

SUPREME COURT OF NOVA SCOTIA

Citation: *Potter v. Chute*, 2026 NSSC 184

Date: 20260605

Docket: Ann SAR No. 501585

Registry: Annapolis Royal

Between:

Roland C. Potter, Vivian Annette Cook-Potter

Plaintiffs

v.

Janice Elaine Chute, Brandy Rebeca Parker, Attorney General of Nova Scotia,
Registrar General of Land Titles, Scotia Mortgage Corporation

Defendants

DECISION

Judge: The Honourable Justice Ann E. Smith

Heard: October 20-24, 2025, in Annapolis Royal, Nova Scotia

Counsel: Bernie Conway, Dan White and Danielle Mourad, for the Plaintiffs
Janice Chute, Self-Represented Defendant
Brandy Parker, Self-Represented Defendant

By the Court:

Background

[1] This matter concerns a dispute between Roland and Vivian Potter (the Plaintiffs or the Potters) and Janice Chute and her daughter Brandy Parker (the Defendants) about the ownership of a fifty foot wide strip of land (the Fifty Foot Strip or the Disputed Land). Other lands owned by each party about the Fifty Foot Strip to the north and to the south.

[2] To say that tensions have run high both before and after the Plaintiffs started their claim for the Disputed Land in October 2020, is a huge understatement. There are allegations of wrongful behaviour made by the parties against each other. The RCMP have been involved on numerous occasions. Roland Potter has been criminally charged as a result of some of his behaviour; however, to the knowledge of this court, has not been convicted.

[3] Both the Potters and Janice Chute and Brandy Parker retained surveyors who testified at the trial as experts. The opinions of the surveyors differ as to the location of the property line between the Potter property and the Chute/Parker property.

[4] The Defendants, Registrar General of Land and Titles and Scotia Mortgage Corporation, did not participate in this trial.

Issues:

[5] The Court identifies the following issues for determination:

1. Which party owns the Fifty Foot Strip, whether through Legal Title or Possessory Title?
2. Did the Plaintiffs or the Defendants trespass on the Fifty Foot Strip?
3. Did Parker/Chute maliciously prosecute Roland Parker?
4. Did the Potters wrongfully interfere with the Defendants' use and enjoyment of their property?

Background

[6] The Plaintiffs, Roland Potter and Vivian Cook-Potter, are joint owners of a property near Clementsvale Road, Clementsvale, identified as PID 05053715 (715). The Defendants, Janice Chute and Brandy Parker, jointly own a property to the north of the Plaintiffs' property, identified as PID 05054283 (283), which lies between the Plaintiffs' property and the highway. It is undisputed that there is a right of way from

the highway to the Plaintiffs' property, crossing the Defendants' property. The dispute involves the location of the boundary between the two properties.

Deed history

[7] The northern property – that is, the Defendants' land – traces its origins to a 1973 deed from Robert D. Potter and Helen I. Potter to Daniel Paul Potter. Robert and Helen Potter owned the entirety of what are now the lands of both parties, consisting of a rectangular parcel running 20 rods along the highway and extending 1.5 miles and 20 rods to a Line Road. By the 1973 deed, they conveyed a northern parcel bordering the highway to Daniel Potter. The description was as follows:

COMMENCING at a stake on the South side line of the Main Highway running through Clementsvale at the intersection of the South side line of the said Highway with the East line of lands of Willis Potter;

THENCE Southerly along the East line of lands of said Potter for a distance of three hundred and fifty (350) feet to a stake;

THENCE at right angles and running in an Easterly direction a distance of twenty (20) rods to the West line of lands formerly of Ernest Lowe, now of Amy Lowe;

THENCE in a Northerly direction following the West line of lands of said Lowe for a distance of three hundred and fifty (350) feet or until it reaches the South side line of the Highway;

THENCE in a Westerly direction following the South side line for a distance of twenty (20) rods to the place of beginning...

[Emphasis added]

[8] The result, as described, was a parcel running 20 rods (some 330 feet) along the highway and extending 350 feet back from the highway, where it bordered the

remainder of Robert and Helen Potter's property. The grantors were reserved a right of way from the highway across Daniel Potter's property.

[9] The inconsistency in the descriptions begins with another conveyance from Robert and Helen Potter to Daniel Potter, this one in 1978. This deed conveyed, in substance, the lands that now belong to the Plaintiffs, leaving Daniel Potter with title to both parcels. The description was as follows:

BEGINNING at the Southeast corner of lands of Daniel Potter, the Grantee herein, which point is three hundred (300) feet more or less, from the southern sideline of the main highway running through Clementsvale;

THENCE running in a southerly direction along lands owned by Amy Lowe a distance of eighteen hundred and fifty (1850) feet, more or less;

THENCE running in a westerly direction along lands reserved by the Grantors herein a distance of twenty (20) rods, more or less;

THENCE running in a northerly direction along other lands of the Grantors herein a distance of eighteen hundred and fifty (1850) feet, more or less, to the Southwest corner of lands of the Grantee herein;

THENCE running in an easterly direction along the southern boundary of lands of the Grantee herein a distance of twenty (20) rods, more or less, to the place of beginning.

[Emphasis added]

[10] At this point, the entire parcel was owned by Daniel Potter. However, the seed of future dispute was sown by the differing descriptions of the depth of the northern property: 350 feet in the 1973 deed, but only 300 feet in the 1978 deed. It is undisputed that Daniel Potter operated an auto salvage business out of a barn located in the vicinity of the boundary, specifically, within the disputed 50-foot zone. A

house was located on the front of the northern property, that is, within 300 feet of the road.

[11] In 1981, Daniel Potter conveyed the southern parcel to his business, Potter's Auto Salvage Limited. The description in the 1981 deed was substantively identical to that in the 1978 deed. Most importantly, it repeated that the southeast corner of the northern parcel was 300 feet from the highway, not 350 feet as suggested in the 1973 description:

BEGINNING at the Southeast corner of lands of Daniel Potter, the Grantor herein, which point is three hundred (300) feet more or less, from the southern sideline of the main highway running through Clementsvale...

[12] The 1981 deed expressly incorporated the 1978 deed.

[13] In 1986, Daniel and Darlene Potter leased a 300-foot right of way to Potter's Auto Salvage, described as follows:

BEGINNING at the centre of a driveway found on the southerly limits of the main road through Clementsvale and being located approximately eighty (80) feet westerly from northeasterly corner of lands of Daniel P. Potter;

THENCE following the [centre] of said driveway in a southeasterly direction approximately 300 feet to a point of beginning located approximately 60 feet from the northeasterly corner of lands of Potter's Auto Salvage Limited;

SAID right-of-way is 20 feet in width.

[14] In June 1989, Daniel Potter conveyed the northern property to Consolidated Auto Recyclers (N.B.) Inc. (Consolidated), a New Brunswick company. This deed replicated the description from the 1973 deed, which was incorporated by reference.

As a result, Consolidated now had a deed to a northern parcel running 350 feet in from the highway, while Potter's Auto Salvage owned a neighbouring property described as commencing 300 feet from the highway. The two companies, along with a third company, shortly thereafter amalgamated.

[15] The southern parcel was foreclosed upon in 1990, and title was conveyed by Sheriff's deed to P.A.S. Auto Recyclers in March 1991. Once again, the conveyance described the parcel as commencing 300 feet from the highway, referring back to the 1978 deed. Under the same description, the parcel was next conveyed by tax deed to Roland Potter in February 1998. Roland Potter subsequently conveyed this property to himself and his spouse, Vivian Annette Cook-Potter, in June 2015.

[16] The Plaintiffs' current deed to the southern parcel incorporates the description from the 1978 deed, with the southeast corner of the northern parcel described as being 300 feet from the highway.

[17] Meanwhile, the northern parcel – what is now the Defendants' property – was foreclosed upon in April 1991, and title was conveyed by Sheriff's deed to CIBC Mortgage Corporation. CIBC Mortgage Corporation then conveyed it by quit claim deed to Heather Leblanc in April 1997. In September 2006, Heather Leblanc conveyed the northern parcel by warranty deed to Michael Leblanc and Ginger

Leblanc. The parcel was foreclosed upon and conveyed by Sheriff's deed to Scotia Mortgage Corporation in November 2012. In July 2013, Scotia Mortgage Corporation conveyed title to Canada Mortgage and Housing Corporation by Warranty Deed. In February 2014, Canada Mortgage and Housing Corporation conveyed the northern parcel to Dennis Cress and Linda Cress by warranty deed. The parcel was conveyed by Warranty Deed to the Defendants in September 2014.

[18] The description in each of these deeds referred back to the 1989 conveyance to Consolidated, with the property said to run 350 feet back from the highway.

The Experts' Reports

[19] Each party led expert evidence from a land surveyor. The Defendants had a survey prepared by Matthew J. LeBlanc. The Plaintiffs retained William E. Ross.

[20] Mr. LeBlanc conducted a survey in 2018. He recounted the history of the deeds to the Defendants' lot and the adjoining properties, describing the deed research as "relatively straight forward." He wrote that the description in the 1973 deed:

very clearly and unambiguously describes the boundaries of the new Lot... Based on the title research it is clear that the subject Lot [i.e. the defendants' lot] has existed since 1973, as described by its original boundaries (being 20 rods wide by 350 feet deep by Deed) ...

[21] Mr. LeBlanc went on to conclude that the “approximation of 300 feet, more or less” in the 1978 deed of the southern lot was “not accurate, as the Southeast corner of Daniel Potter’s Lot was already established as being 350 feet (exactly) from the southern sideline of the main highway, as described in the original deed from 1973.” Robert and Helen Potter could not have conveyed any portion of the front 350 feet in 1978, since they did not have title to any of it. “The 1978 deed description”, Mr. LeBlanc stated, “cannot reconfigure the dimensions of the first conveyed Lot.”

[22] Mr. LeBlanc further recounted a field survey in which he was unable to locate any physical evidence of the southern boundary of the northern lot.

[23] The Plaintiffs’ expert, Mr. Ross, reported that his “research revealed a discrepancy of 50 feet in depth” between the Potter lands and the neighbouring Parker/Chute lands, reflected in the conflicting deed descriptions, described above. He identified the origin of the “overlap” as the 1978 deed, specifically its description of the southern parcel as starting 300 feet from the highway. This left Daniel Potter with “two pieces of land” with “a house and a barn located within these two parcels...”. After the 1981 conveyance of the southern parcel to Potter’s Auto Salvage, the company “operated out of the barn and the barn had an addition to the

easterly and westerly sides. These additions had cement pads”, which were visible in aerial photographs he obtained and reviewed.

[24] Based on the 1981 conveyance to the company, and the 1986 lease of the right of way, Mr. Ross concluded that it was “clear that Daniel Potter wanted to separate his land at a point 300 feet in depth from the main road.” He further concluded that the 1989 conveyance to Consolidated Auto Recyclers “cannot be 350 feet in depth as Daniel and Darlene [Potter] had previously conveyed land to [Potter’s] Auto Salvage Limited that started 300 feet from the main road.” Aerial photographs taken between 1975 and 1977 show the house and the original barn. In relation to a 1987 photograph, Mr. Ross wrote:

you can see the business in operation. The barn now has two additions attached to the sides, the eastern side is easily identified by the different colored shingles. The house roof also tells us where the original barn was if you refer to the earlier photos. You can see a road that traverses around the barn and also the area used for surplus vehicles to the east of the house which would be on the leased area. There is also a Quonset building erected, and that is there today.

[25] The Quonset building and cement pads remain visible in aerial photographs taken in 2002 and 2012, although the barn was gone by that time, having burnt down. Mr. Ross wrote that the 2012 photograph showed that the “easterly cement pad has been removed and placed in the rear of the Potter lands.”

[26] Mr. Ross referred to portions of two surveys: the Dewolfe/Morse plan, and his own. The Dewolfe/Morse plan, he wrote, showed that the barn and eastern

addition would have rested “clearly over the boundary line”, a conclusion reinforced by a comparison with the 1987 photograph. Mr. Ross’s own survey, he said, showed “ties from the house to the line, and the former barn and its additions would fit on this property without issue.”

[27] In short, a survey showing the line at 350 feet from the road results in the concrete pads used by the auto salvage business being located largely, if not entirely, on the northern parcel. By contrast, Mr. Ross’s survey, showing the line at 300 feet from the highway, locates the pads within the southern parcel, that is, the property conveyed to Potter’s Auto Salvage. This is consistent with Mr. Ross’s conclusion that Mr. Potter’s intention would have been for the line to be at 300 feet, as indicated in the 1981 deed.

[28] The Court also heard from two lay witnesses, each called by the Potters. These were James Milner and Rick Jacques. They each gave evidence that Daniel Potter showed them the property line which is where surveyor Ross located it. Jacques testified that Dan Potter walked the property line with him on two different occasions in the 1990s.

The Positions of the Parties

[29] As stated above, in 1981, Daniel Potter owned both the northern and the southern parcel. The Plaintiffs argue that when Daniel Potter conveyed the southern parcel (now the Plaintiffs' lands) to Potter's Auto Salvage in 1981, he effected a subdivision of the lands, changing the boundaries of both lots. The southeast corner of the northern lot, described as being 350 feet from the south side line of the highway in the 1973 deed, was now 300 feet from the south side line of the highway. The Plaintiffs submit that the conveyance to Potter's Auto Salvage was validated by the *Planning Act*, R.S.N.S. 1989, c. 346 (now s. 291 of the *Municipal Government Act*, S.N.S. 1998, c. 18), and that Daniel Potter could not have conveyed title to the disputed 50-foot strip when he conveyed the northern parcel to Consolidated in 1989 because he had already conveyed it to Potter's Auto Salvage in 1981. Those 50 feet of land were no longer Daniel Potter's property to convey.

[30] The Defendants argue that the boundaries of the northern parcel were clearly established in the 1973 deed description and the same description was used in every future conveyance of the property. They say the 1978 deed from Robert D. Potter and Helen I. Potter to Daniel Potter, which erroneously identified the southeast corner of the northern parcel as being 300 feet from the southern sideline of the main highway, could not reconfigure the dimensions of the northern lot.

The Evidence of Witnesses

[31] The Court has carefully considered the evidence of each of the witnesses. However, not all of this evidence will be mentioned in this decision.

[32] I find each witness to be credible and, where their evidence differs, that such differences are a product of memory loss over time, and not of a result of the witness being deliberately untruthful.

[33] Ms. Parker was 46 years old at the time of trial. She has held the designation of Licensed Practical Nurse for 24 years.

[34] On October 26, 2014, she purchased 3572 Clementsvale Road from Dennis Cress in a private sale. Ms. Parker testified that she understood from talking with Mr. Cress that her property line started within 5 feet of what she called the Steel Hut. She also said that from review of the deed that she understood that the boundary line was 350 feet from the main road. Ms. Parker's evidence was that within one or two months of moving in, she approached Mr. Potter and asked him if he could dig a clothesline hole for her so that she could run a clothesline from the back of her house across her back property. Mr. Potter agreed to do so; a pole was obtained and inserted into a hole that Mr. Potter dug. Ms. Parker said that at no point did Mr. Potter tell her that the pole was on his property or that he was doing her a favour.

[35] During the fall/winter of 2014 and 2015 Vivian Potter and Ms. Parker exchanged Facebook messages with respect to plowing the 20 foot wide right of way. Ms. Parker's partner at the time was a lobster fisher. From 2014 to 2015, she and the Potters gave them lobsters in exchange for Roland Potter ploughing snow from the right of way. After a time, the agreement was that fish would be exchanged for the ploughing. Soon after the ploughing for fish arrangement ended. Later that spring, Ms. Parker proposed dividing up the work of maintaining the driveway. There was a "nasty" encounter between Roland Potter and Ms. Parker which ensued and following, with Mr. Potter posting "no trespassing signs". Ms. Parker testified that she told Mr. Potter not to plough the driveway in 2016. Ms. Parker then hired someone to plough the driveway during 2016 into 2017.

[36] Ms. Parker's evidence was that she moved from her home and was not present in it from June 2017 to the beginning of October 2017. Ms. Parker said that the winters were generally "quiet" until she had some wood delivered into the "back piece of the property". She said that on those occasions, Vivian and Roland Potter were present to see what she was doing.

[37] In the late spring or early summer of 2018, Brandy Parker's son, Simon, bought a dirt bike. At the time Simon was 15 years old. Her evidence was that the dirt bike did not work very well, and Simon would work on it. He drove the dirt

bike around her house. Her evidence was that she knew that relations with Roland Potter were not good at this point, so she told Simon not to go beyond doing circles around her house because she did not want any problems with Roland Potter.

[38] The Court reviewed a video taken on July 25, 2018, by her son Simon or her son Tristen, then 13 years old. In it, Mr. Potter is seen driving a backhoe, making two digs into the Disputed Land, and then leaving. Ms. Parker was at work at the time. She understood what had happened after speaking with Simon and Tristen upon her return from work later that day. Her evidence was that she gave this video to the RCMP and that it was “used” to obtain a peace bond and was played in Court during the hearing of a criminal charge of mischief against Roland Potter, which was dismissed.

[39] Ms. Parker’s evidence was that her mother, Janice Chute offered to pay for a land survey to be completed so that the issue of where the property line lay could be resolved. Mr. LeBlanc was retained and prepared his survey in July or August 2018.

[40] Ms. Parker stated that as a result of the July 25, 2018, incident captured on the video she gave to the RCMP, Mr. Potter was placed on conditions. Pursuant to a Nova Scotia Provincial Court Peace Bond Recognizance dated October 3, 2018, one of the conditions of was that Roland Potter not contact or attempt to contact Janice

Chute, Andrew Chute (Brandy Parker's brother), Brandy Parker, Simon Andrews (Brandy Parker's son), or Tristen Andrews (Brandy Parker's son) either directly or indirectly. Another condition was that Roland Potter remain away from the residence at 3572 Clementsvale Road (Brandy Parker's home).

[41] January 29, 2019, Mr. Potter was charged with assault and mischief said to have occurred on July 25, 2018. He was also charged with other *Criminal Code* offences arising out of events on January 6, 2019. He was released on conditions, which again had no-contact provisions for Ms. Parker's family members.

[42] Brandy Parker's evidence was that Roland Potter continually breached these conditions. She said that he used farm equipment as an intimidation tactic. Brandy Parker disputed Roland Potter's trial evidence that he uses the right of way two to three times a day to check his fields. She said she had no difficulty with him or Vivian doing so, provided he simply passes through. She said that it was when Vivian and Roland Potter harassed her and her children that she had a problem.

[43] Brandy Parker's evidence was that she had every right to report what she considered to be breaches of these conditions to the RCMP. She stated that she reported them due to fear for her safety and that of her children and that she had the

legal right to do so. She denied having any malicious intent motivating her reports to the RCMP about the Potters.

[44] Ms. Parker stated that at no time did they ever intentionally block the right of way. She said that the right of way is very close to her home. She said that there were times when she had furniture or other materials in a truck which had to back up into the right of way in order to facilitate unloading and delivery to her home. On such occasions, she said that the Potters would get in tractors or their cars and drive up as close as they could to the Parker truck and “stare them down”. She said that even in such circumstances the Potters could easily drive around the truck to continue along the right of way, and that she has told them that they could drive on a portion of her front lawn in order to do so. Ms. Parker was clear that she did not deny that there may have been Parker vehicles in the right of way, but said that they were only there for short periods of time, and did not block the right of way.

[45] Brandy Parker said that she and her sons started video recording incidents involving Vivian and Roland Parker on the right of way. One such video was played during the trial. Ms. Parker said that she was working in Annapolis Royal. Her mother, Janice Chute was also working that day. Ms. Parker was off work at 7 p.m.; her mother off work at 3 p.m. Brandy Parker’s son, Tristen, 15 years old at the time, called her at work to tell her about interactions he had had with the Potters. He

described Roland Potter as harassing him, shaking his fist at him, and placing boulders on what the Potters believed was the property line. Ms. Parker stated that she had surveillance video of this incident that she gave to the police. This surveillance video was not before the Court. Rather, Ms. Parker stated that she used her cell phone to record what was captured by the surveillance cameras. She then had a young person take clips of what she thought was most important from her cell phone recording and return them to her. She stated that her purpose in doing so at the time was to share with other people what was going on, including to share it on social media. She did post these videos on social media. Ms. Parker felt that the RCMP were not responding to her concerns about the Potters.

[46] Brandy Parker stated that the video clip shown to the Court does not depict what happened prior to its start. A nineteen or twenty year old friend of Tristen, not one of Brandy Parker's children, threw a rock at the window of the backhoe driven by Roland Potter. Vivian Potter was seated beside Roland in the backhoe at the time. The rock went through the backhoe's glass window. As a result, a piece of glass hit Vivian Potter in the eye; her elbow was hurt as well. What the video does show, is Roland Potter putting the bucket of the backhoe down to the ground and aggressively driving the backhoe towards Tristen and the rock-thrower, essentially with them running in a circle in front of the backhoe, trying to get away from it.

[47] Ms. Parker took a number of videos using her cell phone which she posted on her TicToK account showing Roland Potter operating his backhoe on the Disputed Land. At times, she provided commentary on TikTok describing Roland Potter's activities in this regard. One of these video clips shows the Potters' backhoe digging deep harrows on the Disputed Land.

[48] Another video clip shows the Potters putting heavy boulders on what they believed was the property line, and Janice Chute trying to drag these boulders away. At one point, the viewer can see the bucket of the backhoe being directly above Ms. Chute's head. Another person is seen immediately pulling her out of the way of the backhoe.

[49] Also in evidence was the fact that a young child died some years before any of the events before the Court as a result of being hit by a tractor driven by Roland Potter. This was determined by police to have been a tragic accident. In late 2019 Brandy Parker posted the following on a website dedicated to the memory of this child:

That's what this is all about. Roland and Vivian Potter want my land. Well guess what...your [sic] aren't fucking getting it you useless murdering pieces of shit! You will NOT run us out of our home! You will fucking die of old age before I move from this place. And when the property line issues is settled there will be a gate. A big one and you will not trespass on MY property. Fight fire with fire. If you do NOT own the property behind me, you do NOT have a right of way through my yard, so I suggest you stay the hell out of it because I will be calling the RCMP. This is private property!!

[Emphasis added]

[50] The Court received other evidence, which it does not review in this decision, of each Roland Potter, Janice Chute, and Brandy Parker using profane language directed towards the other's supposed trespass on the Disputed Land.

Issue 1: Who Owns the Disputed Land?

Analysis

[51] In *Goulden v. Nova Scotia (Attorney General)*, 2013 NSSC 253, aff'd without reasons on December 19, 2014, Stewart J. summarized the legal principles that govern deed interpretation and boundary determination:

[12] **Boundary determination.** Before embarking on a review of the evidence, it will be of use to set out several of the general legal principles that govern the rather technical field of boundary determination. Various legal principles govern deed interpretation and boundary demarcation when the court is required to resolve boundaries. The general rules of evidence apply to boundary disputes, which are typically heavily concerned with documentary evidence of title. In deed interpretation, the question is not the grantor's subjective intent. Rather, the court is concerned with the meaning of the words used in the deed. That is to say, the question is "what is the expressed intention of the grantor?": *Knock v. Fouillard*, 2007 NSCA 27, at para. 27. If the terms of the conveyance are clear, extrinsic evidence is not admissible: Anne Warner Le Forest, *Anger and Honsberger's Law of Real Property*, 3d edn. (Aurora, Ont: Canada Law Book, 2010) at §18:30:30.

[13] When the words of a deed are not ambiguous, either in themselves or when applied to the land in question, the intention of the original grantor is to be taken from the words of the description in the deed. No further rules of interpretation are required: *Herbst v. Seaboyer*, (1994) 137 N.S.R. (2d) 5 (C.A.), at para. 15; *McCormick v. MacDonald*, 2009 NSCA 12, at para 73. A latent ambiguity occurs when the words of a document on their face do not admit a different possible meaning, but surrounding circumstances show that two or more different meanings are possible. A party may demonstrate that a latent ambiguity exists, and attempt to resolve it, by adducing extrinsic evidence, including evidence of subjective intention. A patent ambiguity, by contrast, is "apparent from the face of the

document”: *Taylor v. City Sand and Gravel Ltd.*, 2010 NLCA 22, at para. 21; Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2d edn. (Toronto: Lexis Nexis Butterworths, 2012) at §2.8.5.

[14] The rules for ascertaining the intention of a grantor in the event of ambiguity were set out in *McPherson v. Cameron* (1868), 7 N.S.R. 208, [1868] N.S.J. No. 2 (S.C.). Dodd J. said the general rule “is to give most effect to those things about which men are least liable to mistake” (para. 5). In applying this principle, the elements of the description are “marshalled” in the following order: “First, the highest regard had to natural boundaries; Secondly, to lines actually run and corners actually marked at the time of the grant; Thirdly, if the lines and courses of an adjoining tract are called for, the lines will be extended to them, if they are sufficiently established; Fourthly, to courses and distances, giving preference to the one or the other according to circumstances” (para. 5).

[15] In *Kolstee v. Metlin*, 2002 NSCA 81, the Court of Appeal confirmed that cases such as *MacPherson*, *supra*, *Saueracker v. Snow* (1974), 14 N.S.R. (2d) 607 (T.D.), and *Humphreys v. Pollock*, [1953] 3 D.L.R. 730 (N.B.S.C.A.D.), *aff’d* [1954] 4 D.L.R. 721 (S.C.C.), “correctly set out the general principles to be applied in interpreting descriptions of land as spelled out in a deed. As a general rule the intent of the parties to a conveyance is to be gathered from the words of the document. If there is an ambiguity, the common sense rules as quoted by the trial judge from *McPherson* ... are generally to be applied. When courses and distances clash preference to one, rather than the other, will depend on the circumstances” (para. 66).

[16] More recently, in *Nicholson v. Halliday* (2005), 248 D.L.R. (4th) 483, [2005] O.J. No. 57, the Ontario Court of Appeal set out the surveyors’ hierarchy of evidence: (1) natural boundaries; (2) original monuments; (3) fences or possession that can reasonably be related back to the time of the original survey; and (4) measurements (as shown on the plan or as stated in the metes and bounds description). See also *Robichaud v. Ellis*, 2011 NSSC 86, at para. 25. The Court of Appeal recently considered this hierarchy in *Podgorski v. Cook*, 2013 NSCA 47, declining to decide whether it applies in Nova Scotia. The court held that the “application of the ‘hierarchy of evidence’ and related survey principles would initially be a matter for the expertise and opinion of the surveyors in question. So, for example, whether monuments were ‘original’ or whether ‘fences or possession’ can be reasonably related back to the ‘time of original survey’ would be matters of expert opinion for a surveyor” (para. 20).

[17] In re-establishing a line, a surveyor must “consider the best evidence available and re-establish the boundary on the ground in the location where it was first established, and not where it was necessarily described, either in the deed or on a plan. The boundary is the re-establishment on the ground of the original running of the line and this re-establishment of the boundary constitutes the deed line”: *Thelland v. Golden Haulage Ltd.*, [1989] O.J. No. 2303, 1989 CarswellOnt 2417 (Ont. Dist. Ct.) at para. 11. Stortini J. stated in *Traynor v. Hilderley*, [1997]

O. J. No. 4839 (Ont. Ct. J. (Gen Div)), that if “original monumentation is found and is undisturbed as to location, it must be accepted, erroneous as may have been the original survey” (para. 14). If there is no evidence “of either the original monuments or original line, then the surveyor must refer to the measurements as contained in the deed or on the plan. This approach may, of course, be affected by possessory title. If no other method of establishing the boundary in question is available, the court must fix the boundary with the assistance of deed measurements and the law of possessory title” (para. 15).

[Emphasis added]

[52] In *Chapman v. C.A. Realty Ltd.*, 2017 NSSC 271, aff’d 2018 NSCA 81, a right-of-way dispute, Arnold J. cited *Goulden* in relation to the use of extrinsic evidence to resolve an ambiguity in a deed:

[48] Where a right-of-way is created by an express grant, its scope and extent are determined according to the language of the grant: *PATCO Developments Ltd. v. 3195972 Nova Scotia Ltd.*, 2016 NSSC 9, 2016 CarswellNS 15, at para 32. C.A. Realty submits that the grant of right-of-way is ambiguous, and that extrinsic evidence is therefore required. The relevant law is summarized in *Goulden v. Nova Scotia (Attorney General)*, 2013 NSSC 253, 2013 CarswellNS 610:

13 When the words of a deed are not ambiguous, either in themselves or when applied to the land in question, the intention of the original grantor is to be taken from the words of the description in the deed. No further rules of interpretation are required: *Herbst v. Seaboyer* (1994), 137 N.S.R. (2d) 5 (N.S. C.A.), at para. 15; *MacDonald v. McCormick*, 2009 NSCA 12 (N.S. C.A.), at para 73. A latent ambiguity occurs when the words of a document on their face do not admit a different possible meaning, but surrounding circumstances show that two or more different meanings are possible. A party may demonstrate that a latent ambiguity exists, and attempt to resolve it, by adducing extrinsic evidence, including evidence of subjective intention. A patent ambiguity, by contrast, is “apparent from the face of the document”: *Taylor v. City Sand & Gravel Ltd.*, 2010 NLCA 22 (N.L. C.A.), at para. 21; Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2d edn. (Toronto: Lexis Nexis Butterworths, 2012) at §2.8.5.

[49] C.A. Realty says the ambiguity must be settled by reference to the expert opinion of Mr. McIntosh, the intentions of the Co-op and Mr. Fury at the time of the transaction, Mr. Fury’s subsequent acceptance of the boundaries of the right-of-way and the plaintiff’s knowledge of the boundaries when she bought the property. On the evidence, I am satisfied that this is an appropriate situation to use extrinsic evidence as an aid to interpretation.

[53] In affirming Justice Arnold’s decision, the Nova Scotia Court of Appeal stated:

[59] Arnold, J.’s finding that this part of the deed was ambiguous and that extrinsic evidence ought to be admitted to aid in its proper interpretation was not appealed. However, I am satisfied that the judge did not err in deciding that this part of the deed was ambiguous and that allowing extrinsic evidence was necessary to guide him in properly interpreting the language contained in the document. In this case, the extrinsic evidence included: testimony regarding the intentions of Co-op and Mr. Fury concerning the rear portion of the lawn; Mr. McIntosh’s expert opinion; and Ms. Chapman’s knowledge of the location and extent of the ROW as well as the NSPI infrastructure, before she purchased her home.

[60] Arnold, J. correctly applied the relevant case law on the permissible use of extrinsic evidence when interpreting a right-of-way, having considered the principles set out in *Goulden v. Nova Scotia (Attorney General)*, 2013 NSSC 253, and *PATCO Developments Ltd. v. 3195972 Nova Scotia Ltd.*, 2016 NSSC 9. I see no error in the way in which the judge addressed this issue.

[54] The Plaintiffs’ claim to the disputed 50-foot strip is rooted in the 1981 deed by Daniel Potter to Potter’s Auto Salvage. The 1981 deed states in part:

THE GRANTOR hereby conveys to the GRANTEE the lands described in Schedule “A” to this Warranty Deed and hereby consents to this disposition, pursuant to the Matrimonial Property Act of Nova Scotia.

[55] Schedule “A” states:

ALL that certain parcel of land situate at Clementsvale in the County of Annapolis and the Province of Nova Scotia, more particularly bounded and described as follows:

BEGINNING at the Southeast corner of lands of Daniel Potter, the Grantor herein, which point is three hundred (300) feet more or less, from the southern side line of the main highway running through Clementsvale;

THENCE running in a southerly direction along lands owned by Amy Lowe a distance of eighteen hundred and fifty (1850) feet, more or less;

THENCE running in a westerly direction along land reserved by Robert D. Potter and Helen I. Potter a distance of twenty (20) rods, more or less;

THENCE running in an easterly direction along the southern boundary of lands of Daniel Potter a distance of twenty (20) rods, more or less, to the place of beginning.

CONTAINING fourteen (14) acres, a little more or less.

BEING AND INTENDED TO BE the same lands and premises as conveyed to Daniel Paul Potter by deed dated the 21st day of November, A.D. 1978 by Robert D. Potter and Helen I. Potter and which is recorded at the Registry of Deeds Office in Bridgetown, Nova Scotia, at Book 303, Pages 575-577 on November 23rd, 1978.
[Emphasis added]

[56] The deed is unambiguous on its face. It contains the same reference to the southeast corner of the northern parcel being 300 feet from the southern sideline of the highway as the 1978 deed, which it incorporates by reference. There is nothing within the four corners of the deed to suggest any ambiguity as to the grantor's intention. It is only when the 1981 deed is considered alongside the 1973 deed to the other lot that the grantor's intention becomes ambiguous. Since the ambiguity is not apparent on the face of the deed, it cannot be a patent ambiguity. It must necessarily be a latent ambiguity.

[57] Did Daniel Potter intend for the southern parcel (now the Plaintiffs' land) to commence at 300 feet from the southern sideline of the main highway, or was he merely repeating an inadvertent error from the 1978 deed with the intention to maintain the original boundaries for both parcels? To resolve the ambiguity, it is necessary to consider extrinsic evidence, including the survey reports and aerial photographs, and the subsequent conduct of the parties to the 1981 deed.

[58] Starting with the survey reports, in Matthew LeBlanc’s analysis, the northern parcel was created by deed in 1973, its southern boundary is 350 feet from the main highway as stated in the original deed and subsequent deeds, and its boundaries have not been altered since it was created. He says the southern parcel was created by deed in 1978, and its boundaries have not been altered since it was created. In Mr. LeBlanc’s view, the erroneous description of the southeast corner of “the lands of Daniel Potter” being 300 feet from the southern sideline of the main highway in the 1978 deed, and subsequent deeds, is irrelevant to the boundaries of the northern parcel:

Robert Daniel Potter and Helen Irene Potter did not have title to the front 350 feet, therefore, they could not have conveyed any portion of it in this 1978 deed. **The 1978 deed description cannot reconfigure the dimensions of the first conveyed lot.**

[Emphasis added]

[59] Mr. LeBlanc does not address the impact, if any, of the fact that Daniel Potter owned both lots in 1981 when he conveyed a portion of the lands to Potter’s Auto Salvage. Mr. LeBlanc is obviously correct that the 1978 deed from Robert and Helen Potter could not have conveyed the disputed 50-foot strip to Daniel Potter, because the grantors had already conveyed it to him in the 1973 deed. However, in 1981 Daniel Potter owned both parcels. As a result, it does not necessarily follow that the 1981 deed, which used the same description as the 1978 deed, could not have

conveyed the disputed 50-foot strip to Potter's Auto Salvage, if that was the grantor's intention.

[60] In William Ross's opinion, it was Daniel Potter's intention to separate his land at a point 300 feet in depth from the main road. After setting out the 1973 and 1978 deeds, Mr. Ross writes at p. 9:

Daniel Potter has now the two pieces of land, and there is a house and a barn located within these two parcels of land. Daniel Potter had an auto salvage business that operated out of the barn. He conveyed the tract of land that started 300 feet from the road to Potter Auto Salvage Ltd. ...

[61] Mr. Ross further notes at p. 14 of his report:

Potter Auto Salvage operated out of the barn and the barn had an addition to the easterly and westerly sides. These additions had cement pads which can be seen in the following photographs. Daniel Potter and Darlene Potter also leased to Potters Auto Salvage recorded July 3, 1986, book 392, page 233, a road 20 feet wide by 300 feet in depth for access to his business.

[62] Most compelling is Mr. Ross's observation, based on the aerial photographs and the location of the remaining western cement pad, that if the boundary is 350 feet from the southern side line of the highway, the barn and its additions would "rest clearly over the boundary line" (p. 32). When one examines the photographs and the diagrams, it becomes clear that if the boundary line was intended to be placed at 350 feet, the barn used by Potter's Auto Salvage would have been located primarily, if not entirely, on the northern parcel. When this evidence is considered alongside the lease of the 300-foot roadway, the inescapable conclusion is that Daniel Potter

intended for the southern parcel to begin at a point 300 feet from the southern side line of the highway.

[63] The lease of the roadway by Daniel Potter to Potter's Auto Salvage is evidence of the subsequent conduct of the parties.

[64] There is no evidence that Daniel Potter or anyone else ever realized the discrepancy between the 1973 and 1978 deeds. Daniel Potter's use of the 1973 deed description of the northern parcel in the 1989 deed to Consolidated suggests that he never turned his mind to it, and believed that the southern parcel had always begun at a point 300 feet south of the southern side line of the highway. What is clear from the evidence, however, is that Daniel Potter intended for the land he conveyed to Potter's Auto Salvage in 1981 to begin at a point 300 feet south of the southern sideline of the highway.

[65] At page 24 of his report, Mr. Ross notes that the 1981 deed and the road lease "were done prior to the Validation Act of 1987", and that, as a result, [t]he deed from Daniel Potter and Darlene Potter to Consolidated Auto Recyclers (N.B.) Limited recorded in [*sic*] July 7, 1989 cannot be 350 feet in depth as Daniel and Darlene had previously conveyed land to Potters Auto Salvage that started 300 feet from the main road."

[66] Mr. Ross's reference to the "Validation Act of 1987" is not quite accurate. The *Real Property Transfer Validation Act*, R.S.N.S. 1989, c. 386, provides as follows:

Short title

1 This Act may be cited as the *Real Property Transfer Validation Act*. R.S., c. 386, s. 1.

Failure to comply before May, 1977

2 (1) The failure to comply with the former *Planning Act*, being Chapter 16 of the Acts of 1969, or the former *Town Planning Act* or any local Act or any regulation or by-law made pursuant to any of the said Acts does not affect and is deemed not to affect the creation of any title or interest in real property conveyed or purported to have been conveyed whether by instrument, testamentary document or operation of law on or before the thirtieth day of April, 1977.

Acquired rights

(2) This Section does not affect the rights acquired by any person from a judgment or order of a court given or made in litigation or proceedings commenced on or before the thirtieth day of April, 1977. R.S., c. 386, s. 2.

[67] In C.W. MacIntosh, *Nova Scotia Real Property Practice Manual* (Online: LexisNexis Canada Inc., updated to 2026), the author discusses the *Real Property Transfer Validation Act* at 4.4H:

The *Real Property Transfer Validation Act* retroactively validates any conveyance made prior to April 13, 1977, which would otherwise have been invalid due to lack of subdivision approval. The effective date for validation was moved forward to April 15, 1987 by then s. 114 of the *Planning Act*, which is now s. 291(2) of the *Municipal Government Act*. ...

[Footnotes omitted]

[68] Section 291 of the *Municipal Government Act*, S.N.S. 1998, c. 18, provides:

Title or interest not affected

291 (1) A failure to comply with

- (a) this Act; or
- (b) the former *Planning Act*,

or a regulation or by-law made thereunder does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed, lease, mortgage or other instrument before April 16, 1987.

- (2) Subsection (1) does not affect the rights acquired by a person from a judgment or order of a court given or made in litigation or proceedings commenced before April 16, 1987.

[69] In *Boutilier v. Clayton*, 2003 NSSC 237, Justice Moir summarized the history of the above provisions as follows:

[7] Legislative Framework. The applicable legislation has a history and the history is helpful to understanding the legislation. Subsection 27(10) of the *Town Planning Act*, RSNS 1954, c. 292 prohibited subdivision of land without municipal approval (by way of a certificate on a plan filed at the Registry of Deeds) and the subsection provided for a fine. *Halifax Relief Commission v. City of Halifax* (1965), 50 D.L.R. (2d) 69 (SC *in banco*) decided that an agreement for the sale of land in contravention of s. 27(10) was void as an illegal contract. This position was reiterated in the context of the s. 49(11) of the *Planning Act*, SNS 1969, c. 16 by Justice Jones when he was a member of this Court and not long before he joined the Appeal Division: *Reid v. Reid*, [1976] N.S.J. 549, 22 N.S.R. (2d) 361 (SC). Although it merely restated the principle in the 1965 *Halifax Relief Commission* decision, *Reid v. Reid* caused great concerns among the conveyancing bar. Many titles were now in doubt. Statutes were passed to validate conveyances that effected an illegal subdivision, starting with *Real Property Transfer Validation Act*, SNS 1977, c.16. The situation changed in 1983 with the new *Planning Act*, SNS 1983, c. 9, s. 101, which was expanded upon in 1987, SNS 1987, c. 51, s. 33, and carried forward in *Planning Act*, RSNS 1989, c. 346, s. 111, now *Municipal Government Act*, SNS 1998, c. 18, s. 287. Under the modern provisions a deed effecting an unapproved subdivision is not void. It is ineffective to pass title until an approved subdivision plan is filed: s. 287(2) and see *C.I.B.C. v. Hi-Tech Woodworkers Ltd.* (1992), 118 N.S.R. (2d) 73 (SC, AD). The curative statutes were eventually replaced by s. 291(1) of the *Municipal Government Act*. It provides that a failure to comply with that statute or the former *Planning Act* “does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed...before April 16, 1987”. Thus, if the 1931 deed conveyed a strip called a roadway separate from the remaining west part of Cleveland Lot 3, say Cleveland Lot 3 West, and separate from the remaining east part to the shore, then s. 291(1) allows for the conveyance

today of Cleveland Lot 3 West although it was never divided by approved plan. Such would have created the east boundary of the lands under agreement of purchase and sale. Similarly, if during their ownership Reid Cleveland and Ernest Cleveland divided Cleveland Lot 3 West into the Upper Lot and the Lower Lot referred to in Roma Boutilier's will then s. 291(1) allows for the separate conveyance today of those lots. Such would have validly created the west boundary of the lands under agreement of purchase and sale.

[70] The *Municipal Government Act* defines "subdivision" at s. 191(q):

(q) "subdivision" means the division of an area of land into two or more parcels, and includes a resubdivision or a consolidation of two or more parcels;

[71] It appears, as Mr. Ross implies, that the shifting of the boundary line between the northern and southern parcels would qualify as a subdivision under the Act which was validated under s. 114 of the *Planning Act*, R.S.N.S. 1989, c. 346, and its replacement, s. 291 of the *Municipal Government Act*.

[72] The Defendants clearly relied on the deed description when they purchased the northern parcel in September 2014.

[73] Section 21(1) of the *Land Registration Act*, S.N.S., 2001 c. 6, specifically provides that "[t]he legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel."¹ Moreover, the Plaintiffs relied on

¹Section 86(1)(e) also provides that there is no right to compensation for any loss sustained because "there is a discrepancy between the legal description or Provincial mapping in the parcel register and the actual location, boundaries or extent of the parcel in question."

the deed description for the southern parcel when they purchased their land. They were not responsible for the error that led to this dispute.

Conclusion on Ownership of the 50 Foot Strip

[74] The 1981 deed between Daniel Potter and Potter's Auto Salvage contains a latent ambiguity which requires the use of extrinsic evidence to resolve. The extrinsic evidence, including the survey reports and aerial photographs and evidence of the subsequent conduct of the parties, indicates that Daniel Potter's intention was to convey to Potter's Auto Salvage a parcel of land beginning at a point 300 feet from the southern side line of the main highway. The 1981 conveyance amounted to a subdivision which was validated under s. 114 of the *Planning Act* and its replacement, s. 291 of the *Municipal Government Act*. As a result, Daniel Potter's deed to Consolidated in 1989 could not have conveyed the disputed 50-foot strip because it had already been conveyed to Potter's Auto Salvage in 1981. The disputed 50-foot strip belongs to the Plaintiffs.

Issue 2: Did Parker/Chute Trespass on the 50 foot Strip?

[75] The only evidence before the Court of trespass on the part of the Plaintiffs is with respect to the temporary parking of vehicles in a manner which constituted trespass on the lands now determined to be owned by the Potters. These trespasses

were very minor and do not warrant an award of even nominal damages to the Potters.

Issue 3: Ronald Potter's Claim for Malicious Prosecution

[76] At paras. 21 and 22 of the Amended Statement of Claim, the Potters plead:

21. The Plaintiffs state that as a means [sic] intimidate the Plaintiffs, the Defendants have filed false reports with the police and cause malicious prosecution of the Plaintiffs.

22. The Plaintiffs further state that as a result of those false reports and malicious prosecutions the Plaintiff, Ronald C. Potter, was falsely imprisoned on several occasions.

[77] Ronald Potter seeks an award of general damages arising from the alleged malicious prosecutions and false imprisonments.

[78] The elements of malicious prosecution are set out in *Nelles v. Ontario*, [1989] 2 S.C.R. 170. There are four necessary elements which must be proven for a plaintiff to succeed in a claim for malicious prosecution: a) the proceedings must have been initiated by the defendants; b) the proceedings must have terminated in favour of the plaintiff; c) the absence of reasonable and probable cause; and, d) malice, or a primary purpose other than that of carrying the law into effect.

[79] In G.H.L. Fridman, *The Law of Torts*, 3rd ed. 2010, the author comments on the differences between the tort of malicious prosecution and the tort of false imprisonment at p. 69:

The tort of false imprisonment or arrest must be differentiated from malicious prosecution, which involves the wrongful invocation of the criminal process, by commencing a prosecution without reasonable and probable cause and out of malice...If the plaintiff is placed under arrest or imprisoned as a consequence of an improperly begun prosecution, this will be by order of some judge or court, not by reason of the direct action of the defendant, or by someone, such as a police officer, acting on the defendant's behalf. bringing of a false charge against the plaintiff, thereby setting the criminal process in motion and involving the plaintiff in an actual trial or the risk of a trial. The latter is a tort committed when the defendant personally seizes the plaintiff and puts him under restraint, with a view to subsequent criminal proceedings, or achieves the same result by employing the services of a police officer.

[80] In *The Law of Torts*, 6th ed. 2020 the author distinguishes between false imprisonment and malicious prosecution:

False imprisonment and malicious prosecution are mutually exclusive causes of action. False imprisonment lies in respect of the direct imprisonment of the plaintiff by the defendant. If the imprisonment occurs or is continued after an intervening discretionary decision by a police officer or an official exercising judicial power, the defendant is not liable for false imprisonment. The source of this distinction lies in the fact false imprisonment derives from the writ of trespass which requires a direct act. Malicious prosecution derives from the action on the case that addresses indirect acts. The case of *Roberts* [*Roberts v. Buster's Auto Towing Service Ltd*, (1976), 70 DLR (3d) 716 (BCSC)] is again illustrative. The defendant's employee reported the incident with the gate to the police and requested that the police apprehend the plaintiff. The police stopped the plaintiff and detained him at the side of the highway before taking him to the police station. This initial detention was a false imprisonment by the employee because she directed the police to apprehend the plaintiff and they acted on her behalf. Later the employee swore an information before a justice of the peace who ordered the plaintiff to be held in custody. Since the detention after the laying of the information was at the direction of a judicial officer, the only cause of action against the employee for the continuing detention was malicious prosecution.

[81] The Plaintiffs have not proven that the Ms. Parker or Ms. Chute acted with the required malice to satisfy the third element of proving malicious prosecution. The Defendants gave evidence that they made reports to the RCMP out of fear of what they considered to be aggressive and violent behaviour on the part of the

Potters, and when Roland Potter contacted them, breaching his Recognizance no-contact conditions. I do not accept, as proposed by the Plaintiffs' counsel, that the social media posting made by Ms. Parker in December 2019 demonstrates the necessary malice to satisfy this element of malicious prosecution. Further, the Plaintiffs are not responsible for Mr. Potter's incarceration. Such incarceration was dictated by judicial officials, and not by Ms. Parker or Ms. Chute.

Issue 4: Did the Potters wrongfully interfere with the Defendants' use and enjoyment of their property?

[82] The Plaintiffs plead in their Counterclaim that the Potters interfered with their use and enjoyment of their land. This is a claim of nuisance.

[83] The legal test that is applicable to a claim of nuisance, which was set out by the Supreme Court of Canada in *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13 at paras. 19-21 as follows:

[19] The elements of a claim in private nuisance have often been expressed in terms of a two-part test of this nature: to support a claim in private nuisance the interference with the owner's use or enjoyment of land must be both *substantial* and *unreasonable*. A substantial interference with property is one that is non-trivial. Where this threshold is met, the inquiry proceeds to the reasonableness analysis, which is concerned with whether the non-trivial interference was also unreasonable in all of the circumstances. ...

[20] The two-part approach, it must be conceded, is open to criticism. It may sometimes introduce unnecessary complexity and duplication into the analysis. When it is applied, the gravity of the harm is, in a sense, considered

twice: once in order to apply the substantial interference threshold and again in deciding whether the interference was unreasonable in all of the circumstances.

[21] On balance, however, my view is that we ought to retain the two-part approach with its threshold of a certain seriousness of the interference. The two-part approach is consistent with the authorities from this Court (as I noted above). It is also, in my view, analytically sound. Retaining a substantial interference threshold underlines the important point that not every interference, no matter how minor or transitory, is an actionable nuisance; some interferences must be accepted as part of the normal give and take of life. Finally, the threshold requirement of the two-part approach has a practical advantage: it provides a means of screening out weak claims before having to confront the more complex analysis of reasonableness.

[84] Earlier in this decision, I reviewed two incidents involving Roland Potter using the bucket of a backhoe to intimidate and harass Tristen Parker and Janice Chute. I find that his action in using heaving machinery to chase a minor around or near the Disputed Lands is deplorable and significantly affected Ms. Parker's enjoyment of her property. No provocation on the part of the young man who threw the rock at the window of the backhoe and hurt Vivian Potter, justifies such action. It is condemned by the Court. I also find that holding the bucket of a backhoe over the head of Janice Chute which was seen in another was also a form of threat and intimidation. It had a significant impact on Ms. Parker's enjoyment and use of her property.

[85] I find that these actions of Mr. Potter constitute actionable nuisance. I award the Plaintiffs \$2500.00 in general damages as a result.

Conclusions:

1. The Potters own the 50-foot Disputed Lands. They are entitled to a certificate of title thereto. There is no need for this Court to rule on the alternative claim of possessive ownership. I know that this finding will be disappointing to the Plaintiffs. It is not their fault at all that the differing deed descriptions have so affected them. However, the Court is bound to follow the law and has attempted to provide reasons which explain why and how the decision finding that the Potters own the Fifty Foot Strip was reached.
2. The Defendants are enjoined from trespassing on the Disputed Lands.
3. Each party is enjoined from blocking or interfering with either's use of the right of way.
4. The Potters, on a joint and several basis, must pay damages to Brandy Parker in the amount of \$2500.00 within 30 calendar days of this decision.
5. The Plaintiffs are entitled to costs.

[86] It is the hope of this Court that now that the ownership of the Disputed Land has been adjudicated by this Court, that all parties will be able to peacefully enjoy their own properties and respect the property rights of the other.

[87] I ask the Plaintiffs' counsel to prepare a draft order, for review and input from the Defendants, which reflects the Court's decision.

[88] If the parties are unable to agree on costs, please advise the Court of that fact. The Court will invite written cost submissions from the parties, following which it will determine costs.

Smith, J.