

Court File No. CV-24-00000012-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
EAST REGION

THE HONOURABLE) FRIDAY, THE 12th DAY
)
JUSTICE HURLEY) OF APRIL, 2024
)



DANILO JOVKOVIC

Applicant

- AND -

THE NATURE CONSERVANCY OF CANADA and

LINDA MIDDLETON

Respondents

JUDGMENT

THIS APPLICATION was heard remotely on this day without a jury at Picton, Ontario in the presence of the lawyer for the Applicant and the lawyer for The Nature Conservancy of Canada and no one appearing for Linda Middleton although properly served as appears from the affidavit of service of Les Hayter sworn March 26, 2024. The Respondents did not oppose the Application.

WHEREAS a Transfer/Deed of Land registered as Instrument No. PE64686 is attached hereto as “**Schedule A**”;

WHEREAS a Plan of Survey registered as Instrument No. 47R3638 is attached hereto as “**Schedule B**”;

ON READING THE NOTICE OF APPLICATION AND THE EVIDENCE FILED BY THE PARTIES.

1. **THIS COURT ORDERS AND ADJUDGES** that this Application is allowed;
2. **THIS COURT DECLARES** that running with and appurtenant to the property owned by the Applicant, and legally described as PT GAMMON POINT CON ROUND PRINCE EDWARD BAY S MARYSBURGH PT 2 47R988 T/W PE164463; PRINCE EDWARD, being PIN 55089-0242 (LT), is a Right-of-Way for all purposes of ingress and egress over a portion of PIN 55089-0239 (LT), as more particularly described in Instrument No. PE64686 attached, and being Part 1 on the Plan of Survey registered as Instrument No. 47R3638;
3. **THIS COURT ORDERS** that the legal description of PIN 55089-0242 (LT) may be amended to read: “PT GAMMON POINT CON ROUND

PRINCE EDWARD BAY S MARYSBURGH PT 2 47R988 T/W
PE164463; T/W PE64686; PRINCE EDWARD”; and

4. THIS COURT ORDERS that each party shall bear their own costs.



Justice Patrick Hurley

SCHEDULE A

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G5

This Indenture

made in duplicate the 10th day of November,
one thousand nine hundred and seventy-five.

Between

ANDERSON GRAHAM JOHNSTON and his wife
HELEN JOHNSTON both of the Township of
South Marysburgh in the County of Prince Edward,

hereinafter called THE GRANTORS
OF THE FIRST PART,

and

RODERICK CHARLES MORRISON of the Regional
Municipality of Metropolitan Toronto, To Uses,

hereinafter called THE GRANTEE
OF THE SECOND PART,

WHEREAS by instrument dated August 14, 1975, and
registered Nov. 6, 1975 as # 62441 the grantors herein purported to
convey the herein described lands to the grantee.

AND WHEREAS although severance approval had been
granted for this conveyance through inadvertance the consent of the
Prince Edward County Land Division Committee was not endorsed on the
said deed.

AND WHEREAS this deed is given to confirm title
and contains the necessary Land Division Endorsation.

Witnesseth that in consideration of -----\$2.00-----

dollars now paid by the Grantee to the Grantors (the receipt whereof is hereby by
acknowledged), they the Grantors do hereby grant, release and quit claim unto the
Grantee, unto and for the uses, ^{hereinafter declared} all estate, right, title, interest, claim and demand
whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or
expectancy, of the Grantors, of, in, to or out of all and singular that certain
parcel or tract of land and premises situate lying and being in
the Township of South Marysburgh, County of Prince Edward, and
Province of Ontario and being composed of part of Gammon Point
at the mouth of Black River in the Concession round Prince Edward
Bay, in the said Township, being more particularly described in
Schedule "A" annexed hereto.

Pursuant to subsection 20 of section 42 of The Planning Act I certify that the consent of the
Land Division Committee of the County of Prince Edward was given on October 19 1975 to the
transaction which the within instrument relates.
on this 17 day
of July 1976

Secty. Pr. Ed. Land Div. Com.
Thos. Walker

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Township of South Marysburgh, in the County of Prince Edward, and Province of Ontario, being composed of part of Gammon Point at the mouth of Black River in the Concession round Prince Edward Bay, in the said Township, being more particularly described as Part 2 on a Plan deposited in the Registry Office for the County of Prince Edward as Plan 47R-988, together with a right-of-way over part 1 on Plan 47R-988.

TOGETHER with a further right-of-way with all those entitled thereto over, along, and upon a strip of land having a uniform perpendicular width of twelve feet (12.00') and being composed of part of Lot 28 and part of Gammon Point in the Concession Round Prince Edward Bay, the centre line of said right-of-way being more particularly described as follows:

COMMENCING at a point in the Easterly limit of County Road #13 passing through said Lot 28, distant six and twenty-nine hundredths feet (6.29') measured on a course of North 26 degrees, 43 minutes East from an iron bar planted in the said Easterly limit of the travelled Township road, distant fifteen hundred and twenty and ninety-eight hundredths feet (1520.98') measured on a course of North 45 degrees, 45 minutes, 50 seconds West from an iron bar planted distant three hundred feet (300.00') measured on a course of North 44 degrees East from a wood stake found in an old rail fence marking the existing centre line of the east half of the said Lot 28, distant thirty-five feet (35') more or less, measured on a course of North 46 degrees West from the most Southerly angle of the North-east quarter of said Lot 28;

THENCE South 45 degrees, 45 minutes 50 seconds East, seven hundred and seventy and thirty-three hundredths feet (770.33') to a point;

THENCE South 55 degrees, 17 minutes, 50 seconds East one hundred and eighteen and ninety-four hundredths feet (118.94') to a point;

THENCE South 46 degrees, 28 minutes, 30 seconds East sixty-nine and sixty-six hundredths feet (69.66') to a point;

THENCE South 61 degrees, 35 minutes, 30 seconds

East fifty-seven and seventy-three hundredths feet (57.73') to a point;

THENCE South 47 degrees, 04 minutes 00 seconds East forty-nine and thirty-four hundredths feet (49.34') to a point;

THENCE North 44 degrees, 14 minutes, 10 seconds East two hundred and sixty-two and sixty-hundredths feet (262.60') to a point;

THENCE South 45 degrees, 45 minutes, 50 seconds East two hundred and twenty-eight and ninety-nine hundredths feet (228.99') to a point;

THENCE South 62 degrees, 07 minutes, 40 seconds East, One Hundred and Fifteen and twenty-five hundredths feet (115.25') to a point;

THENCE South 85 degrees, 45 minutes 40 seconds East Two Hundred and thirty-seven hundredths feet (200.37') to a point;

THENCE South 59 degrees, 34 minutes, 40 seconds East Twenty-nine and seventy hundredths feet (29.70') more or less to a point;

THENCE South 45 degrees, 45 minutes 50 seconds East fifty-three and thirty-two hundredths feet (53.32') more or less to a point in the North-easterly limit of the herein described lands.

For purposes of illustration reference may be made to a plan of survey by Stewart W. Allan, O. L. S., dated November 1, 1968 and attached to registered Instrument #29409 for South Marysburgh.

TYPED BY: [illegible]
COMPAILED BY: [illegible]

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To have and to hold unto the said Grantee unto such uses as he the said Grantee may from time to time by deed, will, mortgage or other instrument in writing appoint and until and in default of appointment and insofar as such appointment may not extend unto the uses of the said Grantee, his heirs and assigns in fee simple.

Provided that, in the event of the Grantee from time to time in the exercise of the above-mentioned power of appointment appointing any interest or estate in the said lands or in any part thereof which is less than a fee simple or is for a limited term or for a special purpose, then in every such case and as often as the same may occur, the remaining interest or estate shall be subject to the power of appointment hereinbefore expressed and, upon the reversion of any interest or estate so appointed for a limited time or for a special purpose either by effluxion of time or by fulfilment of purpose or by operation of law or otherwise, the interest or estate so reverting shall be subject to the said power of appointment in the same way and with the same effect as if there had not been any exercise of the said power of appointment for such limited time or for such special purpose; it being the intent hereof that, notwithstanding any intervening exercise of the said power of appointment, the said power shall continue and shall not be exhausted until the fee simple in the lands hereby conveyed shall have been appointed absolutely without reservation in the said Grantee of any lien, equity of redemption or other estate, right or interest.

Provided further that no exercise of the said power of appointment shall derogate from the effect of any previous exercise of the said power.

Subject nevertheless to the reservations, limitations, provisos and conditions expressed in the Original Grant thereof from the Crown.

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THE LAND TRANSFER TAX ACT, 1974

Affidavit of Residence

IN THE MATTER OF THE CONVEYANCE OF PART OF GAMMON POINT AT THE MOUTH OF
BLACK RIVER, IN THE CONCESSION ROUND PRINCE EDWARD BAY, TOWNSHIP
(insert brief description of land)
OF SOUTH MARYSBURGH, COUNTY OF PRINCE EDWARD

TO RODERICK CHARLES MORRISON
(insert names of all transferees)

I, RODERICK CHARLES MORRISON of the Regional Municipality of
(print name and address)
Metropolitan Toronto, in the County of York

MAKE OATH AND SAY THAT:

1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent):
- (a) A person to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed;
 - (b) One of the trustees named in the above-described conveyance to whom the land is being conveyed;
 - (c) A transferee named in the above-described conveyance;
 - (d) An agent authorized in writing to act for _____ who is a person
(insert name of principal)
described in paragraph _____ above *(insert only one of paragraph (a), (b), or (c) above);*
 - (e) The solicitor acting in this matter for _____ who is a person
(insert name of client)
described in paragraph _____ above *(insert only one of paragraph (a), (b) or (c) above);*
- and as such, I have personal knowledge of the facts herein deposed to.

2. None of the transferees to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed is, within the meaning of the Act, a non-resident person (strike out this paragraph if inapplicable).

~~3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act:~~

(insert the name and place of residence – or in the case of a corporation, the place of incorporation – of any transferee who is a non-resident person. If space is insufficient, attach a list of those transferees who are non-resident persons.)

4. I have read over and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clause f and g of subsection 1 of section 1 of the Act.

Sworn before me at the Town
of Picton
in the County
of Prince Edward
this 29th
day of August 19 75.

Roderick Charles Morrison

Peter J. Jones
A Commissioner, etc.

G12

G13

The Land Transfer Tax Act, 1974

AFFIDAVIT OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE made

Identify
the parties
to the
conveyance

by: ANDERSON GRAHAM JOHNSTON and HELEN JOHNSTON

to: RODERICK CHARLES MORRISON

on the 11th day of November 1975.

I, ANDERSON GRAHAM JOHNSTON

of the Township of South Marysburgh

in the County of Prince Edward

make oath and say that:

This affidavit may
be made by the
purchaser or vendor
or by anyone
acting for them
under power of
attorney or by an
agent accredited in
writing by the
purchaser, or vendor
or by the solicitor of
either of them or by
some other person
approved by the
Minister of Revenue.

1. I am one of the Grantors named in the within (or annexed) conveyance.
2. I have a personal knowledge of the facts stated in this affidavit.
3. (1) The total consideration for this transaction has been allocated as follows:

(a) Land, building, fixtures and goodwill	\$ 2.00
(b) Chattels — items of tangible personal property (see note)	\$ Nil
TOTAL CONSIDERATION	\$ 2.00

(2) The true consideration for the transfer or conveyance for Land Transfer Tax purposes is as follows:

- | | |
|---|----------------|
| (a) Monies paid in cash | \$ 2.00 |
| (b) Property transferred in exchange (Detail Below) | \$ Nil |
| (c) Securities transferred to the value of (Detail Below) | \$ Nil |
| (d) Balances of existing encumbrances with interest owing at date of transfer | \$ Nil |
| (e) Monies secured by mortgage under this transaction | \$ Nil |
| (f) Liens, legacies, annuities and maintenance charges to which transfer is subject | \$ Nil |
| (g) Other (Detail Below) | \$ Nil |
| TOTAL CONSIDERATION (should agree with 3(1) (a) above) | \$ 2.00 |

All blanks must be filled in.

4. If consideration is nominal, is the transfer for natural love and affection? No

5. If so, what is the relationship between Grantor and Grantee? Nil

6. Other remarks and explanations, if necessary

deed of correction and confirmation.

SWORN before me at the Town of Picton
in the County
of Prince Edward

this 24th day of June 1976.

Patricia J. Jones

Anderson G. Johnston
(signature)

PATRICIA JOAN JONES,
A Commissioner,
County of Prince Edward,
Ontario.
Expires December 31, 1976

A Commissioner, etc.

NOTE TO PARAGRAPH 3(1) (b): Chattels: Retail sales tax is payable on the valuation of items shown in 3(1) (b) unless otherwise exempted under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c.415, as amended.

For the purpose of this affidavit insert above only the value of chattels, the total value of which in the opinion of the deponent exceeds \$100.00. This does not exonerate a purchaser from the payment of Retail Sales Tax on any tangible personal property as part of this transaction. When chattels are purchased as part of this transaction with a value of less than \$100.00, the applicable tax should be paid by the purchaser to the Treasurer of Ontario and remitted to the Minister of Revenue.

G13

AFFIDAVIT OF SUBSCRIBING WITNESS

AMENDED MARCH 1972

G14

I, Debra Paterson
of the Town of Picton
in the County of Prince Edward

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed
at the Town of Picton by ANDERSON GRAHAM JOHNSTON and HELEN JOHNSTON

*See footnote

*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the Town of Picton
in the County of Prince Edward
this 24th day of November, 1976.

Debra Paterson

Patricia Joan Jones
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

PATRICIA JOAN JONES
A Commissioner for Taking Affidavits, Etc.
County of Prince Edward
100 Victoria Road, Picton, Ontario
Expires December 31, 1977

*Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".

Amended, May, 1973

AFFIDAVIT IN THE MATTER OF THE LAND TRANSFER TAX ACT

PROVINCE OF ONTARIO

*For place of residence insert appropriate County, District, Regional Municipality, etc.

To Wit:

I,
of the
in the*
named in the within (or annexed) transfer make oath and say:

This affidavit may be made by the purchaser or vendor or by any one acting for them under power of attorney or by an agent accredited in writing by the purchaser, or vendor or by the solicitor of either of them or by some other person approved by the Minister of Revenue.

- 1. I am named in the within (or annexed) transfer.
2. I have a personal knowledge of the facts stated in this affidavit.
3. (1) The total consideration for this transaction has been allocated as follows:
(a) Land, building, fixtures and goodwill \$
(b) Chattels -- items of tangible personal property (see note) \$
TOTAL CONSIDERATION \$
(2) The true consideration for the transfer or conveyance for Land Transfer Tax purposes is as follows:
(a) Monies paid in cash \$
(b) Property transferred in exchange (Detail Below) \$
(c) Securities transferred to the value of (Detail Below) \$
(d) Balances of existing encumbrances with interest owing at date of transfer \$
(e) Monies secured by mortgage under this transaction \$
(f) Liens, legacies, annuities and maintenance charges to which transfer is subject \$
(g) Other (Detail Below) \$
TOTAL CONSIDERATION (should agree with 3(1)(a) above) \$

All blanks must be filled in.

- 4. If consideration is nominal, is the transfer for natural love and affection?
5. If so, what is the relationship between Grantor and Grantee?
6. Other remarks and explanations, if necessary

SWORN before me at the
in the
this day of 19
(signature)

A Commissioner, etc.

Chattels - Retail sales tax is payable on the valuation of items shown in 3(1)(b) unless otherwise exempted under the provisions of The Retail Sales Tax Act. For the purpose of this affidavit insert above only the value of chattels, the total value of which in the opinion of the deponent exceeds \$100.00. This does not constitute a purchaser from the payment of Retail Sales Tax on any tangible personal property as part of this transaction. When chattels are purchased as part of the transaction with a value of less than \$100.00, the applicable tax should be paid by the purchaser to the Treasurer of Ontario and remitted to the Minister of Revenue.

G14

SCHEDULE B

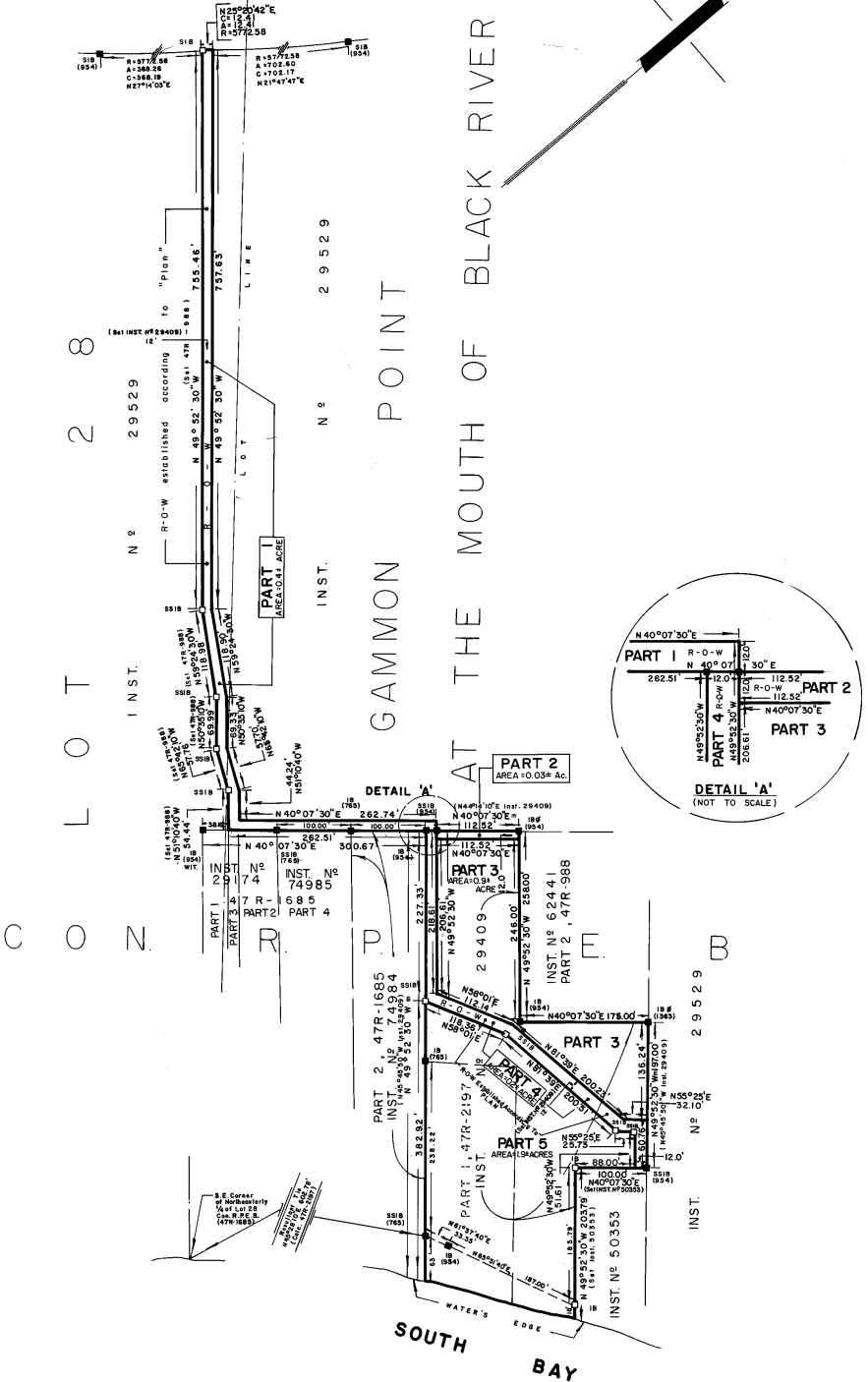
PLAN OF SURVEY OF
**PART OF LOT 28 AND
 PART OF GAMMON POINT
 AT THE MOUTH OF BLACK RIVER**
 CONCESSION ROUND PRINCE EDWARD BAY
 TOWNSHIP OF SOUTH MARYSBURGH
 COUNTY OF PRINCE EDWARD
 SCALE 1" = 100' B. ROGER PICKARD O.L.S. 1987

PLAN 47 **G16**

RECEIVED AND DEPOSITED
 DATE *01 May* 1987
S. Norval, Dep.
 LAND REGISTRAR FOR
 THE REGISTRY DIVISION OF
 PRINCE EDWARD. (N^o 47)

I REQUIRE THIS PLAN TO BE DEPOSITED
 UNDER THE REGISTRY ACT.
 DATE *MAY* 1987
B. Roger Pickard
 B. ROGER PICKARD, O.L.S.

COUNTY ROAD N^o 13
 (REGISTERED PLAN N^o 322)

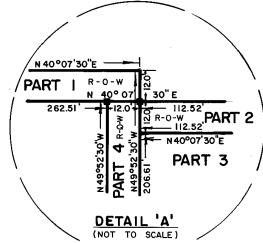


SCHEDULE

PART	DESCRIPTION	INST. N ^o	REMARKS
1	Part of Lot 28 & Part of Gammon Point	29529	R.O.W. Set in INST. N ^o 29409
2	Part of Gammon Point	29409	R.O.W. Set in INST. N ^o 29409
3	"	29409	"
4	"	29409	R.O.W. Set in INST. N ^o 29409
5	"	29409	"

CAUTION
 THIS PLAN IS NOT A PLAN OF SUBDIVISION
 WITHIN THE MEANING OF THE PLANNING ACT.

NOTE
 Bearings are astronomic and are derived from
 the westerly limit of Part 1, 47R-988 shown
 as N 40°07'30"E.



LEGEND

- denotes Survey Monument Planted
- " Survey Monument Found
- INST. N^o " Instrument Number
- " " Measured
- R.O.W. " Right Of Way
- R.P.E.B. " Round Prince Edward Bay
- "PLAN" " Plan of Survey by S.W. Allen, O.L.S., Dated November 1, 1962 and Attached to INST. N^o 29409.

SURVEYOR'S CERTIFICATE

I CERTIFY THAT :

1. This survey and plan are correct and in accordance with THE SURVEYS ACT and THE REGISTRY ACT and the regulations made thereunder.

2. The survey was completed on the 27th day of April, 1987.

B. Roger Pickard
 April 28, 1987
 B. Roger Pickard
 Ontario Land Surveyor

HUME and PICKARD LTD.
 Ontario Land Surveyors
 248 Church St., Belleville (613) 966-4343
 199 Main St., Picton (613) 476-2215

DRAWN BY: R. Davies
 PARTY CHIEF: M. McConnell
 PROJECT N^o: 876479

G16

Court File No.: CV-24-00000012-0000

**Ontario
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Picton

JUDGMENT

**PAYNE LAW PROFESSIONAL
CORPORATION**

Barristers & Solicitors
OFL Building
15 Gervais Drive, Suite 605A
Toronto, Ontario M3C 1Y8

Yan David Payne LSO #48587N
James R. D. Clark LSO #48029W
Tel: (416) 447-4529
Email: James@paynelaw.ca

Lawyers for the Applicant