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REGISTRATION OF TITLE TO LAND

DiCastri

Release No. 10, November 2024

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 the following chapters: 6 (Land Descriptions and Registered and Deposited Plans of Survey), 10 (Restrictive Covenants), 12 (Leases), 13 (Mortgages), 14 (Caveats), 15 (Lis Pendens), 18 (Statutory Exceptions to Indefeasibility of Title), 19 (Fraud) and 20 (Builders', Construction and Mechanics' Lien Legislation).

Highlights

- **CHAPTER 13 – MORTGAGES – § 13:50. Order nisi** – See *Wing Wah Investment Inc. v. AKA Investments Ltd.*, 2024 BCCA 218 (B.C. C.A.) (appeal from order authorizing correction of principal and interest amounts in *order nisi* via slip rule over 3 years after pronouncement; mortgage provided for initial interest rate of 9.25% to increase to 18% after January 2020; *order nisi* granted to first mortgagee based only on 9.25% interest rate; no error to apply slip rule to make substantive changes to principal and interest amounts; slip rule designed to ensure order expresses manifest intention of court and includes power to amend amounts incorrectly calculated to reflect parties' true entitlements; second mortgagee alleges would have commenced foreclosure sooner if aware interest accruing at higher rate; no actual prejudice since second mortgage bound by terms of first mortgage and ought to have known interest rate was 18%; appeal dismissed).
- **CHAPTER 14 – CAVEATS – § 14:20. Claim must amount to an interest in land—Prefatory** – See *Pittman Brothers Production Ltd v. Evans*, 2024 ABCA 185 (Alta. C.A.) (appeal from summary dismissal of claim for specific performance and discharge of caveat and certificate of lis pendens on basis damages adequate remedy; respondents established alternative farmland in area of similar size, soil and growing potential without any evidence of realistic availability of this functionally comparable land within reasonable time; appellant's express intention to indefinitely continue farming disputed lands rendered calculation of damages for crop losses highly speculative, time-consuming, difficult and complex as long term assessment of farm income subject to multiple variables; error of law to dismiss claim for specific performance which raises genuine issue for trial on record; appeal allowed).
- **CHAPTER 20 – BUILDERS', CONSTRUCTION AND MECHANICS' LIEN LEGISLATION – § 20:34. Discharge of Lien** – See *Sterling Parkway Residences Inc v. Gypsum Drywall Interiors Ltd*, 2024 MBCA 46 (Man. C.A.) (appeal by owner from dismissal of application to vacate lien without posting security under ss. 55(3) of Act; on proper interpretation, order vacating lien under ss. 55(3) only granted where no material facts in dispute and patently demonstrable no valid lien exists; given live, triable issue in ongoing litigation respecting whether subcontractors paid, not clear case of invalid lien and no jurisdiction to grant order to vacate; inappropriate for judge on application to comment or make findings respecting good faith and contractual liability where these issues will be subject to determination by trial judge; appeal dismissed).