

SUPREME COURT OF NOVA SCOTIA

Between:

MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH



and

THE HEIRS AT LAW OF JOSEPH FOGARTY, JAMES P. FOGARTY and FRANK FOGARTY

RESPONDENTS

AFFIDAVIT OF SERVICE

I, Renny Neumaier, of Halifax, [make oath and say that/affirm that] I did, on OCTOBER 6, 2014 before the hour of 9:40 [a.m./p.m.], personally deliver a certified copy of a Notice of Application in Court, the same as the certified copy attached to this Affidavit and marked Exhibit "A" together with other documents bearing the same heading, namely a copy of brief dated September 26, 2014, an affidavit of Betty Dobson, sworn on September 23, 2014, an affidavit of Marion Bryson sworn on September 25, 2014, an affidavit of Barry Carroll sworn September 24, 2014, and a draft order to Frank Fogarty. The delivery took place at HALIFAX NOVA-SCOTIA. I knew the person to be the one to whom delivery was to be made because OF VERBAL ADMISSION.

Sworn to /affirmed before me on OCTOBER 6, 2014 at HALIFAX N.S.

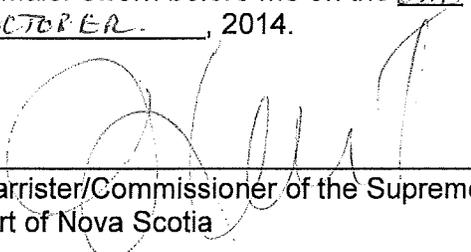
Signature of Authority
Print Name:
Official Capacity:

Renny Neumaier

2014

Hfx. No. 431696

This is Exhibit "A" to the Affidavit of Renny  
Neumaier sworn before me on the 6<sup>TH</sup> day  
of OCTOBER, 2014.



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A Barrister/Commissioner of the Supreme  
Court of Nova Scotia

**KAREN L. VINCENT**  
A Commissioner of the  
Supreme Court of  
Nova Scotia

SUPREME COURT OF NOVA SCOTIA

Court Administration

SEP 26 2014

Halifax, N.S.

Between:



MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH

APPLICANT

and

THE HEIRS AT LAW OF JOSEPH FOGARTY, JAMES P. FOGARTY and  
FRANK FOGARTY

RESPONDENTS

NOTICE OF APPLICATION IN COURT

To: The Heirs at Law of Joseph Fogarty  
Addresses unknown

James P. Fogarty  
9 Donovan Crescent  
Dominion, NS B1G 1C5

Frank Fogarty  
512 Parkland Dr.  
Unit 418  
Halifax, NS.  
B3S 1N1

**The Applicant requests an order against you**

The Applicant is applying to the Court for an Order pursuant to s. 17 of the *Expropriation Act*, R.S.N.S., c. 156 (the "*Expropriation Act*") for a determination respecting the state of the title to two properties in Black Point, Nova Scotia which have been expropriated by the Municipality of the District of Guysborough.

The Applicant started this application by filing this notice on the date certified by the Prothonotary.

**Grounds for the Order**

The Applicant is applying for the Order on the following grounds:

1. The Municipality of the District of Guysborough ("MODG") is a district municipality and body corporate constituted under *Municipal Government Act*, 1998, c. 18 ("*MGA*").

2. Pursuant to the *MGA and Expropriation Act*, the MODG expropriated four parcels of land, (the "Parcels") on or about November 28, 2013 (the "Expropriation Date").
3. As of the Expropriation Date, none of the Parcels had been migrated into the Land Registry.
4. Two of the Parcels bearing PIDs 35044056 and 35214014 appear to originate from a Warranty Deed given to Joseph Fogarty from the original grantee, Michael Fogarty (the "Fogarty Properties").
5. The Respondents James P. Fogarty and Frank Fogarty have identified themselves as two of the heirs at law of Joseph Fogarty who may have a right, interest, or estate in the Fogarty Properties.
6. MODG is unaware of the precise whereabouts and identities of all of the other various heirs at law who may have a right, interest, or estate in the Fogarty Properties.
7. MODG pleads that it is in doubt as to the state of title to the Fogarty Properties and as to the persons who have any rights, estates or interests in the Parcels.
8. MODG does not intend to take any position on the merits of the title to the Fogarty Properties, or on the identities of the persons who have any rights, estates or interests in the Parcels. The sole objective of MODG is to facilitate a means for all persons interested in the Fogarty Properties to settle the question of title by Court Order, so that the question of compensation under the *Expropriation Act* can be dealt with appropriately.
9. MODG repeats and relies upon the foregoing and asks the Court for an Order pursuant to s. 17(2) of the *Expropriation Act* providing for:
  - (a) the persons who are to be served, the notice of the hearing, the contents of the notice and the manner of service thereof;
  - (b) the material and information to be submitted by the expropriating authority or any other person;
  - (c) such other matters as the Court considers necessary.
10. MODG repeats and relies upon the foregoing and asks the Court for a second Order, pursuant to s. 17(1) of the *Expropriation Act* giving:
  - (a) a declaration determining the state of the title to the Fogarty Properties at the time of expropriation; and
  - (b) a declaration of who had rights, estates or interest in the Fogarty Properties at the time of expropriation and the nature and extent thereof;

### **Witnesses for Applicant**

The Applicant expects to file Affidavits from the following witnesses, dealing with the following subjects:

<i>Name of witness</i>	<i>Subject</i>
Marion Bryson	Title searches of the Fogarty Properties
Barry Carroll	Action taken by MODG
Betty Dobson	Fogarty Genealogy

**Motion for directions and date**

At 11:00 (a.m./p.m.) \_\_\_\_\_ on Oct 23, 2014, the applicant will appear before a judge at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions and appointing a time, date, and place for the hearing. The judge may provide directions in your absence, if you or your counsel fail to attend.

**Affidavit on motion for directions**

The Applicant files the Affidavit of Barry Carroll, sworn on September 24, 2014, as evidence on the motion for directions. A copy of the Affidavit will be delivered to you with this notice.

**You may participate**

You may file with the Court a Notice of Contest, and any affidavit for the motion for directions, no more than 15 days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the application.

**Possible final order against you**

The Court may grant a final Order on the application without further notice to you if you fail to file a notice of contest, or if you or your counsel fail to appear at the time, date, and place for the motion for directions.

**Filing and delivering documents**

Any documents you file with the Court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document you must immediately deliver a copy of it to the Applicant and each other party entitled to notice, unless the document is part of an ex parte motion, the parties agree delivery is not required, or a judge orders it is not required.

**Contact information**

The Applicant designates the following address:

Robert G. Grant  
Stewart McKelvey  
Barristers & Solicitors  
Suite 900 - Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, NS B3J 3N2

Documents delivered to this address are considered received by the Applicant on delivery.

Further contact information is available from the Prothonotary.

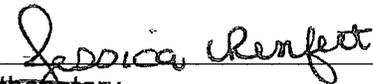
**Signature**     *September*  
**Signed**         *26*                     , 2014



**Robert G. Grant, Q.C.**  
Stewart McKelvey  
Barristers & Solicitors  
Suite 900 - Purdy's Wharf Tower One  
1959 Upper Water Street  
Halifax, NS B3J 3N2  
Telephone: 902.420.3200  
Facsimile: 902.420.1417  
**Counsel for the Applicant**

**Prothonotary's Certificate**

I certify that this Notice of Application was filed with the Court on *Sept. 26*, 2014.

  
\_\_\_\_\_  
Prothonotary

**JESSICA RENFERT**  
Deputy Prothonotary