

The Importance of an Affidavit

In this article we will attempt to explain how notarized affidavits can be a powerful tool in stopping the privatization of the beaches in your area. We have recently discovered there are waterfront properties that are in the process of or have completed “*surveying to the water’s edge*” through the Boundaries Act

http://www.gov.on.ca/GOPSP/en/graphics/stel02_165727.pdf

which, for the sake of simplicity, we shall label “**Step 1**”. After completing **Step 1** the Province acknowledges the new boundary/survey is to the “*water’s edge*” BUT the property is “*with reservation*” meaning we all have claims of reservation and the property is not yet fully privatized until an application for Absolute Title has been submitted to the Province through the Land Titles Act—we shall label this application for “*Absolute Title*” “**Step 2**”. Most waterfront properties in the Township of Tiny have a reservation on the property meaning they must first apply to **Step 1** and then apply to **Step 2** individually but there are a few properties in which they are “*without reservation*”—these waterfront owners can apply for Step 1 and Step 2 at the same time—also known as a “*parallel application*”. If we wish to object to Step 1 we would have to prove/submit factual documentation that the “*survey to the water’s edge*” is erroneous—a very costly and risky process as lawyers and surveyors would have to be involved. Remember that when the “*survey to the water’s edge/Step 1*” is approved the beach property in question is not fully private until the waterfront owner applies for Absolute Title/**Step 2** through the Land Titles Act

http://stage.cbs.gov.on.ca/tssso/english/clientguides/Land_Titles_conversion_Qualified_to_Land_Titles_Absolute_Plus.pdf

If there is no objection to the application for “*Absolute Title/Step 2*”, and it is approved, the waterfront/beach property becomes fully private and we lose all rights of use and access to that beach. It is at “**Step 2**”, through our deeded access and/or use and, more importantly, our traditional historic use that we object—there are additional valid objections in the Municipal Planning Act which would also be included in our objection. Presently, in Ontario, there are many cases in which the courts have ruled in our favour based on the fact that “*extended public use*” or historical traditional use was a valid objection. All these successful objections were supported by factual documentation—proof of historical traditional use by way of notarized affidavits. If a waterfront property owner applies to “*survey to the water’s edge/Step 1*” the only persons notified are the adjacent neighbours therefore there is the very strong possibility we will not be aware of this application. If the waterfront property owner applies for Absolute Title/**Step 2** a notice has to be placed in a local paper thereby giving us the time to file an objection but it is imperative that we are prepared to file an objection with notarized affidavits and other documentation. We would like to be proactive rather than reactive as the time from when the notice is posted in a local newspaper to the time that objections will no longer be accepted is very short. If you have deeded access and/or use to a particular beach you must still lodge an objection, otherwise, those deeded rights become null and void after a

waterfront's application for Absolute Title/**Step 2** has been approved. Our legal representation has informed us that we must begin collecting our affidavits if we are to continue to access and use our beaches.