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REGISTRATION OF TITLE TO LAND
DiCastri
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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 8 (The Statutory Transfer), 9 (Dower), 10 (Restrictive Covenants), 13 (Mortgages), 17 (Registration), 18 (Statutory Exceptions to Indefeasibility of Title), 19 (Fraud) and 20 (Builders', Construction and Mechanics' Lien Legislation).

Highlights

- **RESTRICTIVE COVENANTS – DISCHARGE OR MODIFICATION BY COURT – BRITISH COLUMBIA – "OBSOLETE" –** *Smith v. Clearwater Park GP Inc.,* 2025 CarswellBC 1967 (B.C. S.C.) (petition to modify or cancel building scheme to permit construction project authorized by development permit to proceed; project consists of four townhouses and building scheme imposes limit of one single family dwelling per lot; building scheme impacts approximately 200 properties and restricts broad range of land uses authorized by zoning and official community plan bylaws; multiple dwellings are permitted under current zoning of property and scheme confers discretion on grantor to approve more than one residence on lot; since grantor no longer exists, lot owner must obtain consent of all other owners to proposed development or apply for modification or cancellation of scheme; to determine whether scheme obsolete, court must assess purpose or objects of building scheme at time of registration; overall purpose of scheme to confer discretion on grantor to control development; grantor's "absolute discretion" to approve projects which do not comply, establishes scheme not intended to impose outright prohibition on multiple dwellings or provide owners with assurance lots would never have multifamily residences constructed on them; inappropriate to enforce portion of scheme limiting dwellings since owners have no recourse to apply to grantor for consent; scheme obsolete within the meaning of s. 35(2)(a) of the *Property Law Act,* R.S.B.C., c. 377 since administration of and compliance impossible without grantor; order for cancellation of building scheme.)
- **STATUTORY EXCEPTIONS TO INDEFEASIBILITY OF TITLE – EASEMENTS – DEFINITION –** *Armstrong v. North Saanich (District),* 2025 CarswellBC 2292 (B.C. C.A.) (appeal from order respondent entitled to construct and use staircase on easement which provides access to waterfront over adjacent property; appropriate for chambers judge to refuse to consider district bylaws as element of surrounding circumstances at time easement created; designation of property by District irrelevant to interpretation of easement agreement which defines relationship between dominant and servient tenements; clear purpose of easement based on express wording and surrounding circumstances was to provide pedestrian access from respondent's lot to beach and waterfront below appellant's lot; portions of unimproved easement area steep and unsafe such that staircase necessary for "comfortable use and enjoyment" of easement for its purpose; ancillary right to build stairs on easement does not substantially interfere with appellants' property rights or use and enjoyment; no evidence of damage to appellant's property and potential for damage is inherent risk of many common easements and not unreasonable interference with appellants' proprietary rights; appeal dismissed.)
- **STATUTORY EXCEPTIONS TO INDEFEASIBILITY OF TITLE – IMPROVEMENTS ON ANOTHER'S LAND UNDER MISTAKE OF**

TITLE – BELIEF: REFERABLE TO MISTAKE OF TITLE OR MISTAKE OF IDENTITY? – *2708959 Ontario Inc. v. Stratford (City)*, 2025 CarswellOnt 11347 (Ont. C.A.) (appeal in dispute over encroachments on municipal road allowance and terms of City encroachment agreement; approved 1998 site plan for appellant's lot includes structures which encroach on municipal road allowance; in 2021, municipality complained of encroachments and demanded execution of encroachment agreement pursuant to 2006 policy; appellant objects to terms of proposed encroachment agreement and alleges municipality authorized encroachment of appellant's structures by granting site and building plan approval in 1998 and issuing occupancy permit in 2001; onus on original owner to bring any encroachments to attention of municipality as applicant for approvals; encroachments not identified or readily apparent on inspection of plans and unreasonable to assert tacit authorization of encroachments on basis of improper interpretation of plans by officials; existing encroachments not legalized by adoption of encroachment policy in 2006; no error concluding encroachments neither expressly nor tacitly approved by municipality; appeal dismissed.)