

Meeting Note
Department of Digital Government and Service NL
Law Society of Newfoundland and Labrador
February 11, 2025, 1 pm
JPS 4th Floor, East Block

Attendees:

Honourable Elvis Loveless, Minister of DGSNL
Sean Dutton, Deputy Minister of DGSNL
Paul Baldwin, Executive Assistant

Honourable Bernard Davis, Minister of JPS
Kara Connors, Executive Assistant

Gladys Dunne, KC, Law Society President
Brenda Grimes, KC, Law Society Executive Director
Aimee Rowe, Law Society General Counsel/Deputy Executive Director
Greg French, Law Society Bencher, Chair of Real Estate Committee

Purpose of Meeting:

- To discuss issues with the current practices for certifying land titles and reforms to the land titles registration legislation.

Background:

- The Law Society of Newfoundland and Labrador regulates the practice of law and the legal profession in the province, under the **Law Society Act, 1999**. It is funded from fees paid by lawyers in order to practice. The Law Society serves the public interest by promoting a high standard of legal services and professional conduct. The Law Society may act as an advocate on issues that affect the public interest in the practice of law.
- Newfoundland and Labrador uses a deeds-based registration system to register documents (instruments) that change or affect title to land ownership. Registering a deed gives notice of a person's claim to an interest in land but government does not guarantee legal title. Registration is not mandatory, though financial institutions often require registration as part of the mortgage process.
- Instruments that change or affect title to land can be registered in the Registry of Deeds, operated by DGSNL's Commercial Registrations Division. Registry records date back to 1825. The Registry is accessible online via the Companies and Deeds Online (CADO) database for registrations back to 1982. Pre-1982 paper-based registrations are accessible by in-person visit to the Registry's sole location at 59 Elizabeth Ave., St. John's.
- Title to a piece of land is determined by a lawyer examining evidence of the history of ownership of the property ("chain of title") and providing an opinion as to whether a person has a good title to the property. Establishing good title to the satisfaction of the lawyer providing an opinion on title typically requires providing evidence of an historical chain of title.

- There are challenges with proving good title:
 - The Registry has paper records from 1825 to 1981 and digital records thereafter. Most of the paper records have been digitized, however, they have not been verified and are not accessible through CADO.
 - Many older paper records of Crown grants were lost to fire in 1892.
 - Evidence of land ownership can come from several different sources, including Crown grants registered at the Registry of Crown Titles (FFA), the Land Use Atlas (FFA), lands transferred through Order in Council, and certificates issued by the Supreme Court under the **Quieting of Titles Act**.
 - Properties that have been passed down for generations based on possession, particularly in rural areas, may not be registered or rooted in a Crown grant, and therefore do not have clear ownership title.
 - There is a long history of adverse possession (“squatters rights”) in the province where the Crown’s interest in the land has not been extinguished but the properties may have been occupied for generations.
- All other provinces and territories except PEI and Québec use a parcel-based land title or “Torrens” system where land titles are recorded in a government registry. Under a title-based system government guarantees name on title once registered. Ownership of land is transferred by registering a transfer of title and other required supporting documentation with the registry, which issues a certificate guaranteeing title.
- The initial registration in a title-based system (“raising title”) requires the client to use a lawyer who, in part, examines chain of title and provides a legal opinion (in NS referred to as a Certificate of Legal Effect). In turn, government relies on this legal opinion to ascribe liability to the lawyer for any mistakes discovered, subject to stipulated limitation periods. Once a parcel is registered in a titles-based system a subsequent conveyance of that parcel would not require a chain of title validation given government’s guarantee of name on title.
- As government guarantees title, it can be liable for certain errors in registration. Typically, an assurance fund is established to cover these liabilities and funded through small fees on registrations. In other jurisdictions, these funds have been very seldom needed, and some have eliminated the fees and address claims through its consolidated accounts.
- The Torrens system was adopted in western Canada, the territories, and ON by the 1880s. Québec has a unique “cadastre” system. NB and NS adopted the Torrens system in 2000 and 2005 respectively, and now operate a transitional dual deeds and title system where all new registrations must be made in the Torrens system. To a lesser extent ON continues to operate a dual system as an estimated 25,000 parcels have not yet migrated into a land titles system.
- In the NS dual system, registration in the title system is required for transfers for value, mortgages, subdivisions resulting in three or more parcels of land, new condominium developments, and the issuance of land titles clarification certificates and quieting of title certificates. The traditional deeds-based registry is expected to continue until all parcels are converted. As property is often gifted or conveyed on behalf of an estate from generation to generation to related parties, the deeds-based system is expected to continue for some time to come.

- FFA conducted a public consultation on proposed changes to the **Lands Act** surrounding section 36 and adverse possession (squatter's rights). It released a "What We Heard" document on May 2, 2023, which noted broad dissatisfaction with the current land titles system. In the report, FFA noted that DGSNL is responsible for the legislation on land titles.
- Some respondents also called for merging DGSNL's Registry of Deeds with FFA's Registry of Crown Lands.
- The Law Society Newfoundland and Labrador appointed an ad hoc Land Titles Committee in December 2023 to study the standards used to determine title in the province. The Committee conducted research and consultations with Law Society members and issued a report in September 2024 titled "What is Good Title". The report, a revised version to a 1990 Law Society report of the same name, outlined what they considered best practices for lawyers and real estate practitioners when establishing good title.
- On October 29, 2024, the Auditor General released a report titled, "Administration of Crown Lands, Independent Auditor's Report". While the report focused on the Crown Lands Branch of FFA, it also raised concerns over the registration and management of land titles, the need to reconcile information in the different registries, that title registration is not mandatory, and the overall lack of a land titles system.
 - Recommendation #3 of the AG report stated, "We recommend the Department of Fisheries, Forestry and Agriculture, in consultation with other departments as needed, address the issues identified in this audit with respect to land systems, including registration and titles management."
 - FFA's response to recommendation #3: "The department accepts the recommendation. While the ability to deliver a mandatory titles-based registration system is beyond the Department of Fisheries, Forestry and Agriculture, the department recognizes the important role that it plays in land administration and will continue its ongoing work with the Department of Digital Government and Service NL, the Department of Justice and Public Safety and other stakeholders as needed to address the issues identified in the audit with respect to land systems, land registration and titles management."
- On November 13, 2024, the Public Accounts Committee requested an action plan from FFA for the implementation of the Auditor General's recommendations. The PAC also indicated it may conduct public hearings on the matter in the future.
- The House of Assembly passed significant amendments to the **Lands Act, 1991** in November 2024. These included measures to make it easier to settle adverse possession claims, to obtain title to or quitclaims for primary residences (FFA's Primary Residence Property Title Program), and for government to issue Certificates to identify lands dispossessed from government (i.e. not considered Crown lands).

Analysis:

- In its letter requesting this meeting, the Law Society highlighted that its 2024 report, "What is Good Title?" identifies "... real concerns relating to the current and historical certification of title, rooted in the registry system currently in place, and the disconnect between it and Crown Lands."
- The Law Society previously advocated for the adoption of a Torrens land titles system. The land titles system is also the preferred system by the Association of Newfoundland and

Labrador Land Surveyors, the Canadian Bar Association – Newfoundland and Labrador Branch, and the Newfoundland and Labrador Association of Realtors.

s. 29(1)(a), s. 35(1)(g), s. 27(2)(b)

- [REDACTED]
- A working group with staff from DGSNL and JPS solicitors was established to conduct further research and consult with officials in NS and NB on those provinces' transition to the Torrens system. Research is ongoing and [REDACTED] s. 29(1)(a)
- In August 2023, DGSNL officials met with the Law Society's Real Estate Committee (Valerie Hynes, Pdraig Mohan, Sharyl Rowsell, Linda Bishop, William Cahill) to discuss proposed amendments and a transition to the Torrens lands title system. The Law Society solicited input from its membership in September 2023 on the transition to a Nova Scotia/New Brunswick land titles model. DGSNL has not received any comments from the Law Society resulting from this solicitation.
- A Torrens system is simpler and quicker to use than the current system of establishing chain of title and would thus make the process of land registration and transfer more efficient. Once a title is registered, the chain of title method will no longer be necessary for subsequent title transfers of that same parcel. However, the initial registration of a land interest in the new system will still need to prove title using the current method of showing clear chain of title.
- [REDACTED] Where applicable, new registrations and transfers would be done in the new system, thus slowly migrating to the Torrens system one land transaction at a time. s. 29(1)(a) s. 35(1)(d), s. 29(1)(a)
- [REDACTED]
- The Nova Scotia Barristers' Society was actively involved in the development of the Torrens system there, with the legal community contributing significant amounts of voluntary time towards the development of the bill for the introduction of the Torrens system.
- Implementing a Torrens system would put the Province in line with most of the rest of Canada.

Potential Speaking Points:

- We thank you for your report and analysis of land titles in the province.
- The Department recognizes the challenges associated with the current land registration system, including those raised in the Law Society's report, "What is Good Title?".
- We are currently exploring the introduction of a Torrens-style land titles system.

- Given costs and complexity, the Department does not yet have a timeline on when a Bill would be introduced.
- We would value continued and detailed input from the Law Society as development in this new legislative area continues.
- We recognize the important contribution that the legal community can make, as it did in Nova Scotia, in developing a Torrens system for our Province.

Proposed Actions:

- DGSNL is continuing to work on legislation to bring in a Torrens land titles system.

Prepared/Approved by: P. Lévêque and D. Doyle/ T. Duggan/L. Power/S. Dutton

February 6, 2025