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REGISTRATION OF TITLE TO LAND

DiCastri

Release No. 7, July 2025

Registration of Title to Land is the authoritative treatise on land titles in Canada. This three-volume supplemented work provides detailed analysis of the underlying principles, theory and operation of land titles systems in Canada, the adaptation of the Torrens model in the western provinces, and makes a comparative study of the principles of the title registrations embodied in the Ontario Land Titles Act and the English statutes upon which it is based.

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What's New in this Update

This release updates the commentary and caselaw in Chapters 6 (Land Descriptions and Registered and Deposited Plans of Survey), 8 (The Statutory Transfer), 11 (Powers of Attorney), 13 (Mortgages), 15 (Lis Pendens), 16 (Transmission), 18 (Statutory Exceptions to Indefeasibility of Title) and 21 (Judgments and Writs of Execution).

Highlights

- **LAND DESCRIPTIONS AND REGISTERED AND DEPOSITED PLANS OF SURVEY – GOVERNMENT APPROVAL OF SUBDIVISION OF LAND – PREFATORY** - An approving officer or municipal employee involved in the subdivision and development approval process who exercises their power as a public official for an improper purpose, exceeds their statutory power or breaches a statutory duty with awareness the conduct is unlawful and likely to cause injury may be liable for damages for misfeasance in public office. Proof of egregious intentional misconduct in the exercise of public duties, as opposed to mere incompetence or poor judgment, is required to attract liability. See *6165347 Manitoba Inc v. Robinson*, 2025 CarswellMan 127 (Man. C.A.) (appeal from \$5M judgment for misfeasance in public office against City and two City employees in connection with approval of proposed multi – family residential development; contentious issues arose during course of approval process, including appropriate location and size of access route and expropriation of one parcel from development lands for rapid transit and another for sewer relief which includes installation of retention pond; legal test for misfeasance in public office requires deliberate unlawful conduct in exercise of public functions which is known to be unlawful and likely to injure; trial judge determined City employees exercised power for improper purpose to deliberately delay development; judge erred in concluding “subjective recklessness” or “conscious disregard” of unlawful nature of acts established by evidence on record; maladministration, official incompetence or bad judgment in execution public duties insufficient and only “egregious intentional misconduct” entitled to redress)
- **THE STATUTORY TRANSFER – JOINT TENANTS – SEVERANCE OF JOINT TENANCY-EFFECT OF JUDGMENT AND WRIT OF EXECUTION** - *Robinson Estate v. Wolsey*, 2025 CarswellBC 863 (B.C. S.C.) (dispute over liability for payment of judgment registered against plaintiff's property; in 2011, Crown obtained judgment for \$107,582 against plaintiff's husband and co-defendants and registered on title to property owned jointly with plaintiff; husband died and plaintiff advised registered judgment effective and had to be paid in order to sell property; plaintiff paid judgment and seeks contribution from co-judgment debtors who rely on expiry of judgment when paid by plaintiff; Crown's unpaid judgment not renewed after expiry and charge extinguished although remained noted on title; further, applicable authorities establish upon death of joint their interest in property extinguished and surviving joint tenant takes property free from judgments registered against deceased debtor's interest; plaintiff not personally liable for judgment debt and legal advice followed by plaintiff clearly wrong; judgment debtors not consulted or aware such that plaintiff not entitled to contribution for gratuitous payment.)

- **LIS PENDENS – THE STATUTORY PROVISIONS – *FAMILY RELATIONS ACT (B.C.)*** - *Bayat v. Nguyen*, 2025 BCSC 627 (application to discharge certificate of pending litigation registered over property which is subject of Family Law Act proceeding; s. 215(6) expressly provides for registration of CPL where pleadings allege interest in land based on change in title as a potential outcome of proceeding; pleading does not allege interest in property existed at time of separation such that allegation it is family property is bare assertion and insufficient to establish interest in land under s. 215; allegations of interest in Kingsway property based on implied, express, constructive and/or a resulting trust and a fraudulent conveyance adequately particularized and pleaded and satisfy 215(1); second hurdle is whether title to property can change as potential outcome of family law proceeding; property in possession of third party and authorities addressing interplay of *Family Law Act* and *Land Title Act*, dictate spouse must establish fraud in which third party participated to obtain title to family property; requirement to plead fraud not satisfied by pleading of fraudulent conveyance; relief available in family proceeding cannot change title to property under s. 215(6); order for discharge of CPL.)