

Charles Ellington

Looking Beyond *the* Obvious

Some years ago when I was a practising BC Notary, I was approached by a client regarding his home property.

He lived on a street in the municipality where the lots were all double-sized.

He wanted to subdivide his lot, build a new house on the other half of the lot, move in, and sell the home where he was currently living.

I did a search of his title and discovered that all the lots in the subdivision were encumbered with an RC or restrictive covenant. The RC was to prevent the owners from further subdividing their lots.

I discovered a weakness in the matter, however, and told him it was fine to do what he wanted to do. I went ahead with a metes and bounds subdivision of his lot, which was approved by the registrar of titles.

My friend employed a contractor to build the new house and the foundation was soon laid. Then all hell broke loose because the other owners on the street wanted to do the same.

They phoned the developer who owned a local, well-known real estate office. He phoned my client to tell him he was going to have to take up that foundation.

My client called me in a panic. I went to see the developer, who could not follow my reasoning. He told me his lawyer would visit me.



It so happened that his lawyer had offices in the same building where I was located. He arrived at my office and asked for an explanation.

The lawyer understood the matter immediately and called the developer to tell him that the matter was legal and nothing could be done about it. The lawyer also informed the developer that the other owners did not have the same rights to subdivide as my client had.

It all hinged on the manner in which my client's lot was added to the subdivision. When the subdivision was first put together, the lawyer acting for the developer created the restrictive covenant to cover all the lots in the subdivision. That meant there was a dominant and servient tenement relationship throughout the subdivision; if anyone contravened the provisions of the restrictive covenant, all the other lot holders could sue that owner.

Because my client's lot was an afterthought, however, it was not subject to the restrictive covenant, even though the RC was endorsed on his title. There simply was no Dominant Tenement to enforce the Covenant.

So in matters Notary, things are not always as they seem. We need to keep our wits about us and always look beyond the obvious. ▲

Charles Ellington was commissioned as a BC Notary in 1958 and retired in 1997.