



**OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF NEW BRUNSWICK**

**REPORT TO THE SPEAKER
OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK
OF THE
INVESTIGATION**

**BY THE HON. PATRICK A.A. RYAN, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY CLARA M. SMITH AND
LLOYD A. SMITH OF INFLUENCE VIOLATIONS OF THE *MEMBERS'*
CONFLICT OF INTEREST ACT
BY OSCAR WAYNE STEEVES, MEMBER OF THE LEGISLATIVE ASSEMBLY
FOR ALBERT**

Report to the Speaker
of the
Legislative Assembly of New Brunswick
of the
Investigation
by the Hon. Patrick A.A. Ryan, Q.C.
Conflict of Interest Commissioner

Into Allegations by Clara M. Smith and Lloyd A. Smith
of Influence Violations of the *Members' Conflict of Interest Act*
by Oscar Wayne Steeves, Member of the Legislative Assembly for Albert

Introduction

[1] This Report is the result of an investigation into allegations by Clara M. Smith of Pine Glen, Albert County, New Brunswick, wife of Lloyd A. Smith, asserting that Wayne Steeves, a long time Member of the Legislative Assembly for Albert has breached the “influence” section under the *Members' Conflict of Interest Act*, chapter, M-7.01 SNB 1999. Section 6 of the *Act* is as follows:

Influence

6 A member shall not use his or her office to seek to influence a decision made by another person so as to further the member's private interest or to further another person's private interest.

[2] In this complaint against MLA Steeves sworn March 22, 2012, Clara Smith purports to act for her husband, Lloyd Smith. I say “purports” because an earlier affidavit alleging breaches was sworn by Mr. and Mrs. Smith. Not being in compliance with the *Act*, that affidavit was rejected and was replaced by the affidavit sworn only by Clara Smith. I accept that Clara Smith's affidavit includes her husband, Lloyd Smith, as a complainant.

[3] The Clara Smith affidavit is less far-ranging in the matters being investigated than those set forth in the earlier complaint.

[4] By way of background information, it is necessary to point out that all the parties involved are related by blood or marriage, pitting one side of the large Smith family against the other side. Tanya Steeves, wife of MLA Steeves, is a Smith.

[5] All the Smiths are the first and second generation offspring of James and Kathleen Smith who gave various parcels of land to their children including a much discussed and disputed right of way which is at the very heart of this allegation of influence against MLA Steeves.

[6] The key irritants in this family feud are easements, more commonly known as rights of way, over the same piece of land owned by Lloyd and Clara Smith and granted to various family members by James and Kathleen Smith who owned a large grant of land on both sides of the Niagara Road, Pine Glen, Lower Coverdale, Albert County.

[7] The properties referred to in this investigation are designated in government records by reference to a PAN number and a PID number. Each property may have both. PAN refers to a "Property Account Number" whereas PID refers to a "Property Identification" number.

[8] By reference to Exhibit 2 attached to this Report, the location of the lands of the Smith descendants involved in this controversy of rights can be more easily seen. Property number 3 on the Niagara Road (PAN 5093503) went to Lloyd and Clara Smith. Property 2 (PAN 5572418), contiguous to it, went to Tanya Steeves, her sister Linda Stannard and to Chris Stannard. The right of way on Lloyd and Clara Smith's property is 66 feet wide and runs the full length of their sideline with the Steeves/Stannard sideline to the Niagara Road.

[9] Michael Smith, brother to Lloyd Smith, is the owner of a much larger parcel of land directly behind Lloyd and Clara Smith's property. He also has an easement over the 66 foot right of way granted to him and his sons Adam and Aaron by James and Kathleen Smith, his parents. With the easement his property is conveniently accessible.

[10] When James and Kathleen Smith granted the land fronting on the Niagara Road to their son, Lloyd Smith, in August 1994 and again by deed of rectification on June 16, 2000 they also reserved the 66 foot right of way to themselves, their heirs and assigns.

[11] On January 27, 2010 James and Kathleen Smith granted a right of way over the land they had conveyed to Lloyd Smith to Michael J. Smith, Adam Michael James Smith, Aaron Jeffrey Smith, Chris James Stannard, Linda Isabell Stannard and Tanya Geraldine Steeves.

[12] To put this in context, the servient tenement is the land over which the right is enjoyed, that is, the lands of Lloyd and Clara Smith. The dominant tenements in this case are the lands owned by the possessors of the easements. Under the law, the owners of the land, Lloyd and Clara Smith, have all the rights of any owner except that when there is an easement over their lands, they must give way to rights which accompany the easement. When the rights of the easement holders are not respected by the property owner, trouble is sure to follow and it did. Conversely, easement holders must not abuse their rights. Sometimes, both sides push their misconstrued rights to the limits of their rights.

[13] To say the least, Lloyd and Clara Smith were very unhappy with any work done on the right of way by the brother, Michael, whose property is directly behind theirs. They sued Michael Smith, his sons Adam and Aaron, Chris and Linda Stannard and Tanya Steeves in the Court of Queen's Bench in an attempt to terminate any rights held by the respondents and to get an injunction against their relatives from using the right of way.

[14] On July 27, 2010 Justice George S. Rideout dismissed Lloyd and Clara Smith's application and awarded costs against them, Judicial District of Moncton, Citation: 2010 NBQB 249, Date 2010/07/27, M/M/36-10. Part of the decision is as follows:

[23] This wording clearly establishes the width of the Right of Way to be 66 feet and is for the purpose of egress and regress. There is no limiting effect to the existing roadway nor does Lloyd have the power to dictate the location or width of the roadway within the right of way.

[24] It is also well accepted that Michael has ancillary rights "that are reasonably necessary for the enjoyment and exercise of the right of way". Those rights were set out in paragraph 21 of **Voye**, supra. Therefore, he has the right to clear obstruction on the right of way which interferes with the snow plowing and related work necessary for the enjoyment of the right of way.

[25] The Grant of Right of Way from James and Kathleen dated January 27, 2010 clearly gives Chris Stannard, Tanya Steeves and Linda Stannard a right to the use of the right of way similar to that of Michael. The wording of the original reservation contained the words "heirs and assigns" which has been held to be sufficient to permit an assignment of a grant of land or an easement.

[26] Because the Applicants have requested an injunction against the Respondents, the Court is obligated to review the evidence related to the test in **RJR-MacDonald**, supra to determine if the remedy of an injunction is appropriate. Given my findings with respect to the parties' rights and obligations and that for the present, there is no evidence the Respondents are interfering with the Applicants' servient rights, I would dismiss the Applicants' Application.

[15] It would appear that Lloyd and Clara Smith misunderstand the decision by Justice Rideout or choose not to accept it.

[16] First, I intend to deal with a number of allegations against the member which are without merit. They emanate from suspicions based upon perceived experiences and mutual mistrust on both sides. To the beholder, the mistrust solidified the suspicions as though they were objective reality.

The Peace Bond

[17] Michael Smith and Lloyd Smith confronted each other in the right of way wherein Michael Smith was aggressive in his vehicle and used it to push his brother Lloyd's vehicle onto the highway. A charge was laid against Michael and he was bound over to keep the peace for one year. On November 24, 2010, MLA Steeves was at the hearing in court in Moncton and when it became questionable whether a judge would be available to hear the matter, the MLA is alleged to have said that "...he had come from Fredericton for a trial and there is going to be a trial". According to Clara Smith, after making that statement, the MLA went away to speak to somebody. A hearing was then held. Clara Smith believes that somehow the MLA arranged to have a judge hear the case and she

states in her affidavit: “I believe that Wayne Steeves tried to exert influence on the court proceeding contrary to section [6] of the [Members’] *Conflict of Interest Act*.”

[18] Whether or not MLA Steeves made the statement attributed to him, which he denies, the allegation seems bizarre. Lloyd and Clara Smith wanted brother Michael held to a peace bond. It happened. If MLA Steeves did not want his wife Tanya’s brother tried why would he demand a trial? Who was MLA Steeves supposed to have tried to influence, the judge, the prosecutor and to what purpose? The allegation is without merit.

The Police

[19] On January 16, 2012, another incident related to the right of way found the police already at the right of way that Michael Smith was working on when Lloyd and Clara Smith arrived home. According to Clara Smith, Tanya Steeves was present recording events. Clara testified in her affidavit: “I believe that Wayne Steeves or his wife had tried to exert influence on the police by arranging for them to be at our address, prior to any complaint being filed.”

[20] Officer Sébastien Pelchat was interviewed on July 9, 2012. He spoke on behalf of the Royal Canadian Mounted Police. He said he was very familiar with the families involved and various calls to the right of way. The RCMP officer said that at no time has anybody by the name of Wayne Steeves interfered or tried to interfere with police business. In fact, Constable Pelchat said he does not know Mr. Steeves nor has he ever met him. The allegation of influence is without merit.

[21] If the quality of the remaining allegations had persisted at the low level of those with which I just dealt, I would have ceased the investigation under s. 37(4) of the Act:

Investigation and inquiry

37(4) If the Commissioner is of the opinion that the request is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Commissioner may refuse to conduct an investigation, or may cease the investigation.

The Remaining Allegations

The Stannard/Steeves Property Tax Assessment

[22] This allegation in the Smith affidavit relies on the belief that MLA Steeves used his influence as a Member of the Legislative Assembly to secure a lower tax assessment for his wife and his in-laws on their property adjacent to the Smith property which is subject to the right of way. On October 15, 2010, Clara Smith complained about the low assessment.

[23] As a result of the complaint an assessor was dispatched from the Moncton office to view the property. The Moncton Property Assessment Services office promptly adjusted the assessment from \$400 to \$19,600. A further review of the assessment confirmed the increase. The explanation for the low figure which had gone on for several years was given by Stéphane Melanson, manager of the Moncton Property Assessment Services office since the year 2010. The Moncton office is responsible for almost 87,000 properties, the busiest office in the province, according to Mr. Melanson.

[24] Mr. Melanson said that Property Assessment Services is under a ten year review of properties. The Stannard/Steeves property had not been reviewed until the complaint was filed. Since that time he has informed himself as to how this low figure of assessment had occurred. Mr. Melanson established that the property was originally part of a much larger holding of James and Kathleen Smith assessed as timberland. When various parcels were subsequently conveyed the error was made by continuing to incorrectly describe the lot in question as timberland. Once the Stannard/Steeves lot was properly classified as a building lot, the assessment was increased to reflect the land value of sales in the area, not by comparison with other assessments in the area.

[25] As mentioned, re-assessments are mandated in ten year cycles. An interim attention getter is a complaint to the department of an apparent aberration such as in this case. According to Mr. Melanson one explanation for the increase in this type of stimulus for re-assessment is the prevalence of information available on the internet. In earlier years the assessments of the properties of others was simply not available or too difficult to obtain.

[26] Other employees and retired employees who were interviewed with respect to the allegation of a breach of the *Members' Conflict of Interest Act* were:

Charles LeBlanc, Shediac, Commercial Assessor, nine years experience.

Mélanie Dubé, Moncton, Residential Assessor, seven years experience.

Daniel Cormier, Saint Antoine, Assistant Manager, 19 years experience.

Jean-Guy Doiron, Moncton, Assistant Manager of Property Assessment Services, 14 years experience.

Eric Roy, Moncton, Residential Assessor and Acting Commercial Assessor, 6 years experience.

Gilles Aubut, Dieppe, retired Assistant Manager.

Lloyd MacKenzie, Dieppe, retired Assessor.

[27] None of these professionals had any information about the allegation of influence by MLA Steeves concerning the low assessment of the building lot in question which continued to be assessed as timberland after it had been conveyed from the original parcel. Some of them had no direct information about the property in question itself but

confirmed the probable theory of a carry over timberland classification from the original grantor.

[28] There is no evidence that MLA Steeves had any input whatsoever in the tax assessment of the property owned by the Stannards and his wife, Tanya Steeves. The same absence of evidence of interference applies to Tanya Steeves. In fact, the assessors confirm that there is no record or history in the Moncton office of any person wrongly influencing or attempting to wrongly influence any assessment of any property to their knowledge, not even a rumour of such an occurrence.

[29] I therefore conclude that there is no substance to the allegation against MLA Steeves of using the influence of his office to obtain a lower tax assessment in favour of his wife and in-laws. The suspicion of wrongful influence was present in the minds of Lloyd and Clara Smith because the assessment was unreasonably low and Tanya was married to a Member of the Legislative Assembly. As the Smiths viewed it, there was no other reasonable explanation for the low assessment; the suspicion was exalted to fact which has turned out to be baseless.

The Culvert

[30] What remains to be dealt with is an allegation of influence which was not included in the second affidavit but was in the first affidavit that was rejected for want of proper form and substance. Given the animosity between the parties and the fact that the interviews with the complainants, their correspondence and submissions refer to MLA Steeves influencing a highway supervisor with the Department of Transportation, Fraser Curtis Upham, I think it advisable to deal with this matter now and not as a result, perhaps, of a subsequent complaint.

[31] The allegation is that MLA Steeves used his position to speak to Mr. Upham to persuade the highway supervisor to assist Michael Smith in obtaining an access permit to extend an existing driveway culvert to an overall width of 10 meters. The culvert is in front of the land in question owned by Lloyd and Clara Smith and, coincidentally, directly in front of the right of way. According to the highway supervisor he had a telephone call from MLA Steeves on behalf of "Mike Smith," which Mr. Upham said he considered to be a straightforward matter. The MLA asked Mr. Upham to help Mike Smith fill out the form for an extension of an existing culvert.

[32] Mr. Upham, a 25 year employee of the department, says he told MLA Steeves that he would meet with Mike Smith. They met on site on November 17, 2010 and completed the application form. Mr. Smith said he needed to add eight feet to the culvert. Nothing was done with respect to work on the culvert extension until March of 2012. The permit holder has the responsibility of arranging and paying for the installation. Usually, according to Mr. Upham, the permit holder can arrange to have the work done more economically by an outside contractor than by having the department do the work. However, the department must approve the final product.

[33] Lloyd and Clara Smith were upset. They, the owners of the land over which the right of way ran, had not been consulted. They considered this an abuse of their ownership rights. When they obtained a copy of the permit they saw that Michal Smith had filled in their PID (property identification) number 05064183. They were suspicious that something wrong was going on behind the scene and they were convinced that since they owned the land over which the easement ran, they were entitled to be consulted and their approval first had and obtained before any work of any kind was done with respect to the culvert.

[34] Mr. Upham said that MLA Steeves did not identify Mike Smith as his brother in law or himself as a Member of the Legislative Assembly. However, he said that he has known Wayne Steeves for years as the member for Albert and did not consider the call to assist a person in completing an application for a permit as anything out of the ordinary; except for contractors it was common for people to seek help in filling out application forms because only authorized personnel, such as himself, can get an application number. Mr. Upham described the application as “just routine”. When asked if he had been made aware that Lloyd and Clara Smith were the owners of the land attached to the PID and not Mike Smith, the easement holder, would this have made a difference? He answered that he would probably have asked more questions and consulted the owners but would have ended up concluding that everything was straightforward because Michael Smith had an easement over the land, that the culvert extension was not on the right of way but was on and in the government highway land leading to the right of way. Lloyd and Clara Smith’s permission or approval was not needed because the culvert was on provincial government land.

[35] Lloyd and Clara Smith complained to the district engineer, Charles Boudreau. On March 20, 2012 the Smiths addressed a letter to Mr. Upham and Stephen Allen asking that the culvert be removed. The Assistant to the District Transportation Engineer, Ross Fisher, replied on March 26. He pointed out something that had been overlooked or deliberately ignored by the Smiths. He even underlined the pertinent parts:

The Department of Transportation & Infrastructure approved an access permit to lengthen a culvert on the Right of Way of the Niagara Road. This culvert is located on the Right of Way of the Niagara Road and is not on private property.

The Department currently has no plans to remove the culvert from the Right of Way of the Niagara Road.

[36] Cooperation between the family members was basically non existent. The fact that Lloyd and Clara Smith’s PID number was on the application form under the box “Ownership and Location of Property” and their misunderstanding that the culvert being installed was on their land raised their suspicion of foul play to the highest level. Are there reasonable explanations for the use of the PID and the placement of the culvert?

[37] Without question the ownership PID number belongs to Lloyd and Clara Smith. What relation does it have to Michael Smith? He also is an owner. He is a grantee of an easement, a right of way, over this property identifying its location by the same PID

number. I see nothing nefarious in Mr. Smith's use of the PID number. It identifies his easement and the location of the provincial government right of way in which the culvert extension was to be installed in front of, not on, Lloyd and Clara Smith's property.

[38] Lloyd and Clara Smith were and are under the impression that the culvert is on their land. According to Mr. Upham and the letter of March 26, 2012, signed by Mr. Fisher, it is not on their property, it is on the provincial highway.

[39] Insofar as MLA Steeves' telephone call to Mr. Upham to assist Michael Smith in filling out the application form is concerned, it brings to light a situation that could and, in this case, was easily misconstrued. Michael Smith happens to be a brother in-law. Help of any kind, even something as innocent as the one here, can be misconstrued. The *Members' Conflict of Interest Act* attempts to deal with the subject and answers the legality of the situation but not suspicious belief spawned in perception. Members of the Legislative Assembly normally assist constituents in routine matters. Section 7 of the Act provides:

Activities on behalf of constituents

7 This Act does not prohibit the activities in which members of the Assembly normally engage on behalf of constituents.

[40] When dealing in any political way with respect to relatives or friends, members are well-advised to be extremely cautious when extending a helping hand, no matter how innocent or even trivial the assistance. It is the apprehension of favoritism that draws attention to the matter; some will believe the worst, others the least and still others will recognize that part of the duty of a member is to represent each and every constituent in a nonpartisan fashion. Citizens, irrespective of political affiliation, must be able to discuss their concerns with their representative; the constituency office is neutral territory.

[41] In the result, I find that the member for Albert, Oscar Wayne Steeves, has not used his influence of office to further any private interest in breach of section 6 of the *Members' Conflict of Interest Act* as claimed.

Dated at the City of Fredericton this 12th day of March, 2013.

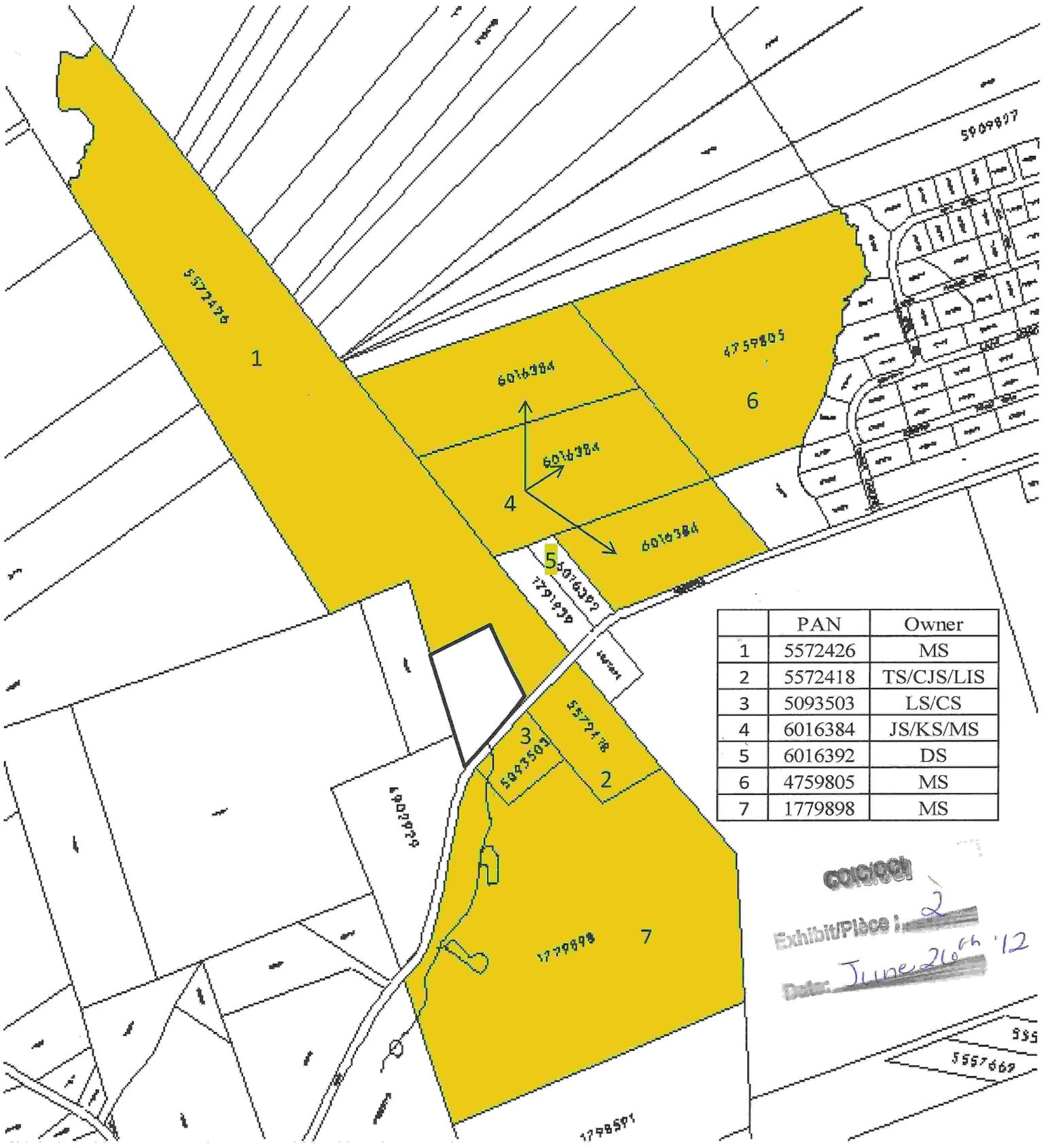
The Hon. Patrick A.A. Ryan, Q.C.

Pursuant to s. 40 of the *Members' Conflict of Interest Act*, I met with Oscar Wayne Steeves on February 13, 2013 to inform him of the particulars of my report and to give

him the opportunity to make representations before completing my report. No representations were made.

The ratio decidendi of my report has not changed.

The Hon. Patrick A.A. Ryan, Q.C.



	PAN	Owner
1	5572426	MS
2	5572418	TS/CJS/LIS
3	5093503	LS/CS
4	6016384	JS/KS/MS
5	6016392	DS
6	4759805	MS
7	1779898	MS

COICIGI
 Exhibit/Pièce : 2
 Date: June 26th '12

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