

## Title 132

### REAL PROPERTY

#### Part VI—Remainders

##### §114 note 1

**See also** *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, s. 217(4) (in any will or other document and whether maker alive on that day or not, reference to person or group or class of persons described in terms of relationship by blood or marriage to another person deemed to refer to or include person coming within description as result of adoption, unless contrary expressed).

#### Part X—Joint Tenancy and Tenancy in Common

##### §166 note 1

*Rennie v. Rennie et al* (2019), 2019 ONSC 2948 (Ont. S.C.J.) (ownership of property properly transferred to deceased, daughter, and applicant as joint tenants; daughter, as joint tenant, transferred title both with respect to her interest in property and on behalf of deceased pursuant to legal authority conferred to her by power of attorney).

##### §167 note 1

*Marley v. Salga*: affirmed (2020), 2020 ONCA 104 (Ont. C.A.).

##### §170 note 1

*Saunders v. Gefen* (2019), 2019 ONSC 6017 (Ont. S.C.J.) (joint tenancy severed by joint tenants' unilateral acts, and by their mutual course of dealings in connection with court order for temporary dependent's support which treated their interests as constituting tenancy in common).

##### §172 note 1

*Add blurb following Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 67(1): (property of bankrupt).

##### §198 note 1

**See also** *Cormpilas v. Ioannidis* (2020), 2020 ONSC 4831 (Ont. S.C.J.) (claim for occupation rent assessed by considering elements of unjust enrichment).

##### §215 note 2

*6071376 Canada Inc. v. 3966305 Canada Inc.*: affirmed 2020 ONCA 428 (Ont. C.A.).

*Change Abridgment mapping for heading X.3.(f)—Trespass to:*

§221 note 1

*1312733 Ontario Inc. v. Simone*; appeal dismissed as moot (2020), 2020 ONSC 6546 (Ont. Div. Ct.).

§223 note 1

*Rumanek & Co. Ltd. v. Abuomar* (2019), 2019 ONSC 1589 (Ont. S.C.J.); appeal quashed (2019), 2019 ONCA 908 (Ont. C.A.) (equitable receiver in aid of execution may pursue application under *Partition Act* if authorized to do so by court; receiver having both legal interest in property of debtor and right to possession).

**§223.1 [New]** Only persons entitled to the immediate possession of an estate in property may bring an action or make an application for its partition or sale.<sup>1</sup>

- 1 *909403 Ontario Ltd. v. DiMichele* (2014), 2014 ONCA 261 (Ont. C.A.); *Galsan Holdings Inc. v. Davalnat Holdings Inc.* (2018), 2018 ONSC 3600 (Ont. S.C.J.) (corporate entities holding title to properties were distinct legal persons and their shareholders having no possessory rights to properties; no evidence that corporations holding properties as bare trustees).

**§227.1 [New]** Partition will not be ordered where to do so would conflict with an agreement between the parties concerning the property in question.<sup>1</sup>

- 1 *Krizans v. Skurdelis* (2020), 2020 ONSC 4386 (Ont. Div. Ct.) (respondent having no right of first refusal under agreement; nothing in order conflicting with provisions of agreement).

## Part XII—Restrictive Covenants

**§348.1 [New]** Landowners may use real covenants to create rights enforceable by one owner against another, even in the absence of privity of contract. The resulting interests are distinct from contractual rights, as a restrictive covenant binds subsequent purchasers in equity, whereas the right to contractual performance is a legal interest that is personal to the contracting parties. Another distinction between real covenants and contractual rights lies in the timing of the creation of the right. When equity is used to enforce a restrictive real covenant against a subsequent purchaser who purchased the land with notice of the covenant, the right being enforced is a pre-existing equitable right which persisted through the transfer from the predecessor in title. Contractual rights, on the other hand, are created at the time of contract formation. In the case of a post-incorporation contract, they are created after the corporation comes into existence when the parties objectively manifest an intention to be bound by a new agreement on the same terms as those of the pre-incorporation contract.

Thus, real covenants and contracts create juridically distinct forms of rights and obligations, which should not be confused with one another.<sup>1</sup>

- 1 *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.* (2020), 2020 SCC 29 (S.C.C.).

§353 note 2

*Wonderland Power Centre Inc. v. Post and Beam on Wonderland Inc.* (2018), 2018 ONSC 7589 (Ont. S.C.J.) (restrictive covenant on title at time of sale of property not complying with *Land Titles Act*, s. 119(4)(c) as land to be benefitted by covenant not described in covenant; restrictive covenant unenforceable; rectification granted).

§355 note 1

**See also** *Lone Oak Properties Ltd. v. Baillie* (2019), 2019 ONSC 4667 (Ont. S.C.J.); varied (2020), 2020 ONCA 614 (Ont. C.A.) (when developer reserved to itself unfettered right to waive or modify restrictions with respect to any lot in subdivision, those restrictions could not and did not constitute building scheme which was now enforceable; rectification allowed).

§377 note 1

*Icona Hospitality Inc. v. 2748355 Canada Inc.* (2018), 2018 ONSC 4239 (Ont. S.C.J.) (in order to accept argument that restrictive covenants spent since they operated to restrict development according to prevailing planning policies, one would have to conclude that restrictive covenants were spent when they were given; very purpose of contractual restrictive covenants was to operate to restrict development in ways that would otherwise be permissible, and there had been no material change since restrictive covenants had been given to make their continued assertion vexatious).

### Part XIII—Registry Act

§413 note 1

*Hilson v. 1336365 Alberta Ltd.*; reversed in part (2019), 2019 ONCA 1000 (Ont. C.A.).

**§414 [Replacement]** Instruments, documents, books, records or a facsimile of them shall be produced for inspection and copying, and certified copies of them shall be provided upon payment of the required fee and in the manner specified by the Director of Land Registration.<sup>1</sup>

- 1 *Registry Act*, R.S.O. 1990, c. R.20, s. 15(1) [re-en. 2012, c. 8, Sched. 51, s. 8].

**§422 [Replacement]** No action or other proceeding for damages shall be instituted against any officer or employee of the ministry of the minister or anyone acting under the minister's authority for any act done in good faith in the execution or intended execution of his or her

duty under the *Registry Act*, or for any alleged neglect or default in the execution in good faith of his or her duty under the Act.<sup>1</sup>

- 1 *Registry Act*, R.S.O. 1990, c. R.20, s. 118(1) [Am. 2001, c. 9, Sched. D, s. 13; 2012, c. 8, Sched. 51, s. 54].

**§429.1 [New]** Every registered instrument is the property of the Crown and shall be retained in the custody of the land registrar in his or her office.<sup>1</sup> The provincial land registration regime gives the Crown complete control over the process of publication. The Crown has proprietary rights in the plan, and custody and control over the physical plans. Because of the extent of direction and control, copyright is vested in the Crown when registered or deposited plans of survey are published.<sup>2</sup>

- 1 *Registry Act*, R.S.O. 1990, c. R.20, s. 50(3).
- 2 *Keatley Surveying Ltd. v. Teranet Inc.* (2019), 2019 SCC 43 (S.C.C.).

**§435.1 [New]** The test on a motion for leave to issue a certificate of pending litigation made on notice to the defendants is the same as the test on a motion to discharge a certificate of pending litigation.<sup>1</sup>

- 1 *Homebuilder Inc. v. Man-Sonic Industries Inc.* (1987), 1987 CarswellOnt 499 (Ont. Master); *Ram Dinary Inc. v. Dai et al.* (2020), 2020 ONSC 4846 (Ont. S.C.J.) (in determining whether CPL appropriate in circumstances, court considering relevant *Dhunna* factors); **see also** 572383 *Ontario Inc. v. Dhunna* (1987), 1987 CarswellOnt 551 (Ont. Master) (factors for court to consider in exercising its discretion to vacate CPL).

**§435.2 [New]** A certificate of pending litigation is intended to protect an interest in land in situations where other remedies would be ineffective. It is not intended to be an instrument to secure a claim for damages.<sup>1</sup>

- 1 *Tribecca Development Corp. v. Danieli* (2015), 2015 ONSC 7638 (Ont. S.C.J.); *Beygi et al v. Mahmoudzadeh* (2020), 2020 ONSC 7944 (Ont. S.C.J.) (damages could be easily calculated through simple accounting); *Li v. Li* (2020), 2020 ONSC 7315 (Ont. S.C.J.) (while plaintiff met threshold of establishing triable issue, not just and equitable to grant leave to issue CPL; plaintiff refused to close sale, agreed property could be sold, and acknowledged damages were adequate remedy; actual relief underlying plaintiff's request was security for damages claim, but to grant CPL in circumstances would be contrary to principle that CPL should not be used as instrument to secure claim for damages).

**§435.3 [New]** A claim for a trust interest in a mortgage may be a claim to an interest in land.<sup>1</sup>

- 1 *Nuforest Watson Bancorp Ltd. v. Prenor Trust Co. of Canada* (1994), 1994 CarswellOnt 1811 (Ont. Gen. Div.); *Sedona Lifestyles (Rometown Inc.) v. Diversified Capital Inc.* (2020), 2020 ONSC 750 (Ont. S.C.J.) (plaintiffs' motion for leave to issue CPL against charge/mortgage between defendants dismissed; number of factors militated against CPL, including failure of plaintiffs to prosecute their claim to interest in land with reasonable diligence).

§437 note 1

**See also** *Canadian Western Trust Company v. 1324789 Ontario Inc.* (2019), 2019 ONSC 4789 (Ont. S.C.J.) (plaintiff bringing mortgage enforcement action; guarantors under mortgages alleging breach of fiduciary duty, breach of contract and bad faith; guarantors not meeting threshold requirement for CPL since having no reasonable claim to interest in land).

**§437.1 [New]** In an action claiming to set aside an alleged fraudulent transfer, before obtaining judgment in the main action and where the claim in the main action does not concern an interest in the land allegedly fraudulently transferred, the following legal tests should be met in order to obtain a certificate of pending litigation: the claimant must satisfy the court that there is a high probability that he or she will successfully recover judgment in the main action; the claimant must introduce evidence demonstrating that the transfer of property has been made with the intent to defeat or delay creditors; and the claimant must demonstrate that the balance of convenience favours issuing a certificate of pending litigation.<sup>1</sup>

- 1 *Grefford v. Fielding* (2004), 2004 CarswellOnt 1181 (Ont. S.C.J.); *Jennifer Horrocks v. Bruce McConville et al* (2020), 2020 ONSC 4645 (Ont. S.C.J.) (wife bringing action alleging that sale of properties by husband fraudulent because designed to defeat her family law claims; wife granted leave to register CPLs against properties); *Hassoun v. Molu* (2018), 2018 ONSC 6781 (Ont. S.C.J.) (claimant failed to establish "high probability" of success in main action or an intent to deceive; balance of convenience not tipped in favour of claimant).

§438 note 1

*Marmak Holdings Inc. v. Miletta Maplecrete Holdings Ltd. et al.* (2019), 2019 ONSC 4630 (Ont. S.C.J.) (breaches of joint venture agreement were triable issue but not one over which there was claim of interest in property); *Dobis v. Dobis* (2019), 2019 ONSC 3547 (Ont. S.C.J.) (applicant was tenant with contractual arrangement with former owner to provide certain services in exchange for reduced rent; contractual arrangement not amounting to interest in property for purposes of registering CPL); *Olympia Trust Company v. 2558992 Ontario Inc.* (2019), 2019 ONSC 6944 (Ont. S.C.J.) (third mortgagees hoped they could set aside sale process initiated under second mortgage on basis assignee of mortgagee had to freshly serve notice of sale; ruling that notice of sale

served on all parties valid dispelled such hope; no remote basis to maintain CPL); *Stetco v. 1788046 Ontario Limited* (2020), 2020 ONSC 1369 (Ont. S.C.J.) (plaintiff not establishing reasonable claim to interest in property; claim that plaintiff victim of mortgage fraud not borne out by evidence); *Saggi v. Grillone* (2020), 2020 ONSC 4140 (Ont. S.C.J.) (plaintiff having no direct or indirect interest or claim to property, no actual trust in property in favour of plaintiff and property not directly or indirectly standing as security for plaintiffs' loans; CPL discharged).

**§438.1 [New]** The fact that a party has delayed in seeking a certificate of pending litigation will be considered by the court in determining whether a request for a certificate of pending litigation should be granted.<sup>1</sup>

- 1 *Wilanmar Holdings Ltd. v. Meredith* (2008), 2008 CarswellOnt 7092 (Ont. S.C.J.); *Nanton v. Julien* (2019), 2019 ONSC 68 (Ont. S.C.J.) (court noting lengthy delay on part of plaintiff in seeking CPL; impugned transactions taking place in 1990's and early 2000's; plaintiff not asserting CPL until 2017); *Caroti v. Kegalj* (2019), 2019 ONSC 5772 (Ont. S.C.J.) (delay in seeking remedy significant factor against granting CPL, but not only factor to be considered); *Falsetto v. Falsetto* (2019), 2019 ONSC 6405 (Ont. S.C.J.); leave to appeal refused (2020), 2020 ONSC 1415 (Ont. Div. Ct.) (delay of 14 months not fatal, as plaintiff having proceeded with degree of diligence in collecting information and documents to permit him to advance comprehensive claim); *Pauwa North America Development Group Co. Ltd. v. Skyline Port McNicoll (Development) Inc.* (2021), 2021 ONSC 18 (Ont. S.C.J.) (not fair, just or reasonable for purchaser to wait almost three months to seek equitable relief in form of CPL which, operating like injunction, would likely cost seller another sale and impede its efforts to sell distressed asset in winter during pandemic).

**§438.2 [New]** The fact that a plaintiff has requested both monetary damages and a certificate of pending litigation in his or her claim is in no way a bar to the success of the motion. If it was a bar, no mortgage holder who sued the debtor could ever get a certificate of pending litigation.<sup>1</sup>

- 1 *Pacione v. Pacione* (2019), 2019 ONSC 813 (Ont. S.C.J.).

**§438.3 [New]** Where parties have agreed to a consent order that provides that nothing, including a certificate of pending litigation, will be registered against title, such an order binds the parties that have agreed to it.<sup>1</sup>

- 1 *Caroti v. Kegalj* (2019), 2019 ONSC 5772 (Ont. S.C.J.).

**§440 [Replacement]** The *Courts of Justice Act*<sup>1</sup> grants jurisdiction “to the court” to discharge a certificate of *lis pendens*, and the *Ontario Rules of Civil Procedure* stipulate that an order discharging a certificate may be obtained on motion “to the court”.<sup>2</sup>

- 1 *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 103(6); 2254069 *Ontario Inc. v. Kim* (2017), 2017 ONSC 5003 (Ont. S.C.J.); 2587508 *Ontario Inc. v. Hamilton City Centre Holdings Inc.* (2018), 2018 ONSC 3131 (Ont. S.C.J.); *Time Development Group Inc. v. Bitton* (2018), 2018 ONSC 2790 (Ont. S.C.J.); *Shahbaz v. Mizrahi* (2018), 2018 ONSC 1915 (Ont. S.C.J.).
- 2 *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, R. 42.02(1); *Dynacorp Canada Inc. v. Curic* (2010), 2010 ONSC 2603 (Ont. Master); **see also** *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, R. 1.03(1) “court” [rep. & sub. O. Reg. 711/20, s. 1] (meaning court in which proceeding pending and, in case of proceeding in Superior Court of Justice, including case management master).

#### §443 note 3

*Tambeau v. Martin* (2020), 2020 ONSC 2483 (Ont. S.C.J.) (common law partners disputing ownership of property; man’s motion for order discharging CPL dismissed; harm to woman in vacating CPL greater than harm to man in declining to do so).

#### §443 note 4

*Arif v. Mwebi* (2018), 2018 ONSC 4982 (Ont. S.C.J.) (materials in *ex parte* motion failed to fully disclose that amendment purchasers proposed to agreement rejected by vendor; court not finding deliberate non-disclosure, but finding disclosure deficient on material point; CPL discharged); *Royal Bank of Canada v. Azkia et al* (2019), 2019 ONSC 5894 (Ont. S.C.J.) (obligation on *ex parte* motions was for moving party to make full and fair disclosure, not for court to conduct forensic examination of materials presented); *Kirubakaran v. Tiller* (2020), 2020 ONSC 6101 (Ont. S.C.J.); affirmed (2021), 2021 ONCA 89 (Ont. C.A.) (in moving for leave to register CPL, plaintiff swore entire transaction was undocumented; none of purchase and sale documentation was contained in his motion record on *ex parte* motion; plaintiff could not sustain CPL in face of his non-disclosure of material facts); *Gong v. Neuhaus Management Ltd.* (2020), 2020 ONSC 4430 (Ont. S.C.J.); affirmed (2021), 2021 ONSC 531 (Ont. S.C.J.) (failure to draw court's attention to "no registration" clause in agreement of purchase and sale not constituting failure to provide full and fair disclosure of all material facts; NRC not material; vendor terminated APS that contained NRC prior to motion being brought; NRC not specifically and clearly prohibiting registration of CPL in any event); *Moses v. Metro Hardware and Maintenance Inc.* (2020), 2020 ONSC 6684 (Ont. S.C.J.); leave to appeal refused (2021), 2021 ONSC 877 (Ont. Div. Ct.) (no necessity for plaintiffs to bring motion for CPL without notice, but having chosen to do so, they voluntarily and knowingly undertook extra obligations under R. 39.01(6) to make full and fair disclosure of facts and law); *Phillips v. SR & R Bay Ridges (Two) Ltd.* (2020), 2020 ONSC 6015 (Ont. S.C.J.) (purchaser failing to provide court with copy of agreement of purchase and sale, much less disclose material clauses prohibiting registration of CPL and acknowledging that

purchaser having no legal, equitable or proprietary interest in property); *Zhao v. 8657181 Canada Inc.* (2020), 2020 ONSC 2864 (Ont. S.C.J.) (non-disclosure must be substantial and go directly to substance of plaintiffs' claim against defendants).

**§443.1 [New]** The determination of whether a property is unique is straightforward in the context of a negotiated transaction like a mortgage. In general, creditors seeking to secure their loans will look to the value or other characteristics of the collateral to ensure that the loan is adequately protected in the event of default. Absent such characteristics, the loan may not be advanced. In such circumstances, damages are not be a satisfactory remedy because the lender would potentially face a collectability issue that it sought to avoid in the first place by taking security.<sup>1</sup>

1 *Royal Bank of Canada v. Azkia et al.* (2018), 2018 ONSC 1580 (Ont. S.C.J.).

**§443.2 [New]** A certificate of pending litigation is a discretionary remedy; accordingly, the court may consider the "clean hands" doctrine. The clean hands doctrine requires that the misconduct considered relates directly to the conduct in the transaction before the court.<sup>1</sup>

1 *Khan v. Taji* (2020), 2020 ONSC 6704 (Ont. S.C.J.) (plaintiff admitting that properties registered in her father's and brother's names for purpose of defrauding her husband from his equalized share of net family property; fraudulent intention defeating plaintiff's right to claim CPL against her co-conspirators; plaintiff not coming to court with clean hands).

§445 note 1

*Emilio Manzo et al. v. Poetry Living et al.* (2020), 2020 ONSC 1382 (Ont. S.C.J.) (although plaintiff claimed indirect interest in properties in question, in form of shares in companies that owned them, he admitted he had no direct interest; leave to register CPL not granted).

*Change Abridgment mapping for heading XIII.5.(g).(iii)—Notice to Solicitor of Purchaser or Mortgagee to:*

## **Part XIV—Land Titles Act**

**§511.1 [New]** Every registered instrument is the property of the Crown and shall be retained in the custody of the land registrar in his or her office.<sup>1</sup> The provincial land registration regime gives the Crown complete control over the process of publication. The Crown has proprietary rights in the plan, and custody and control over the physical plans. Because of the extent of direction and control, copyright is vested in the Crown when registered or deposited plans of survey are published.<sup>2</sup>

1 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 165(1).



**§511.2 [New]** A "zombie" deed is best understood as a transfer of an interest in land registered after the date of death of the grantor as if the grantor were still alive. Registration of transfers of this nature, if detected, are rejected for registration by the Land Registry Office. "Zombie" deeds/transfers are clearly not in compliance with current Government of Ontario registration regulations and requirements imposed on lawyers using the electronic registration system for the transfer of an interest in land in Ontario.<sup>1</sup>

- 1      *Thompson v. Elliott Estate* (2020), 2020 ONSC 1004 (Ont. S.C.J.) (wife's will executed before wife died unexpectedly, but registration of transfer severing joint tenancy overlooked by wife's lawyer; lawyer later registered transfer despite wife's death; court application for declaration of interest in land was proper legal procedure to follow to correct error made by lawyer after wife's death).

§514 note 7

*Planning Act*, R.S.O. 1990, c. P.13, s. 34 [am. 2019, c. 9, Sched. 12, s. 6] (zoning by-laws).

§514 note 8

*Planning Act*, R.S.O. 1990, c. P.13, s. 50 [am. 2020, c. 34, Sched. 20, s. 1].

**§514.1 [New]** All land registered under the *Land Titles Act* is, unless the contrary is expressed on the register, subject to any liabilities, rights and interests reserved to the Crown, or any conditions imposed in accordance with the *Public Lands Act*, with respect to transfers of freehold or leasehold interests in unpatented lands, or easements in or over such lands, that are authorized or deemed to be legally effective or validly granted, as the case may be.<sup>1</sup>

- 1      *Land Titles Act*, R.S.O. 1990, c. L.5, s. 44(1)¶7.1 [en. 2020, c. 34, Sched. 22, s. 4]; **see also** *Public Lands Act*, R.S.O. 1990, c. P.43, ss. 37.2 [en. 2020, c. 34, Sched. 22, s. 3] (transfers of land without letters patent), 37.3 [en. 2020, c. 34, Sched. 22, s. 3] (validity of previous transfers), 37.4 [en. 2020, c. 34, Sched. 22, s. 3] (reservations in transfers).

§521 note 1

*McKay v. Vautour*; affirmed (2020), 2020 ONCA 16 (Ont. C.A.); *Gauld v. McFalls* (2018), 2018 ONSC 4734 (Ont. S.C.J.) (plaintiffs' actual possession of area was open, notorious, peaceful, adverse, actual and continuous and requirements for adverse possession were met for uninterrupted period of at least ten years prior to conversion of property to Land Titles system).

**§522.1 [New]** Canada Revenue Agency liens do not create a "charge" on land and accordingly do not have priority over valid prior unregistered equitable interests.<sup>1</sup>

- 1 *Trang v. Nguyen* (2012), 2012 ONCA 885 (Ont. C.A.); *Krates v. Crate* (2018), 2018 ONSC 2399 (Ont. S.C.J.) (as applicant's unregistered equitable interest existing prior to CRA liens, applicant's interest in properties having priority).

§531 note 1

*Hornstein v. Kats et al.* (2020), 2020 ONSC 870 (Ont. S.C.J.) (notice filed by plaintiff preventing sale of property not authorized by *Land Titles Act* nor approved by Director of Titles; accordingly, notice unauthorized and improperly registered).

§554 note 1

*Bao v. Mok* (2019), 2019 ONSC 915 (Ont. S.C.J.) (registered owner's parents brought claim asserting they were beneficial owners of subject property held in trust for them, and they registered caution; parents' claim dismissed; court not exercising discretion to award compensation; parents' claim not made "without reasonable cause"; no question as to *bona fides* of parents' claim); *Hornstein v. Kats et al.* (2020), 2020 ONSC 870 (Ont. S.C.J.) (provision not referring to notices; although plaintiff improperly registered notices against property, provision not applying).

§556 note 1

*Hornstein v. Kats et al.* (2020), 2020 ONSC 870 (Ont. S.C.J.) (notice filed by plaintiff preventing sale of property not authorized by *Land Titles Act* nor approved by Director of Titles; accordingly, notice unauthorized and improperly registered).

*Add heading XIV.15.1 and Abridgment mapping:*

### **15.1—Withdrawal of Registered Land [New]**

**§558.1 [New]** Where after land has been registered special circumstances appear or subsequently arise that make it inexpedient that the land should continue under the *Land Titles Act*, the owner may apply in the prescribed manner to the land registrar for the withdrawal of the land from the Act.<sup>1</sup> If the owner proves before the land registrar that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the land registrar that special circumstances exist that render the withdrawal of the land or a part thereof expedient, the land registrar may issue a certificate describing the land or such part thereof as the consent covers and as the land registrar considers proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued the Act ceases to apply to the land described therein, and the land thereafter is subject to the ordinary laws relating to real estate and to the *Registry Act*.<sup>2</sup> The certificate of the land registrar under this section is not valid unless approved and countersigned by the Director of Titles.<sup>3</sup> The withdrawal provision is not applicable to a registered Crown grant.<sup>4</sup>

- 1 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 171(1); *Joubarne v. Land Registrar & Director of Titles (Ontario)* (2019), 2019 ONSC 6709 (Ont. Div. Ct.) (Director of Titles reasonably concluding that applicant not identifying special circumstances that applied to her or her land that made it inexpedient for her property to remain in land titles system; applicant's subjective views on advantages of land registry system over land titles system not special circumstances that made it inexpedient for her property to remain in land titles system).
- 2 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 171(2); **see also** *Registry Act*, R.S.O. 1990, c. R.20.
- 3 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 171(3).
- 4 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 171(4); **see also** *Land Titles Act*, R.S.O. 1990, c. L.5, s. 33 (registration of Crown grant).

**§558.2 [New]** The Director of Titles may withdraw land from the *Land Titles Act* if, in the Director's opinion, special circumstances appear or subsequently arise that make it inexpedient that the land should continue under the Act.<sup>1</sup> The Director of Titles shall notify all persons having a registered interest in the land of the withdrawal.<sup>2</sup>

- 1 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 172(1).
- 2 *Land Titles Act*, R.S.O. 1990, c. L.5, s. 172(2).

§564 note 1

*Wonderland Power Centre Inc. v. Post and Beam on Wonderland Inc.* (2018), 2018 ONSC 7589 (Ont. S.C.J.) (restrictive covenant on title at time of sale of property unenforceable as not complying with *Land Titles Act*; rectification granted as not impacting indefeasibility of title to property that followed from registration); *Bluekat Capital Corp. v. YDB Investments Corp* (2019), 2019 ONSC 6218 (Ont. S.C.J.) (registration of fraudulent mortgage deleted from register of title to property); *Macor v. Grama* (2019), 2019 ONSC 6706 (Ont. S.C.J.) (endorsement could not be lost by error of Land Registry Office in removing reference from thumbnail description of property; law directed that easement continued to exist and register must be rectified); *Grunwald v. Le Marchant* (2020), 2020 ONCA 442 (Ont. C.A.) (court granting rectification of parcel registers; nothing in *Land Titles Act* making distinction between properties registered as Land Titles Conversion Qualified and properties registered as Land Titles Absolute for purposes of rectification provision).

Add heading XV and Abridgment mapping:

## **XV—Electronic Registration [New]**

**§578.1 [New]** The minister may designate all or any part of designated land<sup>1</sup> as: an area in which documents may be registered in either an electronic format or a written form; an area in which documents must be registered in both an electronic format and a written form; or an area in which documents must be registered in an electronic format alone.<sup>2</sup> A “document” means an instrument or document as defined in the *Registry Act*, an application made under the *Land Titles Act*, and any other instrument, document or plan registered, submitted, made, filed or deposited under the *Land Titles Act* or the *Registry Act*.<sup>3</sup>

- 1 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, Pt. II (ss. 15, 16) (automated recording and property mapping); **see also** *Land Registration Reform Act, Automated System*, O. Reg. 16/99, s. 1 (all of Ontario designated).
- 2 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 19 [en. 1994, c. 27, s. 85(3); am. 1998, c. 18, Sched. E, s. 100; 2001, c. 9, Sched. D, s. 13].
- 3 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 17 “document” [en. 1994, c. 27, s. 85(3)]; **see also** *Land Titles Act*, R.S.O. 1990, c. L.5; *Registry Act*, R.S.O. 1990, c. R.20, ss. 1 “instrument”, 105 “document”.

**§578.2 [New]** An electronic document submitted for registration shall be in an electronic format approved by the Director of Titles and shall be completed in a manner approved by the director.<sup>1</sup> Direct electronic transmission of an electronic document to the electronic land registration database is prohibited except as permitted by the Director of Land Registration.<sup>2</sup> An electronic document delivered to the electronic land registration database by direct electronic transmission is not registered until the land registrar registers the document in the prescribed manner.<sup>3</sup>

- 1 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 20(1) [en. 1994, c. 27, s. 85(3); am. 2006, c. 34, s. 14(2)]; **see also** *Land Registration Reform Act, Electronic Registration*, O. Reg. 19/99, ss. 4 [am. O. Reg. 76/08, s. 1; O. Reg. 200/09, s. 1] (contents of document), 5 [am. O. Reg. 76/08, s. 2] (additional contents of transfer).
- 2 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 23(1) [en. 1994, c. 27, s. 85(3); am. 2000, c. 26, Sched. B, s. 11(7)]; **see also** *Land Registration Reform Act, Electronic Registration*, O. Reg. 19/99, s. 3 [am. O. Reg. 86/18, s. 2] (person submitting electronic document for electronic registration shall deliver it to electronic land registration database by direct electronic transmission).
- 3 *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 23(3) [en. 1994, c. 27, s. 85(3)].

**§578.3 [New]** No person shall submit a document for electronic registration until having obtained an authorization from the Director of Land Registration.<sup>1</sup>