent parcels reveals that each of them is subject to restrictive covenants. Examination of the Deed effecting the first conveyance of the parcel confirms that it was made subject to restrictive covenants.

H. The Agreement of Purchase and Sale identifies a single PID. Review of the graphics of this and adjacent parcels identifies a second parcel owned by the same Seller. The parties contemplated that the entire area covered by the two parcels is included in the purchase/sale. The realtors and the Seller’s lawyer had not come to that realization.

I. Past conveyances had included a fractional tenant in common interest in the common areas consisting of access roads, water frontage and backlands. The tenant in common interest has not been migrated nor has it been presented as part of the conveyance.

J. The parcel is separated from the public highway by a railway or former railway. Access is said to be by prescription, notwithstanding the limitations upon the ability to obtain a prescriptive right over railway lands.

K. The Form 24 relating to the Seller's Deed identifies three parcels; however, only two appear in the Deed. The Buyer is expecting to buy three parcels. The Seller simply doesn't have title to the third parcel as someone neglected to add it to the Seller's Deed.

Our clients have high expectations; often unrealistically so. However, I believe that our clients have the right to expect that we will conduct basic due diligence with a view to averting disasters such as those noted above. Generally speaking, our clients expect more than just a search of title. Extent of title issues, if things turn sour, are certain to be high on the client's list of expectations even if he/she didn't turn his/her mind to it at the time of purchase. We can do two things to protect ourselves (and our clients) with respect to extent of title issues:

i) To the extent that survey fabric and legal descriptions are available, they should be investigated and reported on to the client. The client should be provided with copies of any such material.

ii) We need to manage our clients' expectations from the very beginning of our retainer. Many laypersons assume, incorrectly, that if a parcel has been migrated, it must have been surveyed. We need to explain that we cannot determine the size or boundaries of a parcel, nor can we determine if a house, other buildings or improvements such as the driveway, well and septic system are located within the confines of those boundaries, and that only a surveyor can perform that function for them.

Working in the LRA environment is challenging and at times frustrating. We all encounter Parcel Registers and results which don't reflect what was intended or what ought to have been intended. However, we have the ability to make the system better. I would suggest that when we do a revision or recording one of our primary objectives should be to leave the Parcel Register in an "equal or better" condition than that which existed prior to our involvement.