



# Appeals to the Registrar General

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# Introduction

- A little about me.
  - A lawyer with Weldon McInnis since 2002.
  - Broad civil practice, including real estate transactions.
  - Have presented for CBA, NSBS, RELANS, APTLA, ANSLS.
  - Member of the NSBS Practice Standards (Real Property) Committee, 2010 to 2018.

# Introduction

- Overview.
  - Legislative Authority
  - Jurisprudence
  - Statistics
  - Experience
  - Conclusion

# Legislative Authority

*LRA*, Section 90:

- (1) A person who objects to and is aggrieved by the decision of a registrar respecting the administration of this Act may appeal in writing to the Registrar.
- (2) An appeal shall be submitted to the Registrar General within thirty days of the decision appealed from.
- (3) The Registrar General shall investigate the decision being appealed and the facts surrounding the decision and may, after consideration of written or oral submissions, confirm the registrar's decision or order the registrar to do any action that the registrar is required or authorized to do under this Act.
- (4) The Registrar General's decision must be in writing.
- (5) A decision of the Registrar General pursuant to this Section is final.

# Legislative Authority

## Regulation 32:

(1) To appeal a decision of a registrar under Section 90 of the Act, a person must submit an appeal in writing to the Registrar General in paper format or electronically, following the instructions in Property Online, together with all of the following:

- (a) the fee prescribed under the Land Registration General Regulations, if any;
- (b) a copy of the registrar's decision that is being appealed;
- (c) a copy of the documents that are the subject matter of the appeal;
- (d) a clear statement of the reasons why the registrar's decision is incorrect and any other explanatory information.

(2) An application for an appeal under this Section must state in bold in the subject line "Appeal of a Registrar's Decision - PID(s) (insert PIDs of affected parcel(s))- County(ies) (insert name(s) of County/ies where affected parcel(s) are located)".

# Jurisprudence

- Decisions interpreting section 90:
  - *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - *Delport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - *Schofield v. Registrar General* Ken. No. 454759, February 7, 2017 (unreported).

# Jurisprudence

- *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - Developer owned large tract of land which included Cow Bay Pond.
  - Developer filed plan showing several lots over 100 hectares in area, each including a portion of Cow Bay Pond, purporting to subdivide.
  - RG filed a stop order. Developer brought a judicial review.

# Jurisprudence

- *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - S.90 read differently at that time:
  - (1) A person who objects to and is aggrieved by
    - (a) a registration or a recording;
    - (b) a cancellation of a recording;
    - (c) a revision of a registration; or

# Jurisprudence

- *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - (d) any decision of a registrar with respect to any action the registrar is required or authorized to take under this Act,
  - may require the registrar to provide written reasons and, within thirty days after receipt of the reasons, may apply to the court for an order requiring the Registrar General to take any action that the Registrar General is required or authorized to take under this Act.
  - (2) On an application pursuant to subsection (1), the court may make such order as it thinks just.

# Jurisprudence

- Old way:
  - Registrar
  - Court (s.90)
  - Registrar General
- New way:
  - Registrar
  - Registrar General (s.90)
  - Court (Judicial Review)

# Jurisprudence

- *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - Court finds, whether s.90 applies or not, standard of review to be correctness.
  - Partly because lack of privative clause.
  - Note s.90(5) of the amended legislation: “A decision of the Registrar General pursuant to this Section is final.”

# Jurisprudence

- *Silver Sands Realty Ltd. v. Nova Scotia (Attorney General)*, 2007 NSSC 291, further reasons 2009 NSSC 74, appeal dismissed 2010 NSCA 28.
  - Further reasons 2009 NSSC 74: on contest over the form of order, court refused to order Crown ownership of Cow Bay Pond, even though that was a finding of the court.
  - Section 90 appeal may not be the proceeding you want.

# Jurisprudence

- *Delport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - A mapper refused a PDCA on the grounds the parcel might not exist.
  - Owner appealed to the RG under s.90.
  - RG refused the appeal.
  - Owner brought judicial review of RG decision.

# Jurisprudence

- *Delport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - Court found the standard of review was now reasonableness (intervening decision determining this subsequent to amendment to s.90).
  - Court required RG's written reasons to determine the issue "...in a way that is justifiable, intelligible and transparent." (2012 NSSC 416, paragraph 53.)
  - In this case, the court found the reasons not to meet this standard.

# Jurisprudence

- *Delpport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - Court sent the matter back to the RG, who issued clearer reasons, still refusing to overturn the mapper's decision to reject the PDCA.
  - Owner brought another judicial review.
  - Supreme Court of Nova Scotia dismissed the judicial review.
  - Owner appealed to the Nova Scotia Court of Appeal.
  - Court of Appeal dismissed the appeal.
  - Leave to appeal to Supreme Court of Canada refused 2014 CarswellNS 554.

# Jurisprudence

- *Delport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - Owner argued the mapper lacked jurisdiction to reject the PDCA, that it was the qualified lawyer's jurisdiction to determine the existence of the parcel and that in any event the *LRA* does not guarantee boundaries, and therefore a standard of correctness should have applied.
  - Court did not agree and upheld the reasonableness standard. The mapper has the jurisdiction to refuse a PDCA where it is possible the parcel might be completely overlapped by other parcels.
  - Court of Appeal dismissed the appeal. Leave to appeal to Supreme Court of Canada refused 2014 CarswellNS 554.

# Jurisprudence

- *Delport Realty Ltd. v. Nova Scotia (Registrar General of Service)*, 2012 NSSC 416, 2013 NSSC 287, affirmed 2014 NSCA 35.
  - Court considered compensation under the *LRA*.
    - Found that registering a parcel that would have the effect of ousting a competing interest holder's claim and leaving that interest holder with only a claim for compensation, should not be a first resort.
    - *QTA* available as first resort.

# Jurisprudence

- *Schofield v. Registrar General* Ken. No. 454759, February 7, 2017 (unreported).
  - No subdivision approved – some lots granted prior to April 16, 1987 – four lots granted after.
  - Qualified lawyer, acknowledging conveyances of the four lots were ineffective, filed Form 1 RPA requesting remainder, including the four lots, be assigned a PID.
  - Mapper refused, requiring court decision to recognize the conveyances as nullities, stating that “We have no authority to adjudicate that a deed is invalid, or ineffective.”
  - Lawyer appealed to the RG, who upheld the decision on grounds the offending deeds created an interest which must be resolved before *LRA* registration.

# Jurisprudence

- *Schofield v. Registrar General*, Ken. No. 454759, February 7, 2017 (unreported).
  - Court found standard of review for any interpretation of the *LRA* to be reasonableness.
  - Standard of review for interpretation of the *MGA*, being of “general application to property law, and to municipal government, and to municipal law, and to subdivision law,” to be correctness.
  - Court found the correct interpretation of the *MGA* was that no registrable interest in the four parcels had been conveyed.

# Jurisprudence

- *Schofield v. Registrar General*, Ken. No. 454759, February 7, 2017 (unreported).
  - Court commented generally on the *LRA*:
    - not to “second guess legal titles”;
    - compensation purpose equal to other three purposes;
    - does not require titles not to be “messy.”

# Jurisprudence

- Conclusions on Jurisprudence:
  - Very little there.
  - You are entitled to reasons which determine the issue “...in a way that is justifiable, intelligible and transparent.”
  - The RG’s decision on *LRA* interpretation is “final,” and only subject to reversal if unreasonable.
  - On matters of general property law & other law, standard of review may be correctness.

# Statistics

Since May 2009 (when the regulation was enacted):

- approx. 1600 Appeals.
- approx. 15/month.
- approx. 2/3 registry appeals & 1/3 mapping appeals.
- approx. 80% allowed & 20% refused.

# Experience

- Personal:
  - A Removal of *LRA* (not *QTA*) Certificate of *Lis Pendens* was rejected for lack of a court order – appeal allowed.
    - turnaround after submitting all documentation:
  - A PDCA was rejected on grounds of survey and boundary issues – appeal refused.

# Experience

- Anecdotal from the Bar:
  - Recently on ListServe:
    - Mapper rejected PDCA because insufficient Statutory Declaration to establish adverse possession.
    - Others shared their similar encounters, including one member who brought the judicial review in *Schofield*.

# Conclusion

- Whenever you disagree with a rejection, appeal to RG should be your first recourse in most cases.
  - efficient application – not time consuming
  - quick decisions in most cases
  - make sure you include all documentation required, including any document sought to be submitted and the rejection notice

# Conclusion

- Subject to Judicial Review
  - However, court will afford deference to RG in *LRA* interpretation.
  - Court may not afford deference if question of general application to property law, etc..
- RG appeal is used with some frequency,
  - in most cases, effectively.

# Questions

