

# Title PLUS<sup>®</sup>

## Hotsheet

### Cottage Properties

Since November 1998, TitlePLUS<sup>®</sup> title insurance<sup>1</sup> has been available for secondary residences such as cottages and other recreational properties. When dealing with cottages and/or waterfront properties, there are some particular issues to bear in mind.

#### **Road Allowances**

Often there is a 66 foot road allowance laid out around lakes and rivers. These road allowances belong to the municipality unless a bylaw was passed closing them and parts were conveyed to the abutting owners. Often, all or part of the cottage or other buildings are built on the road allowance. It is important for the lawyer to determine whether or not there is a road allowance because if a building is built wholly or partly on the road allowance, the purchaser will not obtain title to the land on which it is located. No possessory title to a road allowance can be obtained.

#### **Construction in the Water**

If the property fronts on water and there is a structure, such as a dock or a boat house, built in the water, the solicitor must first ascertain whether the water is navigable. The bed of navigable waters in Ontario is owned by the Provincial Crown. Most of the lakes and rivers on which cottages are situated are navigable. If there is anything constructed in a navigable water, you must determine whether a permit was issued by the provincial Ministry of Natural Resources for the structure to be built. Creeks, small rivers and very small, shallow lakes or ponds may not be navigable. If you are in doubt, presume that it **is** navigable.

The actual water of a navigable body of water is under the jurisdiction of the federal government. A permit should be obtained to build a structure in the water because it obstructs the waterway. This is mainly of concern where one of the Great Lakes (including Georgian Bay), the St. Lawrence River, or an official waterway is involved.

#### **Accretion and Diminution of Land**

The water's edge presents problems where the water has receded or advanced since the legal description was drawn up or the last survey was made. In navigable waters, if the water recedes due to natural causes, the extra land that appears then belongs to the owner of the adjacent land, not the Crown. If the water advances due to natural causes, the land newly covered by the water then belongs to the Crown, not the owner of the adjacent land. However, if the water advances or recedes due to artificial, man-made causes (such as a dam), the ownership of the land does not change. Please note that where a 66 foot road allowance lies between the privately owned land and the original water's edge, the water must cover the entire road allowance before the owner's land is affected.

<sup>1</sup> The TitlePLUS policy is underwritten by Lawyers' Professional Indemnity Company.

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