

# **Supreme Court of Nova Scotia Practice Memorandum No. 11**

## **#11 Quieting Titles**

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### **Introduction**

The judges of the Supreme Court of Nova Scotia exercised their power under Section 49 of the *Judicature Act* to modify procedural provisions in the *Quieting Titles Act* so they conform with the present Rules.

This practice memorandum guides applications or actions under the Act.

### **Action or Application**

A claim for a certificate of title, and any claim joined with it under s. 3(2) of the *Quieting Titles Act*, may be brought by action or by application in court. See, Rule 76A.02(1). Thus, the plaintiff has a discretion to choose the route, and other parties who disagree with the choice have recourse to Rule 6 – Choosing Between Action and Application.

### **Contents of Statement of Claim or Grounds**

Section 5 of the Act requires inclusion of the following subjects in the statement of claim, and Rule 76A.02(1) extends these to the statement of grounds in the notice of application:

- a complete description of the land being claimed;
- the names of owners and occupiers of lands adjoining the land being claimed;
- whether the claimant or another person is, or claims to be, in actual or constructive possession of the land;
- the name of the person to whom the land is assessed for municipal rates or taxes and, if available, a statement of the acreage upon which the assessment is based;
- all rights of others in respect of the land the claimant admits to exist and all claims to rights in respect of the land he or she knows about but does not admit.

### **What Must be Filed at Start**

In addition to the notice of action or notice of application, the Act requires an affidavit and either a certified abstract of title or a certified copy of the parcel register to be filed when the originating document is filed. See, s. 5(2) and s. 6.

As provided in s. 5(2), the affidavit or affidavits must verify “every material particular” in the statement of claim or grounds. An affidavit must conform with Rule 39 – Affidavit, including it being limited to admissible evidence. See, Rule 39.02.

The abstract for *Registry Act* lands must conform with the standards and format discussed by the late Justice Nathanson in *Ratto v. Rainbow Realty Ltd.*, [1984] N.S.J. 501 (S.C.). In cases of land under the *Land Registration Act*, the plaintiff will file a summary of the parcel register, in the same format as an abstract, unless the judge hearing the motion for directions orders otherwise.

A plan of the lands signed by a Nova Scotia Land Surveyor must be filed, unless a party satisfies a judge that a plan is unnecessary. A judge will direct when a necessary plan is to be filed.

### **Parties and Notice**

Subsection 4(2) of the Act permits the claimant to join only the Attorney General “in the first instance”. However, subsection 9(7) requires the judge on the motion for directions to order the joining of “those persons who appear to be asserting an active claim” and to direct “other persons who appear to have an interest to be given notice of their right to intervene”.

It will promote the efficiency of the motion for directions, and lessen the chance of an adjournment of the hearing, if the claimant does two things despite s. 4(2):

- join other persons actively asserting a claim as defendants or respondents from the beginning;
- before the motion for directions, notify a non-party who appears to have an interest that they have a right to intervene and of the time, date, and place of the hearing of the motion.

Abutters should either be joined or given notice of their right to intervene.

The Act permits notice by newspaper advertisement. See, s. 9(6). This implies that unascertained persons may be bound by a certificate of title if a judge directs an advertisement. A claimant who seeks directions for an advertisement must produce evidence showing why persons should be bound without service. If the interests are serious enough, consideration should be given to an appointment under Rule 36 – Representative Party.

Service of the notice of action or notice of application on the other parties is governed by Rule 31 – Notice.

Service of the notice of a right to intervene is not covered by Rule 31 – Notice. The claimant should:

- notify persons who are not joined, but appear to have an interest, of the claim and of the motion for directions by reasonable means reasonably in advance of the hearing of the motion for directions;
- provide evidence on the motion for directions about persons who were not joined but who appear to have an interest, why they were not joined, and what has been done to notify them;
- request the judge hearing the motion for directions to approve the notice given to these persons or direct further notice.

### **Filing a Notice of Defence or Notice of Contest**

The Act provides that it is unnecessary to file a defence. However, the motion for directions will proceed more efficiently if a defendant or respondent who opposes the claim for a certificate files a notice of defence or a notice of contest no more than fifteen business days after being notified of the action or application in accordance with Rule 31 – Notice. See for example, Rule 5.08.

### **Briefs for Directions**

The plaintiff or applicant must file a brief at least five business days before the hearing of the motion for directions, and the defendant or respondent then has two business days to file a brief. The claimant's brief must explain the basis of the claim, name the abutters and others who may have interests, and explain what has been done for notice. Reference is made to Rule 40 – Brief.

### **Participation by Attorney General**

Counsel for the Attorney General must attend the hearing of all motions, unless a judge orders otherwise. He or she must review all documents filed in the proceeding, report to the court whether the requirements of the *Quieting Titles Act* have been met, ascertain who has been notified, report whether all who are entitled to notice have been notified, and generally assist the court unless a judge orders that his or her assistance is not needed.

### **Subjects for Directions**

The parties to a motion for directions should give thought to the subjects to be

raised for the judge's consideration. The case may have unique features, or nuances. Therefore, neither a checklist nor the following list of subjects should be followed rigidly on a motion for directions.

The Act and the Rules contain numerous suggestions for subjects that may be considered on a motion for directions. References to both are included in the following list:

- add defendants or intervenors, s. 9(5)(a), s. 9(7), Rule 5.13(2)(b), and Rule 35.10;
- provide for notice to added parties;
- provide for filing, and delivery, of a defence or notice of contest, s. 7(3);
- require giving notice to a person of their right to intervene, s. 9(5)(a) and s. 9(7);
- permit advertisement and settle the terms and the text, s. 9(6);
- consolidate proceedings claiming certificates of title to the same or related land, Rule 37.02;
- amend pleadings, s. 9(5)(b) and Rule 83.11;
- review the abstract of title and specify the issues;
- receive the report of counsel for the Attorney General;
- make a reference under s. 9 of the Act and Rule 11 – Reference, and adjourn the motion pending the referee's report;
- determine whether a plan of the lands is necessary and, if so, set a deadline for it to be filed;
- in an uncontested proceeding in which all parties have been notified, grant a final order or direct what must be done before the final order can be settled;
- in a contested application, set a time, date, and place for the hearing, Rule 5.13(1);
- in a contested action, set deadlines for trial readiness including a deadline to request a date assignment conference, Rule 4.13;
- determine the place of trial or hearing, s. 2 of the *Land Actions Venue Act* and Rule 32 – Place of Proceeding.

### **Record of Directions**

A judge who provides directions may create a record of them by correspondence or by distributing a transcript. Otherwise, the judge may require a party to prepare a draft order containing the directions, which order is settled as provided in Rule 78 – Order.

### **Order for Certificate of Title**

An uncontested order may be granted at the hearing of the motion for directions or upon proof of compliance with directions. In a contested proceeding decided in favour of the claimant, the order is settled in the usual way.

## **Forms**

Forms in the schedule to the Act are not mandatory. See, s. 21. The forms attached to this practice memorandum are included to reflect the adaptation of the Act to the Rules. They are:

- Paragraphs for statement of claim or grounds;
- Notice of Right to Intervene;
- Advertisement;
- Order for Certificate;
- Uncontested Certificate of Title.

Variations should be brought to the attention of a judge.

Adopted by the court on May 11, 2017.

Joseph P. Kennedy  
Chief Justice of the Supreme Court of Nova Scotia