

ALBERTA LAW REFORM INSTITUTE

EDMONTON, ALBERTA

**PROPOSALS FOR A LAND RECORDING
AND REGISTRATION ACT
FOR ALBERTA**

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PROPOSALS FOR A LAND RECORDING AND REGISTRATION ACT FOR ALBERTA

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ALBERTA LAW REFORM INSTITUTE

The Alberta Law Reform Institute was established on January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta, and the Alberta Law Foundation.

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The members of the Institute's Board of Directors are B.R. Burrows, Q.C. (from September 1993); C.W. Dalton; N.A. Flatters (from September 1993); The Hon. Mr. Justice J.L. Foster; Madam Justice A. Fruman (until July 1993); A.D. Hunter, Q.C. (Chairman); W.H. Hurlburt, Q.C.; H.J.L. Irwin; D.P. Jones, Q.C. (until May 1993); Professor F.A. Laux; Professor J.C. Levy; Professor P.J.M. Lown (Director); The Hon. Madam Justice B.L. Rawlins; and A.C.L. Sims, Q.C.

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ACKNOWLEDGEMENTS

The publication of this report represents the conclusion of an enormous task. The first stage was a massive project of research and analysis conducted by Professor Thomas W. Mapp, then of counsel to the Institute, the fruits of which were published in his valuable monograph *Torrens' Elusive Title*. The second stage was the preparation by a Joint Land Titles Committee representing the common law provinces and territories of Canada of a report entitled *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada* and of the Model Act itself. The report was issued in July 1990, and, after consultation and further discussion, a further report *Final Revisions* was issued in March 1993. The Institute, and in particular, Mr. W.H. Hurlburt, Q.C. and Professor Mapp, had a very large part to play in the development of that project.

The Joint Committee's report and final revisions were, however, a collegial product. The Institute gratefully acknowledges the conscientious and effective work of the members of the Joint Committee, the members of which are listed in Appendix B.

This report represents the culmination of the process described above, fitting the Model Act into the Alberta environment. To state in our normal wording that Mr. Hurlburt has had the carriage of this project, with the able assistance of Professor Mapp, would be a gross understatement of their roles. Professor Mapp was responsible for much of the preparatory work which underlay the development of the Model Act and the drafting of that act. He has continued to be involved and the conceptual clarity of the proposals owes a lot to him. Mr. Hurlburt has moved the proposals through the Joint Committee stages, through consultation with all aspects of the Alberta Bar, through to the document which is represented by this report. Mr. Hurlburt's grasp of and facility with the concepts, his ability to correlate and manage huge amounts of information is an impressive skill, amply demonstrated by the clear and concise annotations to the draft statute. To these primary authors of the report, the Institute owes a very large debt of gratitude.

The process of consultation has been a broad one, and these consultants have played a valuable role in shaping the proposals and ensuring the continued consistency and relevance of the various provisions. Those consultants are listed in Appendix B. In particular, the Institute wishes to thank Mr. Kenneth Payne, Director of Property Registration, to whom we have turned for advice on many occasions and who has unstintingly responded to the many requests for very practical advice on the current operations of the act and the effect of the proposals.

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Statute or draft statute	Abbreviated reference
Land Titles Act, RSA 1980, c. L-5	Land Titles Act, or LTA
Model Land Recording and Registration Act recommended by the Joint Land Titles Committee in its Report dated July 1990 entitled <i>Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada</i> , as revised by its report dated March, 1993.	Revised Model Act, or RMA.
Draft Land Recording and Registration Act included in Part III of this report.	Draft Land Recording and Registration Act, draft Act, or LRRRA.
Organization	Abbreviated reference
Joint Land Titles Committee appointed by the Governments of Alberta, British Columbia, Manitoba, Northwest Territories, Ontario, Saskatchewan and Yukon and the Council of Maritime Premiers	Joint Land Titles Committee.
Terms	Abbreviated reference
The administrative process which secures priority of enforcement of an interest by means of entries in a register.	Interest recording, or recording.
The administrative process which affects, confers, confirms or terminates interest by means of entries in a register.	Title registration, or registration.
The system of interest recording and title registration proposed in this report.	Land recording and registration, interest recording and title registration, or recording and registration.

PART I

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

In this report, the Alberta Law Reform Institute proposes that a new Land Recording and Registration Act be enacted to replace the Land Titles Act (Alberta). Part III of Volume 1 contains a draft of the proposed Act.

Parts 1 to 8 of the draft Act establish a reformed system of recording and registering interests in land which preserves the beneficial aspects of the existing system of caveating and registration and adapts it to the circumstances of today and of the future.

The Governments of Alberta, British Columbia, Manitoba, the Northwest Territories, Ontario, Saskatchewan and Yukon appointed a Joint Committee on Land Titles to prepare a Model Land Recording and Registration Act suitable for adoption by the Provinces and Territories of Canada. A representative of the Council of Maritime Premiers participated in the work of the Joint Committee. Parts 1 to 8 of the draft Act adopt the Joint Committee's Revised Model Land Recording and Registration Act with minor changes.

The purposes of the draft Act are:

- *to make dealings in land easy, quick, cheap and safe.*
The draft Act accomplishes this by providing for an efficient system of recording interests to protect their priority and registering interests to confirm ownership.
- *to provide a sound and modern statutory foundation for the system.*
The Land Titles Act is based on a mid-nineteenth century Australian statute. Legislative amendment and judicial interpretation have done much to adapt it to evolving circumstances. However, it has become outdated, difficult to understand, and in some important respects downright misleading. The draft Act substitutes a sound and modern statutory foundation for the recording and registration system.
- *to make the recording and registration system more efficient.*
The draft Act provides a more readily comprehensible and generally more user-friendly legislative foundation than the Land Titles Act. It will reduce the time that must be spent studying the Land Titles Act and the great mass of judicial decisions on it. The draft Act solves problems that have arisen under the Land Titles Act. It moves administrative matters out of the statute so that administrative efficiencies can be introduced more readily.

- ***to set out basic principles more clearly and coherently.***

The Land Titles Act conceals its basic principles by

- not saying what they are
- interspersing them in a mass of unrelated substantive law provisions and administrative directions to Registrars. This report provides for cleaning up the Act, moving substantive law provisions to other more appropriate Acts and moving administrative details to regulations and policy manuals.

The draft Act clearly articulates its basic principles in small compass.

- ***to enable users and the courts to use the systems more easily, confidently and efficiently.***

The draft Act is clearer and more easily understood and applied.

- ***to solve problems that have arisen under the Land Titles Act.***

Examples of problems that have arisen under the Land Titles Act are: what constitutes fraud that will invalidate a registration; what the "misdescription" and "prior certificate of title" exceptions to indefeasibility are; what the priorities of a previously caveated interest are if the caveat is discharged without authority; and what happens if a good faith purchaser becomes registered under a forged or unauthorized transfer. The draft Act resolves these problems.

- ***to implement some desirable policy changes.***

While accepting the basic policies of the Land Titles Act, the draft Act makes some desirable changes in policy. Examples are: enabling a purchaser who gives value to rely on an invalid cancellation of a recording (which replaces the caveat) while giving the claimant under the cancelled recording a claim for compensation; and providing that, where a *bona fide* purchaser for value becomes registered under an unauthorized registration, both the purchaser and the deprived or subordinated owner will have a remedy, one being entitled to the interest and the other to compensation.

In addition to setting out in a clear and comprehensible manner the legal principles necessary for a modern and efficient land recording and registration, the draft Act provides for

- ***an administrative system.***

The draft Act provides for land registration offices and staff. Other administrative matters will go into regulations and administrative policy manuals.

The report recommends that the Land Registration Offices be administered by the Department of Justice under the supervision of the Attorney General. The recommendation is made because the administrators of the title registration confer and terminate basic property rights and it is the Institute's view that they should be under the continuing supervision of a department that is accustomed to making judgments that protect and advance legal rights. The report does not suggest that the administrators must themselves be lawyers.

- *a system of land descriptions and surveys.*

The draft Act provides basic legal authority to maintain a system of land descriptions and surveys. The details of the system would be covered by regulations.

- *recognition of common law rights and interests in land.*

The Land Titles Act appears to say that instruments do not convey rights until they are registered. The draft Act says that instruments confer rights when they are entered into, thus confirming the judicial interpretation of the Land Titles Act.

- *a limited number of overriding interests.*

A title registration system must recognize some interests that, although not shown in the register, have priority according to common law. These include: reservations in the original grant from the Crown; municipal tax liens and irrigation and drainage district rates; leases for 3 years or less if there is actual and discoverable occupation under them; and, temporarily, instruments registered in the general register. The draft Act reduces the number of overriding interests.

- *a user-funded compensation system.*

A recording and registration system gives owners a guarantee of their initial ownership. However, while the system is on the whole beneficial to those who deal in land, it inevitably causes loss to a few. The draft Act would continue, and somewhat liberalize, the existing user-funded system of compensation for those who suffer loss through the operation of the system.

The report also provides an example of a scheme for disposing of all provisions of the Land Titles Act. It provides for the deletion of provisions that are covered by Parts 1 to 8 of the draft Act or are inconsistent with the proposed system. A few substantive law provisions of the Land Titles Act that are part of interest recording and title registration are included in the draft

Act. Parts 9 and 10 of the draft Act include substantive law provisions of the Land Titles Act that are closely related to interest recording and title registration, including provisions relating to writs of execution. Appendix C in Volume 2 of the report provides for moving to other statutes the substantive law provisions of the Land Titles Act that are not closely related to recording and registration. Appendix D in Volume 2 includes in regulation form the administrative provisions of the Land Titles Act that should not be allowed to clutter up the Act. The Institute has not considered whether or not all these substantive and administrative provisions should be carried forward, as that is outside the scope of its Land Titles project: it has provided a scheme that will carry them forward if, upon consideration after a decision to adopt the draft Act is made, it is thought desirable to do so.

PART II

REPORT

CHAPTER 1

INTRODUCTION

A. Purpose of Recommendations

This report recommends that Alberta adopt a Land Recording and Registration Act that will

- replace the Land Titles Act
- provide a sound and modern statutory foundation for the Alberta land recording and registration system.
- make the system more efficient.
- set out basic principles more clearly and coherently.
- enable users and the courts, to use the systems more easily, confidently and efficiently.
- solve problems that have arisen under the Land Titles Act.
- implement some desirable policy changes.

The Land Titles Act is based on a 19th century Australian Act. Its central concept of title registration has served us well. However, it leaves problems unsolved. It is opaque, and sometimes downright misleading. It has had to be tortured by courts into new forms to meet current conditions. It hides the light of title recording and registration under bushels of substantive law and administrative detail. It requires rationalization and modernization in the light of nearly a century and a half of experience of interest recording and title registration.

A draft Land Recording and Registration Act appears in Part III. It accepts the basic principles of interest recording and title registration as they have developed in Alberta. It will make the benefits of interest recording and title registration more easily and uniformly available.

B. Disposition of Land Titles Act**(1) Need for disposition**

The purpose of our project is to recommend the adoption of a modern and efficient Land Recording and Registration Act. The proposed Act will necessarily displace the caveating and registration provisions of the Land Titles Act. But one further thing must be done to make the proposed Act efficient. That is to get rid of the underbrush that, in the Land Titles Act, obscures the legislative exposition of the principles of interest recording and title registration. This underbrush consists of two parts. One is a great mass of substantive law provisions that are not part of the law of interest recording and title registration. The other is a great mass of administrative directions that should not be in a statute at all.

(2) Criteria for disposition

We assume for this purpose that all provisions of the Land Titles Act should be carried forward unless our project gives good reason to drop them. On that assumption, we think that the provisions of the Act should be disposed of as follows:

- (a) provisions that
 - are covered by the proposed Act,
 - are contrary to the policy of the proposed Act , or
 - perform no functionshould be deleted.
- (b) substantive law provisions that are an integral part of land recording and registration should be accommodated in the main part of the proposed Act. There are very few of these.
- (c) substantive law provisions that are not integral but are more closely related to land recording and registration than to any substantive law statute should be put into additional parts of the proposed Act.
- (d) substantive law provisions that are not integral or closely related to land recording and registration should be put into other substantive real property statutes.
- (e) administrative provisions should be put into regulations.

(3) Should extraneous material be reformed?

The task that we have undertaken is to provide a statutory foundation for a modern and more efficient interest recording and title registration system. Our project does not include the reform of statute law that is not directly related to those subjects. We are making proposals for the disposition of substantive Land Titles Act provisions not covered by the draft Act merely in order to get rid of the underbrush. We therefore do not propose reforms for those substantive provisions. We propose ways of carrying them forward with only such minor changes as will be made necessary by the enactment of the draft Act. We have accepted them as given and do not express any opinion as to whether or not they are all appropriate.

We turn now to administrative matters. We believe that the LTA contains far too much administrative detail. This detail not only tends to hide important provisions of law, but also makes it difficult for administrators of the land recording and registration system to modernize administrative procedures to utilize current electronic record-keeping systems. The draft Act contains provisions prescribing the basic administrative structures necessary to support a recording and registration system. Beyond that, it is drafted to legislate the legal consequences of recording and registration, not the administrative procedures for recording and registration.

In this report, we identify those administrative provisions of the Land Titles Act that have not been included in the draft Act. As in the case of the substantive law provisions, we propose a way of carrying them forward with only such minor changes as will be made necessary by the enactment of the proposed Act. We have accepted them as given and do not express an opinion as to whether or not they should be carried forward.

(4) Scheme for disposition

While dealing with the substantive and administrative provisions of the Land Titles Act is not, strictly speaking, part of our project, we think that we should provide a detailed scheme for carrying forward those provisions that are not covered by the proposed Act, are contrary to the policy of the proposed Act or without function. This scheme is as follows:

- (a) we have included the recording and registration provisions in Parts 1 to 8 of the draft Act which is Part III of this Volume 1.
- (b) we have included in Parts 1 to 8 a few substantive provisions from the Land Titles Act that are an integral part of recording and registration.

- (c) we have included in Part 9 of the draft Act the Land Titles Act provisions relating to the general register and writs of execution. This would be a temporary measure until our Report 61, *Enforcement of Money Judgments*, is implemented. Given the close connection between these subjects and recording and registration, we think that, as the statute book now stands, the proposed Act is the most appropriate place for these provisions.
- (d) we have included in Part 10 of the draft Act a number of Land Titles Act substantive law provisions that, while not an integral part of land recording and registration, are, in our opinion, more closely related to that subject than to any other substantive law statute.
- (e) we have included in Part 11 some transitional provisions designed to bring rights and obligations under the Land Titles Act and existing records under the proposed Act.
- (f) we have provided in Volume 2 an Appendix C entitled *Consequential Amendments to Statutes*. This appendix deals with all substantive law provisions of the Land Titles Act that are not dealt with in one of the ways outlined above.
- (g) we have provided in Volume 2 an Appendix D entitled *Regulations*. This appendix deals with all administrative provisions of the Land Titles Act that are not dealt with in one of the ways outlined above.

Appendix A in this Volume 1, entitled *Schedule of Disposition of Land Titles Act Provisions*, shows how we have dealt with each section of the Land Titles Act, whether by deletion, inclusion in a section of Parts 1 to 8 of the draft Act, inclusion in Part 9 or 10 of the draft Act, inclusion in Appendix C in Volume 2, *Consequential Amendments to Statutes*, or inclusion in Appendix D, *Regulations*.

We have not engaged in consultation about the scheme for disposing of the substantive law and administrative provisions of the Land Titles Act which we have described above and which appears in more detail in Parts 9, 10 and 11 of the draft Act and in Appendix C and Appendix D in Volume 2. Our reason is that we do not think that consultation on these consequences of adopting a new Land Recording and Registration Act would be fruitful until the decision to adopt the proposed Act is made. On the other hand, we did not think it appropriate to recommend the adoption of the new Act without pointing out in a general way what will have to be done about the Land Titles Act if the proposed Act is enacted. We have therefore put forth a scheme

which we think is workable and demonstrates that the disposition of the Land Titles Act, while a significant problem, can be surmounted.

C. Format of This Report

We think that it will on the whole be beneficial to users if we put into one volume everything to do with the proposed Land Recording and Registration Act, and if we put into another volume our scheme for the disposition of the provisions of the Land Titles Act that will not be displaced by or reflected in the proposed Act. Our report is therefore in two volumes, as follows:

(1) Volume 1

Volume 1 consists of the following:

- Part I, introductory material.
- Part II, which contains:
 - a brief description of the policies embodied in the draft Land Recording and Registration Act;
 - a brief outline of the Alberta land recording and registration system as it exists now and as it will exist after the adoption of the draft Act;
- Part III, which contains the draft Act with annotations. The annotations explain how the proposed provisions give effect to the proposed policies.
- Appendix A, *Schedule of Disposition of Land Titles Act Provisions*.
- Appendix B, *List of Consultants*.

Part II gives the reader a statement of the important general principles reflected in the draft Act. However, the reader must turn to Parts 1 to 8 of the draft Act itself and to the annotations to those Parts to get a detailed understanding of the proposed interest recording and title registration system which we propose.

(2) Volume 2

Volume 2 contains our detailed scheme for disposing of the substantive and administrative provisions of the Land Titles Act that are not otherwise dealt with. This is covered by

- Appendix C, *Consequential Amendments to Statutes*.
- Appendix D, *Regulations*.

D. The Joint Land Titles Project**(1) Harmonization of land recording and registration laws**

Uniformity of title registration legislation in Canada, or at least harmony of legislation, is a desirable end in itself. It will promote business efficiency, the development of common jurisprudence, and the development of common feeling across the country.

The need for rationalization of the land registration statutes in Alberta and other provinces as well creates a significant danger that, in the absence of collaboration, unharmonious parochial reforms will be carried out. The Institute therefore sought the cooperation of other jurisdictions in the development of new legislation which would be suitable for all of common law Canada. We met with a warm response. The Governments of Alberta, British Columbia, Manitoba, the Northwest Territories, Ontario, Saskatchewan and Yukon appointed a Joint Land Titles Committee to try to develop model land recording and registration legislation with a view to its adoption by those Governments. The Joint Committee was joined by Charles W. MacIntosh, Q.C., who was charged by the Council of Maritime Premiers with developing a land titles system for the Maritime Provinces.

In July 1990, the Joint Committee completed and issued its report entitled *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada*, which included a draft Model Act. In March 1993, after consultation and further deliberation, the Joint Committee issued a further Final Revisions report under the same title. It is hoped that the various jurisdictions will use the Revised Model Act included in the 1993 report as the basis of new land recording and registration statutes.

(2) Adoption of the revised Model Land Recording and Registration Act

The Institute believes that the adoption of a statute based on the revised Model Land Recording and Registration Act is very much in the public interest of Alberta. The draft Land Recording and Registration Act, which is contained in Part III, therefore adopts the revised Model Act with only a few minor policy departures that do not affect the integrity of its scheme and such changes as are necessary to fit it into the Alberta legal structure.

(3) Use of the Joint Committee report

Part II of this report is based on the Joint Committee's 1990 report. It makes use of much of the text of the report.

E. Scope of the Land Recording and Registration Act

The draft Land Recording and Registration Act, with some exceptions which will be contained in additional parts of the proposed Act

- deals only with the protection of ownership and priority of interests in land.
- avoids dealing with substantive law that is not exclusively related to ownership and priority of interests in land except where a substantive provision is necessary to achieve its objectives or is so interrelated that it cannot appropriately be moved to another statute.
- accepts the general law, including the general law about the existence and nature of interests in land.

The additional parts of the draft Act are as follows:

- Part 9 of the proposed Act deals with writs of execution and similar charging instruments.
- Part 10 contains some miscellaneous provisions that are intertwined with land recording and registration to the extent that they cannot appropriately be moved to other statutes. These will be dealt with in Chapter 4.
- Part 11 contains transitional provisions.

The draft Act, as we have said, does not deal with most of the administrative detail that is found in the Land Titles Act. In our view, the statute should only provide the legal rules and requirements that are necessary for the foundation of an efficient system of land recording and registration and for the foundation of the necessary administrative structure. The administration of those legal rules and requirements should be provided for in regulations or administrative policies.

The draft Act does not refer to the computer or to computerization. We think, however, that it will be found functional for any form of record-keeping, from quill pen to electronic recording. The more logical structure of the draft Act and the exposure of its basic legal principles and elements should actually facilitate computerization. Computerization should greatly improve service, but it is a practical matter which does not affect legal principles and rules.

CHAPTER 2

PURPOSES AND DEVELOPMENT OF LAND REGISTRATION

A. Purposes of Land Registration

Title registration was established to promote facility of transfer of interests in land, that is, to make dealings with interests in land quick, easy, cheap and safe. However, title registration is also intended to provide security of ownership. Measures taken to achieve one purpose sometimes derogate from achieving the other, and a title registration system must strike a proper balance between them.

B. Background to the Development of Land Recording and Registration

(1) Common law conveyancing

There has been a system of title registration in Alberta since 1886, when the Territories Real Property Act¹ was enacted. This was before the establishment of the province. It was before there was a significant amount of private land ownership in the province. Any comparison between an Alberta title registration system and an Alberta system of common law conveyancing and land ownership is therefore necessarily artificial. But title registration in common law jurisdictions is a reaction against the deficiencies of the common law conveyancing system, so that a discussion of title registration should start with a discussion of the common law system.

Alberta common law has its origins in the English common law. The English common law was very protective of land ownership. An owner's ownership could be divested only by a transaction binding on the owner. The transaction would usually be a conveyance executed by the owner, though it might be a transfer by operation of law, for example to a bankruptcy trustee or to satisfy the owner's debts. The common law conferred a high degree of security of ownership.

But the common law made it very difficult for a purchaser of an estate or interest in land to be sure that they had acquired the estate or interest they

¹ 1886 S.C., c. 26.

had bargained for. This was its great difficulty. A purchaser ran the risk that the title they acquired was invalid for any of the following reasons:

- (1) that a title document through which the seller derived title was invalid;
- (2) that a lost document did not support the seller's title, or even adversely affected it;
- (3) that the transfer tendered to the purchaser was not valid;
- (4) that the seller had granted a previous legal interest in the land to some other person; and
- (5) that there was a prior equitable interest or equity in existence.

A purchaser who was a *bona fide* purchaser for value would not be affected by a prior equitable interest, but the doctrine of constructive notice, under which a purchaser was fixed with notice of all interests that would have been discovered by a reasonable investigation, exacerbated purchasers' difficulties.

Conveyancers developed elaborate procedures to guard against these risks. There being no official source of land ownership information, purchasers' advisers investigated title backwards for a period of time sufficient to give reasonable assurance that adverse claims to the land would have come forward — sixty years was such a period. Purchasers usually received title deeds which, if valid, established their ownership. They and their advisers made investigations to determine who was in possession. All this made the acquisition of estates and interests in land expensive, slow and difficult. Despite such investigations, a purchaser's title was uncertain because of the risks mentioned above, which could not be completely nullified by the most careful investigation.

A lesser but important difficulty with the common law was that it did not give adequate protection to the ownership of equitable interests. As noted above, a prior equitable interest would not prevail over a subsequent *bona fide* purchaser for value without notice. While the doctrine of constructive notice made it difficult for a purchaser to qualify as a *bona fide* purchaser for value without notice, the possibility that a purchaser might do so made equitable interests vulnerable.

Alberta and the common law jurisdictions with which Alberta has the closest connections (i.e., Canada, England, the United States, Australia and New Zealand) have taken either (or sometimes both) of two ways of making the acquisition of interests in land quicker, cheaper, easier, and safer. One way

is to provide for what is variously called "deed registration" and "interest recording". The other is to provide for the registration of interests in land, or, more compendiously, "title registration".

(2) Deed registration and land registration as remedies for problems of common law conveyancing

A deed registration system (which we will henceforth call an interest recording system) shifts the balance significantly away from promoting security of ownership and towards achieving facility of transfer. It provides a public register of documents affecting interests in land and enables a purchaser who complies with the system to acquire ownership free of a prior interest which is not recorded in the register. It thus solves problems (4) and (5) listed above. It helps to solve problem (2) by requiring that documents be recorded. It thus increases facility of transfer. It does nothing to alleviate problems (1) and (3).

A title registration system shifts the balance even more towards facility of transfer. Like an interest recording system, it enables a purchaser to acquire ownership free of prior interests not reflected in a register. However, it goes further. It declares that a registered owner is the owner of the registered interest. A purchaser from a registered owner therefore need not assure himself or herself of the adequacy of the instruments relevant to the seller's title. Land registration therefore solves problem (1) listed above. It may go further still and confer ownership on a purchaser even though the conveyance to the purchaser was not valid. If it does this, a purchaser who procures registration need not assure himself or herself of the adequacy of the immediate transfer from the seller and thus problem (3) is solved. Title registration law in at least some title registration systems goes this far.

A title registration system coupled with an interest recording system can also solve the problem of protecting an equitable interest by providing that the recording or registration of the interest will assure its priority over a subsequent interest even if it is acquired by a *bona fide* purchaser for value without notice.

(3) Nature and sources of land titles statutes of Alberta and other provinces and territories

The land titles statutes of British Columbia, Ontario, the prairie provinces and the two territories include full-blown title registration systems.² All but the British Columbia statute include what are really full-blown interest recording systems, which are based upon the entry of notices in Ontario and the registration of caveats in the prairie provinces and the territories.³ All contain elements of the common law system. All include systems of compensation for losses caused by malfunctioning of the interest recording and title registration systems. Appropriate combinations of these elements are highly functional. The draft Act is such a combination.

The land registration statutes of the three prairie provinces and the two territories are based on the model developed in Australia in the mid-nineteenth century by Sir Robert Torrens. The British Columbia statute has been strongly influenced by that model but has a number of distinctive differences.⁴ The Ontario statute is based on the English Land Transfer Act, 1875, and is therefore framed rather differently than the Torrens statutes.⁵

This report will not analyze each of these statutes. The proposals made in this report and in the draft Act were developed by the Joint Committee on Land Titles, which included representatives from all of the jurisdictions mentioned, and we believe that the proposals distil the essence from the existing systems. The most fundamental functional difference is between the British Columbia system of registration of charges, which confers not only priority but also a rebuttable presumption of ownership, and the caveat and notice systems of the other jurisdictions, which confer only priority. The Joint Committee's proposal in that regard, which we have adopted, is to include in the proposed statute an interest land recording system that is comparable to the existing Alberta caveat system.

² Ontario and Manitoba both have separate deed registry systems that apply in parts of each province and are governed by separate deed registry statutes.

³ The British Columbia system of registration of charges is a somewhat different solution to the problem of interests which are not fully registrable as it confers on registered charges not only priority but also a rebuttable presumption of ownership.

⁴ See Di Castri, *Registration of Title to Land*, (Carswell, 1987) ss 14 and 15 at 1-18 to 1-23.

⁵ *Ibid.*, s. 16 at 1-24 to 1-27.

C. Evolution of the Alberta Land Recording and Registration System

(1) Original Torrens system

As we have noted, the Torrens system of title registration was devised by Sir Robert Torrens in South Australia in the mid-19th century. The system was based on a register, that is, a formal set of state-maintained written records. The register was the source of legal ownership of land: every registered owner of land held the land directly from the Crown by virtue of a certificate of title which formed part of the register. Registered ownership was subject only to interests registered against the owner's certificate of title. If an interest in land was not entered in the register it did not exist. Only a limited number of interests could be registered, and dispositions of land had to fit within a limited number of forms. The system included a scheme for compensation of owners of interests who were deprived of those interests through malfunction of the system.

(2) Variations in Alberta land titles system

The Alberta land titles system is usually called a Torrens system. It includes the register, which is the central feature of the Torrens system, and much of the Alberta Land Titles Act reads very much like the original Australian Torrens statutes. But the Alberta system has been changed to provide flexibility that accommodates the legitimate needs of users of the system. Three of the changes are mentioned in the next three paragraphs.

The Alberta land titles system recognizes interests in land that do not appear on the register. Section 56 of the Land Titles Act still says that no instrument is effectual to convey an interest until it is registered, but the courts have held that an instrument, without registration, is effectual to convey an equitable interest. The registration or caveating of a conflicting interest may deprive an unregistered interest of its priority and even wipe it out, but the unregistered interest is nevertheless valid as between the parties to the transaction that created the interest and as against some third parties such as volunteers and fraudulent purchasers. The effectiveness of unregistered interests is one major change from the Torrens system.

The Alberta land titles system includes a system of long term protection of priority of interests in land by caveat. The original Torrens system allowed the filing of caveats or cautions to protect threatened interests, but these either froze the register, thus preventing other dealings with the land, or required the person filing to take early steps to enforce the interest. They were therefore unsuitable to the long term protection of interests. Under section 145 of the

Alberta Land Titles Act, however, "registration by way of caveat . . . has the same effect as to priority as the registration of any instrument under this Act" and the registration of a caveat continues indefinitely without preventing later dealings with the land. The caveat system is widely used to protect not only interests that are registrable but also a wide range of interests in land that are not registrable. This is the second major change from the Torrens system.

The Alberta land titles system has allowed a great deal of flexibility in what may be included in registered documents. It does provide forms for registrable interests such as mortgages and leases, but these are skeletal in nature and in practice conveyancers include in them whatever provisions they wish. This is the third major change from the Torrens system.

(3) Limitations of land recording and registration

A recording and registration system confers great benefits. It is, however, necessary to recognize that such a system has its own limitations and brings with it its own problems.

First, a registration may be misleading if what is purportedly registered is not an interest in land or if the person registered as owner of an interest is not a person who has the legal capacity to own land. Land registration does not confer validity upon an interest or ownership that the general law does not recognize. A specific example of a registration that does not confer what it appears to confer is the registration of a mortgage for a specified sum: the registered mortgage secures what is owing under the balance of the mortgage account, which is likely to be less, but may be more, than the amount specified in the register.

Second, there are important kinds of interests that, for reasons of policy or constitutional law, affect ownership but are not disclosed by the register. Some of these are listed in section 65 of the Alberta Land Titles Act. Unpaid taxes is an important example, and various other public interests also override the register. An important private interest that overrides the register is the interest of a tenant in possession under a lease for a period not exceeding 3 years.

Third, there are important restrictions on the use of land that do not appear on the register. Examples are zoning and land use bylaws.

Fourth, the very measures that are taken to promote facility of transfer necessarily detract from security of ownership. If the registration of A's ownership is wrongly cancelled and if B is wrongly registered, then C can

acquire a good title by registering a disposition made by B. This promotes facility of transfer by enabling C to rely on the register, but it makes A's registered ownership defeasible. We think that the defeasibility of A's ownership by subsequent events under title registration creates less uncertainty for A than the defeasibility of his ownership due to defects in his transferor's title or in the transfer to him under common law conveyancing, but it nevertheless creates uncertainty. The existence of a proper compensation scheme will clearly, in our view, give preponderance to the advantages of title registration over a common law conveyancing system, but that is very different from saying that there is no defeasibility disadvantage attached to title registration.

The only point that we make here is that a system of land recording and registration is not the panacea for all land ownership problems that it is sometimes thought to be. Its limitations and its accompanying disadvantages should be recognized. We are convinced, however, that an interest recording and title registration system is beneficial and in the interests of Alberta users of the system and the people of Alberta generally. We believe also that a proper statutory foundation will make the system more beneficial and mitigate its disadvantages.

CHAPTER 3

PROPOSALS FOR A LAND RECORDING AND REGISTRATION ACT AND SYSTEM

A. Elements of Proposed System

(1) Terminology

The terms "recording" (or "interest recording") and "registration" (or "title registration") which we use throughout this report are terms of art. The usage is well known, but, for purposes of clarity, we will explain it briefly here.

"Recording", in its ordinary meaning, is the making of a record. When used in the context of an interest recording system it is a term of art which includes both administrative acts and a legal consequence. The administrative acts are the making of an entry of a document in a register and the retention of the document, or a copy, in the land registration office which maintains the register. The legal consequence is the confirmation or conferring of priority on recorded interests. Section 1.1(k) of the draft Act, therefore defines "recording" as "the administrative process which, under this Act, secures priority of enforcement for an interest by means of entries in a register".

"Registration", in its ordinary meaning, is the making of an entry in a register. This is much like the ordinary meaning of "record", but requires that the record be made in a "register". When used in the context of a title registration system "registration" is, like "recording", a term of art which includes both administrative acts and a legal consequence. The administrative acts are much the same as the administrative acts included in "recording", though they involve the use of different words. The legal consequence is more extensive: "registration" confirms or confers not only priority, but also ownership. Section 1.1(m) of the draft Act, therefore defines "registration" as "the administrative process which, under this Act, affects, confirms or terminates interests by means of entries in a register". Under the draft Act, registration presupposes recording, as section 5.3(4) provides that the registration of an interest records the interest unless it was previously recorded.

The difference between the legal consequences of "recording" and "registration" is thus that recording confers or confirms priority only, while

registration (because it includes recording) confers or confirms both priority and ownership. The physical process is much the same, though different words will be used.

Different existing usages can cause confusion for the unwary reader. "Deed registration" also consists of the administrative act of making an entry in a register and the legal consequence of the conferring or confirmation of priority. "Interest recording", the term used in this report, is another name for a deed registration system, though interest recording may take different forms: Manitoba and Ontario, for example, have pure deed registration systems as well as interest recording and title registration systems. In Alberta, Manitoba, Saskatchewan and the two territories, the "registration" of "caveats" has evolved into interest recording, as it also involves the making of entries in a register and the conferring or confirmation of priority, and in Ontario the entering of notices has much the same effect.

The similarity of the terms "recording" and "registration", and the use of the term "registration" in respect of deed registration and caveat registration, thus create some difficulties of communication and comprehension. However, we think that if "recording" is rigorously used to denote a system of conferring and confirming priorities and "registration" is used to denote a system of conferring and confirming both priorities and ownership, the terminology will be found to be convenient and useful.

(2) Outline of proposed interest recording and title registration system

The interest recording and title registration system which we propose includes the following elements:

1. an administrative system;
2. a system of land descriptions based on surveys;
3. a system of registers;
4. the common law system of conveyancing and titles where it is not inconsistent with the interest recording and title registration system;
5. an interest recording system;
6. a title registration system;

7. overriding interests;
8. a compensation system.

It will be seen that the elements of the proposed system are the same as those that constitute the existing Canadian interest recording and title registration systems. In the British Columbia system the fourth and fifth elements are a system of registration of charges and a system of registration of fee simple estates respectively.

This report will now describe the listed elements individually.

B. Description of Proposed System

(1) System of administration

(a) Administrative structures

Interest recording, as has been noted above, is an administrative process from which legal consequences flow. So is title registration. Administration is as integral and necessary a part of the whole interest recording and title registration system as is law.

The existing interest recording and title registration system is administered by staffs of Land Titles Offices supervised by Registrars. Sections 2.1 and 2.2 of the draft Act make general and illustrative provision for a similar administrative system. Section 2.2 also provides for a central official who is designated as a Registrar General and who is the counterpart of existing central officials who have different titles in different provinces and territories.

Regulations under section 2.3 will provide for all other administrative matters that require a legal foundation and will prescribe the administrative requirements for documents. The requirements for documents submitted for *recording* should be restricted to ensuring that the documents are physically capable of easy processing and that they provide the necessary information about the person effecting the recording. The requirements of form and authentication for documents submitted for *registration* will be more onerous, but should not be so onerous that they derogate unduly from facility of transfer.

In summary, the draft Act provides for the continuation of existing administrative systems, the basic features of which will be included in the

statute. All other administrative matters will be included in regulations or administrative policies.

(b) Responsibility for administration

Until recently, the Attorney General was responsible for the administration of the Land Titles Offices. The administrative responsibility for the Land Titles Act, including the Land Titles Offices, has been transferred to another minister as part of a governmental reorganization involving a number of registration services. An agency has been created to administer all of those services. We do not know whether a minister will continue to have direct responsibility for the operation of the Land Titles Offices.

Governmental organization is, of course, peculiarly a governmental function. The administration of the land recording and registration system has broad connotations, however, and we think that we should express our views on it. Our general view is that the interests of users and the public require that, in the long run, the land recording and registration system be supervised by the Department of Justice under the ultimate supervision of the Attorney General rather than being operated by a separate agency given a general Government mandate to operate the system and return a stated amount of revenue to the Government. We will give our reasons for this view.

1. RESPONSIBILITY OF THE PROVINCE

The Province, by establishing the Land Titles system, effectively took over the responsibility for all land ownership rights in the province that are within its constitutional control. Citizens are compelled by law to entrust their legal rights in real property to the Land Titles system or to lose them. This is a unique situation, unlike, for example, the Personal Property Security system, which is merely a place for creditors to give notice of claims. In our opinion, the Province should discharge itself the responsibility that it undertook for good reason, and should not pass it on to a separate entity designed to supply a range of services that are largely record-keeping and information-giving.

2. FUNCTIONS REQUIRING CONTINUITY OF SUPERVISION IN LIGHT OF OBJECTIVES

Title registration includes standardized administrative processes that are similar to the standardized administrative processes of other registration services. Those standardized administrative processes could be carried out by a separate agency. But title registration also includes functions

that, in our view, make it unique among registration services and differentiate it from all others. Some of these are as follows:

- (1) A Land Titles Office creates and terminates legal rights in property. In the course of doing so its staff continually make legal judgments. While registration of an interest is as of right, there are many times when judgment must be exercised, and both the Land Titles Act, as applied, and the proposed Land Recording and Registration Act as it will apply, leave specific discretions to Registrars to refuse the registration of documents and to record possible interests in cases of legal or factual doubt.
- (2) The survey function shapes the formal structure of landholdings into the future and the registration of subdivision plans results in the creation of new interests in land.
- (3) The recording and registration system includes a user-funded system of compensation for official error and for malfunction of the system through unauthorized entries in the register and failure to make required entries. This compensation system maintains user confidence, which in turn reduces delays and transaction costs and makes business more efficient. It also makes the system fair by compensating victims for the occasional loss of ownership that is the inevitable consequence of making it easy to deal with land. Because title registration creates and terminates legal rights, the compensation system is of much more fundamental importance and different in kind than the personal property compensation system. Its exposure is also far greater. It is imperative that it be operated with the larger purposes of title registration in mind and not with reference to the corporate objectives of a service-providing entity. We discuss this subject further under the heading *The compensation system as a source of Government revenue*, below.

All these functions go beyond accepting documents and entering them in registers. They require the application of judgment based on an understanding of, and concern about, the larger purposes of the system.

Land Titles Office judgments, and the way Land Titles Offices are operated, thus affect the rights of people in property, and they have long-term effects on ownership and use of real property. It is imperative that the judgments and decisions of Land Titles Office staff be made in an atmosphere of understanding of and concern for property rights and the rights of citizens in property.

We are not suggesting that the Land Titles Offices should be the preserve of lawyers. No doubt even a basically unsupervised agency charged with the administration of the Land Titles Act could hire legal help as needed. But it is our view that the interests of the people of the province would best be served by having the title registration system administered as a responsibility of the Attorney General and attached to the Department of Justice. That is the department that is accustomed to considering and safeguarding legal rights as part of its normal functioning. A new agency could obtain that depth and continuity, if at all, only by creating a continuing and substantial bureaucracy with the depth and continuity of the Department of Justice and with its orientation towards considering and safeguarding legal rights. We think that, in the long term, the Department of Justice is the organization that is most likely to give the kind of direction that is needed for the proper functioning of this unique service. We recommend accordingly.

(2) Land descriptions and surveys

An adequate system of identification on the ground of parcels described in land registration office registers is an integral part of the existing Alberta interest recording and title registration system. Land is usually identified by reference to survey plans which are part of the records of the Land Titles Offices and which, in the case of all but the oldest plans, have been checked and approved by Land Titles Office officials.

The existing plan-based system works well. Current and foreseeable conditions dictate that it be continued. A plan-based system of identification of parcels of land should therefore be a component of the proposed interest recording and title registration system. In our view, however, the administrative requirements necessary to maintain the identification system should not be in the statute, and the draft Act does not include such requirements. What it does do, through section 2.3(e), is to provide for regulations prescribing requirements as to legal descriptions of land and the preparation, form, approval and use of plans of survey.

In summary, the draft Act provides for the continuation of the present plan-based system of identification of parcels of land. Such a system is an integral part of the proposed interest recording and title registration system, but should be provided for in regulations rather than in the governing statute itself.

(3) Registers

Interest recording depends upon entries in registers. So does title registration. Registers are therefore an integral part of an interest recording and title registration system.

Under most of the existing Torrens statutes, there is theoretically one register, which is composed of certificates of title and which incorporates the documents memorialized upon the certificates of title. A Registrar signs and seals a certificate of title which certifies that a named person is the owner of an estate in fee simple (or occasionally of a lesser estate) in a described parcel of land. The Registrar then registers lesser interests by making entries about them on certificates of title, together with the names of the registered owners of those lesser interests.

The draft Act, through sections 3.1 and 3.2, provides a system of individual registers for parcels (with provision for interest registers covering interests less than an estate in fee simple absolute where convenient). A parcel register will set out the name of the registered owner of the estate in fee simple absolute and the identifiers of recorded documents and documents creating other registered interests, and it may contain additional information as well. Entering the identifier of a document in a register will incorporate the document into the register. This is more like the present Ontario system of parcel registers than the Alberta system of certificates of title, but it will perform the same functions as the latter and will be readily comprehensible to users familiar with the Alberta system.

The use of parcel registers instead of certificates of title will mean that it will not be necessary to cancel one page of the register and create another one every time an estate in fee simple absolute is transferred; it will thus minimize a cause of error which has caused trouble in the past. The proposed Act will eliminate duplicate certificates of title and the administrative burden of maintaining them. The deposit of a duplicate certificate of title is sometimes a convenient way of creating a mortgage, but the advantage of being able to do so is small and may be illusory, and a certified copy of the register can be used to perform any other function which the duplicate certificate of title now performs.

The draft Act lays down the principle that registers are to be established for all land which is subject to the Act. It leaves all other administrative matters relating to registers to administrative discretion and to regulation. These include the procedure to be followed before a register is established and a parcel of land, or an interest in it, is brought under the Act. They also

include the determination of the geographical extent of a parcel to be covered by a parcel register (and sometimes the substances that it covers, such as petroleum or natural gas), and the circumstances under which interest registers should be established for interests less than estates in fee simple absolute.

In summary, the draft Act provides for a system of registers which includes:

1. the establishment of parcel registers, each covering a parcel of land described in it, and collectively covering all land in Alberta which has been brought under the Land Titles Act or is brought under the proposed Act (sections 3.1 and 3.2);
2. the establishment, where convenient, of interest registers based on parcels but covering lesser interests (sections 3.1 and 3.2);
3. the registration of owners of estates in fee simple in parcel registers and the registration of owners of lesser interests in either parcel registers or interest registers;
4. the recording of interests and the registration of interests other than estates in fee simple absolute by the entry of document identifiers in parcel and interest registers, and the automatic incorporation of the documents themselves into the registers.

(4) Common law conveyancing and title

The draft Act's interest recording and title registration system floats on the general law. The draft Act provides for the recording and registration of "interests". "Interest", under section 1.1(e), means "any estate or right in, over or under land recognized under law" so that it is the general law which determines what interests exist and what their incidents are. Section 4.4(1) confirms the effectiveness and relative priorities of interests as determined by the general law. Recording and registration will displace common law priorities and common law ownership, but not always, and only to the extent necessary to allow ownership of interests in land to be dealt with efficiently.

This is much the same as the present law under the existing Alberta interest recording and title registration systems. The draft Act merely states explicitly what has to be gleaned from hints in the Land Titles Act and from judicial decisions which have given robust interpretations to opaque statutory language.

(5) Interest recording

(a) Nature of the proposed interest recording system

An interest recording system, as has already been said, determines priorities among interests. It has nothing to do with the existence, nature or ownership of interests.

The interest recording system proposed by the draft Act, as has been noted, corresponds to the existing caveat system that is a feature of the Land Titles Act and other western Canadian statutes (other than British Columbia, where the caveat gives only temporary protection, while registration of charges gives additional protection). It also corresponds to the notice system under sections 74 and 75 of the Ontario Land Titles Act, though the latter operates by affecting persons who acquire interests in land with notice of interests entered on the register rather than by specifically providing for priorities. The draft Act merely rationalizes these systems and makes their consequences explicit.

(b) Reasons for an interest recording system

The fact that interest recording confers or confirms only priority, while registration of title confers or confirms both priority and ownership, might suggest that title registration should apply to all interests in land and that mere interest recording should be done away with.

As has been noted, an interest recording system solves two problems that the common law created for those acquiring ownership of land. One is the problem created by the possible existence of unknown legal interests granted by the seller or an earlier owner. The second is the problem created by the possible existence of unknown prior equities, which problem was exacerbated by the doctrine of constructive notice of equities which would be discovered by reasonable investigation. In addition, where a lost document has been recorded, an interest recording system helps to solve the problem caused by the loss of documents necessary to a transferor's title. An interest recording system thus increases facility of transfer. That is its reason for existence.

Although title registration solves more problems than interest recording, there are two reasons for maintaining an interest recording system in addition to a title registration system. The first is that, for reasons which are developed more fully below, the law cannot effectively guarantee ownership of all interests in land and would seriously mislead people if it were to try to extend title registration to all interests. The second is that land registration staff can record a document almost immediately upon receipt and thus ensure its

priority for whatever it is worth, while the verification procedures necessary for registration take more time and may involve returning documents for correction. It is for these reasons that the draft Act provides for an interest recording system as well as for a title registration system.

(c) Interests that may be recorded

The law should enable all owners of interests in land to protect their interests. Section 4.1 of the draft Act therefore provides that "any interest may be recorded if it is in land which is subject to this Act . . .", and the definition of "interest" in section 1.1(e) includes all interests recognized by the general law.

The converse principle is that nothing that is not an interest in land recognized by the general law should be recorded under a system dealing with interests in land. Section 4.1 therefore goes on to say that "any recording which is not authorized under this section is void", and the section, as noted in the preceding paragraph, authorizes the recording of interests in land and nothing else.

(d) Recording procedure

Under section 4.2 of the draft Act, a person who wants to record an interest will, in the usual case, have two choices. One is to submit to the Registrar a document in prescribed form which incorporates the document which confers the interest or a copy of the latter document. The other is to submit a document which summarizes the transaction on which the interest is based. The regulations will call for a cover sheet giving the name of the person who records the interest, an address for service, and any other required information. Where the person has commenced an action claiming an interest in land or calling in question another interest, there is a third choice: the person can record their interest by means of a certificate of *lis pendens*.

Recording will be accomplished when the Registrar enters in the appropriate register the identifier assigned to the document submitted for recording (draft Act section 4.3(2)), though the Registrar will probably include additional information in the entry.

Registrars will not require that recording documents submitted for recording be authenticated, nor will they check to see that recording documents conferring interests are legally proper or purport to confer or summarize interests in land. That is because recording confers or confirms

only priority on whatever interest the claimant has, and does not purport to validate an interest or to confer ownership of an interest.

(e) Effect of recording

(i) In general

We repeat here that the interest recording system proposed by the draft Act is a rationalized version of the prairie and territorial caveat system and the Ontario notice system. With few exceptions, it deals with priorities among interests, and only with priorities and has nothing to do with the existence, nature or ownership of interests.

It follows that recording does not give a legal assurance that an "interest" that is recorded is an interest recognized by law, or that it exists, or that it is owned by the claimant who records it, or that it affects the land against which it is recorded. Another consequence is that an interest exists without recording and continues to exist despite the termination of a recording, so long as the general law recognizes its existence. The interest, as will be seen, may be subordinated to other interests through the operation of the interest recording system, but that is a different matter.

The common law gives an interest in land priority over subsequent interests in the same land. It subordinates an interest to prior interests. Often it gives priority to an interest over one set of competing interests and subordinates it to another set. One who acquires an interest does not necessarily know what prior interests exist. Interest recording gives the acquirer two things. The first is information about prior interests. The second is an assurance that no interests not then recorded or registered can assert priority over the interest being acquired. But, unless the acquirer records the acquired interest, interest recording renders that interest vulnerable in its turn to being subordinated to subsequent interests.

We now turn to a discussion of the effect of the recording of a prior interest as against subsequent interests and the effect of the recording of a subsequent interest against prior interests. The same interest may be prior to a subsequent interest, subsequent to a prior interest, or both.

(ii) Effect of recording a prior interest

The principal purpose of recording a prior interest is to confirm its priority over subsequent interests.

Suppose that O, the registered owner of Blackacre, grants a legal interest in Blackacre to A. A immediately acquires the interest (draft Act section 4.4(1)). Suppose that O then grants a conflicting interest to B, and that neither A's interest nor B's interest is recorded or registered. A's interest, being prior in time, is entitled to priority over B's interest under the general law, which is preserved by section 4.4(1). A's concern with the interest recording system is to preserve an existing priority. Under section 4.4(2)(a) of the draft Act, the recording of A's interest confirms and continues the common law priority of the interest, which might otherwise be taken away by the recording of B's subsequent interest.

But recording can also achieve another important purpose.

Suppose that the prior interest that O granted to A is an equitable one. Under the rules of common law and equity, A's interest would be defeated if B is a *bona fide* purchaser for value of the legal estate or of a higher equitable estate without notice of A's interest. The prior recording of A's interest under these circumstances will not only protect the priority which the rules of common law and equity have conferred, but will ensure that the priority will continue in circumstances in which the rules of common law and equity would not recognize the priority. Section 4.4(2)(a) thus goes farther than the common law and gives the holders of equitable interests a means of protecting themselves which was not available to them under the common law.

(iii) Effect of recording a subsequent interest

Suppose that the interest granted by O to A has priority over B's interest at common law, but that the interest granted by O to B has been recorded and A's interest has not. Section 4.4(2)(b) of the draft Act reverses the common law rule and confers priority on B's subsequent interest over A's prior interest.

A number of qualifications must be made to that statement:

1. Recording will not confer priority upon a subsequent interest that was not obtained for value. (See section 4.4(2)(b)(i). See also the discussion under the heading "Volunteers" below.)
2. Recording does not confer priority upon an interest which was obtained through the fraud of the person who acquires the interest. (See section 4.4(2)(b)(ii). See also the discussion under the heading "Fraud" below.)

3. Some interests retain their priority under the common law or a statute despite lack of recording and are called "overriding interests". (See section 6.1 and the reference to it in section 4.4(2). See also the discussion under the heading "Overriding interests" below.)
4. Where there are two registers for the same parcel or interest, and where in each register there are recorded or registered interests derived from the interests on which the register is based, recorded interests derived from interests registered in one of those registers will be deprived of priority. (See section 5.7. See also the discussion under the heading "Conflicting registers" below.) This situation will arise rarely, if at all.

The general rule is that the recording of a subsequent interest affects only the relative priorities of the interest over prior interests. But there is one situation in which the recording has a substantive effect. Suppose that the interest that O conveyed to A in the example given above was an estate in fee simple. At common law, O would not longer own any interest in Blackacre. Therefore O's grant to B could not convey anything and B could not acquire an interest in Blackacre. But interest recording, and in particular section 4.4(5)(a) of the draft Act, validates B's interest unless A's interest is recorded first.

(iv) Effect of recording on priorities of derived interests

Suppose that O grants an interest in Blackacre to A1, who records it, and that O then grants a conflicting interest to B, who also records. Suppose that A1 then assigns the first interest to A2. The recording of an interest will confer priority on the interest not only in the hands of the person who records it but also in the hands of a successor who obtains the whole interest or a derived interest from that person or from an intervening successor. (See section 4.4(3)(a).) That appears to be the present law of caveats, though the point is not beyond all doubt.⁶ In the example stated, the interest assigned to A2 should be enforceable with priority over B's interest under the Land Titles Act and it will be enforceable with that priority under the draft Act.

⁶ *Calford v. Zellers (Western)*, [1972] 5 W.W.R. 714 (App. Div.); *Demers v. Fountain Tire Distributors*, [1974] 1 W.W.R. 348 (App. Div.). In *Passburg Petroleum Ltd. v. Landstrom Developments Ltd.*, [1984] 4 W.W.R. 14 (Alta. C.A.), the assignee also got the benefit of their assignor's caveat, but it did so through the application of the privity-of-estate doctrine. In *White Resource Management v. Durish*, [1993] 1 W.W.R. 752; (1993), 5 A.L.R. (3d) 372 the Court of Appeal did not refer to the existence of the assignor's caveat in deciding the relative priorities of the assignee's interest and an interest protected by an intervening caveat, so that the proposition in the text is not beyond question. (In *White* the Court delivered reasons for refusing leave to reargue the appeal dated January 29, 1993. Leave to appeal to the Supreme Court of Canada was granted on October 14, 1993.)

Next, suppose that A1, instead of assigning to A2, has given two successive assignments of the interest to M and N. Each of M and N is entitled to have the interest enforced with priority over B's interest. As between themselves, however, the general rules of recording apply, so that if N records the second assignment first and meets the other conditions of section 4.4(2)(b) (i.e., the giving of value and the absence of fraud), M's assignment will be ineffective as against N and N will be entitled to have the second assignment enforced as against M, as well as against B.

(f) Effect of cancellation of a recording

Suppose that O, the owner of land, has granted a legal interest to A. Suppose further that A recorded the interest; that the recording was subsisting at the time B acquired a subsequent interest or at the time B recorded the subsequent interest, or at both times; that A's recording was subsequently cancelled; and that A's interest was not extinguished.

The Land Titles Act does not say specifically whether or not A's interest continues to have priority over B's interest despite the discharge of A's caveat, which is the counterpart under that Act of the cancellation of a recording under the draft Act. In *Boulter Waugh v. Union Bank*,⁷ the Supreme Court of Canada held that the lapse of A's caveat under notice to take proceedings under the Saskatchewan counterpart of section 137 of the Land Titles Act allowed B to enforce the subsequent interest with priority over A. *Boulter Waugh* has been variously interpreted by Alberta and Saskatchewan appellate judges and courts as (a) applying only in a contest between encumbrances;⁸ (b) having dealt only with equitable notice questions and not with the caveat sections in the Saskatchewan Land Titles Act;⁹ (c) having held that the lapse of A's caveat gave B priority;¹⁰ and (d) having held that A's interest continued to have priority but that A could not enforce the interest in the absence of a good reason for allowing the lapse of caveat to occur.¹¹ In *Passburg Petroleums Limited v. Landstrom Developments Ltd.*¹² the Alberta Court of Appeal held that

⁷ (1919), 58 S.C.R. 385.

⁸ *Bensette v. Reece*, [1973] 2 W.W.R. 497 (Sask. C.A.), per Woods J.A.

⁹ *Ibid.* per Hall J.A.

¹⁰ *McFarland v. Hauser* (1977), 2 Alta. L.R. (2d) 289 (App. Div.); rev. on other grounds, [1979] 1 S.C.R. 339.

¹¹ *White Resource Management Ltd. v. Durish*, [1993] 1 W.W.R. 752 (Alta. C.A.). Leave to appeal to the Supreme Court of Canada was granted on October 14, 1993.

¹² [1984] 44 W.W.R. 14 (Alta. C.A.).

the discharge of an assignor's caveat did not affect the priority established by that caveat for the interest in the hands of an assignee. The authorities are accordingly in some disarray.

The draft Act deals with the question. The general rule is that the cancellation of a recording does not affect either the existence of the recorded interest or the existing priorities of the recorded interest over other interests. Section 4.4(2)(a) of the draft Act states the general rule: a prior interest which was recorded at the time that a subsequent conflicting interest was either obtained or recorded is to be enforced with priority over the subsequent interest. Section 4.7(2) and (3) say that cancellation of a recording does not terminate the recorded interest and that cancellation of a recording does not affect priority of enforcement rights which accrued under section 4.4 before the cancellation. So that if A's recording lapses, A's priority over B's interest nevertheless continues.

Section 4.5 of the draft Act provides one exception to the general rule. The section applies when the recording of a prior interest was cancelled under an invalid request for cancellation but the prior interest would, but for the section, continue to have priority over a subsequent interest. In order to get the benefit of the exception, the person who acquires the subsequent interest (a) must have believed that the recording was cancelled under a valid request for cancellation, (b) must have no knowledge of the facts which made the cancellation unauthorized, and (c) must either have paid value or detrimentally altered their position in reliance on the invalid cancellation. The intention of the section is to protect a purchaser who, in the course of a conveyancing transaction, relies on a cancellation of a recording if the request for cancellation was obtained by the purchaser in good faith and for value. The section also provides that the owner of the prior interest who is deprived of priority by the section is to be compensated under the compensation system.

No doubt A could lose the priority of their interest under general law rules of estoppel and misrepresentation if they had led B to believe that A's interest had been terminated, and if B had relied on the appearance so created. But in the absence of a case that falls within section 4.5 of the draft Act or falls within some special rule of law, the priority of an interest will continue despite the lapse of its recording. That priority will, of course, be vulnerable to the recording of new subsequent interests at a time when the prior interest is not recorded.

(6) Title registration**(a) Nature of the proposed title registration system**

Title registration does not deal with the legal recognition of interests in land. It does not deal with the legal incidents of interests. It does not say what it is that constitutes binding grants and transfers of an interest or what brings about the devolution of interests by operation of law. It leaves all of those things to the general law.

Title registration is a system under which entries in a register determine the ownership of interests in land. This is the effect of section 5.3(1) of the draft Act. The purpose is to give purchasers a quick, easy, cheap and simple way to acquire ownership of interests. It does this by giving them quick, easy, cheap and simple ways

- to identify the persons who can give them legally effective grants and transfers of interests, and
- to protect interests once acquired.

Title registration is intended to give effect to ownership rights under the general law. If everything happened immediately and happened as it should, the register would always reflect the general law: the principal activity of land registration officials is the continual revision of the register so that it will reflect the general law. But things do not always happen as they should and things do not immediately come to the attention of land registration officials. Divergences between the general law and the register are therefore inevitable. At the moment such a divergence occurs, the person whom the general law recognizes as the owner of an interest usually has a right to have the register brought into conformity with the general law, but once a successor has acquired an interest from the person shown as owner on the register, the displaced owner usually loses that right. This is the essence of title registration.

The title registration system proposed by the draft Act is similar to the existing provincial and territorial title registration systems as they have evolved through statute and judicial interpretation. The purpose of the draft Act is to rationalize the system, solve a number of problems that have become apparent over the years, and make the consequences of the system explicit.

(b) Reasons for a title registration system

Because title registration confers or confirms both priority and ownership of interests, it not only enables a person to acquire an interest in land free of prior interests not reflected in a register, but makes it unnecessary for the person acquiring the interest to investigate the adequacy of the instruments necessary to the transferor's title. It may go even further and make it unnecessary to investigate the adequacy of the instrument which confers the interest being acquired. Title registration thus increases facility of transfer, and does so to a greater extent than does an interest recording system. This is its reason for existence.

(c) Interests that may be registered

An important question is: what interests should be capable of registration? Any interest can be recorded, thus protecting its existing priority or obtaining additional priority for it. What interests should qualify for the additional protection of registration?

There are three practicable answers:

1. register only estates in fee simple absolute;
2. register estates in fee simple absolute plus a list of the most common and best understood interests in land;
3. register all interests in land except any that should be excluded from registration by some valid public policy.

Title registration should float upon the general law. It should not change substantive real property law. Before making a choice among the options listed in the preceding paragraph, it is necessary to digress to consider ways in which the general law recognizes interests in land.

The general law recognizes an estate in fee simple absolute, defines it, and prescribes its incidents. Therefore, a title registration statute can make a simple statement of law that O is the owner of an estate in fee simple absolute in Blackacre, because the general law gives meaning to the words. The same is true of a life estate in land.

The general law recognizes the existence of a number of other estates and interests in land. It prescribes incidents which, if present, will bring a legal right into the category of a specific interest in land, such as a lease, and it sometimes prescribes some of the legal consequences that flow from bringing a

legal right into a given category. However, except for the estate in fee simple and the life estate, the general law does not define interests so precisely that a title registration statute can merely say that A is the owner of an interest in Blackacre without in some way providing for the ascertainment of the incidents of that interest: a statement that A is the owner of a leasehold interest is not enough, by itself, to say what A's rights in the land are.

The most that a title registration statute can say about anything other than an estate in fee simple or life estate is that A is the owner of whatever estate or interest is defined by a specific transaction. A statement in a register that A is the owner of a leasehold interest does not confer a leasehold interest unless the general law recognizes as a leasehold interest the interest that is conferred on A by an underlying document incorporated into the register. In other words, a title registration statute, except in the case of an estate in fee simple absolute, cannot say *what* it is that A owns in Blackacre, except by incorporating the terms of the grant to A and by leaving the definition of what is granted to be determined by the interaction of those terms with the general law.

It can be argued that the additional protection of registration should be available to all, or almost all, interests in land, from an estate in fee simple absolute to a springing trust. This is option 3 above.

We are of the view that it would not be appropriate to register an almost indefinite range of estates and interests. We do not think that, except for a number of interests which are common and well-understood, the law should purport to confirm or confer ownership of rights the nature of which has to be gleaned by interpretation of documents and of the general law and which may prove not to exist at all. Purporting to register such things is likely to lead people to think that they have more protection than they can have in the nature of things. We have not adopted option 3.

At the other end of the range of what is reasonable, it can be argued that all that is needed is to register estates in fee simple absolute. This is option 1. It would accomplish a good deal. All that a person who wanted to acquire a fee simple estate or a lesser estate or interest would have to do would be to trace a good title back to a registered owner of the estate in fee simple absolute. In most cases, that would involve acquiring the interest either from the present registered owner of the estate in fee simple absolute or someone who has already acquired it from that present registered owner. In some cases, it would involve acquiring the interest from someone who had acquired it from a previous registered owner of the estate in fee simple absolute. The complete chain of title would usually appear from one existing

register, though occasionally it might be necessary to trace the interest back to a preceding register. Upon acquisition, the person who acquires the interest could establish and protect its priority by recording it. It can be argued that this is enough protection for lesser interests and that registration should be reserved for the estate in fee simple absolute, because it is only the estate in fee simple absolute which is fully defined by the general law so that the register can, without risk of error, say that A owns it.

However, we think that registration should be extended beyond the fee simple absolute to a limited number of estates and interests which are so well understood and recognized by the general law that registration will be efficient and useful. These are listed in section 5.1 of the draft Act. This list includes the great bulk of important estates and interests. We think that, in the case of important and comparatively well understood interests of these kinds, the importance of enabling users to obtain legal assurances of ownership outweighs the possible adverse consequences arising from the law's inability to guarantee the existence or content of the interests. We have therefore chosen option 2 from the list given above.

(d) Registration procedure

One who acquires an interest will procure its registration by submitting to the Registrar the document that conveys the interest. Such a document will embody a "transaction" as defined in section 1.1(t) of the draft Act. The Registrar will then register the interest by entering the owner's name in the appropriate parcel or interest register as the owner of the interest and by entering the identifier of the document. Unless the interest is an estate in fee simple absolute, the Registrar will also be required to note in the register the identifier of the document which registers the interest.

The Registrar will examine a document which is submitted for registration, and will register it: if the person upon whom the interest is being conferred appears to be a legal person; if the document is prepared and authenticated in accordance with the regulations and purports to confer a registrable interest; and if there is no provision of the general law which forbids the acquisition of the interest by the person upon whom it is being conferred.

(e) Effect of registration

(i) General rule

Section 5.3(1) of the draft Act declares that the registered owner of an interest is the owner of the interest. That declaration will make a person the legal owner of the interest whether or not the ownership would be recognized by the common law. Section 5.3(3) and (4) will confer upon the registered interest priority based upon the time of registration, unless an earlier recording of the interest has already conferred a greater priority (but see the discussion under the heading "Overriding interests" below).

(ii) Conditions which must be met

Section 5.3(1) is not absolute. It makes its declaration only if:

- (1) the interest is of a kind listed in section 5.1 of the draft Act;
- (2) the registered owner has legal capacity to own the interest; and
- (3) the interest is recognized under law (which makes explicit something which is implicit in the requirement that the interest be of a kind listed in section 5.1).

Condition (1), that the interest be of a kind listed in section 5.1, is one of policy, and is laid down for reasons given under our discussion of interests that may be registered. Conditions (2) and (3) recognize the impossibility of conferring ownership *of* something that does not exist under law and the impossibility of conferring ownership *upon* something that does not exist under law. If condition (1) or (2) is not satisfied, the registration is both void under section 5.2(3) and excluded from the benefit of section 5.3(1). If condition (3) is not met, the registration is also void because there is no interest qualified for registration under section 5.1 as required by section 5.2(1), and the registration also falls within the exception set out in section 5.3(1).

A registration is effective, and the registered owner is the legal owner of the interest, even though the registration was brought about by that owner's fraud or the registered interest was not conferred on the registered owner by a valid conveyance. An owner who, by such a registration, has been deprived of an interest or had an interest subordinated will usually have a right to have registrations revised so as to restore their position. These situations are discussed below under the heading "Revision of registrations".

(f) Revision of registrations

(i) Purpose of revisions

"Revision of registrations" means the making or cancellation of a registration or of more than one registration. "Revision of registers" would convey this meaning, but it would also include the making and cancellation of recordings and is therefore unsuitable for use in this context.

Registers comprise a great body of registrations. These are constantly being revised by the making of new registrations and the cancellation of old ones. The purpose of every revision is to bring the register into conformity with the general law so that every registered owner of an interest will be the person who would be owner of that interest under the general law. It is, of course, impossible in practice for all registrations to agree with the general law at all times, but they would do so if systems worked perfectly and instantaneously, and the closer the title registration system comes to reflecting the general law, the more efficiently it is operating.

The draft Act says when registrations are to be revised. The principal provision is section 5.4(1), but sections 5.5, 5.6 and 5.7 deal with the subject as well. We will now turn to the various circumstances that call for revision of registrations.

(ii) Revisions based on binding transactions

A registered owner may transfer a registrable interest that the general law recognizes. Alternatively, the operation of a law such as one relating to expropriation, bankruptcy, creditors' remedies or the administration of estates may devolve a registered interest upon a new owner. In each of these cases there is a transaction binding on the registered owner. Section 5.4(1)(a) of the draft Act provides that registrations must be revised as required by such binding transactions.

The occurrence of a binding transaction is the most common reason for registrations to be revised. Title registration is designed to facilitate such transactions, particularly grants and transfers of interests by registered owners.

(iii) Revisions in cases of fraud and mistake

A registered owner may be defrauded into granting or transferring a registrable interest. Or a registered owner may grant or transfer a registrable interest by a document that does not express the intention of the parties. In

either case, the document is valid but may be subject to being set aside or rectified.

If the grantee or transferee has become registered as owner of an interest under such a document, the registration is valid, and it remains valid until it is cancelled. However, once the document is set aside or rectified, the original registered owner is again the owner under the general law. Therefore section 5.4(1)(b) of the draft Act provides that registrations must be revised as required so as to restore the original registered owner's registration. Similarly, if the grantee or transferee became registered in fraud of the holder of an unregistered and unrecorded interest, registrations would have to be revised to restore the situation.

(iv) Revisions where there was no valid transaction

In a case between immediate parties, if a registered owner, A, has obtained registration of an interest in land without a valid transaction at all, the previous owner, O (who would be the true owner under the general law), is entitled to have A's registration cancelled and to become registered as owner under a new registration (unless A believed that there was a valid transaction). However, if another person, B, has succeeded A as registered owner and is not guilty of fraud, O is not entitled to have registrations revised. This is the essence of title registration. It assures anyone who acquires an interest in land that there is no A who can claim ownership once the interest has been registered in the name of the person acquiring the interest. This is the effect of section 5.5(2)(b) of the draft Act.

But there is an exception to the proposition that if A has obtained registration without a valid transaction, O is entitled to have A's registration cancelled. The exceptional case is one in which A obtained registration in the belief that there was a valid transaction and without knowledge of the facts that rendered it invalid. The paradigm case is: O is the registered owner of Blackacre; a rogue forges a transfer from O to A and delivers it to A who accepts it in the belief that it is granted by O and pays the rogue for it; and A registers the transfer and becomes registered as owner of Blackacre. Should O be entitled to have A's registration set aside and to be restored as the registered owner of Blackacre?

It was long thought in Canadian Torrens jurisdictions that registration did not protect A from a fatal defect in the immediate transaction on which A's registration was based. This view was based at least in part on the decision

of the Judicial Committee of the Privy Council in *Gibbs v. Messer*.¹³ However, since the later decision of the Judicial Committee in *Frazer v. Walker*,¹⁴ it has been thought that if A is a *bona fide* purchaser for value, his or her registered ownership will prevail. *Gibbs v. Messer*, on this theory, is either no longer authoritative or is restricted to its particular facts, under which a rogue forged a transfer from O to a *non-existent* A and then forged a further transfer from the non-existent A to the good faith purchaser, B.

In the paradigm case, A failed to identify the party with whom they were dealing, accepted a nullity and obtained registration of it. At first blush, it seems wrong that the title registration system should either confer ownership upon A or compensate A, who has failed to identify the party with whom they were dealing. This is particularly so if O, the previous registered owner, has not connived at or contributed to the error. Nevertheless, we think that A should be entitled to receive either the interest in land or compensation for its loss.

Title registration is designed to facilitate transfer of interests in land. If the system requires every purchaser to conduct elaborate investigations to determine that the conveyance they receive is binding upon their vendor, it will tend to obstruct rather than facilitate the transfer of interests. If title registration requires everyone who registers an interest in land to contribute to the cost of the compensation system and then leaves an innocent registrant with neither the land nor compensation, it is unfair. Section 5.6 of the draft Act therefore makes it clear that a person who, for value, becomes registered under an invalid transaction in the belief that it was valid and without knowledge to the contrary should get either the interest or compensation for it.

That leaves the question: who should get the interest in land and who should get the money? As a general rule, it is better to get the interest than a necessarily uncertain claim for compensation. *Frazer v. Walker* would give the land to the good faith purchaser, A, in every case, and the displaced registered owner, O, would get compensation. We think that approach is too rigid and is likely to have unfair results.

Our view is that it will usually be fairer and cheaper to restore O's registration and to compensate A. As the facts are likely to come to light fairly soon, O, as the displaced owner, is statistically likely to have a closer

¹³ [1891] A.C. 248.

¹⁴ [1967] A.C. 569. See also *Registrar, Regina Land Registration District v. Hermanson* (1987), 1 W.W.R. 439 (Sask. C.A.).

connection with the land, and to suffer loss which will be harsher, as well as greater and less easy to quantify, than will be the loss of A, as a recent acquirer of the interest. We therefore think that the general rule should be that the displaced registered owner is to be restored to ownership and the newly registered purchaser is to be compensated for being displaced. Section 5.6(3) of the draft Act sets out this rule.

However, circumstances vary. In a particular case, it may be harsher, more difficult or more expensive to return the land to the displaced registered owner. Section 5.6(4) of the draft Act therefore gives the Court the power, when it is just and equitable to do so having regard to some listed circumstances and any others relevant to the question, to confirm the unauthorized registration and award compensation to the displaced registered owner.

(v) Revisions where there are competing registers

There is one last circumstance in which registrations may be revised. Where there are two registers for the same parcel or interest, and where in each register there are recorded or registered interests derived from the interest on which the register is based, the interests registered in one of those registers will be deprived of priority. (See draft Act section 5.8. See also the discussion under the heading "Conflicting registers" below.)

(7) Overriding interests

In theory, the register is everything, and a person who is not fraudulent and who records or registers an interest can be assured of the appropriate priority, or of the appropriate priority plus ownership, if the interest is registered. In theory, a recorded or registered interest is subject only to prior interests which are recorded or registered. In practice, every title registration system must recognize the priority of some interests which are neither registered nor recorded.

Section 6.1 of the draft Act recognizes the following overriding interests:

- (a) reservations or exceptions in the original grant of the estate in fee simple absolute from the Crown either expressly or pursuant to an act (draft Act section 6.1(a)).

This recognizes the public interest in retaining what is excepted or reserved. The draft Act, however, adopts what is essentially the Saskatchewan and Ontario position, namely, that the register, by making an express statement (e.g., "minerals included") can override

the otherwise overriding Crown exception or reservation. It will thereby make a change in the existing law of Alberta, under which the overriding effect of Crown reservations and exceptions is absolute.

- (b) a tax lien in favour of a municipality.

It is not practicable to keep up-to-date tax information in a land registration office, so that purchasers must obtain it from the municipal authority anyway. Privately owned land is so close to universally subject to municipal and school taxes that purchasers will not fall into the trap of thinking that because the municipality's claim is not shown on the land register it does not exist. For these reasons, municipal tax liens should be effective without being recorded or registered.

- (c) irrigation and drainage district rates.

The liability of land in irrigation and drainage districts resembles the liability of land for municipal taxes. Their rates should be effective without recording or registration.

- (d) a leasehold for a term of 3 years or less if there is actual possession under the lease and the possession could be discovered through reasonable investigation.

This overriding interest runs counter to the policy of facilitating transfer, as the existence of a three-year lease may significantly derogate from rights of ownership, and the possibility of the existence of such a lease may require an investigation on the site. However, requiring that short term leases be recorded or registered would be an unconscionable burden on tenants and upon land registration offices. This proposed overriding interest is a somewhat revised version of the existing overriding leasehold interest.

- (e) decrees, orders and interests in the general register.

This carries forward section 65(2) of the Land Titles Act. The existence of the general register is anomalous. It is contemplated that it will be abolished 3 years after it becomes possible for Land Registration Offices to provide a creditor with a list of interests registered in a debtor's name.

Some overriding interests which are listed in some existing Torrens statutes are not listed as overriding interests in the draft Act. One is public highways, which do not seem to require protection as they are protected in other ways. A second is easements, which do not appear to be entitled to any

special protection. A third is powers of expropriation, which do not constitute interests in land.

Statutes other than the Land Recording and Registration Act create interests in, or charges upon, land. These interests or charges can result in serious derogations from the value of the register. The effect of section 6.1 of the draft Act, including its opening words and section 6.1(e), is that such statutory interests will be enforced with priority from the time of their creation only if the statute that creates them refers to the Land Recording and Registration Act and expressly provides that the interest is enforceable with priority otherwise than as provided in the title registration statute. It does not seem practicable to ask a Legislature to bar itself from enacting other statutes that create interests in land which have priority without recording or registration, but it can be hoped that a Legislature will agree to make it clear when it intends to do so.

(8) Compensation

(a) Approach to compensation system

A title registration system can function without a system of compensation for persons who suffer loss from the malfunctioning of the system, and some do. However, Canadian title registration systems all have compensation systems. In our view, they should continue to do so.

The Alberta compensation system, like most others, is user-funded. This is a fact of fundamental importance. It means that the system should be designed for users. Compensation should be payable when it is in the interests of users as a class that it should be payable. It should be provided for when it seems likely that the benefits to users will justify the cost of providing it.

The first compensation systems in Australia were introduced, at least in part, to neutralize opposition to title registration. Opponents of the system raised fears that many landowners would lose their land when it was brought under the title registration system. The compensation systems were intended to allay those fears. Those fears, however, are not the driving force for Canadian compensation systems.

Nowadays, a compensation system has several functions. It achieves fairness. It provides what is in effect an insurance service against loss of interests. It encourages people to rely on the register. It is best, however, to think of it in terms of business efficiency.

Even the most efficient interest recording and title registration system necessarily involves some error and consequent loss. It is not practicable, even if it is possible, to ensure that all documents transferring registered interests are valid, and it is not possible for a system dealing with masses of documents and entries to avoid all official error. If there were no compensation system, persons dealing with land would be likely to take expensive and time-consuming precautions to avoid losses which could, but are not likely to, occur under the system. The social cost of taking such precautions is not justifiable. It is better to accept the fact that there will be losses and to spread them over all users through a user-funded compensation system.

Compensation funds in Canada and Australia have been hedged around with limitation periods and, in some cases, procedural hurdles. Claims for compensation have been treated as adversarial matters. Certainly it is appropriate to ensure that claims are substantiated, but compensation should simply be a means of spreading inevitable losses in a businesslike way and of tidying up the inevitable wreckage, and it should be regarded as an inevitable cost that is incurred in the interest of business efficiency. A claim for compensation should not be regarded as a raid on public funds, but rather as a routine claim for reimbursement from funds provided by users for that specific purpose.

It would be possible to discontinue the compensation system and leave users to rely on private title insurance. However, we think that, because the State effectively mandates the use of the recording and registration system which results in inevitable losses, it should also operate a compensation system to cover those losses.

(b) The compensation system as a source of Government revenue

In Alberta, the compensation system is funded by assurance fund fees charged on the registration of transfers and mortgages. These fees have traditionally exceeded the amounts paid out as compensation. This is in part because of the procedural and limitation hurdles that have to be surmounted. It is primarily due to the fact that the risk of compensable losses in a properly administered Land Titles Office is rather small in relation to what is involved.

Originally, the assurance fund fees went into a fund and remained there. It became attractive, however, to take the money into the Province's general revenue, and section 157(3) of the Land Titles Act authorizes the Provincial Treasurer to take everything over \$75,000 into general revenue. If the fund is insufficient — and a fund of \$75,000 is likely to be insufficient —

section 168(1) provides that a compensation payment is to come from the General Revenue Fund.

Section 168(2) recognizes the provenance of the money. Under that section, the liability of the General Revenue Fund is restricted to \$31,000,000 plus or minus the net inflow or outflow of money since 1983. The \$31,000,000 was the amount thought to have been taken into general revenue by that date.

This procedure creates one danger. Because of it, compensation payments come from public funds. The danger is that the guardians of the public funds may resist claims on the grounds that the public purse must be protected. But users put up the money in order to compensate users. Proper safeguards against abuse of the system should be maintained, but no unnecessary obstacles should be put in the way of properly authenticated claims merely because the money has been taken into general revenue. Enlightened administration of the compensation system is important in the maintenance of user confidence and, as a consequence, in the efficiency of dealings with land.

The turning over of the administration of the Land Titles Offices to Alberta Registries could increase the danger. It foreshadows a situation in which the administrators are required to achieve specified financial objectives. This may be an efficient way of dealing with the Land Titles Offices as service providers. But specifying financial objectives with respect to the compensation system would be quite another matter. It would give the administrators an incentive to keep compensation payments down to enable them to achieve the financial objectives rather than to ensure that the money provided by users is used to compensate users against the inevitable losses. A limit on compensation payments imposed for Government revenue purposes would detract from the achievement of the objectives of recording and registration.

We make no comment on the desirability of the Government obtaining more money from compensation system fees than is paid out in compensation system payments. But we do most strongly urge that the compensation system be administered as a system designed to spread inevitable user losses among users of the system. If more fees are needed to fund more payments, the Government can raise the fees, at least until the point is reached when the system has to be reconsidered because costs are exceeding the value of benefits.

(c) When compensation is payable

(i) General principles

The compensation system is established as part of the interest recording and title registration system. It should provide compensation for loss caused by a malfunction of the latter system. Subject to two exceptions which are discussed below, it should not provide compensation for loss caused by anything else.

The interest recording and title registration system functions through the making of entries in registers. System malfunction may consist of the making of an unauthorized entry in a register, or it may consist of an omission to make a required entry. The view taken by the Joint Committee on Land Titles, as reflected in the Model Land Recording and Registration Act, was that, as a general rule, compensation should be payable only for losses sustained through the making of unauthorized entries or through omissions to make required entries. Section 7.1(a) and (b) of the draft Act provide compensation for such losses. Users should otherwise be left to their tort remedies.

We agreed with the Joint Committee. However, upon further consideration, we think that there should be an additional head of compensation, namely, compensation for errors of the Registrar not included in the making or omission of entries. Section 7.1(c) of the draft Act accordingly provides for it. Section 158 of the Land Titles Act now provides for compensation for official error and we think that the scope of compensation should not be narrowed by the adoption of the proposed Act. Most official errors will lead to the making of unauthorized entries or to the failure to make required entries and would be covered by the Model Act, but there may be an occasional situation in which other official errors cause loss for which compensation should be paid. Providing a general register certificate that omits a writ of execution is an example. Failure to cancel a register upon receipt of documents establishing an expropriation is another, though more laboured, example: it could be argued that the loss suffered by a purchaser from the owner who has been expropriated was not caused by the failure to cancel, because it is the expropriation statute that deprives the purchaser of ownership, so that the official error will have caused loss.

Some existing title registration statutes, in effect, provide for compensation for loss sustained through the operation of the statute. This approach is reasonably satisfactory, but it requires in each case a comparison between the effect of the statute and the effect of the law which would apply if the statute were not in force. This, after a century or more of title registration,

is a rather artificial exercise. There is also at least one case where this approach leads to an unsatisfactory result. A loss sustained through the Registrar's failure to record a subsequent interest would not be compensable as a loss sustained through the operation of the statute, because the loss under the general law would be the same as the result under the statute and therefore could not be said to be caused by the operation of the statute. It would, however, be a loss caused by system malfunction and should be compensated for.

(ii) Documents apparently in proper form

One point should be emphasized. Regulations under section 2.3(b)(iii) of the draft Act will, in effect, authorize Registrars to accept for registration documents which appear to be authenticated in ways prescribed by the regulations. Business efficiency requires that Registrars should do this, and no blame attaches to them for doing it. However, if a Registrar accepts for registration a document which apparently conforms to the regulations but is not valid, the registration of an interest based upon that document is not authorized by the draft Act.

(iii) Documents obtained by fraud

Some existing statutes provide for compensation for loss sustained through registration of documents obtained by fraud. The draft Act does not.

Under the common law, a conveyance obtained by fraud confers a good title on the grantee. The defrauded person has a right to have the conveyance set aside but will lose all claim to the interest if a purchaser acquires it from the grantee. Registration of the conveyance, while it may make it easier for the original grantee to satisfy a purchaser about title, does not change the common law situation. It is not the registration of the conveyance, but its execution and delivery, that causes the loss to the defrauded person. That being so, there is no reason why the defrauded person should received compensation under the title registration situation.

If the defrauded person discovers the fraud before the grantee disposes of the interest, title registration gives them a more effective means of preventing the further disposition of the interest. The defrauded person can, by caveat under the present Land Titles Act or by recording a statutory interest under section 5.4(2) of the draft Act, preserve their priority over a subsequent purchaser even though the conveyance has not yet been set aside. A defrauded person's only recourse under the common law pending the setting aside of the conveyance would be to obtain an interim injunction.

(iv) Comparison of proposed coverage with present coverage

(A) General compensation provisions

Section 7.1 of the draft Act sets out the principal grounds for compensation. It covers the same ground as section 158(1) of the Land Titles Act. Although the provisions are drafted differently, they both come down to unauthorized registrations and recordings, omissions to record or register, and to official error.

(B) Registrations not authorized by valid transactions

Section 5.6 of the draft Act adds a small additional category of compensation. It will be remembered that, if A is registered as the owner of an interest under what they believe to be, but is not, a valid conveyance from O, section 5.6 presumptively requires O to be reinstated as owner, with compensation to A. Compensation to A is an extension beyond the general compensation categories under section 7.1(1) of the draft Act, though, under the *Frazer v. Walker* principle, it will be in substitution for, and may be cheaper than, the compensation to O for loss of the interest to A. Section 5.6 will include the case of an invalid request for cancellation of a registration.

(C) Conflicting registers

Section 5.7 of the draft Act provides for compensation in situations in which there are two conflicting registers in each of which one or more interests have been derived from a root registered interest. We think that compensation would be payable in like circumstances under the Land Titles Act. This situation will be rare, if it ever occurs.

(D) Breach of trust

Section 171(a) of the Land Titles Act provides that the assurance fund is not liable for losses occasioned by owners' breaches of trust. The draft Act does not contain a specific exclusion of this kind. But section 10.1 provides that a trustee who is registered as owner is deemed to be the absolute and beneficial owner and that the Registrar must revise registrations as required by a transaction binding on such a trustee. Therefore, no claim for compensation for loss caused by the registration of a disposition by a trustee would arise.

(E) Land included in two grants from the Crown

Section 171(b) of the Land Titles Act provides that the assurance fund is not liable for losses caused by the inclusion of the same land in two or more grants from the Crown. The draft Act does not make any such exclusion. In order for a claim for compensation to arise in such a case, it seems that the Registrar would have to accept and register both grants, as the first registration would be authorized by the grant. It seems also that the second registration would have to result in the second registrant or a successor acquiring ownership to the exclusion of the first registrant or a successor. To the extent that such an extraordinary chain of circumstances may come about, there is an extension of coverage by the compensation system. Since official error is involved, we think that compensation should be payable. The risk appears small.

(F) Misdescription

Section 171(c) of the Land Titles Act provides that if loss results from land being included in a certificate of title by misdescription of boundaries and parcels, a person who suffers loss must first proceed against a person "liable for compensation and damages", and can proceed against the assurance fund only after obtaining a judgment against that person and finding them judgment-proof. The draft Act does not contain a similar provision. In such circumstances, a person who suffers loss could claim compensation without proceeding against the person "liable for compensation and damages". Upon paying the claim, the Government would have a claim over under section 7.8 of the draft Act against a "wrongdoer" whose "wrongful act" caused or contributed to the loss, but only if the wrongful act was intentional and not merely negligent. Section 7.8 leaves intact any general law right the Government might have under an assignment of a claim or under subrogation to the claimant's rights.

Here there is an extension of system liability for compensation. The most obvious example is that of a surveyor who makes a negligent error in a survey plan that results in the inclusion of land in a plan that should not be there. A lawyer might cause or contribute to the wrongful inclusion of land in a certificate of title through misdescription, though examples are not too easily contrived. We think it appropriate for the loss to be spread among users through the payment of compensation under the Act.

(G) Documents executed by corporations

Section 171(d) of the Land Titles Act provides that the assurance fund is not liable for loss by reason of the improper execution of an instrument on behalf of a corporation.

Section 10.5(1) provides that a document is deemed sufficiently executed by a corporation if it complies with formalities prescribed by the subsection; section 10.5(2) requires the Registrar to revise registrations as required by a document so executed; and section 10.5(3) provides that a transaction effected by such a document is a valid transaction for the purposes of section 5.4(1)(b) and section 5.6. In our view, this means that as a general rule there can be no claim for compensation based on improper corporate execution or lack of corporate capacity to execute, and to that extent the draft Act does not extend the scope of compensation.

A corporation could have a claim for compensation if a seal or signature is forged on a purported corporate document or if a person who signs as director or officer is not a director or officer. This could extend the scope of compensation to a point prohibited by section 171(d), but that is by no means certain. A forged execution is really no execution, and a court might well decline to characterize it as an "improper execution" and thus make compensation payable despite section 171(d). If there is an extension of compensation, it seems to us that it is one that is required by principle: if an individual owner is entitled to relief upon the registration of a forged document, we see no reason why a corporation should not be so entitled.

Section 171(d) also excludes from compensation a case in which a corporation has no capacity to take the benefit of a registered instrument. We do not think that such an exclusion is necessary. The corporation would not suffer loss because of an unauthorized registration. Any loss that it suffered would be caused by the general law relating to corporate capacity and would not be compensable under the draft Act.

(H) General registration certificates

Section 171(d.1) of the Land Titles Act provides that the assurance fund is not liable by reason of the registration of an instrument where there is a material difference, as defined, between the name of the person named in the instrument and the name of a person described in an instrument registered in the general register. The substance of this provision has been carried forward to section 9.7(2) of the draft Act.

(I) Persons under disability

Section 171(e) of the Land Titles Act provides that the assurance fund is not liable for loss occasioned by the registration of an instrument executed by a person under legal disability, unless the fact of the disability was disclosed on the instrument. It also applies to a caveat, though this seems unnecessary.

The draft Act contains no such exclusion. It seems to us that this is a case in which a registration that is apparently regular but is not authorized under the general law takes away ownership rights. We think that the compensation system should cover this situation.

The draft Act therefore extends the scope of compensation under this head.

(J) Corporate powers of attorney in security documents

Section 171(f) of the Land Titles Act provides that the assurance fund is not liable for loss occasioned by the registration of an instrument executed by an attorney if the purpose is one specified in the power of attorney. The further requirement that the certificate mentioned in section 115(5) must be registered restricts the application of the provision to the cases covered by that subsection: cases in which a power of attorney is granted in a corporate mortgage or other security document for use in case of default.

The draft Act does not make a similar specific exclusion. However, section 10.3(7) provides that a document executed under section 10.3(6) (which is the counterpart of LTA section 115(5)) requires registrations to be revised and is a valid transaction for the purposes of sections 5.4(1)(b) and 5.6. No claim for compensation will arise by reason of the registration of such a document.

(d) Criteria for fixing compensation

Where an owner has been deprived of an interest, or where an interest has been subordinated, by an unauthorized recording or registration or because of the Registrar's failure to register or record, the compensation to the owner should be the value of the interest (in the case of deprivation) or the loss in value (in the case of subordination). Consequential economic loss that does not enter into the value of the land should not be included. Section 7.2(1) of the draft Act so provides. Section 7.2(2) allows any benefit received by an owner to be set off against the compensation.

It is likely to be unfair to determine the amount of the owner's loss as at the date of deprivation or subordination. That is because land values tend to increase over long periods of time, and because a long period of time may elapse before a deprivation or subordination is discovered. In our view, the appropriate time for the assessment of the loss is when the claimant brings the claim to the attention of the Registrar General or sues on it. The date of discovery would be a possible alternative, but the somewhat more current date is likely to be fairer, and evidence of value at that date is likely to be easier to find and more accurate. Section 7.2(1) of the draft Act therefore provides that compensation is to be based on values as they exist when a claim is made or an action brought for compensation.

If the claim is for something other than the loss or subordination of an interest (e.g., for an omission of an execution from a general register certificate) then the damages should be assessed in the same way as damages are assessed in other areas of the law.

Compensation should include interest at least from the date when a claim is brought to the Registrar General or the date when an action is brought to enforce it. We think that the earlier of those two dates is the appropriate time to start interest running. The Joint Committee thought that interest should start running at the rate applicable to general damages from the date on which the loss is or ought to have been discovered, but we think that such a provision is likely to add more complexity and cost than any additional fairness would justify. This is particularly so because a claimant can bring the claim to the Registrar General and thus start interest running at the usual prejudgment interest rate on special damages. Compensation should also include reimbursement for reasonable expenses incurred in bringing a claim to the Registrar General and for the costs of an action if one is brought. Section 7.5(2) and section 7.6(2) of the draft Act cover these subjects.

(e) Funding of compensation

Funds for the compensation system are now provided by users of the interest recording and title registration system through fees paid on registration. The original Torrens statutes contemplated the maintenance of an assurance or compensation fund to be made up of specific fees charged on the registration of transfers and mortgages, and this is still largely the case, though sometimes a single fee is charged for both the administrative process and the assurance fund. Since payments out of assurance or compensation funds have been rare, it has become customary to take into government general revenue the money collected for the compensation system, so the existence of assurance or compensation funds, if they continue to exist at all, is largely notional.

We do not propose any departure from the user-pay principle. We think, however, that all registration and recording fees should include an element of contribution to the compensation system, as those who record their interests also get some, though less, protection from the system.

The fixing of fees is left to regulation by section 2.3(a) of the draft Act.

(f) Limits on compensation

Some compensation systems impose either per loss or aggregate limits on compensation payments. For obvious reasons, governments are nervous about apparently unlimited liabilities, no matter how unlikely such liabilities are to materialize.

It is desirable that governments continue to provide compensation systems. This is a matter of important public policy. The administration of a compensation system, except for the settlement of claims, can be administered efficiently as a minor component of the recording and registration process, and the incremental cost of administration is small and does not involve the payment of commissions. The incremental cost to users of the system is also small, as all that it involves is paying a somewhat larger fee, and it avoids imposing upon users the necessity of engaging in separate title insurance transactions. Governments can efficiently provide coverage for all recording and registration transactions and can ensure that coverage is complete.

The imposition of a limit on individual claims would not destroy a compensation system so long as the limit is high enough to cover the great bulk of land transactions. In our view, governments can afford to allow adequate limits because large claims are few and far between and because a government which had to pay out more than it took in any year would be able to recoup the losses by increased fees over a period of time.

If a limit is imposed, those involved in larger transactions would have to consider whether to take whatever risk is involved in completing them without insurance, or whether to look for insurance. Large transactions, however, can bear the expense of greater precautions.

The Land Titles Act imposes two limitations. Section 165(2) limits the Province's overall liability to \$31,000,000 plus or minus money paid into or out of the compensation system since 1983. This was an estimate of the amount by which assurance fund income had exceeded assurance fund payments to that time. Section 169 limits compensation for loss or damage relating to mineral rights to \$2500 per hectare plus out-of-pocket money. This was imposed

because of the breakdown in the administration of mineral titles earlier in the century. We have included these in Appendix D to Volume 2 as regulations R15.1 and R15.2 respectively, without recommendation for or against their adoption.

Section 2.3(f) of the draft Act will authorize regulations to specify a maximum award. We trust that coverage will be maintained at least at existing levels.

(g) Procedure

A compensation system should be a business-like device for spreading the occasional inevitable losses among all users of the system. We therefore think that the statute should encourage the business-like disposition of claims. Section 7.5 of the draft Act provides for the bringing of claims to the Registrar General and for the settlement of those claims by agreement between the Registrar General and the claimant. We hope that procedures adopted by the Government under the draft Act will be expeditious and that the compensation system will be administered with a view to settling all proper claims quickly and fairly.

Section 7.6 of the draft Act will allow a claimant to bring an action in court and recover judgment for the amount of the claim.

Section 7.7 of the draft Act provides that the Provincial Treasurer will pay an amount agreed to by the Registrar General or the amount of a judgment, subject to any limitation on amount imposed by regulation. Payment should be mandatory, and financial administration legislation should recognize that principle up to any limits prescribed by regulations.

(h) Limitation period

The Torrens statutes require that claims for compensation be brought within limitation periods which commence at the time the claimant is deprived of an interest in land.¹⁵ This is unfair, because in many cases there is nothing to alert the claimant to the deprivation, so that the right to compensation is lost before the claimant knows of it.

¹⁵ A discoverability rule may apply to the payment of compensation under the Land Titles Act, but the Court of Appeal refrained from deciding the point: see *Hill v. Registrar, South Alberta Land Registration District* (1993), 8 Alta. L.R. (3d) 379; 100 D.L.R. (4th) 331.

We think that a discoverability rule should apply. Accordingly, section 7.3(1) of the draft Act will start the time running when the claimant "knows or ought to know of the loss" and will give the claimant two years to settle with the Registrar General or commence action. Section 7.3(2) will suspend the running of time while the claimant is under a disability. The section will permit the Registrar General to agree to extend the time so that the approach of the time limit need not compel a claimant to commence action when settlement is still possible.

C. Some Specific Matters Affecting Rights of Ownership

(1) Fraud

The general law relating to fraud as between immediate parties meshes in well enough with title registration law. There is, however, a special problem when B acquires an interest from O, the registered owner of an interest in land, and registers or records the interest at a time when another person, A, owns a conflicting interest which is not recorded or registered.

Facility of transfer would best be promoted by providing that B always obtains priority over A. Ethical standards and the protection of individuals against sharp or dishonest practice would best be implemented by providing that B obtains priority over A only if B does not know of the existence of A's interest. Neither extreme is acceptable. Some balance must be achieved.

Equity said that a *bona fide* purchaser of the legal estate without notice took it free of equitable interests. However, a purchaser was fixed with notice, not only of the interests he knew about, but also of interests which would have been discovered by a proper investigation of title and possession. Purchasers therefore had to engage in expensive and time consuming investigations of title and possession in order to minimize the risk of finding themselves subject to interests which they did not expect to have priority over them.

Canadian title registration statutes strike a different balance. Under all of them, registration confers ownership, but not if the registered owner was guilty of fraud. However, most of the Torrens-based statutes go on to exclude from the ambit of fraud some conduct which might well be equitable fraud under the general law. They abolish the doctrine of constructive notice and say that even actual knowledge of an interest is not of itself to be imputed to a purchaser as fraud. They therefore do not require a purchaser to conduct any investigation other than a search of the register (except to guard against overriding interests).

This policy is well accepted, but it is difficult to determine what, in addition to mere knowledge of the existence of an unrecorded and unregistered interest, will deprive a purchaser of the protection of those statutes. We think that the point should be clarified.

In our view:

- (a) the doctrine of constructive notice should not apply;
- (b) proceeding with actual notice of an unrecorded and unregistered interest should not be, by itself, imputed as fraud;
- (c) a purchaser who knows of an existing unrecorded and unregistered interest should be entitled to assume without inquiry that the proposed purchase is authorized by the owner of the unrecorded and unregistered interest;
- (d) proceeding with knowledge that a proposed acquisition is not authorized by the owner of the unrecorded and unregistered interest and that the proposed purchase will prejudice that interest should constitute fraud.

Section 1.2 of the draft Act, when read with sections 4.4(2)(b)(ii) and 5.4(1)(b), gives effect to these views.

This test for fraud focusses on the point of substance, namely, whether B knows that the acquisition of the interest is actually an invasion of the rights of A. It facilitates transfer. It adds some predictability. B can assume that O, the owner, in granting an interest to B, is acting with A's authority. If he is, there is no reason to deny priority or ownership to B. B does not have to investigate to find out whether or not the assumption is true.

The test probably gives somewhat less protection against sharp practice than does the Land Titles Act. Under the draft Act, B may know that A's interest exists. B may have no reason to think that A has agreed to the transaction. Nevertheless, B, by purchasing an interest and recording or registering it, will obtain priority over A. This can be sharp practice. The justification for allowing it is the need for a system of obtaining interests in land which is cheap, quick, easy and sure. Facts are often open to different interpretations, and persons acquiring interests should have clear guidance as to when they can rely on registers. The owner of every interest can protect themselves by recording the interest, and one who does not take advantage of the protection afforded by the system takes the risk of loss. This is necessary for the benefit of those who do take advantage of it.

(2) Value

The general law looks more favourably on purchasers who give value for interests in land than upon donees who do not. So do the existing interest recording and title registration statutes. Much of the protection of interest recording and title registration is available only to purchasers who have given value.

For interest recording purposes, the draft Act continues this treatment. Under section 4.4(2)(b)(i), the recording of a subsequent interest confers priority over a prior unrecorded interest only if the subsequent interest was obtained for value as defined in the draft Act.

However, we have concluded that the protection of title registration should be given to registered owners whether or not they have given value for their interests. Donees who register interests will contribute to the cost of the compensation system. Donees who become registered as owners of interests of the kinds which can be registered are likely to spend money on land and involve it in their economic affairs and thus require assurance of ownership as much as do purchasers. The elaborate investigations required by the common law are as burdensome for donees as for purchasers, and the exposure to the risk of ownership being upset by someone further up the chain of title is just as harsh, once investment has been made in land.

Section 5.3 therefore confers the benefits of title registration on donees as well as on purchasers. The declaration of ownership in section 5.3(1) applies whether or not a registered owner has given value for the interest. Section 5.3(5) provides that for priority purposes a registered interest has been obtained for value. Registrations cannot be revised under section 5.4(1) merely because the registered owner has not given value.

(3) Conflicting registers

(a) Need for special principle

The law cannot effectively say that each of persons A and B is the owner, to the exclusion of all others, of the same estate or interest in the same land, nor can it effectively say that each of conflicting interests A and B shall be enforced with priority over the other. It is, however, theoretically possible: that two registers will be created for the same parcel or interest; that interests will be recorded and registered in each register; that section 4.4 of the draft Act will declare interests recorded and registered in each register to be entitled to priority over conflicting recorded and registered interests in the other

register; and that section 5.3(1) will declare registered owners in each register to be the legal owners of conflicting registered interests.

Obviously, a Registrar will not intentionally create two parcel registers for the same parcel or two interest registers for the same interest. However, the possibility that there may be an inadvertent duplication has to be addressed. If it is not, persons dealing with land may feel a need to make historical searches of title in every case to deal with this possibility. Even an historical search will not give a purchaser a complete assurance that there is no duplication, because it necessarily starts at the end of one chain of title and might not discover another chain.

Sections 64 and 66 of the Land Titles Act deal with the problem by making an exception from indefeasibility for a "prior certificate of title granted under this Act or granted under any law heretofore in force and relating to title to real property". Section 173(1)(f) deals with it somewhat differently by making an exception for "an instrument of title prior in date of registration under this Act, or under any law heretofore in force in any case in which 2 or more grants, or 2 or more certificates of title, or a grant and certificate of title, are registered under this Act or under any such law in respect of the same land". These exceptions have caused much difficulty, largely because they are difficult to understand and apply.

There are two questions: (a) when should special principles relating to conflicting registers be invoked? (b) when special principles are invoked, what should they be?

(b) When special principles apply

As we have seen, most of the Torrens-based statutes say that the special principles should be invoked when there is (a) a certificate of title, and (b) a prior certificate of title to the same land, or possibly a prior "instrument of title". This is not, in our view, the appropriate test.

In our view, the special principles should be invoked only when no other principle or provision of the title registration statute will solve a conflict between two conflicting interests. That situation will arise only if

- (a) there are two parcel registers for the same parcel or two interest registers for the same interest (because if there is only one register the usual priority principles will determine priority), and
- (b) two interests, one in each register, have come into conflict, either as to ownership or priority, with each other, and

- (c) at least one interest has been derived without fraud from each of the originally conflicting interests.

The reasons for requirement (c) are:

- (a) that at the time of the first conflict between interests in the two registers, one of the interests is entitled to priority over the other, so that it is not then necessary to apply the special principles;
- (b) that if a person acquired an interest without fraud from either of the conflicting interests, the general principles reflected in section 5.5 of the draft Act would give priority to the interest so acquired and any successors to that interest, so that there is no need for the special principles so long as this has happened with respect to only one of the originally conflicting interests; and
- (c) that it is only if two interests derived from the originally conflicting interests conflict with each other, so that both owners are entitled to priority under section 5.5 of the draft Act, that the special principles are needed.

Section 5.7 of the draft Act accordingly provides for the application of special principles in cases in which there are conflicting interests, each of which is derived from a "root registered interest", recorded or registered in two different registers, that is, under two different chains of title. Annotations to section 5.7 show by examples how to determine when this situation has arisen.

(c) What special principles should apply

The next question is: what special principles should be applied to resolve a conflict of the kind just described? It does not appear to us that the relative dates of registers, which are fortuitous insofar as the merits of the parties are concerned, should be the governing factor. Nor does it appear to us that the identification of the best original root of title should dictate the answer, as that is also fortuitous insofar as the merits of the party are concerned (though if all else fails, it will be the only possible answer).

We are of the view that a rational solution would be to resolve the conflict in favour of the chain of title under which a party is in possession or has dealt with a party in possession. The law has long given protection to possession. The land is more likely to have special value to the party in possession. It is likely to be cheaper to pay off a party who is not in possession. For what it is worth, a prospective purchaser will know that if they go into possession they will win if section 5.7 applies, and that may promote facility of transfer.

The test of possession will not resolve the conflict if no one is in possession under either of the conflicting chains of title. In such a case, we think that, if there is only one party who gave value or who claims through a person who gave value, it would be rational to award the interest to that party. While the draft Act attaches less importance to value than does the existing law, the giving of value is a reasonable grounds for giving a preference to one claim over another if there is no stronger grounds for making a choice between them. Of course, if someone in each chain gave value, or if no one in either chain gave value, this test will not resolve the conflict either.

In the last analysis, if there is no other reason for preferring one chain of title over the other on grounds of possession or value, it is necessary to go back to the original root of the conflict and see which chain of title has the better legal origin, and resolve the conflict in favour of that chain. That result may be virtually fortuitous, but there is no better solution available.

Section 5.7(4) of the draft Act lays down the special principles in the form of rules. The annotation to section 5.7(4) illustrates the application of the principles by examples.

The losers should not be without remedy. Conflicting registers cannot come into existence except through system malfunction. Section 5.7 therefore confers on the losers a right to compensation.

(4) Misdescription

Most of the existing Torrens-based statutes say that some or all of the indefeasibility provisions do not apply where land is included in a registered title by wrong description or misdescription. The draft Act does not contain any such specific statement.

If two registers or registrations cover the same land, the conflicting claims can and should be sorted out under the general principles of title registration, whether the problem has arisen because of inclusion of land due to misdescription or for some other reason. Priority principles will resolve conflicting claims that arise within one register. Conflicting registers principles will resolve conflicts that arise because two registers cover the same land.

(5) Limitation of actions

The draft Act does not prescribe any limitation period for the revision of registrations. In the absence of such a prescription, it seems likely that a

revision of registrations can be made at any time, and the courts have allowed revisions of land registration office records without any time limitation. However, the question whether or not time limits should be imposed is one for a limitations system.

D. Principal Conclusion and Recommendation

It is our view that the interest recording and title registration system we have described in this Report and in the draft Act is a rationalized and modernized system which will preserve the benefits of present systems and will make them more efficient to operate and more useful to their users.

We therefore recommend that the Land Titles Act be repealed and that Parts 1 to 8 of the draft Act be enacted in its place.

CHAPTER 4

ADDITIONAL CONTENTS OF PROPOSED ACT

A. Introduction

One of the principal purposes of the proposed Land Recording and Registration Act is to set out the basic legal principles of the Alberta land recording and registration system more clearly and coherently. Parts 1 to 8 of the draft Act do this. Extraneous material has been excluded so that the basic legal principles will stand out and be readily identifiable.

As we have already pointed out, the Land Titles Act includes a great amount of substantive law relating to subjects other than land recording and registration. It also includes a great mass of administrative directions. In Volume 2 of this report we will make proposals for the disposition of most of this extraneous material. There are some provisions, however, that do not form part of the land recording and registration system but are related to it so closely that, if they are to be carried forward at all, they should be included in the proposed Act rather than in some other Act. We do not make any recommendation as to whether or not these provisions should be carried forward but we include them in Parts 9 and 10 of the draft Act to show how they can be dealt with.

In addition, some transitional provisions will be needed in order to bring the existing administrative structures and records under the proposed Act and to preserve and deal with rights and obligations that will exist under the Land Titles Act when the proposed Act comes into force. Part 11 makes provision for the transition.

We will now briefly discuss these additional materials. They are included in Parts 9, 10 and 11 of the draft Act, which we will now describe.

B. Part 9 — Executions and Other Charging Instruments

The Land Titles Act makes machinery for enforcement of claims available to creditors under writs of execution and some other charging instruments. It does this by

- providing a "general register" in which writs and other charging instruments may be registered under the names of the debtors, so that a writ will bind all the interests of a debtor in land in the land

registration district and so that other kinds of charging instrument will have the effects that are given to them by the statutes that create them.

- providing a procedure under which creditors' interests may be entered on certificates of title, with similar binding effect.

The general register is to be discontinued when the Land Titles Office can provide a substitute benefit to creditors. That substitute benefit will be lists of all interests in land registered in the names of specific debtors. This will be done by computer search of the land register, and it is expected that this should be possible within the next few years. When the lists are available, the present section 17.3 of the Land Titles Act or section 9.5 of the draft Act will be proclaimed. At that point registrations in the general register will be discontinued, and the register will be completely terminated three years later.

We do not propose a change in the existing policy of the law that creditors should be able to protect their rights under the land recording and registration system. The system of protection of creditors rights is closely related to the land recording and registration system and we therefore think that the proposed Act should provide for it. Part 9 of the draft Act does this. We have not consulted on this proposed Part 9. It is only a suggestion as to how this subject can be dealt with. When a decision is made to adopt a new Land Recording and Registration Act, consultations should be held to ensure that Part 9 would work fairly and efficiently.

Part 9 maintains the general register for the time being. In addition, it treats creditors' rights as recordable interests. We think that the draft Part 9 shows that this treatment is workable and is more efficient than the present system.

It would be more appropriate to provide in another statute for the binding effect of writs of execution on interests in land owned by debtors. However, because the Land Titles Act does this now, sections 9.3 and 9.7 of the draft Act make such provision.

Enactment of the proposed Part 9 would be an interim measure only. We have made in our Report 61, *Enforcement of Money Judgments* comprehensive proposals covering that subject. For the long term, those proposals should be implemented.

C. Part 10 — Miscellaneous

(1) Trusts

The following provisions of the Land Titles Act deal with trusts:

- section 51 says:
 - no trust may be entered on the register
 - a trustee is to be treated as absolute owner for purposes of the Act.
- section 116(4) requires the Registrar to register an executor or administrator of a deceased person "in his capacity as the executor or administrator". Section 116(5) requires the Registrar to describe the owner as the executor or administrator, but says that this is "for the purposes of section 120 only".
- section 120 prohibits the Registrar from registering a transfer, etc., executed by an executor or administrator unless there is proof that no minors are interested in the estate or the consent of the Public Trustee to the disposition. This seems to mean that the Registrar, when deciding whether or not to register, will see that the transferor is an executor or administrator but that anyone else reading the certificate of title should turn a blind eye to the words identifying the transferor as such. It is likely that this is intended to lead into LTA 118.
- section 118 says that a person registered in place of a deceased owner
 - holds on trusts and subject to deceased owner's equities
 - is to be treated as absolute and beneficial owner for purposes of registered dealings with land.
- section 195 says that a non-fraudulent person dealing with an owner in whose name a certificate of title has been granted is not affected by notice of "a trust or unregistered interest".
- section 171 says that the assurance fund is not liable for loss caused by an owner's breach of trust.

These provisions enable people to deal with registered owners without having to worry about whether they are acting in breach of trust. Presumably they do so in order to promote facility of transfer. We see no reason not to carry the policy forward into the new Land Recording and Registration Act, and carrying it forward will help to promote the facility of transfer which the new Act is intended to promote. Since the provisions specifically relate to land

registration, we think that they must go into the new Act rather than into some other statute.

The policy applies to executors and administrators as well as other trustees. Describing owners as executors and administrators as required by section 116(4) obstructs this policy, but section 118 seems intended to assure purchasers that they need not take steps to be sure that no breach of trust is taking place. We do not think that there is any need to upset this long-standing practice. Section 10.1 of the proposed Act therefore covers the essence of sections 51, 116(4) and (5) and 118 of the Land Titles Act, and section 10.2 of the draft Act copies section 120.

Section 10.1 of the draft Act would not prevent a beneficiary of a trust from recording their beneficial interest. Such a recording would no doubt interfere with facility of transfer by the trustee, but we think that beneficiaries, like the owners of any other legal or equitable interests in land, should be able to protect themselves in this way.

(2) Powers of attorney

Section 115 of the Land Titles Act makes a number of provisions about powers of attorney. Notable among these are section 115(3) and section 115(6). Section 115(3) suspends the power of an owner to deal with land when an entry of a power of attorney is made on the certificate of title to the land. Section 115(6) suspends the power of a corporate mortgagor to deal with land if the mortgagee certifies that conditions have occurred which, under the mortgage, confer a power of attorney on the mortgagee. These two provisions, particularly section 115(6), exist only for the purposes of land registration and recording and cannot appropriately be put into another statute. In order to keep the whole section together we propose to put the whole of section 115 into the proposed Land Recording and Registration Act as section 10.3.

(3) Documents executed by corporations

Section 152.3 of the Land Titles Act provides that documents executed by corporations that meet certain conditions are to be deemed to be sufficiently executed for the purposes of the Act. The section makes documents binding on corporations that would not be bound if the section were not there. It therefore has a substantive effect. As it stands, the section does not have a general binding effect except for the purposes of land registration, and we do not recommend that it go into another statute where it would apply for purposes other than land registration. It cannot appropriately go into the Business Corporations Act because it applies to all corporations, not merely corporations

incorporated under the Business Corporations Act. If it is to be carried forward, we therefore think that it should go into the proposed Land Recording and Registration Act, and we have put it in as section 10.5.

(4) Offenses

Section 202.1 of the Land Titles Act makes it an offence

- to make a false statement in a document or other Land Titles Office record
- to remove, destroy or alter the contents of a document or other Land Titles Office record.

The section is closely related to the operation of the land recording and registration system. We have therefore included in the proposed Act section 10.4 which, with drafting changes, incorporates section 202.1.

(5) Surveyor's liability

Section 80(1) of the Land Titles Act provides that the registration of a plan does not relieve a surveyor from liability for damage flowing from the registration. While we are not sure that such a provision is necessary, we have included it as section 10.6 of the draft Act so that consideration may be given to bringing it forward.

D. Part 11 — Transitional Provisions

As we have said above, Part 11 provides a scheme for the transition from the Land Titles Act to the proposed Land Recording and Registration Act. Essentially Part 11

- transmutes records and registers under the Land Titles Act into counterpart records and registers under the draft Act.
- recognizes and provides for the continuing effect of interests that exist under the Land Titles Act at the time of its repeal.

Once the decision is made to adopt a new Land Recording and Registration Act, there should be extensive consultation to ensure that the transitional provisions make the change to the new Act as free from problems as possible.

E. Conclusion

In conclusion we recommend that

- Alberta adopt a Land Recording and Registration Act along the lines of Parts 1 to 8 of the draft Act.
- Alberta include in the Land Recording and Registration Act provisions dealing with such of the provisions in Parts 9 to 11 of the draft Act as are considered appropriate, after further consultation.

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October 1993

PART III

DRAFT LAND RECORDING AND REGISTRATION ACT

**DRAFT LAND RECORDING AND
REGISTRATION ACT**

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LAND RECORDING AND REGISTRATION ACT

PART 1 INTERPRETATION, APPLICATION AND PURPOSES

Definitions

1.1 In this Act,

- (a) "court" means any court authorized to adjudicate in Alberta in civil matters in which the title to real estate is in question.
- (b) "cancellation" means the administrative process which, under this Act, eliminates the prospective effects of recording and registration by means of entries in a register;
- (c) "claimant" means either
 - (i) the person who records an interest, or
 - (ii) if there has been a registered assignment of the right to have a recording cancelled, the registered assignee of the right;
- (d) "document" means a writing, a plan, a map, or any information in a form which can be converted into a writing, a plan, or a map by a machine or a device, and includes information
 - (i) on microfilm,
 - (ii) in electronic, mechanical or magnetic storage, or
 - (iii) in electronic data signals;
- (e) "interest" means any estate or right in, over or under land recognized under law;
- (f) "interest register" includes a consolidated interest register;
- (g) "law" means the law in force in Alberta and includes
 - (i) legislative enactments,
 - (ii) common law and equity, and
 - (iii) regulations;
- (h) "lien" means an interest created by operation of law which secures the payment or other performance of an obligation;

- (i) "person", "claimant" and "owner" include any agent who is empowered to act for the person, claimant or owner;
- (j) "postponement" means either
 - (i) the process of subordinating the enforcement of one interest to another, or
 - (ii) the document effecting a postponement;
- (k) "recording" means the administrative process which, under this Act, secures priority of enforcement for an interest by means of entries in a register;
- (l) "register", except in the term "general register", means the register established under this Act
 - (i) for a parcel of land, or
 - (ii) for a registered interestand includes any document incorporated into a register by reference;
- (m) "registration" includes revision of registrations and means the administrative process which, under this Act, affects, confers, confirms or terminates interests by means of entries in a register;
- (n) "security interest" means a consensual interest which secures the payment or other performance of an obligation;
- (o) "servitude" means an interest affecting the use or enjoyment of land created by covenant, condition, easement or implication, and includes
 - (i) a utility interest,
 - (ii) a party wall agreement, and
 - (iii) an encroachment agreement,as defined in the *Law of Property Act*, but does not include a lien or a security interest;
- (p) "successor" means a person who acquires an interest, or an interest derived from that interest, directly or through intermediate transactions, from a prior owner;
- (q) "tax lien" means a lien against an interest of a taxpayer for the amount of unpaid taxes, fees, assessments, rates and other charges;

- (r) "termination" means either
 - (i) the process of releasing or discharging an interest, or
 - (ii) the document effecting a termination;
- (s) "this Act" includes any regulations made under this Act;
- (t) "transaction" means an event or a dealing affecting an interest, whether by means of a contract, transfer, transmission, postponement, expiration or termination, or by any other means;
- (u) "transfer" means either
 - (i) the process of creating or assigning an interest, or
 - (ii) the document effecting a transfer,

other than by will or by operation of law;
- (v) "transmission" means the process of creating or passing an interest by operation of law, and includes the passing of an interest
 - (i) under a limitations act, or
 - (ii) to a personal representative;
- (w) "value" means any consideration sufficient to support a simple contract, and includes
 - (i) a commitment to give credit or for the extension of time for payment under credit previously given,
 - (ii) the acceptance of a security interest for, or in total or partial satisfaction of, an existing claim, or
 - (iii) consideration previously given for an existing contract;
- (x) "writing" includes printing, typewriting, or any other intentional reduction of language into legible form, or to a form which can be converted into legible form by a machine or a device, such as language
 - (i) on microfilm,
 - (ii) in electronic, mechanical or magnetic storage, or
 - (iii) in electronic data signals.

Annotation

Section 1.1(b)

Under section 5.4(6), cancellation of a registration divests the registered interest and cancels the recording of the interest. Under section 4.7(2) and section 4.7(3), cancellation of a recording does not terminate the recorded interest and, except as provided in section 4.5, does not affect accrued priorities of enforcement rights.

Section 1.1(e)

The draft Act provides for the recording and registration of interests. Section 1.1(e) makes it clear that it is the general law and not the draft Act which determines what is an interest and what its incidents are.

Section 1.1(k)

"Recording" takes place when the Registrar enters the identifier for a document in the register (section 4.3(2)). The entry of the identifier incorporates the document into the register by reference (section 3.2(3)). The interest conferred or summarized by the document is thus recorded (section 4.2(1)). Section 4.4 defines the priority which is conferred on the interest, or which is confirmed, and the circumstances under which priority is conferred.

Section 1.1(m)

"Registration" takes place when the Registrar enters the identifier of a document creating an interest in the register (section 5.2(2)). Except in the case of a transfer of an estate in fee simple absolute, the entry of the identifier for the document effecting the transaction which creates or confers the registered interest will incorporate the document into the register (section 4.3(2)). Section 5.3, subject to the limitations set out in it, confirms or confers ownership of the registered interest.

Section 1.1(t)

The word "transaction" is defined very broadly so as to include most things that change the legal rights of an owner of an interest. It is important in several provisions and is particularly important because section 5.4(1)(a) requires that registrations be revised as required by a transaction which binds the registered owner. The inclusion of "expiration" means that upon the expiration of the time for which a time-limited interest is granted, the registration of the interest can be cancelled. This replaces some specific provisions of the Land Titles Act.

Fraud

1.2

- (1) In this Act the meaning of fraud is subject to the provisions of this section.**
- (2) The equitable doctrine variously known as "notice" and "constructive notice" is abolished for the purpose of determining if conduct is fraudulent under this Act.**
- (3) A person who engages in a transaction with an owner who holds an interest subject to an interest which is neither recorded nor registered,**
 - (a) is not affected by actual knowledge of the interest which is neither recorded nor registered,**
 - (b) may assume without inquiry that the transaction**
 - (i) is authorized by the owner of the interest which is neither recorded nor registered, and**
 - (ii) will not prejudice that interest, and**
 - (c) has no duty to assure the proper application of any assets paid or delivered to the owner.**
- (4) The person referred to in subsection (3) obtains the interest acquired under the transaction through his fraud if he had actual knowledge that the transaction**
 - (a) was not authorized by the owner of the interest which was neither recorded nor registered, and**
 - (b) will prejudice that interest.**

Annotation

Section 1.2

Section 1.2 does not affect the nature of fraud as between two immediate parties, that is, as between O, a registered owner, and B, who, by fraud, induces O to convey the registered interest to B. What it does affect is the meaning of fraud as between B and A, where A, at the time of a conveyance from O to B and the resulting recording or registration of B's interest, is the owner of a prior conflicting unrecorded and unregistered interest. If B acts fraudulently, section 4.5(2)(b) will not give him priority over A, and a registration of his interest will be subject to revision, i.e., in this example, to cancellation, under section 5.4(1)(b).

Section 1.2(2) continues the abolition of the doctrine of constructive notice which appears in the existing Torrens-based statutes, so that much of what is called equitable fraud is not included in "fraud" as the word is used in the Act. The subsection ensures that fraud will not be imputed to B merely because B knows of the existence of A's prior interest.

Most of the Torrens-based statutes provide that mere knowledge of the existence of A's interest is not to be imputed to B as fraud. Section 1.2(3)(a) says much the same thing. The Torrens-based statutes do not say what it is, in addition to knowledge, that will make B's conduct fraudulent. Section 1.2(4) does that. The test is whether or not B has actual knowledge that A has not authorized O to grant the conflicting interest to B. Proceeding with that knowledge is fraudulent under section 1.2(4). However, in the absence of actual knowledge to the contrary, B may assume that O is acting with A's authority in conveying the conflicting interest.

Application to Crown

1.3

- (1) The Crown in right of Alberta is bound by this Act.**
- (2) This Act applies to any interest vested in the Crown in any other right which is within the legislative competence of the Legislature, and to any interest which has been subjected to this Act by the Crown.**

Annotation

Section 1.3

1. The general policy of the Act is that the Crown, in the right of Alberta, Canada, or any other jurisdiction, is to be treated as nearly as is constitutionally possible like any owner or acquirer of an interest in land.
2. There is an exception. Under section 6.1(a), a reservation or exception from a Crown grant is an overriding interest unless the interest has been expressly registered.

General application

1.4 This Act applies to

- (a) every parcel of land, and every interest therein, for which a certificate of title has been issued under the *Land Titles Act* or a predecessor Act, and
- (b) every parcel of land, and every interest therein, for which a register is established under this Act.

Annotation

Section 1.4

Under section 1.4(b), the mere establishment of a register for a parcel would bring the parcel under the act. Sections 38 to 41 of the Land Titles Act contain elaborate procedural provisions for bringing land under it. If these provisions are wanted, they can be put into regulations. See, for example, Volume 2, Appendix D, Part 13.

Purposes

1.5

(1) The purposes of this Act are

- (a) to provide certainty for ownership of interests in land and to simplify proof of ownership,**
- (b) to facilitate the economic and efficient execution of transactions with respect to interests in land, and**
- (c) to provide compensation for persons who sustain loss through entries in registers which are not authorized by this Act.**

(2) In order to carry out the purposes mentioned in subsection (1)(a) and (b), the Act provides for

- (a) the establishment of registers for**
 - (i) parcels of land, and,**
 - (ii) where convenient, for registered interests,**
- (b) establishing the relative priority of enforcement of interests in land through recording, and**
- (c) establishing the ownership of interests in land by registration.**

(3) In order to carry out the purpose mentioned in subsection 1(1)(c), the Act provides for compensation under Part 7.

Annotation

Section 1.5

Section 1.5(1) is intended assist in the interpretation of the Act and to focus the mind of the reader upon the objects of a title registration system. Section 1.5(2) and (3) list the principal devices used to achieve those objects.

**PART 2
GENERAL**

Registration districts and offices

2.1

(1) The Lieutenant Governor in Council

- (a) shall establish one or more land registration districts in the Province,**
- (b) may establish new land registration districts, and**
- (c) may change the boundaries of established land registration districts,**
as may be required to achieve the purposes of this Act.

(2) The Lieutenant Governor in Council

- (a) shall establish a land registration office in each land registration district, and**
- (b) shall provide each office with supplies and equipment as may be required to achieve the purposes of this Act.**

Annotation

Section 2.1

Section 2.1 imposes a duty upon the Lieutenant Governor in Council to establish one or more land registration districts, each with a land registration office. However, it leaves the Lieutenant Governor in Council to determine, as administrative matters, the numbers of land registration districts and the areas to be administered by each. For a draft of regulations continuing the existing land registration districts and providing that the existing Land Titles Offices are the Land Registration Offices for the two districts, see Volume 2, Appendix D, Part 1.

Public officers and employees

2.2

- (1) The Attorney General shall appoint a public officer called the "Registrar General".
- (2) The Registrar General shall
 - (a) direct and supervise the operation of the land registration offices,
 - (b) direct and supervise all persons employed in the land registration offices in the performance of duties and the exercise of powers prescribed under this Act, and
 - (c) inspect the records of the land registration offices.
- (3) The Registrar General may perform the duties and exercise the powers of a Registrar.
- (4) For each land registration office, a Registrar, one or more Deputy Registrars, and any other employees required for the operation of the office, may be appointed in accordance with the *Public Service Act*.
- (5) For each land registration office, the Registrar shall perform the duties and exercise the powers prescribed by this Act, but a duty performed or a power exercised by a Deputy Registrar or Assistant Deputy Registrar is deemed to be performed or exercised by the Registrar.
- (6) The Registrar General, the Registrars and all other employees of land registration offices shall be attached to the Department of Justice and subject to the direction and supervision of the Attorney General.
- (7) Neither a public officer, nor any employee acting for him or appointed to act in his office, shall be liable for any acts or omissions, done or not done, in good faith.

Annotation

Section 2.2(1)

Section 2.2(1) requires the responsible minister to appoint a Registrar General, who is to supervise the land registration offices created under section 2.1, and who may act as a Registrar.

Section 2.2(2)

1. Section 2.2(1) and (6), in effect, provide that the Land Registration Offices will be attached to the Department of Justice and supervised by the Attorney General. Our reasons for this proposal appear at pages 28 to 30 of this report.
2. Section 2.2(4) effectively requires the responsible minister to appoint a Registrar for each land registration office, though the Registrar General may act as a Registrar. Under later sections, a Registrar is responsible for establishing registers and maintaining them according to the Act and is therefore responsible for the operation of the land registration office.

Regulations

- 2.3 The Lieutenant Governor in Council may make any regulations required to achieve the purposes of this Act, including regulations**
- (a) requiring the payment of a fee, prescribing the amount of the fee and permitting a payment to be made under credit arrangements, with respect to any action a Registrar is required or authorized to take by this Act;**
 - (b) prescribing requirements**
 - (i) as to the form of documents or classes of documents submitted for recording or registration to facilitate their efficient processing in a land registration office,**
 - (ii) as to the form and content of documents submitted for registration to facilitate comprehension of their legal effect, and**
 - (iii) for verifying the authenticity or validity of documents submitted to obtain the revision of registrations or cancellation of recordings;**
 - (c) prescribing notice requirements and requirements with respect to addresses;**
 - (d) prescribing requirements with respect to**
 - (i) the establishment of a register for a parcel of land which was not previously subject to this Act, and,**
 - (ii) subject to Part 3, the establishment, cancellation and form of parcel and interest registers;**
 - (e) prescribing requirements as to legal descriptions of parcels and as to the preparation, form, approval and use of plans of survey;**
 - (f) prescribing a maximum amount or amounts payable for compensation under Part 7;**
 - (g) for the administration of oaths and the taking of affirmations and declarations in matters relating to land; and**
 - (h) for the use of the International System of Units as defined in the *Weights and Measures Act* (Canada) in any register or document incorporated therein.**

Annotation

Section 2.3(a)

Regulations under section 2.3(a) will require payment of fees for official actions of Registrars and Registrars' staffs. The fees can include a contribution towards the compensation system established by Part 7. A Registrar can decline to perform any duty if the prescribed fee is not paid.

Section 2.3(b)

Regulations under section 2.3(b)(i) will deal only with form. Their only purpose will be efficiency of administration. They will deal with such things as size and format of documents and the orderly presentation of required information. These are the only requirements applicable to documents submitted for recording.

Regulations under section 2.3(b)(ii) and (iii) will deal only with documents submitted for the purpose of effecting registrations, revisions of registrations and cancellations of recordings. They can prescribe forms and they can prescribe the content of documents, as the Land Titles Act and regulations under it now do, though they should not impose strait-jackets upon legitimate transactions. They can also prescribe the methods of authentication, such as witness's signatures and affidavits, though they should not set up prophylactic systems which impose greater costs on users of the system than are justified by the reduction of the risk of accepting unauthorized documents and the likelihood that the formalities will avoid loss. They can also provide for verifying the validity of documents, for example, by requiring affidavits of execution to show that the person executing a document is not a minor.

Section 2.3(c)

The primary function of section 2.3(c) is to provide for regulations about notices to be sent by the Registrar, e.g., notices of recordings. It is broad enough, however, to authorize the making of a regulation prohibiting the Registrar from registering a transfer that severs a joint tenancy until the Registrar is satisfied of one of a number of things, one of which is that notice has been given to the joint tenants. See, for example, draft Regulation R4.4 in Volume 2, Appendix D.

Section 2.3(d)

Section 1.4 provides that the Act applies to every parcel of land, and every interest therein, for which a register is established under this Act. The establishment of a register therefore brings land under the Act. Section 2.3(d) provides for the making of regulations about the establishment of registers and Regulations R13.1 to R13.4 deal with the establishment of the first registers for parcels brought under the Act. As noted in the annotation to section 1.4, this

arrangement replaces the elaborate statutory provisions in the Land Titles Act for bringing land under the Act.

Regulations under section 2.3(d) will also deal with other matters relating to registers generally. These will include the form of registers, including computerized registers, as section 2.4(1) merely provides that registers shall be maintained in writing, and the definition of "writing" in section 1.1(x) is broad enough to include computer records (see the annotation to section 2.4). Regulations under section 2.3(d) could also regulate the discretions of Registrars with respect to the geographic area or substance which can be covered by one register, and with respect to the establishment of interest registers and consolidated interest registers, as sections 3.1 and 3.2 leave these matters to official discretion.

Section 2.3(e)

Regulations under section 2.3(e) should provide a system of land descriptions based upon survey plans which will permit the efficient identification on the ground of parcels covered by registers. These regulations would replace many existing statutory administrative provisions for survey plans, which would be better in regulations. See the draft regulations in Volume 2, Appendix D, Part 11.

Section 2.3(f)

Part 7 establishes a system of compensation for those who suffer loss through unauthorized recordings and registrations or through failure to make required recordings and registrations. It contemplates that, as a condition of maintaining such a system, a government may wish to limit its liability. Section 170(2) of the Land Titles Act now effectively limits the liability to \$31,000,000 plus the net inflow of money into the assurance fund since 1983. Regulations under section 2.3(f) could do this.

Records and copies

2.4

- (1) Registers and any other documents required to be prepared or kept under this Act shall be maintained in writing.
- (2) Any person who has paid the prescribed fee shall be furnished with a copy, or a certified copy, in legible written form, of any register or document incorporated therein.
- (3) The certification with respect to a certified copy of a register or of a document incorporated therein shall be signed by a Registrar.
- (4) A certified copy referred to in subsection (3) is admissible in evidence in any civil, criminal or administrative proceeding to the same extent as the original would have been admissible, and is conclusive proof of the facts certified without proof of the signature or official capacity of the person who appears to have signed the certification.

Annotation

Section 2.4(1)

Section 2.4(1) requires that registers and documents be maintained in writing. However, "writing", under section 1.1(x), includes not only printing but language which is microfilmed or which is in electronic storage or in electronic data transmission signals. It therefore permits computerization, though it does not require it. It may be amplified by regulations under section 2.3(d).

Section 2.4

Section 2.4(2) ensures that the public has access to all information in registers and in recorded and registered documents.

Alteration of documents

- 2.5 A Registrar may alter any document submitted under this Act**
- (a) before the document is recorded or registered, and**
 - (b) with the written consent of the parties who, in the opinion of the Registrar, will be affected by the alteration.**

Annotation**Section 2.5**

Section 2.5 enables a Registrar to correct a document before recording or registration, if all persons affected consent. This is for the administrative convenience of users.

Recording and registration options**2.6 Under this Act, an interest may be submitted**

- (a) for recording only, or**
- (b) for recording and registration.**

Annotation**Section 2.6**

The policy of the draft Act is that every interest in land should be recorded. Under section 4.4, recording protects the priority of the interest under the general law and also, in the usual case, confers priority over prior unrecorded and unregistered interests. The further policy of the Act is to permit the kinds of interests listed in section 5.1 to be registered. Under section 5.3, the registration of an interest results in a legislative declaration that the registered owner is the legal owner of the interest. Section 2.6 makes two things clear. One is that the owner of an interest can have it recorded, without more, even if it is registrable. The second is that an interest that is to be registered must first be recorded (though the recording and registration may be carried through virtually simultaneously).

**PART 3
REGISTERS**

Establishment of registers

3.1

- (1) A Registrar shall establish parcel registers for all land within each land registration district which is subject to this Act.
- (2) Subject to the *Planning Act*, a parcel may include any geographic area or substance therein which can be owned in fee simple absolute, whether on, over or under the surface of land, which the Registrar deems convenient at any time for the purposes of this Act.
- (3) A Registrar may, when convenient at any time for the purposes of this Act, establish an interest register for any registered interest.
- (3.1) *A Registrar shall establish an interest register for any lease or other registrable interest in land situated within the area set apart for National Parks under the National Parks Act (Canada).*

Note: Section 33 of the Land Titles Act requires the Registrar to register duplicate originals or certified copies of federal leases and other instruments relating to the title to land situated within the area set apart for national parks. Section 3.1(3.1) carries forward the registration requirement. The Institute makes no recommendation as to whether or not this provision should appear in the proposed Act, and notes the possible constitutional difficulties arising from certifying the ownership of an interest in federal lands not otherwise brought under the Act. If section 3.1(3.1) is included in the proposed Act, it would be desirable to state whether or not compensation will be paid if a registration is void for constitutional reasons.

- (4) One consolidated interest register may be established for two or more interests, when convenient at any time for the purposes of this Act.
- (5) The Registrar shall assign an identifier to each register.

Annotation

Section 3.1

1. A parcel register will perform the functions which a certificate of title now performs. There will be no duplicate certificate of title or duplicate register.
2. The Registrar is required by section 3.1(1) to establish parcel registers which will in the aggregate cover all land to which the statute applies, but can determine what land is to be included in each parcel register.

Regulations could be promulgated under section 2.3 to give guidance to Registrars.

3. A register is a formal record of information. Registers were originally in book form. Some land registration registers are now in single sheet form. Some are now in electronic form in computers.
4. A parcel register is a formal record of information about the ownership of interests in a parcel of land. The Act does not prescribe its form, other than to say that it must contain the information listed in section 3.2 and any additional information prescribed by regulation under section 2.3(d).
5. Section 3.1(2) allows a Registrar, subject to the regulations, to establish a parcel register which does not cover all the rights above and below the surface of a parcel which an estate in fee simple can include. Suppose that O, the registered owner of Blackacre, transfers to A an estate in fee simple in the mines and minerals. If the general law recognizes an estate in fee simple in mines and minerals, the Registrar may establish a parcel register for A's estate in fee simple and delete the mines and minerals from the register which previously covered all of Blackacre. Suppose that, in addition, O transfers to B a volumetric space above the surface of Blackacre. If the general law recognizes an estate in fee simple in such volumetric spaces, the Registrar may establish another parcel register for the volumetric space so conveyed and delete it from the register covering O's remaining estate in fee simple.
6. Section 3.1(3) allows the Registrar to open a register based upon an interest which is less than an estate in fee simple but is of another kind which is registrable under section 5.1. Suppose that O, the owner of Blackacre in fee simple, grants a utility right of way to A, a power company, which mortgages it to B, along with its other properties, to secure a multi-million dollar financing. If there is no interest register, B's security interest must be registered in the parcel register, where it may, at first blush, appear to affect O's ownership and any other interests recorded or registered against the parcel. If an interest register is established for A's utility interest, B's security interest will be registered in it and not in the parcel register at all.
7. Under section 3.1(4), an interest register, which will be called a "consolidated interest register", can be established for two or more interests. One possible example is a consolidated interest register established for a string of pipeline or power line utility rights of way. Such a register would permit a security interest to be registered against the whole pipeline or power line by one registration. Another example is a consolidated interest register established for a group of interrelated restrictive covenants or easements for a building scheme. A third example is a consolidated interest register established for a number of interests granted by one document, e.g., a mineral lease, which incidentally grants registrable interests in the surface.

Content of registers

3.2

(1) A parcel register shall contain

- (a) the identifier for the register,**
- (b) a legal description of the parcel,**
- (c) the name of the registered owner of the fee simple absolute in the parcel,**
- (d) either**
 - (i) the identifier for any document of transfer, transmission, postponement or termination registering an interest in the parcel and, except for a servitude with a dominant tenement, the name of the registered owner of the interest, or**
 - (ii) if an interest register has been established for any registered interest in the parcel, the identifier for that register,**
- (e) when there is a registered servitude the benefit of which is annexed to the parcel, either**
 - (i) the identifier for the document creating the servitude, or**
 - (ii) if an interest register has been established for the servitude, the identifier for that register and**
- (f) the identifier for any document recording an interest in the parcel which has not been registered.**

(2) An interest register shall contain

- (a) the identifier for the register,**
- (b) the identifier for the register for any parcel subject to the interest for which the register is established,**
- (c) the identifier for any document of transfer or transmission registering the interest for which the register is established and, except for a servitude with a dominant tenement, the name of the registered owner of the interest,**
- (d) either**

- (i) the identifier for any document of transfer, transmission, postponement or termination registering an interest against the interest for which the register is established and the name of the registered owner of the interest, or
 - (ii) if an interest register has been established for any registered interest derived from the interest, the identifier for that register, and
 - (e) the identifier for any document recording an interest in the interest for which the register is established, which has not been registered.
- (3) An identifier shall be assigned to each document referred to in this section, and the entry of the identifier for a document in a register in accordance with this section incorporates that document into the register by reference.
- (4) An entry in a register forms part of the register whether or not it was made under proper authority.

Annotation

Section 3.2(1)

1. Section 3.2(1) prescribes the information which a parcel register must contain.

A parcel register must in every case contain a description of the parcel of land for which it is established and the name of the registered owner of the estate in fee simple absolute in the parcel. The effect of section 5.3(1) is that the registered owner so named, if legally capable of owning it, is the legal owner of the estate in fee simple absolute.

2. In the case of a lesser registered interest, the entry registering it in a parcel register must (unless a separate interest register is established for the interest) contain two more things. The first is the identifier for the document which registered the interest. The second is the name of the registered owner of the interest. The effect of section 5.3(1) is that if the interest is of a kind listed in section 5.1 and is recognized by law, the registered owner so named, if legally capable of owning it, is the legal owner of the interest.

Under section 3.2(3), the entry in a parcel register of the identifier for a document registering an interest which is less than an estate in fee simple absolute incorporates the document into the register. This is necessary because it is the document, together with the general law, which defines the interest which is registered. It is not necessary either to enter the identifier of a document registering an estate in fee simple absolute or to

incorporate the document into the register, because the general law defines an estate in fee simple absolute and because it is therefore not necessary to refer to the document to ascertain the rights of the registered owner.

3. A parcel register must also contain the identifier for any document which records an unregistered interest in the parcel. Under section 3.2(3), the entry of the identifier incorporates the document. Under section 4.2, the recording of the document records any interest which is based on the document or on a transaction summarized in the document, and sections 4.4 and 4.5 provide for the consequences of the recording in terms of priority of the interest.

Section 3.2(1) and section 3.2(2)

Section 3.2(1)(d), section 3.2(1)(e) and section 3.2(2)(c) relax some requirements when a servitude with a dominant tenement is involved. First, the name of the registered owner of such a servitude need not be shown in a parcel register or an interest register against which the servitude is registered. This is because ownership of the servitude follows the ownership of the dominant tenement; showing the original owner of the servitude as owner would therefore be misleading, and there would be no significant advantage to be gained by having the registered owner's name changed every time ownership of the dominant tenement changed, assuming that that would be practicable. Second, the identifier for the servient tenement need not be shown in the parcel register established for the dominant tenement. That is because the servient tenement may change hands and there is no significant advantage to be gained by having the identifier change every time, assuming that that would be practicable. What is necessary is to show in the parcel register for the dominant tenement the identifier for the document that created the servitude, from which the servient tenement can be identified.

Section 3.2(2)

Section 3.2(2) prescribes the information which an interest register established for an interest less than an estate in fee simple absolute, such as a mortgage, lease or utility interest, must contain.

An interest register must contain both the identifier of the parcel register for any parcel subject to the interest and the identifier for the document registering the interest for which the register is created. Entering the identifier incorporates the document, and the consequences are the same as the consequences of the registration of a registrable interest in a parcel register. Interests are then registered and recorded against the interest in the interest register in the same way as lesser interests are registered and recorded against the fee simple in parcel registers, and the same consequences flow.

Section 3.2(3)

The effect of section 3.2(3) is that a register includes not only what is usually called the register, that is, the formal written record which contains the information required by section 3.2(1) and section 3.2(2), but also the documents whose identifiers appear in that formal record. The documents must therefore be examined in order to determine what the recorded and registered interests are.

Section 3.2(4)

An entry in a register is part of the register. If it proves to have been made without authority, whether by a Registrar or by someone else, it may be possible to cancel it or to cancel its effect under other provisions of the Act, but while it is there it has whatever effect the Act gives to an entry. This is necessary to promote facility of transfer.

**PART 4
RECORDING**

Recordable interests

- 4.1 Any interest may be recorded if it is in land which is subject to this Act, and any recording which is not authorized under this section is void.**

Annotation

Section 4.1

1. Section 4.1 lays down two general principles. One is that all interests in land recognized by the general law, including estates and other kinds of rights, are capable of being recorded. The second is that nothing but an interest in land recognized by the general law is capable of being recorded, and that a purported recording of something else, such as a mere personal contract right, is not a recording at all and does not have the consequences of a recording under the Act.
2. "Recording" is defined by section 1.1(k) to mean "the administrative process which, under this Act, secures priority of enforcement for an interest by means of entries in a register". Section 4.3(2) provides that an interest is recorded when the identifier of a document submitted for recording is entered in the appropriate register.
3. "Interest" is defined by section 1.1(e) to mean "any estate or right in, over or under land recognized by law", and "law" is defined by section 1.1(g) to mean the law in force, including legislative enactments, common law and equity, and regulations.

Recording requirements

4.2

- (1) An interest may be recorded by means of a document in prescribed form which**
 - (a) incorporates the document on which the interest is based or a copy thereof, or**
 - (b) summarizes the transaction on which the interest is based.**
- (2) An interest may also be recorded by means of a certificate of *lis pendens* in prescribed form certifying that in the action in which the certificate is issued a claim has been made to enforce the interest or to call into question an interest described or summarized in the certificate.**
- (3) An interest may be recorded by any person, whether or not the person is an owner of all or any share of the interest, including, but not limited to, a person who is a successor from a prior owner of the interest to be recorded.**
- (4) A Registrar shall record a document submitted for recording if**
 - (a) the interest is qualified for recording under section 4.1, and**
 - (b) the document complies with any regulations made under section 2.3.**

Annotation

Section 4.2(1)

1. An interest being intangible, it must, under section 4.2(1), be recorded by means of a document, which must be brought to a Registrar for the purpose of recording.

A person who claims an interest may submit for recording either the document that conferred the interest (e.g., a lease) or a copy of the document with whatever incorporating form is prescribed. Alternatively, the claimant may submit a document summarizing the interest, i.e., a statement prepared by the claimant which describes in summary form the transaction from which the interest arose. In the case of a lease, the summary might say that O, the registered owner of Blackacre, has granted a lease to A, the person who is recording the leasehold interest. It would then summarize the terms of the lease insofar as they shape the leasehold interest. It would also summarize such collateral matters as options to renew the lease or purchase the land. This would be enough to alert anyone who deals with the land later to the existence and nature of the recorded interest.

2. Under section 4.4(4), the recording of a prior interest is effective only as to the rights expressly described in the recorded document. There is therefore a risk involved in recording an interest by means of a document summarizing the interest. See the annotation to that subsection.

Section 4.2(2)

1. Section 146(1) of the Land Titles Act provides that a person claiming an interest in land may "in lieu of filing a caveat or after filing a caveat" bring an action to enforce his claim and register a certificate of *lis pendens*. LTA 146(2) provides that "a person who has proceeded by way of action to call into question some title or interest in any land may register a certificate of *lis pendens*". LTA 146 does not say what the consequences of registering a certificate of *lis pendens* are, but if a certificate can be registered "in lieu" of a caveat, it seems likely that it is intended to have the same effect as filing a caveat. We interpret the section as providing a way of protecting the priority of a claim to an interest and also the priority of a claim to subvert an interest.
2. Section 4.2(1), and in particular section 4.2(1)(b), enables a claimant to protect the priority of an interest by bringing a certificate of *lis pendens* to the Registrar and thus performs the function now performed by LTA 146. It does so by accepting the certificate of *lis pendens* as another kind of recording document. The interest being enforced in the action, or the right to subvert an interest, is then recorded, thus bringing the certificate of *lis pendens* into the recording system.

Section 4.2(3)

Section 4.2(3) will enable a person who has acquired a derivative interest to be assured of the benefits of recording even though the interest from which the interest was derived is not recorded or registered by the original owner.

Suppose that O, the owner of Blackacre, enters into a sale agreement with A1, who does not record or register the interest conferred by the agreement, and that A1 enters into an agreement to lease to A2. Under section 4.2(3), A2 can record both A1's interest and A2's interest. If A2 does so, and O later transfers Blackacre to B, who becomes the registered owner, A1's interest, as well as A2's interest, will be effective against B under section 4.4(2)(a), and the foundation of A2's interest will be secure, so long as it is recognized by the general law.

Section 4.2(4)

Section 4.2(4) makes the recording of an interest in land a matter of right by providing that the Registrar must record a document if it meets administrative regulations. (Also, the fee required to be paid by regulations under section 2.3(a) must be paid.) The only requirement about the substance of the recording is that the interest being recorded must qualify under section 4.1, that is, that the interest must be an interest in land.

Time of recording

4.3

- (1) A Registrar shall record documents, insofar as practicable,**
- (a) promptly after their submission for recording, and**
 - (b) in the order in which they were submitted for recording.**
- (2) An interest is recorded when the identifier assigned to the document submitted for recording is entered, as recorded, in the appropriate register in accordance with section 3.2(3).**

Annotation

Section 4.3(1)

In an ideal world, documents submitted for recording would be recorded immediately and in the precise order in which the Registrar receives them. In practise, administrative processes take time and documents come from different sources, including mail, and go through different administrative processes, so that it is not always possible to ensure that they are recorded in the order in which they first come into the hands of land registration office staff. Electronic processing alleviates these problems, but it is unlikely to do away with them altogether.

Section 4.3(1) enunciates the principles of immediate and sequential recording, but recognizes that there are practical limitations upon the application of those principles.

Section 4.3(2)

The essential element of recording is the entry of a document's identifier in a parcel or interest register. Under section 3.2(3), the entry of the identifier in a way that shows an intention to record it incorporates the document into the register.

Priority of interests**4.4****(1) Subject to subsection (2),**

- (a) an interest is effective from the time of the transaction upon which it is based according to law, and**
- (b) interests shall be enforced with priority relative to each other according to law.**

(2) Subject to sections 4.5 and 6.1,

- (a) a prior interest which was recorded at the time that a subsequent conflicting interest was either**
 - (i) obtained, or**
 - (ii) recorded****shall be enforced with priority over the subsequent interest, and**
- (b) a prior interest is not effective against a subsequent conflicting interest which was**
 - (i) obtained for value,**
 - (ii) obtained without fraud of the owner of the subsequent interest,**
 - (iii) obtained at a time when the prior interest was not recorded, and**
 - (iv) recorded at a time when the prior interest was not recorded, and****the subsequent interest shall be enforced with priority over the prior interest.**

(3) Under subsection (2)

- (a) the recording of an interest entitles a successor to the owner of the recorded interest to have his interest enforced with the same priority, without further recording, as the recorded interest, but**
- (b) the recording provisions of subsection (2) apply to conflicting interests of successors to the owner of the recorded interest.**

(4) Under subsection (2)(a), the recording of a prior interest by means of a document summarizing the transaction on which it is based is effective only as to those rights expressly described in the recorded document, and only to the extent of the description of each right.

(5) Under subsection (2)(b)

- (a) what would have been a subsequently obtained interest, but for a conflicting prior interest, becomes a fully effective interest when the prior interest becomes ineffective to the extent of the conflict, and**
- (b) if a subsequent interest will not be enforced with priority for an owner because the requirements of subsection (2)(b) were not satisfied, an interest of a successor to the owner of the subsequent interest shall be enforced with priority over a prior interest when the requirements of subsection (2)(b) are first satisfied, and**
- (c) once a subsequent interest is entitled to priority of enforcement, it remains so when acquired by a successor.**

Annotation**Section 4.4(1)**

Section 4.4(1) makes it clear that the general law of real property, including the general law relating to the recognition and priority of interests in land, applies except when it is displaced by the recording and registration of interests. In so doing, the subsection is consistent with Alberta law resulting from judicial interpretation of the Land Titles Act, but it departs from the original Torrens system theory.

If O, the registered owner of Blackacre, grants an interest in Blackacre to A, the interest takes immediate effect as if the Act did not exist. If O then purports to grant a conflicting interest to B and neither A's interest nor B's interest is recorded or registered, the existence and relative priority of the interests will be determined by the common law and equity.

Section 4.4(2)

1. Section 4.4(2)(a) provides that a prior interest which is recorded at a time when a subsequent interest is either obtained or recorded is to be enforced with priority over the subsequent interest. It thus confirms the priority conferred by the common law.

Section 4.4(2)(b) confers priority upon a subsequent interest which is obtained and recorded at times when a prior interest is not recorded, but only if the subsequent interest is obtained for value and without fraud. (For a discussion of what constitutes fraud for this purpose, see section 1.2 and the annotations to that section.) (If the subsequent interest is registered as well as recorded, section 5.3(5) declares that it was obtained for value for the purposes of section 4.4 and thus does away with the requirement of value.)

The following examples will illustrate the workings of section 4.4(2):

Example 1

O, the owner of Blackacre, has granted an interest in Blackacre to A and has later granted a conflicting interest in Blackacre to B. A's interest is recorded. While the recording remains uncanceled, B obtains an interest and records it. A's interest will be enforced with priority because it was recorded both when B's interest was obtained and when it was recorded. (See section 4.4(2)(a)(i) and (ii).)

Example 2

O has granted an interest in Blackacre to A and has later granted a conflicting interest in Blackacre to B. A's interest is recorded after the grant to B is made. B's interest is recorded after A's interest is recorded. A's interest will be enforced with priority because it was obtained and recorded at times when B's interest was not recorded. (See section 4.4(2)(b)(iii) and (iv).)

Example 3

O has granted an interest in Blackacre to A. A's interest is recorded. Then O grants a conflicting interest to B. Then A's recording is cancelled but A's interest is not terminated. Then B's interest is recorded.

The general rule is that A's interest will still be enforced with priority. (See section 4.4(2)(a)(i) and section 4.4(2)(b)(iii). See also section 4.7(3), which provides that the cancellation of the recording of an interest does not affect priorities which have accrued under section 4.4.)

There are exceptional cases. General law rules of estoppel and misrepresentation may apply. Section 4.5 provides for another exception. It applies if the facts are the same as in this example, but (a) A's recording was cancelled under an invalid request for cancellation; (b) B's interest is not merely recorded but also registered; and (c) B had no knowledge of the facts that made the cancellation of A's recording unauthorized and has paid value for the purported benefits of the cancellation of A's recording or detrimentally altered his position in reliance on the invalid cancellation. If section 4.5 applies, B's interest is enforceable with priority over A's interest and A will be entitled to compensation under Part 7. (See also the annotation to section 4.5.)

Example 4

O has granted an interest in Blackacre to A and has later granted a conflicting interest in Blackacre to B. A's interest is unrecorded. Then B's interest is granted and recorded. However, B's interest was obtained by fraud. Section 4.4(2)(a) does not apply, because A's interest was not

recorded when B's interest was obtained or recorded. Section 4.4(2)(b) does not apply because of section 4.4(2)(b)(ii), under which the obtaining of B's interest without fraud is a condition which must be satisfied before the subsection will confer priority. Section 4.4(1) applies, and the relative rights and priorities of A and B will be determined by the rules of common law and equity. The same would be true if B's interest, though obtained without fraud, was not obtained for value, under section 4.4(2)(b)(i).

Example 5

O has granted an interest in Blackacre to A and has later granted a conflicting interest in Blackacre to B. A's interest is not recorded. B's interest is obtained for value and without fraud and is recorded. B's interest will be enforced with priority over A's prior interest. (See section 4.4(2)(b).) This is the principal case for which the interest recording system is provided.

2. The general rule stated in Example 3 is consistent with the present law as declared by the Court of Appeal of Saskatchewan in *Bensette v. Reece*, [1973] 2 W.W.R. 497 and by the Court of Appeal of Alberta in *Passburg Petroleum Ltd. v. Landstrom Developments Ltd.*, [1984] 4 W.W.R. 14. In the *Bensette* case, a purchaser acquired title subject to a caveated interest and then had the caveat removed under notice under the "lapsing" provision of the Saskatchewan statute. In the *Passburg* case, a purchaser acquired title subject to a caveat registered by a lessee who was the appellant's assignor, and the caveat was discharged by the lessee. In each case, it was held that the caveated interest continued in force and that the purchaser's interest was subject to it despite the cancellation of the registration of the caveat.

The general rule in Example 3 is consistent with the part of the decision of the Court of Appeal of Alberta in *White Resource Management v. Durish*, [1993] 1 W.W.R. 752 (leave to appeal to the Supreme Court of Canada granted) in which the court held that a caveated interest continued in existence after the lapse of the caveat under LTA 137. The result is, however, inconsistent with another part of the court's decision in which the court held that unless the caveator has good reason for having allowed the caveat to lapse, the court will hold that a subsequent attempt to enforce the interest is abuse of process.

It is difficult to reconcile the *Bensette* and *Passburg* cases on their facts with an earlier Supreme Court of Canada case, *Union Bank of Canada and Phillips v. Boulter Waugh Ltd.* (1919), 58 S.C.R. 385, which was decided in favour of a mortgagee who had cleared off a prior caveat under the Saskatchewan lapsing provision. The policy of the later cases is probably the law today, and is, in our view, preferable in any event. The title registration and interest recording system is designed so that purchasers of interests in land can rely on registers. It is not a device to enable purchasers to get rid of prior conflicting interests subject to which they have acquired their interests.

In the *Bensette* and *Passburg* cases, the caveats were present both when the subsequent conflicting interests were obtained and when they were registered. The decisions do not specifically address a situation in which a recording is in the register when a subsequent conflicting interest is obtained but is not in the register when the subsequent conflicting interest is recorded or registered. However, the relevant time for reliance on the register is when a purchaser obtains his or her interest, and if a prior recording is on the register at that time, the purchaser's interest will under section 4.4(2)(b) be subject to the recorded interest.

3. Two points should be noted here:

- (a) section 4.4(2)(a) not only confirms the common law priority of a prior recorded interest, but also confers priority upon a prior recorded equitable interest which, under the rules of common law and equity, would not bind a *bona fide* purchaser for value of a legal interest or a higher equitable estate;
- (b) section 4.4(2)(b) not only provides that a subsequent recorded interest is to be enforced with priority over a prior unrecorded interest, but also says that the prior interest is ineffective against the subsequent interest, which, together with section 4.4(5)(a), precludes any argument that if O, the owner, conveys Blackacre to A, he has nothing left to convey to B, so that the conveyance to B conveys nothing and B has nothing to record. This point is amplified in the annotation to section 4.4(5)(a).

Section 4.4(3)

Under section 4.4(3), a successor is entitled to the benefit of a prior owner's recording. Under section 1.1(p), a "successor" is "a person who acquires an interest, or an interest derived from that interest, directly or through intermediate transactions, from a prior owner". As between successors to the same prior owner, the rules in section 4.4(2) apply.

In *Calford Properties Limited v. Zeller's (Western) Limited*, [1972] 5 W.W.R. 714 and *Demers v. Fountain Tire Distributors*, [1974] 1 W.W.R. 348, the Alberta Appellate Division held that successors were entitled to the benefit of their assignors' caveats. In *White Resource Management v. Durish*, [1993] 1 W.W.R. 752 (leave to appeal to the Supreme Court of Canada granted October 14, 1993) the Court of Appeal did not refer to an assignor's prior caveat in giving priority to another interest over that of the assignee. We think it unlikely that the court meant to overrule the previous decisions, but in any event we think that a successor should be entitled to the benefit of their assignor's recording.

The effect of section 4.4(3) can best be shown by examples:

Example 1

O grants a prior interest to A and a subsequent interest to B. A records the prior interest. A satisfies section 4.4(2)(a) and A's prior interest is therefore entitled to priority over B. Then B records the subsequent interest. Then A assigns the prior interest to A1. A1 is entitled, without more, to enforce the prior interest with priority over B. (See section 4.4(3)(a).)

Example 2

O grants a prior interest to A and a subsequent interest to B. B records the subsequent interest. B satisfies section 4.4(2)(b) and is therefore entitled to priority over A. Then A records the prior interest. B transfers the subsequent interest to B1. B1 is entitled to enforce the subsequent interest with priority over A's prior interest. (See section 4.4(3)(a).)

Example 3

O grants a prior interest to A and a subsequent interest to B. A records the prior interest. A satisfies section 4.4(2)(a) and A's prior interest is therefore entitled to priority over B. B then records. A then assigns the prior interest to M, who does not record. Then A assigns the prior interest again, this time to N, who does record and satisfies section 4.4(2)(b). Either M or N would be entitled to enforce the assigned prior interest with priority over B, but as between M and N, the provisions of section 4.4(2)(b) apply, and N is entitled to enforce the interest with priority over M, despite the common law priority of the assignment to M. (See section 4.4(3)(b).)

Section 4.4(4)

An important function of the register is to disclose information about the ownership of land and interests in land. There is sufficient disclosure of an interest if it is recorded by recording the document on which it is based: it is for any person investigating title to decide what interest, if any, the recorded document has conferred. However, if an interest is recorded by recording a summary of the transaction on which the interest is based, the summary may be insufficient to disclose the nature of the recorded interest. Section 4.4(4) accordingly qualifies section 4.4(2)(a) by restricting the protection of a recording to those rights expressly described in the recorded document.

The existing law about what a caveat must show has caused difficulties. For example, the Alberta Land Titles Act requires that a caveat state "the nature of the interest claimed and the grounds on which the claim is founded". The Supreme Court of Canada has held that a caveat which described merely one claim did not protect another claim arising under the same agreement (*Ruptash and Lumsden v. Zawick*, [1956] S.C.R. 347), and the Saskatchewan Court of Appeal has held that a caveat that claimed under a lease did not, without more, protect an option to purchase conferred by the lease (*Powers v. Walter and Walter*, [1981] 5 W.W.R. 169 (Sask. C.A.)). On the other hand, the Alberta

Court of Appeal has held that a caveat which claimed "an interest . . . under and by virtue of a lease . . . for a term and on the conditions therein set forth and contained" protected a right of renewal granted by the lease, though a caveat that referred a lease for a term of 30 years, without mentioning the renewal term, did not protect the right of renewal (*Calford Properties Limited v. Zeller's (Western) Limited*, [1972] 5 W.W.R. 714 (Alta. App. Div.)). It also seems that a claim under an agreement in broad terms will protect whatever interests the agreement confers. The state of the law is not entirely satisfactory.

Section 4.4(4) establishes a strict test: if an interest is not "expressly described", the recording is not effective with respect to it. If the description describes less than the whole of an interest, the recording is not effective as to the remainder. A person who records only a summary will therefore incur a risk that the summary will be found inadequate and that interests which are not properly described will not be protected by the recording. This will be a drawback to the use of summaries. However, the use of a summary will be useful in some cases. It will permit the recording of an interest which is not based upon a document, and it will permit the recording of an interest which is based upon a document that the claimant cannot produce.

Section 4.4(5)(a)

Under the common law, O, the owner of Blackacre, who has conveyed Blackacre to A, has nothing left and cannot thereafter convey it to B, so that B gets nothing from a subsequent conveyance. It can be argued that B therefore has no interest to record and that a purported recording of a subsequent conveyance by B is ineffective. Section 4.4(2) and section 4.4(5)(a) make it clear that the argument does not apply in a case in which B obtains the protection of recording and A does not. Assuming that the other conditions of section 4.4 are met by B, A's prior interest will become ineffective against B when B's subsequent interest is recorded, and, under section 4.4(5)(a), B's subsequent interest simultaneously becomes fully effective. After that time, B therefore has an effective interest and A's interest is not effective against B.

Section 4.4(5)(b)

Section 4.4(2)(b) does not confer priority upon a subsequent recorded interest if the owner of the interest is a donee or acquired the interest by fraud.

However, under section 4.4(5)(b), the interest becomes effective when it is acquired by a subsequent owner for value and without fraud. The following example illustrates the provision:

Example

O, the owner of Blackacre, grants a prior interest to A, who does not record it. O then grants a subsequent interest to B1, who is a donee or acquires the interest by fraud, and who does record the subsequent interest. B1 then assigns the subsequent interest to B2, who acquires it for value and without fraud and records it, all at a time when the grant to B1 is in force under the

common law. Then A records the prior interest. B2 has satisfied all the conditions of section 4.4(2)(b) and is entitled to have the subsequent interest enforced with priority over A's prior interest. B2 would also be entitled to priority for a lesser interest acquired from B1.

If A had recorded after B1 recorded but before B2 recorded, A would have been entitled to priority.

Section 4.4(5)(c)

Under section 4.4(5)(c), once a subsequent interest is recorded and all the conditions of section 4.4(2)(b) are met, the interest is entitled to priority of enforcement over an unrecorded and unregistered prior interest. If the owner of the subsequent interest conveys the interest to a donee, the donee is therefore entitled to enforce it with the same priority. If the owner is defrauded into conveying it, the conveyance is valid in the successor's hands if the general law would regard it as valid.

Reliance on invalid termination of prior recording

4.5

(1) This section is applicable when

- (a) the recording of a prior recorded interest was cancelled under an invalid request for cancellation,
- (b) a subsequent registered interest would not be enforced with priority over the prior interest because the requirements of section 4.4(2)(b)(iii) and (iv) were not satisfied, and
- (c) the owner of the subsequent registered interest
 - (i) believed that the recording of a prior interest was cancelled under a valid request for cancellation,
 - (ii) had no knowledge of the facts which made the cancellation of the recording of the prior interest unauthorized, and
 - (iii) paid value for the benefits purportedly obtained under, or detrimentally altered his position in reliance on, the invalid cancellation.

(2) When this section applies,

- (a) the subsequent registered interest shall be enforced with priority over the prior interest, and
- (b) the owner of the prior interest who sustains loss under this section shall be compensated in accordance with Part 7.

Annotation

Section 4.5

The general rule is that the cancellation of a recording does not affect the existence of the recorded interest or the existing priorities that the recorded interest has over other interests at the time of the cancellation. This is the effect of section 4.4(2)(b) and section 4.7(2) and (3).

The general rule would cause difficulty for purchasers under *bona fide* conveyancing transactions and would thus detract from the facility of transfer that it is the function of land recording and registration to promote. It is common for a purchaser, in the course of purchasing an interest in land, to obtain and register a discharge of caveat in order to ensure the priority of the interest being purchased, and it will be equally common for purchasers to rely on cancellations of recordings under the proposed Act. The result of the

general rule, if the general rule applied to that situation, would be that if the cancellation of the prior recording proved to be invalid and if the prior interest had not been terminated, the interest would continue to exist in priority over the interest being purchased. A purchaser would therefore get a clear title only if the request for cancellation upon which they relied was valid, unless an estoppel or some other legal bar applied.

Section 4.5 therefore makes an exception to the general rule. If a request for the cancellation of a prior recorded interest on which the purchaser relies is invalid, the purchaser's interest may nevertheless take priority over the previously recorded prior interest. In order to obtain that priority the purchaser must

- believe that the request for cancellation is valid.
- have no knowledge of the facts that made the cancellation unauthorized.
- pay value for, or otherwise rely upon, on the cancellation.

The owner of the previously recorded interest will be compensated for the loss of the interest.

Future obligations

4.6

- (1) Under section 4.4, the priority of a recorded security interest that secures a specific sum extends to all subsequent obligations that are secured by the security interest up to the specific sum, including obligations for principal sums subsequently advanced, and increased interest, as determined in accordance with the terms of the document which conferred the security interest.**
- (2) If the secured person refuses to make further advances, or if the obligor has and exercises a right not to receive further advances, the secured person shall, at the request of the obligor, provide a termination of the security interest except insofar as it is security for**
 - (a) obligations already incurred, and**
 - (b) further advances made by the secured person under the terms of the document in order to maintain his security for obligations already incurred.**

Annotation

Section 4.6

1. Section 4.6(1) confers upon the holder of a recorded mortgage or other security interest the same priority for obligations which arise after the recording or registration of another interest as for obligations which arise before such recording or registration. The section applies, however, only if the security interest is for a specific sum. The benefit of the section automatically applies to registered security interests, as registered interests are necessarily recorded interests.

Suppose that O, registered owner of Blackacre, grants a mortgage for \$40,000 to A, who records it. Suppose that O later grants a conflicting interest to B, who also records it. Suppose that at the time of B's recording the mortgage secured only \$20,000 but that, in accordance with the terms of the mortgage, A makes a later further advance of \$20,000 to O. The effect of section 4.6 is that the mortgage secures the additional obligations in priority to B's recorded interest. Similarly, if the mortgage term is later extended and the interest increased in accordance with the terms of the mortgage, the registered mortgage secures the resulting obligations in priority to B's interest.

2. Section 4.6(2) is intended to prevent A from clouding O's title with the potentiality of future advances while refusing to make the advances.

Cancellation of recording

4.7

(1) The recording of an interest shall be cancelled

(a) when the interest is not qualified for recording under section 4.1,

(b) if the interest is not registered, in accordance with a request for cancellation

(i) by the claimant, or

(ii) if the interest is a servitude and a dominant tenement is identified in the recording document, by the registered owner of the dominant tenement

upon complying with any regulations under section 2.3, and

(c) in accordance with section 5.4(6) when the registration of the interest has been cancelled.

(2) Subject to section 5.4(6), cancellation of the recording of an interest does not terminate the interest.

(3) Subject to section 4.5, cancellation of the recording of an interest does not affect priority of enforcement rights which accrued under section 4.4 before the cancellation.

Annotation

Section 4.7

1. An interest exists whether or not it has been, or is, recorded. Therefore, the cancellation of the recording of an interest, without more, will not terminate the interest. (See section 4.7(2).) In order to clear both a *title* and a *register* of a recorded interest, it will be necessary to procure both the termination of the interest and the cancellation of the recording. This follows existing law.
2. Another consequence of the existence of an interest whether or not it is recorded is that, except in one special set of circumstances, the priority of an interest, once established by a recording, continues despite the cancellation of the recording. (See section 4.7(3). See also section 4.4(2)(a) and (b) and section 4.5 and the annotations to both of those provisions.)
3. Recordings will commonly be cancelled

- (a) by Registrars in accordance with written requests for cancellation. Usually, these requests will be from claimants, i.e., persons who record interests or assignees of rights to cancel, but recordings of servitudes will be from the owners of dominant tenements if these are identified in the recording documents. Requests for cancellations will have to be authenticated in accordance with regulations under section 2.3(b)(iii), which will apply the standards applied to registered documents (see section 4.7(1)(b));
- (b) as an automatic consequence of the cancellation of registrations, by the action of section 5.4(6), to which section 4.7(1)(c) is subject.

Recordings will also be cancelled by Registrars under court orders where the court determines that a recording is not supported by an effective interest in land. See Part 8, which deals with the powers of the court.

4. It is possible that a recording will upon occasion be cancelled because the recorded interest did not qualify under section 4.1 in the first place, i.e., because the interest claimed is not an interest at all and the recording is void. A Registrar might cancel a recording on such grounds, but is unlikely to do so without a court order.

Cancellation of recording by assignee

4.8

- (1) The right to have the recording of an interest cancelled, or the enforcement of a recorded interest postponed, may be assigned by the claimant of the recorded interest by a document complying with any regulations made under section 2.3, and the assigned right shall be treated as a registrable interest under Part 5.
- (2) Until an assignment under subsection (1) is registered, the claimant under the recording retains the right to have the recording cancelled, or the enforcement of a recorded interest postponed.

Annotation

Section 4.8

Suppose that O, the owner of Blackacre, grants a petroleum and natural gas lease to A1, who records the interest. O later transfers the land to B, who becomes registered as owner subject to A1's recording. A1 then assigns the lease to A2. A2's priority is protected by A1's recording under section 4.4(3)(a). However, A2 is likely to want to be assured that no one but A2 can cancel A1's recording, and is also likely to want to be able to cancel it himself or herself without obtaining a request for cancellation from A1.

Section 4.8 accordingly gives a person who records an interest power to assign the right to cancel the recording or the right to postpone the enforcement of the recorded interest to the enforcement of another interest. The assigned right is treated as a registrable interest, and the authenticity of the assignment will have to be verified to the standards of a document presented for registration under regulations prescribed under section 2.3(b)(iii).

An assignment of the right to cancel the recording will assure the assignee of two things. One is that the assignor will not cancel the recording. The second is that a notice to take proceedings to substantiate the recorded interest, if it is to be served by registered mail, will have to be sent to the assignee's address for service, not the assignor's. If the assignee wants these protections, they will insist on obtaining and registering an assignment of the right to cancel or postpone the recording.

Under section 4.10, the registration of the right to cancel a recording shifts from the assignor to the assignee any liability for continuing the recording if it proves to be wrongful. An assignor may therefore want to ensure that the assignment is registered.

Cancellation of recording on notice

4.9

(1) Except for

- (a) a recorded interest which is registered,
- (b) a Registrar's recording under section 5.4(5), and
- (c) a recording pursuant to another statute,

a recording shall be cancelled after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court on the recorded interest has been served

- (d) on the claimant under the recording, and
- (e) if the recorded interest is under a servitude, on the registered owner of every fee simple estate in any land identified in the document by means of which the interest was recorded as land to which the benefit of the servitude is annexed,

either

- (f) as process is usually served,
- (g) through registered mail, in the prescribed form, to the address for service of notices with respect to the recording, or
- (h) in accordance with directions given by the court upon application, which may be made *ex parte*,

unless before the cancellation the claimant takes proceedings in court by originating notice or otherwise to substantiate the recorded interest and a certificate of *lis pendens* in the prescribed form has been recorded.

(2) Notwithstanding subsection (1), the court may on an *ex parte* application shorten the period of 60 days to a period it specifies in the order, and a copy of the order shall be served or mailed with the notice.

(3) It shall be proved to the satisfaction of the Registrar

- (a) that the notice was served as required by subsection (1), and
- (b) that the person who caused the notice to be served has a recorded or registered interest in the land against which the recording to be cancelled was recorded.

(4) A person who

- (a) procures the cancellation of a recording under this section, and**
 - (b) has served notice under subsection (1)(g)**
- is liable for any loss sustained because of the cancellation unless**
- (c) the claimant received the notice within the period mentioned in subsection (1) or the period mentioned in subsection (2), whichever is shorter,**
 - (d) the court directed under subsection (1)(h) that the notice be served under subsection (1)(g), or**
 - (e) the court finds that the method of service was reasonable under the circumstances.**

Annotation**Section 4.9**

1. A recording does not prove that the interest claimed by the recording exists. Section 4.9 therefore provides a procedure by which a challenger who has a recorded or registered interest in land that is subject to a recording can require the claimant under a recording to have the claim validated by a court, and to enable the challenger to have the recording cancelled if the claimant does not bring an action within a specified time.

There are three kinds of cases to which the procedure does not apply. First, it does not apply to a registered interest. The section 4.9 procedure is not a proper way to get rid of what the law declares is an interest in land. Second, the procedure does not apply to a Registrar's recording. In order to get rid of a Registrar's recording it will be necessary to take legal proceedings against the person whose interest is protected by the recording. The third is a recording under another statute. These are diverse and many of them are recorded to protect public interests, so that it does not seem appropriate to allow them to be removed under a simple mechanical procedure.

There is one kind of case in which the person to be served is not the claimant under the recording or that claimant's assignee. If the recorded interest that the challenger wishes to get rid of is a servitude, and if the servitude identifies land to which the benefit of the servitude is annexed, the challenger must serve the owner of every fee simple estate so identified. This is because those fee simple owners are the owners of the benefit of the recorded servitude and should therefore be the ones to receive notice of an attempt to get the recording off the register.

2. The procedure under section 4.9(1) is simple enough. Suppose that O is the registered owner of Blackacre and A1 has recorded an interest in Blackacre. O will serve a notice upon A1 to take proceedings in court on the recorded interest. Unless A1 commences proceedings in court and records a certificate of *lis pendens* within 60 days or a shorter period fixed by the court, the Registrar, upon proof of service, will cancel the recording.
3. The Act goes further. It provides a simplified method of service: a claimant under a recording must provide the Land Registration Office with an address for service, and a challenger is allowed to serve the notice to take proceedings by sending it to the claimant at the address for service by registered mail. This seems appropriate enough: if a claimant wants to obtain the benefits of recording, they should be willing to maintain an up-to-date address and ensure that documents received there will be dealt with promptly.

But, on the other hand, it seems unfair to allow a challenger to get rid of a recording by sending a notice to an address that they know or should know is obsolete. Section 49.4 therefore goes on to say that the challenger is liable for any loss caused by the cancellation of the recording consequent upon service by registered mail at the address for service unless one of three things is true. First, the challenger will not be liable if they obtained a court order permitting this form of service. Second, the challenger will not be liable if the claimant actually receives the notice within the prescribed period. Third, the challenger will not be liable if the court thinks that it was reasonable to effect service by this form of service. The court would likely need some evidence that the challenger turned their mind to the question of service and had some information that suggested that service at the registered address would come to the claimant's attention. This scheme is an attempt to balance the conflicting interests of claimants in being able to clear registers and the interests of claimants in not, in effect, being deprived of property without being given an effective chance to object.

A challenger who does not want to take the risk of liability can bring proceedings in another way, such as by statement of claim, or, if the rules of court permit, by originating notice. Service would then be effected in accordance with the rules of court or as required by a court order.

4. If A1 has assigned to A2 the right to cancel the recording under section 4.8, and if the assignment has been registered, the notice to take proceedings will have to be served on A2 and not on A1 (see section 1(1)(c)).

Improper recording

4.10 If a recording

- (a) was void because the interest was not qualified for recording under section 4.1, or**
- (b) was not cancelled at the request of the claimant under the recording**
 - (i) after the interest ceased to exist under law, and**
 - (ii) after written demand for cancellation by a person adversely affected by the recording,**

the claimant under the recording is liable to any person who sustains loss because of the initial recording or its continuance unless

- (c) the court finds that the initial recording or its continuance was reasonable under the circumstances, or**
- (d) the recording was made by a Registrar under section 5.4(5).**

Annotation

Section 4.10

1. The right to record an unsubstantiated claim against land can be abused. Suppose that O is the registered owner of Blackacre and that A1 has recorded an interest in Blackacre which is not a valid interest. Under section 4.10, A1 would be liable to O for any loss suffered by O because of the wrongful recording unless the court finds that the recording was reasonable under the circumstances. Similarly, suppose next that A1 had a valid interest but it has been terminated. O is then entitled to give a written demand that A1 cancel the recording, and A1 will be liable to O for any loss sustained by O because of the wrongful continuation of the recording unless the continuation was reasonable under the circumstances.
2. If A1 has assigned to A2 the right to cancel the recording under section 4.8, and if the assignment has been registered, the demand for cancellation will be made to A2 rather than A1, and it will be A2 rather than A1 who is liable to O for loss sustained by O.

**PART 5
REGISTRATION**

Registrable interests

5.1

- (1) The following interests and amendments thereto may be registered:**
- (a) a fee simple estate;**
 - (b) a life estate;**
 - (c) a leasehold;**
 - (d) a servitude;**
 - (e) a profit *a prendre*;**
 - (f) a security interest;**
 - (g) the interest under a postponement agreement;**
 - (h) an interest under a mineral unit operation agreement as defined in the *Law of Property Act*;**
 - (i) the interest of a purchaser under an agreement to purchase land.**
- (2) If another Act requires or authorizes the registration of an interest, and the interest is not qualified for registration under subsection (1), the interest shall be recorded.**

Annotation

Section 5.1(1)

1. Section 5.1(1) lays down the general principle that interests of the kinds listed may be registered.
2. The opening words of section 5.1(1) provide that amendments to registered interests may be registered. Thus a renewal or extension of a mortgage could be registered as a security interest without having to decide nice questions as to whether the words of the renewal were sufficient in law to confer a new mortgage or change the effect of the old one.
3. "Servitude", "security interest", and "postponement" are defined in section 1.1. The interest under a postponement agreement is included as a registrable interest because it may effectively change the ownership and priority rights of registered owners and the priority rights of recorded

owners, and it is desirable that postponement agreements be authenticated in the same way as other documents conferring interests which are to be registered.

4. The intention of section 5.1(1)(i) is that the only interests of purchasers under agreements to purchase land that will be registrable will be interests under formal land purchase agreements that will fall within a form prescribed by regulation.

Section 5.1(2)

It is common for other statutes to confer rights or claims against land and to provide for the "registration" of such rights and claims against the land affected. In such a case, it is likely that the Legislature intends the other statute to confer rights and that it intends the Land Recording and Registration Act merely to protect the priority and effectiveness of those rights. Section 5.1(2) therefore says that if another statute provides for the "registration" of an interest against land, the interest is to be recorded rather than registered, unless it is of a kind which is registrable under section 5.1.

Registration

5.2

- (1) A Registrar shall register an interest upon request if**
- (a) the interest is qualified for registration under section 5.1,**
 - (b) the person to be registered as owner has legal capacity to own the interest, and**
 - (c) the interest is based on a valid transaction.**
- (2) An interest is registered when the identifier assigned to the document submitted for registration is entered, as registered, in the appropriate register in accordance with section 3.2.**
- (3) Any registration which is not authorized under subsection (1)(a) or (b) is void.**
- (4) If a registration is void under subsection (3) because not authorized under subsection (1)(b), the Crown in right of Alberta is the legal owner of the interest under the purported registration, in trust for whomever the law determines the interest should be held.**

Annotation

Section 5.2(1)

Section 5.2(1) makes registration of an interest a matter of right if the conditions set out in the subsection are met.

The conditions are that

- (a) the interest is qualified for registration under section 5.1.

Only something which the general law will recognize as being a fee simple estate, a life estate, a leasehold, a servitude, or one of the other interests listed in section 5.1, can be registered. A purported registration will not transform something else into a registrable interest; it will not, for example, transform a licence into a lease, and the purported registration of a licence as a lease will, under section 5.2(3), be void as a registration. However, under section 5.3(4), the purported registration, despite the fatal flaw, would record the licence.

This condition will require the Registrar to decide whether an interest submitted for registration is an interest of a kind included in the list set out in section 5.1. However, regulations under section 2.3(b)(iii)

will prescribe forms of documents which the Registrar will accept as conferring qualified interests.

- (b) the person to be registered as owner has legal capacity to own the interest.

Only a person whom the general law will recognize as having capacity to own an interest can be registered as owner of the interest. A purported registration in the name of Hercules or of a non-existent corporation will not transform either into a person with capacity to own an interest and will be void under section 5.2(3).

This condition recognizes the impossibility of conferring ownership upon something that cannot have rights. Section 5.2(4) fills the resulting void by vesting legal ownership of the interest in the Crown in trust for whomever the general law will recognize as the owner of the registered interest.

- (c) the interest is based upon a valid transaction.

A Registrar will register an interest only if there appears to be a valid "transaction". Under the definition in section 1.1(t), "transaction" is broad enough to include any passing of an interest by act of an owner or operation of law, but the Registrar will, except under court order, act only on transactions which comply with regulations under section 2.3.

Suppose that O is the owner of an estate in fee simple absolute in Blackacre. Suppose that A presents to the Registrar a document which purports to be a transfer from O to A but is in fact a forgery. The Registrar is not obliged to accept the alleged transfer or to register A as owner of Blackacre, and will not do so if he knows that the document is forged.

However, the lack of a valid transaction does not of itself render a registration void. If the Registrar registers the forged transfer, A will become the registered owner, and therefore the legal owner, of Blackacre. O will be able to recover ownership only if A's registration can be cancelled under sections 5.4 to 5.7. Section 5.2(3) renders a registration void only for failure to meet the conditions in section 5.2(1)(a) and (b), and section 5.3(1), which makes a registered owner the legal owner of the registered interest, applies notwithstanding section 5.2(1)(c).

Section 5.2(3)

1. Under section 5.2(3), a purported registration is void for the purposes of Part 5 if it is not authorized under section 5.2(1)(a), that is to say, if the purportedly registered interest is not of one of the kinds listed in section

- 5.1. However, if the interest exists under the general law, the purported registration, though void as a registration, will have the effect of a recording under section 5.3(4)(b).
2. A purported registration is also void for the purposes of Part 5 if it is not authorized under section 5.2(1)(b), that is to say, if the purportedly registered owner does not have legal capacity to own the registered interest.

Section 5.2(4)

Section 5.2(4) fills the lacuna which would otherwise occur if a purported registered owner is not a person with legal capacity to own the interest. It does so by making the Crown in right of the province the legal owner of the interest, in trust for the owner recognized by the general law.

Effect of registration

5.3

- (1) Notwithstanding section 5.2(1)(c), so long as a registration remains uncanceled, the registered owner is the owner of the registered interest as defined in the register and within the parcel described in the register,**
- (a) if the interest is qualified for registration under section 5.1,**
 - (b) if the registered owner has legal capacity to own the interest, and**
 - (c) to the extent that the interest is recognized under law.**
- (2) For the purposes of subsection (1)(c), a security interest is recognized under law only to the extent of the actual obligation of the obligor under law.**
- (3) A registered interest shall be enforced with priority in accordance with section 4.4.**
- (4) An interest which was not previously recorded is recorded for the purposes of section 4.4 at the time of**
- (a) its registration, or**
 - (b) its purported registration if its registration is void under section 5.2.**
- (5) A registered interest has been obtained for value for the purposes of section 4.4, but not for the purposes of sections 4.5 and 5.6.**
- (6) A registered interest is, at the time of registration, subject to**
- (a) a transaction which binds the registered owner,**
 - (b) a conflicting interest in accordance with section 4.4, and**
 - (c) an interest under section 6.1.**

Annotation

Section 5.3(1)

1. The principal thrust of section 5.3(1) is that a person who is registered as the owner of an interest is the legal owner of the interest. By providing that it overrides section 5.2(1)(c), section 5.3(1) makes itself a new root of title even if ownership was not conveyed to the registered owner by a valid transaction binding upon a previous owner or by operation of law. If there is no valid transaction, the registration of a new owner will usually be

subject to being set aside under section 5.4(1)(b), but until it is set aside, the registered owner will be the legal owner of the interest. Section 5.3(1) will apply even if no value has been given.

It would be absurd for the law to make a declaration of ownership while declaring a registration void. Section 5.3(1) therefore does not apply to registrations which section 5.2(3) declares void: the cases described in section 5.2(1)(a) and (b) (which are the cases in which section 5.2(3) declares a registration void) are the same as the cases described in section 5.3(1)(a) and (b).

2. Under section 5.3(1)(c), there is a third case in which the declaration of ownership will not apply. It is a case in which what is purported to be registered is not an interest in land, so that a system of registration of title to land should not apply to it. The limitation is implicit in the definition of "interest", but section 5.3(1)(c) makes it explicit.
3. The cases mentioned above are the only cases in which registration does not confirm or confer legal ownership. In some other cases, fraud and unauthorized registrations, for example, a displaced owner may have a right to have registrations revised and thus regain legal ownership, but until registrations are revised, the new registered owner is the legal owner of the interest.

Section 5.3(2)

If O, the owner of Blackacre, grants a mortgage to A which purports to secure a stated amount, and A registers the mortgage, the amount secured by it will be the amount determined by the state of accounts between the parties, not the amount stated in the mortgage. This is the general law, and it has been applied under Canadian title registration systems. Section 5.3(2) adopts it and applies it to all security interests.

Section 5.3(3) and (4)

Section 5.3(1) deals with the ownership of registered interests. Section 5.3(3) and (4) deal with their priority. The registration of an interest will have the effect of recording a previously unrecorded interest and thereby conferring priority upon it as if it were being recorded at the time of registration. Registration will not displace the priority conferred by an earlier recording of the same interest.

Under section 5.2, the registration of an interest will be void if the interest is not one of those listed in section 5.1 or if the registered owner does not have legal capacity to own it. If the registration is void because the interest is not qualified for registration under section 5.1, it will nevertheless be recorded, so that its priority will be preserved. If the registered owner does not have legal capacity to own the interest, the interest will still exist and be owned by the Crown in trust, so that the recording will protect its priority. If the interest is

not an interest recognized by law, neither registration nor recording will protect it.

Section 5.3(5)

Recording confers priority on a subsequent interest over a prior unrecorded interest only if the subsequent interest was obtained for value. However, section 5.3(5) says that a registered interest has been obtained for value for the purposes of section 4.4, the section which deals with priorities of recorded interests. A registered interest thus obtains priority even though no actual value was given for it.

Section 5.3(5) is made inapplicable to situations under sections 4.5 and 5.6 as both of these make specific provisions for special circumstances in which it would not be appropriate to treat registered interests as acquired for value if they have not been so acquired.

Section 5.3(6)

Section 5.3(6) summarizes the effect of registration on priorities under the draft Act. If O, a registered owner, has granted an interest in the land to A, O's interest will be subject to A's interest, which was granted by "a transaction which binds the registered owner" under section 5.3(6)(a), and it does not matter whether or not A's interest is recorded or registered. If A has a prior interest which is entitled to prior enforcement under section 4.4, whether under a recording or otherwise, O's interest will be subject to it under section 5.3(6)(b). Under section 5.3(6)(c), O's interest will also be subject to any overriding interests mentioned in section 6.1 to which the general law would give priority.

Section 5.3(6) applies at the time of the registration of O's interest. Under section 4.4(1), interests acquired under later transactions binding on O are effective against O without recording or registration.

Revision of registrations

5.4

- (1) Subject to sections 5.5, 5.6 and 5.8, registrations shall be revised as required**
 - (a) by a transaction which binds the registered owner,**
 - (b) when a revision of registrations was not authorized by a valid transaction or was based on a transaction which has been rectified or cancelled under law, and**
 - (c) for the recognition of an interest entitled to priority of enforcement.**
- (2) The right of a person to have a registration revised is a statutory interest which**
 - (a) may be recorded under section 4.1,**
 - (b) is subject to the enforcement priority provisions of section 4.5, and**
 - (c) entitles the person to the benefits of the registered interest which he is entitled to obtain.**
- (3) A Registrar may refuse to revise a registration if he has information which he reasonably believes indicates that, because of a doubtful question of fact or law, the revision might result in a registration not in accordance with law.**
- (4) Subsection (3) applies notwithstanding that a document submitted for registration appears to comply with regulations under section 2.3.**
- (5) If a Registrar obtains information which he reasonably believes indicates that a statutory interest may exist under subsection (2), the Registrar may record the possible interest.**
- (6) The cancellation of the registration of an interest divests the interest and cancels its recording.**

Annotation

Section 5.4(1)

1. Registration involves making entries in a register that affects the ownership of registered interests (see section 1.1(m)). Every registration revises the register and revises registrations.

2. Section 5.4(1) lists the circumstances under which registrations must be revised. Essentially, what it says is that registrations must be revised so that the register will reflect the ownership of interests established by the general law. A transaction that binds the registered owner changes the ownership of the interest under the general law and requires that registrations be revised to reflect the change. If a registration was not authorized by a valid transaction, or if it is based on a transaction that has been set aside, registrations must be revised to reflect the ownership of the interest under the general law. If the holder of a prior interest has a right to perfect the legal ownership of that interest, registrations must be revised to reflect that ownership.
3. Section 5.4(1) does not say who is to make the revisions or who is to decide that registrations should be revised. The revisions will always be made by Registrars. Registrars will revise registrations whenever documents in certain standard forms are put before them. Courts will order Registrars to revise registrations after judicially determining that existing registrations do not conform to the ownership of the interest under the general law. The revision of registrations goes on continually in order to bring the register into conformity with the general law.
4. Section 5.4(1) is subject to sections 5.5, 5.6 and 5.7. Each of these says that in particular circumstances registrations are not to be revised under section 5.4(1). They make exceptions to section 5.4(1) as follows:
 - (a) Suppose that A is registered as owner of an interest but O, the displaced or subordinated owner, is entitled to have registrations revised to displace A and restore O's position. Suppose further that B acquires an interest from A without fraud. Section 5.5 says that the successor, B, is entitled to have registrations revised in B's favour and that revisions cannot be revised in O's favour in a way that would prejudice B. This is the heart of title registration, as it enables B to rely on the register.
 - (b) Suppose that A became registered as owner of an interest without a valid transaction and no successor has intervened. Section 5.6 applies if A believed that there was a valid transaction, was unaware of the circumstances that made the transaction invalid, and gave value or otherwise detrimentally relied on the invalid transaction. It provides a scheme for giving both A and O remedies, which may or may not involve revising registrations in O's favour.
 - (c) Section 5.7 applies in the unusual case in which there are registrations in two conflicting registers and interests have been derived from each of them. It provides a scheme for giving remedies to claimants under both registers.

5. Specific comments on section 5.4(1)(a), (b) and (c) are as follows:

(a) Transaction which binds the registered owner

Section 1.1(t) defines "transaction" very broadly. It includes dispositions by registered owners. It includes the passing of interests by operation of law, including such things as bankruptcy, the effect of limitations period, estate transmissions and expropriations. Section 5.4(1)(a) requires that registrations be revised so that the register will reflect the legal results of all things that bind registered owners.

(b) Invalid or defeasible transaction

Registrations sometimes occur although they are not authorized by valid transactions. Examples are registrations made under official error or on the registration of forged documents. Such registrations are effective: section 5.3(1) says that the registered owner is the owner. But registrations that are not authorized by a valid transaction do not reflect the general law and are therefore subject to revision under section 5.4(1)(b) unless section 5.6 applies.

A document obtained by fraud may be set aside by the courts. A document that does not correctly give effect to the intentions of the parties may be rectified by the courts. The document is valid until set aside or rectified, and a registration based on the document is valid. However, once the document is set aside or rectified, the register no longer truly reflects ownership under the general law, and registrations must be revised to make it do so.

(c) Enforcement of conflicting interests (section 5.4(1)(c))

Section 4.5 establishes the priorities among conflicting unrecorded and recorded interests, and section 5.3(3) and (4) bring registered interests into the same system of priorities. If it is necessary to revise registrations in order to give effect to priorities, that will be done, usually under court order.

Suppose, for example, that O, the registered owner of Blackacre, sells Blackacre under agreement for sale to A, who records the interest. Suppose that O then transfers Blackacre to B, who becomes registered as owner. When A's obligations under the sale agreement are fully performed, A is entitled to have registrations revised, that is, A is entitled to become registered as owner of Blackacre and to have B's registration cancelled.

Suppose, instead, that O granted a lease to A, who did not record or register it. Suppose that B obtained the transfer of Blackacre from O in fraud of A. A's interest is prior in time to B's interest and B is not entitled to priority over A under section 4.4. A is entitled to have

registrations revised by having the lease registered against B's fee simple ownership.

Section 5.4(2)

1. Section 5.4(1) says that registrations "shall" be revised in certain circumstances. In each of those circumstances the general law gives some person a right to the interest that will result from the revision.
2. Section 5.4(2) erects the right into a statutory interest. The incidents of the statutory interest are that it may be recorded and that it entitles the person to the benefits of the registered interest which they are entitled to obtain.
3. Like any other off-register interest, the statutory interest is vulnerable. A successor to the registered owner who records or registers an interest may acquire priority over the off-register statutory interest and thus subordinate it or defeat it entirely. The person entitled to the revision can protect themselves by recording the statutory interest, at which point it takes priority in the same way as any other recorded interest.
4. Section 5.4(2)(b) confers a right to have registrations revised where a transaction on which a previous revision was based has been rectified or cancelled under law. This occurs when the intention of the parties was not reflected properly in a document or when the document was obtained by fraud. The subsection does not apply until the rectification or setting aside has taken place. However, the common law confers an interest on the occurrence of the mistake or fraud, and that interest can be recorded immediately when the mistake or fraud is discovered.

Section 5.4(3), (4) and (5)

Section 5.4(1) provides, in effect, that registrations must be revised so that the registration will reflect the proper legal ownership under the general law. But sometimes, what appears to be a transaction binding a registered owner that must be registered under section 5.4(1)(a) may not be what it seems. Sometimes, the Land Registration Office records may disclose a doubt as to whether the register correctly reflects the general law. Section 5.4(3), (4) and (5) provide a scheme to cope with such circumstances. Essentially they enable the Registrar to hold the ring while the parties decide among themselves what their respective rights are or go to court for a judicial determination.

The three subsections give the Registrar two powers. The first is a power to refuse to register even an apparently valid document if information the Registrar has indicates that there is a doubtful question of fact or law that affects the lawfulness of the proposed registration. The second is a power to record a statutory interest to have registrations revised. If the Registrar, for example, is told that a transfer they are about to register is forged, the Registrar may reject it for registration but also record the transferee's interest in case the transfer is valid, so that the register is in effect frozen until the

respective rights are determined. Or, if the Registrar finds from the Land Registration Office Records that a registration was made in error but that another interest has intervened, they may record the possible statutory interest until it is determined whether the holders of the subsequent interest obtained it without fraud.

Section 5.4(6)

So long as a registration remains uncancelled, the registered owner will be the owner of the registered interest under section 5.3(1). Because the declaration applies only while the registration is uncancelled, cancellation of the registration will terminate the declaration of ownership, and section 5.4(6) will go on to divest the interest and cancel its recording. The legal ownership of the divested interest will either vest in a new owner or, if it is not transferred and is a derived interest, will merge in the interest from which it is derived and thus will be effectively transferred to the owner of that interest.

If the cancellation of a registration is not authorized, the owner who was registered under it will have a statutory right under section 5.4(1)(b) to have registrations revised.

Reliance on improper registration

5.5

(1) This section is subject to section 5.7 and is applicable when

- (a) a registration is or was subject to revision,
- (b) an interest has been obtained by an owner as a successor from the owner under the registration subject to revision, and
- (c) that interest is, with respect to the register which included the registration subject to revision, entitled to priority of enforcement under section 4.4 over an interest of a person entitled to have registrations revised.

(2) When this section applies

- (a) registrations shall be revised, in any registers, as required for the enforcement of the interest of the successor, and
- (b) registrations shall not be revised to the prejudice of the interest of the successor on the grounds that the interest was obtained from an owner under a registration subject to revision.

Annotation

Section 5.5

1. Section 5.5 is the heart of the title registration system. It is section 5.5 that enables a purchaser to rely on the register and thus obtain secure ownership of an interest in land. We will illustrate its effect by a series of examples.

Example 1

Suppose that O was registered as owner of an estate in fee simple absolute in Blackacre. Suppose further that A has, without any valid transaction, become registered as owner of Blackacre (for example, upon the basis of a forged or otherwise unauthorized transfer or a simple mistake of transcription in the land registration office), and O's registration has been cancelled. Suppose further that A knows that there is no valid transaction and is therefore not entitled to the protection of section 5.6.

Under section 5.4(1)(b), A's registration will be subject to revision (i.e., cancellation) because of the lack of a valid transaction, and O will have a statutory interest under section 5.4(2)(a) which will entitle O to the benefits of the interest which was prejudiced by A's registration (i.e., the estate in fee simple in Blackacre). Accordingly, O will be entitled to have A's

registration cancelled and to become registered as owner of Blackacre. Section 5.5(1) does not apply in terms because no interest has been obtained by an owner as a successor from A and it does not apply in policy because no third party is involved.

Example 2

Suppose next, that, under the circumstances set out in Example 1, A transfers Blackacre to B, who registers the transfer and becomes registered owner of Blackacre. The conditions of section 5.5(1)(a) and (b) have now been satisfied. Suppose further that B acquired and registered the transfer from A without fraud and that O's statutory interest under section 5.4(2) is not recorded. B's registered interest is recorded and must be enforced with priority in accordance with section 4.4 (see section 5.3(3) and (4)), and it satisfies the conditions for priority of a subsequent interest under section 4.4(2)(b). The condition of section 5.5(1)(c) (that B's registered interest must be entitled to priority over O's statutory interest) has now been satisfied. Section 5.5 applies.

Section 5.5(2)(a) provides that, under the circumstances described above, registrations must be revised as required for the enforcement of the interest of the successor, that is, B's interest. On the facts so far given, that provision is unnecessary, because B is the sole registered owner, and no revision of registrations is required for the enforcement of B's interest.

Example 3

Suppose, however, that O's registration was *not* cancelled. There would then be two valid registrations, one naming O as the registered owner and the other naming B. On these facts, a revision of registrations (i.e., the cancellation of O's registration) is required for the enforcement of B's registered interest. Since section 5.5(2)(a) provides that registrations shall be revised as required for the enforcement of B's interest, it follows that O's registration must be cancelled.

Section 5.5(2) goes on to provide that registrations are not to be revised to the prejudice of B's interest on the grounds that A's registration was subject to revision (i.e., cancellation). This ensures that B's registration will be enforceable.

2. Essentially, what section 5.5 says is that a person who acquires an interest from a registered owner and becomes registered as owner of the interest acquires ownership free and clear of the unrecorded and unregistered claims of prior owners, even if a prior owner has an existing registration. This result is necessary for the promotion of facility of transfer. A similar example could be constructed for any case in which the interest registered in the name of A and acquired by B is an interest that conflicts with the interest of O.

3. For a discussion of a case in which A obtains registration under an unauthorized transaction but in the belief that it was authorized by a valid transaction and without knowledge of the facts that rendered it invalid, see section 5.6 and the annotations thereto. For a discussion of a case in which there are conflicting registers and interests have been acquired from the holders of two conflicting interests under the two registers, see section 5.7 and the annotations thereto.

Reliance on invalid transaction

5.6

- (1) This section is subject to section 5.5 and is applicable when a revision of registrations**
 - (a) was not authorized by a valid transaction,**
 - (b) benefits a registered owner**
 - (i) who believed that the revision was authorized by a valid transaction,**
 - (ii) who had no knowledge of the facts which made the transaction invalid, and**
 - (iii) who paid value for the benefits purportedly obtained under, or detrimentally changed his position in reliance on, the invalid transaction, and**
 - (c) has prejudiced a former or subsisting registered owner.**
- (2) When this section applies, either the registered owner or the prejudiced person may apply to the court under Part 8 for**
 - (a) a declaration of the rights of the parties, and**
 - (b) orders for revision of registrations and for compensation,****and shall name the Registrar General as a party to the proceeding.**
- (3) In an action under subsection (2), the court shall determine the rights of the parties in accordance with the following principles:**
 - (a) subject to subsections (4) and (5), the prejudiced person has a right to have registrations revised, to the extent not prohibited by section 5.5, as required to nullify the effects of the unauthorized revision, and**
 - (b) a registered owner, and the prejudiced person if a revision under this subsection cannot fully nullify the effects of the unauthorized revision, shall be compensated in accordance with Part 7 for the loss sustained because of the revisions.**
- (4) The court may, if it is just and equitable, do both (but not one only) of the following:**
 - (a) confirm the unauthorized revision, and**

- (b) direct that the prejudiced person be compensated in accordance with Part 7 for the loss sustained because of the confirmation of the unauthorized revision.
- (5) In deciding whether it is just and equitable to exercise its powers under subsection (4), the court shall consider the following circumstances:
- (a) the nature of the ownership and the use of the property by the parties,
 - (b) the circumstances of the invalid transaction,
 - (c) the special characteristics of the property and their appeal to the parties,
 - (d) the willingness of any of the parties to receive compensation,
 - (e) the ease with which the amount of compensation for a loss may be determined, and
 - (f) any other circumstances which, in the opinion of the court, may make it just and equitable for the court to exercise or refuse to exercise its powers under subsection (4).
- (6) If the Registrar General is satisfied that this section applies,
- (a) he may enter into an agreement with either the registered owner or the prejudiced person providing for payment of compensation and reasonable expenses of bringing the claim, and
 - (b) the agreement is deemed to be an agreement under section 7.5(2).
- (7) Section 7.7 applies to an agreement entered into under subsection (6) and to an order for compensation made under this section.

Annotation

Section 5.6

1. Suppose that O was registered as owner of an estate in fee simple absolute in Blackacre. Suppose further that A has, without any valid transaction, become registered as owner of Blackacre (for example, upon the basis of a forged or otherwise unauthorized transfer, and O's registration has been cancelled.

Up to this point, the fact situation is the same as that in the first example discussed under section 5.5. However, suppose further that A obtained registration in the belief that it was authorized by a valid transaction and without knowledge of the facts which rendered the transaction invalid, for example, in the belief that a forged document was in fact a valid transfer from O to A. (The reverse supposition was made in the section 5.5 example.) Suppose also that A gave value for the request for cancellation or detrimentally altered his position on the strength of the cancellation of the registration. The conditions of section 5.6(1) are met, and section 5.6 applies.

2. The effect of section 5.6, where it applies, is as follows:
 - (1) Both O and A have remedies. One will keep or regain ownership of Blackacre. The other will receive compensation.
 - (2) The presumption is in favour of O regaining ownership, which will involve the cancellation of A's registration and O's re-registration as owner. In that event, A will receive compensation. (See section 5.6(3).)
 - (3) However, if it is just and equitable to do so the court may award ownership to A under section 5.6(4), in which case A's registration will be confirmed and O will receive compensation. In deciding what is just and equitable, it may consider not only the factors specifically listed in section 5.6(5)(a) to (e), but also, under section 5.6(5)(f), any other relevant factors.
3. Under *Frazer v. Walker*, [1967] A.C. 569 (P.C.), A's ownership would always be confirmed if A gave valuable consideration. This is probably the law of the Torrens-based jurisdictions. It is probably the law of British Columbia with respect to a fee simple estate, though not, under *Credit Foncier v. Bennett* (1963), 43 W.W.R. 546 (B.C.C.A.), with respect to a registered charge.
4. The *Frazer v. Walker* approach promotes facility of transfer. Under it a purchaser who receives documents in the ordinary course of business need not engage in elaborate and usually futile investigations to determine whether the documents are genuine. Section 5.6 operates somewhat differently. It assures A of a remedy, which is enough to promote facility of transfer. It recognizes that in most cases it will be better to restore ownership to O and compensate A, but that there may be cases in which the remedies should be reversed. It is closer in principle to section 60(12) of the Ontario Land Titles Act under which there is a discretion to cancel A's registration and pay compensation for doing so.
5. What if, instead of registering an interest, the Registrar cancels a registration without being authorized to do so by a valid transaction (e.g., by cancelling a registration on the strength of a forged or unauthorized request for cancellation)? Does section 5.6 apply?

First, a cancellation of a registration is a "revision of registrations" under the opening words of section 5.6(1). This is because the cancellation of a registration divests the registered interest under section 5.4(6) and is therefore a "termination" as defined in section 1.1(r), which in turn makes it a "registration" under section 1.1(m).

Second, a "termination" is a "transaction" as defined in section 1.1(t), so that the cancellation of a registration is a "transaction". Therefore, a registered owner who believes that a cancellation of a registration was authorized by a valid request for cancellation satisfies section 5.6(1)(b)(i); a registered owner who has no knowledge of the facts that made the request for cancellation invalid satisfies section 5.6(1)(b)(ii); and a registered owner who pays value for the benefits purportedly obtained under, or detrimentally changed their position in reliance upon, an invalid request for cancellation of a registration satisfies section 5.6(1)(b)(iii).

Section 5.6 accordingly applies to an unauthorized cancellation of a registration if a benefited registered owner satisfies the conditions of section 5.6(1)(b).

6. The requirement that the benefited registered owner who wants to rely on an unauthorized transaction must have paid value for the benefit of the cancellation of the registration or detrimentally relied on the transaction is a departure from the protection that the proposed Act gives to volunteers who become registered as owners. Its purpose is to avoid the conferring of windfalls upon registered owners who have not participated in or relied on a change in the register. Suppose, for example, that O had granted a mortgage to A, a second mortgage to B, and a third mortgage to C. Suppose further that C had insisted that A's mortgage be discharged as part of the transaction, and that O delivered to C an unauthorized request for cancellation of A's mortgage, on the strength of which C advanced money under what should have been a second mortgage. C should be able to rely on the discharge, but there is no reason why the section should confer upon B the windfall effect of promoting his second mortgage to a first mortgage. If C is compensated, A should be entitled to have their mortgage registered again in priority to B's mortgage.
7. Section 5.6 is made subject to section 5.5. Suppose that the facts were as in Annotation 6 and A's registration is to be restored. But suppose further that B, before the facts became known, had transferred their mortgage to B1, who had registered the transfer and become registered. Section 5.5 protects B1 in that case, and A's mortgage cannot be registered in priority to the mortgage that now belongs to B1. In the result, A would probably have to be compensated rather than re-registered.

Conflicting registrations**5.7****(1) In this section,**

(a) "root registered interests" means the interests registered in different registers, whether parcel or interest registers, which resulted in the initial conflict between the interests registered in different registers, and

(b) "derived interests" means interests, whether or not recorded or registered, which are derived from a root registered interest.

(2) This section is applicable to determine the priority of enforcement of derived interests from one root registered interest relative to derived interests from another root registered interest.

(3) This section is not applicable to determine the priority of enforcement of conflicting

(a) root registered interests, and

(b) interests derived from only one root registered interest.

(4) When this section is applicable, all of the derived interests from one root registered interest shall be enforced with priority over the conflicting derived interests from another root registered interest in accordance with the first of the following sequence of rules which establishes the derived interests to be enforced with priority:

Rule 1.

If there is actual possession of land under an interest conferring a right to possession, whether a root registered interest or a derived interest from it, the derived interests from that root registered interest shall be enforced with priority.

Rule 2.

If there is an interest obtained for value derived from one root registered interest, and no such interest derived from another root registered interest, the derived interests which include the interest obtained for value shall be enforced with priority.

Rule 3.

The derived interests from the root registered interest which was not subject to revision under section 5.4 when the initial conflict between interests registered in different registers occurred shall be enforced with priority.

- (5) Any owner who sustains loss because the derived interests from another root registered interest are enforced with priority under this section shall be compensated in accordance with Part 7.**

Annotation**Section 5.7(1)-(3)**

The law cannot say that each of two persons owns the same interest in land to the exclusion of the other or that each of two persons is entitled to enforce conflicting interests with priority over each other. Some special principle must apply to determine which of the two will prevail.

The question as to when the special principle should apply, and the answer given by section 5.7, may be illuminated by examples:

Example 1

A is the registered owner of Blackacre and Greyacre under Register 1. A transfers Blackacre to B. The Registrar, in another register (Register 2), registers B as the owner of both Blackacre and Greyacre, but does not cancel A's registration as owner of Greyacre and does not cancel Register 1. The fact situation, accordingly, is that Register 1 says that A is the owner of Greyacre and Register 2 says that B is the owner of Greyacre.

In this example, there are two conflicting registers which make two conflicting statements about the ownership of Greyacre. However, the conflict can be settled without resort to a conflicting registers provision. That is because section 5.4(1)(b) entitles A to have B's unauthorized registration cancelled, leaving A the sole registered owner of Greyacre.

Section 5.7 does not apply. It does not apply in terms because, while there is a conflict between root registered interests, there is no conflict between derived interests. It does not apply in policy because A has a statutory right to revision. If there is a contest at that point, A will win. Section 5.4(1)(b) applies.

Example 2

The facts are the same as in Example 1, except that C has obtained a transfer of Greyacre from B without fraud and has registered it or recorded it. The fact situation now is that (a) Register 1 says that A is the registered owner and (b) Register 2 says that either B or C is the registered owner, depending on whether C's interest is registered or recorded. Again there are two conflicting registers, and two conflicting statements about the ownership of Greyacre.

Section 5.7 does not yet apply. It does not apply in terms. There is now only one derived interest (C's interest). Therefore, although there is a conflict between one derived interest and one root registered interest, there is no conflict between two derived interests. It does not apply in policy because the policy in favour of facility of transfer requires the law to protect the last person who, under the hypothetical facts, obtained an interest from a registered owner. If there is a contest, C will win. Section 5.5 applies.

Example 3

The facts are the same as in Example 1, except that

- (a) C has, as in Example 2, obtained a transfer from B without fraud and has become registered as owner of Greyacre or has recorded their ownership,
- (b) D has obtained a transfer from A without fraud and has become registered as owner of Greyacre or has recorded their ownership.

The fact situation is now that (a) Register 1 says that either A or D is the registered owner, depending on whether D registered or merely recorded, and (b) Register 2 says that B or C is the registered owner, depending on whether B registered or merely recorded. Again, there are two conflicting statements about the ownership of Greyacre.

Section 5.7 applies. It applies in terms because

- (a) A's fee simple and B's fee simple are root registered interests registered in different registers which resulted in the initial conflict between the interests registered in different registers, and
- (b) C's fee simple and D's fee simple are interests each of which is derived from one of the root registered interests.

Section 5.7 applies in policy because there are two contradictory statements of the law, one of which says that B or C is the owner and the other of which says that A or D is the owner, and there is no other rule or principle which determines who is to be treated as the legal owner of Greyacre.

Section 5.7(4)

1. If section 5.7 applies, section 5.7(4) determines how the conflict between interests is to be resolved. It does so by laying down three rules. The application of these rules can be illustrated by example, using the facts in Example 3 above, in which D acquired an interest in Greyacre from A and is recorded or registered in Register 1, while C acquired a conflicting interest in Greyacre from B and is recorded or registered in Register 2. The examples are as follows:

Example 1

A or D is in possession. Rule 1 says D will win. Alternatively, if B or C is in possession, Rule 1 says that C will win. If none of A, B, C and D is in possession, Rule 1 will not decide the issue.

Example 2

None of A, B, C and D is in possession. D gave value to A and C did not give value to B. Rule 2 says that D will win. Alternatively, if C gave value to B and D did not give value to A, Rule 2 says that C will win. If neither D nor C gave value, or if both C and D gave value, Rule 2 will not decide the issue.

Example 3

If none of A, B, C and D is in possession, and if neither or both of C and D gave value, Rule 3 says that D will win, because, on the hypothetical facts, A was entitled to have B's registration cancelled before either C or D acquired an interest.

2. The examples deal with cases in which there is only one derived interest recorded or registered in each of the conflicting registers. Under section 5.7(4), if one interest recorded or registered in one register wins, all interests in that register which are derived from the root registered interest will win.
3. Under section 5.7(4), the winning interests are entitled to be enforced with priority over the losing interests. Recorded or registered interests in one register may be subordinated to the recorded and registered interests in the other, or registrations may be cancelled under section 5.4(1)(c). The precise remedy will depend upon the circumstances.
4. Under section 5.7(5), the losing interests will be entitled to compensation.

**PART 6
INTERESTS OVERRIDING REGISTER**

Interests overriding register

- 6.1 Notwithstanding sections 4.4 and 5.3, the following interests, whether or not recorded or registered, and no other interests, shall be enforced with priority relative to all other interests according to law:**
- (a) except when the interest has been expressly registered under this Act, an interest of the Crown in right of Alberta reserved in or excepted from the original grant of the fee simple absolute from the Crown either expressly or pursuant to an Act;**
 - (b) a tax lien in favour of a municipality;**
 - (c) irrigation and drainage district rates;**
 - (d) a leasehold for a term of 3 years or less if**
 - (i) there is actual possession of the land under the lease, and**
 - (ii) that possession could be discovered through reasonable investigation;**
 - (e) any decrees, orders or executions, against or affecting the interest of the owner of the land, that have been registered in the general register and maintained in force against the owner.**
 - (f) an interest created under an Act which expressly refers to this Act and expressly provides that the interest is enforceable with priority otherwise than as provided in this Act.**

Annotation

Section 6.1

1. Section 6.1(a) recognizes the public interest in retaining for the public benefit what is excepted or reserved from Crown dispositions. However, it adopts what is essentially the Saskatchewan and Ontario position, namely, that the register, by making an express statement (e.g., "minerals included") can override the otherwise overriding exception or reservation.
2. Section 6.1(b) makes municipal tax liens overriding interests. It does so for two reasons. First, it is not practicable to keep up to date tax information in a land registration office, so that purchasers must obtain it from municipal authorities anyway. Second, privately owned land is so commonly the subject of municipal taxes that purchasers will not fall into the trap of

thinking that because the municipality's claim is not shown on the land register it does not exist. Much the same considerations apply to irrigation and drainage district liens, and section 6.1(c) therefore gives them overriding effect as well.

3. Section 6.1(d) is a significant derogation from facility of transfer, as the existence of a lease of anything up to 3 years could be a significant derogation from rights of ownership which could be discovered only by on-site investigation. However, requiring short term tenancies to be recorded or registered would be an unconscionable burden on tenants and upon land registration offices. This is a somewhat revised version of section 65(1)(d) of the Land Titles Act.
4. Section 6.1(e) is necessary to give effect to instruments entered in the general register under section 9.5. It is expected that the existence of the general register will be terminated under section 9.15, and section 6(1)(e) will then be repealed by section 9.16.
5. Section 6.1(f) recognizes the power of the Legislature to give overriding effect to interests in land created under other statutes, but would avoid the conferring of overriding effect inadvertently.

**PART 7
COMPENSATION**

Grounds for compensation

7.1 Except as provided in section 7.4, a person who sustains loss through

- (a) a revision of registrations, a recording, or a cancellation of a recording, which is not authorized by this Act,**
- (b) an omission to revise registrations, or to make or cancel a recording, as required by this Act, or**
- (c) an error or omission by the Registrar not included in paragraphs (a) and (b),**

is entitled to be compensated for the loss sustained.

Annotation

Section 7.1

1. Sections 7.1(1)(a) and (b) confer a right to compensation for loss sustained as a result of a malfunctioning of the interest recording and title registration system. The system malfunctions either when an entry (a recording, registration, cancellation or postponement) is made which is not authorized by the system or when an entry is not made which is required by the system. An example of the former is the registration of an interest based upon a forged or unauthorized document or the registration of a greater interest than is conveyed by an authorized document. An example of the latter is a failure to record a proper document submitted for recording. Section 7.1(1)(c) goes on to provide for compensation for a loss through official error not covered by section 7.1(a) and (b).
2. Regulations will prescribe the form of documents submitted for registration and will prescribe the way in which documents are to be authenticated. It is intended that Registrars will accept for registration documents which comply with the regulations and that they will not make independent investigations to determine the authenticity or validity of documents. Nevertheless, if a Registrar accepts for registration a document which does not embody a valid transaction, and if the registration brings about the cancellation or subordination of a registered interest, the deprived or subordinated owner is entitled to compensation under section 7.1(1). In one sense, the system will have operated as it is intended to operate, but the registration is nevertheless unauthorized by the statute and, in another sense, the system will have malfunctioned.
3. Sections 5.6 and 5.7 also provide for compensation. Both refer to Part 7.

Amount of compensation

7.2

(1) The compensation shall be,

(a) if a person is deprived of an interest, the value of the interest, or

(b) if the priority of an interest of a person is subordinated, the reduction in value of the interest,

determined as of

(c) the date on which the person submits a claim for compensation to the Registrar General, or

(d) the date on which the person commences an action for compensation, whichever is earlier.

(2) In determining

(a) the value of an interest, or

(b) the reduction in the value of an interest

under subsection (1), the Court may take into account any benefit received by the person referred to in the subsection.

(3) For any loss for which a person is entitled to be compensated under this Act, other than a loss described in subsection (1), the compensation shall be the actual amount of the damage suffered.

Annotation

Section 7.2

1. Section 7.2(1) establishes a standard by which compensation for a compensable loss under section 7.1(1)(a) or (b) is to be quantified. Where system malfunction results in the deprivation or subordination of an interest, it is the value of the interest (in the case of deprivation) or the reduction in value of the interest (in the case of subordination) which determines the amount of compensation. However, under section 7.2(2), the Court would be able to set off against the compensation the value of any benefit received by the claimant.
2. Where there is a loss due to Registrar's error that is not covered by section 7.2(1), section 7.2(3) provides that compensation is to be the amount of damage suffered.

3. Under sections 7.5 and 7.6, interest and either expenses or costs may be payable in addition to the compensation.
4. Section 7.2(1) prescribes the date as of which compensation for loss or subordination of an interest is to be quantified, so that compensation will not be quantified as of the date of the malfunctioning of the system. The date prescribed by section 7.2(1)(c) and (d) is the earlier of the date on which the claimant submits a claim for compensation to the Registrar General under section 7.5 and the date on which the claimant commences an action in court under section 7.6.

Limitation of time

7.3

- (1) The person ceases to be entitled to compensation unless, before the expiration of two years after he knows or ought to know of the loss sustained or within such further time as is agreed to by the Registrar General, he either
- (a) enters into an agreement with the Registrar General providing for the payment of compensation, or
 - (b) commences an action for compensation in the court.
- (2) The operation of the limitation period provided by subsection (1) is suspended during any period of time the claimant was a person under disability.
- (3) Under subsection (2), the claimant has the burden of proving that the operation of the limitation period was suspended.

Annotation

Section 7.3

1. A person who sustains loss because of an unauthorized entry in a register or because of the omission to make a required entry should bring a claim for compensation promptly. Section 7.3 therefore prescribes a limitation period of two years. However, the time does not start to run until the claimant knows or ought to know of the loss sustained, so that a claimant is protected against losing an entitlement to compensation before he or she could be reasonably expected to know of the loss. Time does not run against a person under disability.
2. Submitting a claim to the Registrar General will not of itself stop the time from running: a concluded agreement is necessary. A prudent claimant will therefore commence an action in court before the two year period could possibly have elapsed on any view of the facts. However, the commencement of an action will be rendered unnecessary if the Registrar General agrees to an extension of the time, which would probably be done if there are serious negotiations on foot.
3. Section 164 of the Land Titles Act provides that no action shall be brought against the Registrar without 3 months notice. This effectively reduces the limitation period. It has not been carried forward.

When compensation not payable

- 7.4 A person is not entitled to compensation if the loss was sustained because the person, with actual knowledge of an interest which could be recorded under section 5.4(2), failed to record the interest promptly.**

Annotation**Section 7.4**

Under section 5.4(2), an owner who is deprived of a registered interest by an unauthorized registration or by the registration of a document that is subject to cancellation or rectification is entitled, under a statutory interest which can be recorded, to the benefits of the registered interest. That statutory interest may be lost or subordinated if it is not recorded when a third person acquires an interest from the owner under the unauthorized registration. The effect of section 7.4 is that there will be no compensation for a deprived owner who, with knowledge of the facts, loses the interest because of a failure to avail himself or herself of the protection afforded by section 5.4(2).

Agreement for compensation

7.5

- (1) A person who claims to be entitled to compensation may submit a claim to the Registrar General.**
- (2) If the Registrar General is satisfied that the person is entitled to compensation, he may enter into an agreement with the person providing for payment to the person of**
 - (a) compensation,**
 - (b) reasonable expenses of bringing the claim, and**
 - (c) interest on the amount of compensation from the date that the Registrar receives the claim at the rate for pecuniary damages established under section 4(2) of the *Judgment Interest Act*.**
- (3) When an agreement is entered into under subsection (2),**
 - (a) the Registrar General must certify to the Provincial Treasurer that the person is entitled to compensation, expenses and interest as set forth in the agreement,**
 - (b) the person ceases to be entitled to compensation under this Part and**
 - (c) the person is entitled to receive the compensation, expenses and interest provided for in the agreement.**

Annotation

Section 7.5

Section 7.5 provides a statutory procedure under which a person who claims to be entitled to compensation may negotiate a settlement of the claim with the Registrar General covering compensation, reasonable expenses of bringing the claim, and interest. Once the agreement is reached, it is enforceable and takes the place of the claim for compensation.

A similar agreement may be negotiated under section 5.6(6) and is deemed to be an agreement under section 7.5(2).

Judgment for compensation

7.6

- (1) A person who claims to be entitled to compensation may commence an action in the court naming the Registrar General as defendant.**
- (2) The court may give judgment**
 - (a) declaring that the person is entitled to compensation, and**
 - (b) determining the amount of**
 - (i) compensation,**
 - (ii) interest under the *Judgment Interest Act*, and**
 - (iii) costs.**
- (3) Interest under subsection (2)(b)(ii) shall be calculated at the rate for pecuniary damages established under section 4(2) of the *Judgment Interest Act*.**
- (4) For the purposes of the *Judgment Interest Act*, the person's cause of action shall be deemed to have arisen on**
 - (a) the date on which the person submits a claim for compensation to the Registrar General, or**
 - (b) the date on which the person commences an action for compensation,****whichever first occurs.**

Payment of compensation

7.7 Upon receipt of

- (a) a certificate of the Registrar General under section 7.5(3),
- (b) a judgment of the court under section 7.6(2) or section 5.6, or
- (c) an order of the court under section 15 of the *Dower Act*,

the Provincial Treasurer shall, subject to any regulations under section 2.3(f), pay to the person the amounts of compensation, expenses, costs and interest provided for therein.

NOTE: This subsection should be adjusted to fit in with financial administration legislation and regulations.

Annotation

Section 7.7

Once a claimant has entered into an agreement with the Registrar General for compensation, expenses and interest, the financial minister must pay the agreed amount. Once the appropriate court has given judgment for compensation, costs and interest, either under section 7.6(2) or section 5.6, the financial minister must pay the amount of the judgment. However, regulations under section 2.3 may limit the amount payable.

Section 7.7 does not designate the source of payment. The Government could maintain an actual or notional compensation fund or it could deal with fees and payments as general revenue matters.

Liability of wrongdoer

7.8

- (1) In subsection (2), "wrongful act" does not include an act or omission which is merely careless or negligent.
- (2) If the loss for which compensation is payable under section 7.5 or section 7.6 was caused in whole or in part by a wrongful act, the person who committed the wrongful act, other than a Registrar or an employee of the land registration office, is liable to the Government for the amount of the compensation or for such portion thereof as the court finds to be just and equitable, having regard to the extent of the person's responsibility for the loss.
- (3) The liability of the person may be enforced by
 - (a) the Registrar General in an action brought against the Registrar General for compensation under section 7.5, or
 - (b) the Provincial Treasurer in an action brought against the person.
- (4) Nothing in this section affects a right of the Government to enforce any right received by the Government under an assignment or subrogation.

Annotation

Section 7.8

1. Section 7.8 confers upon the Government a right of contribution from a person whose intentionally wrongful act causes or contributes to loss for which compensation is payable. An example is a rogue who forges a transfer from a registered owner, delivers it to a purchaser, and collects the proceeds. The contribution could be the full amount if the appropriate court decides that, having regard to the responsibility of the person, full indemnity would be just and equitable.
2. The section does not confer a right of contribution against someone whose negligence causes a loss for which compensation is payable. Section 7.8(4), however, preserves any right that the Government might acquire under the general law.

**PART 8
POWERS OF COURT**

Application by aggrieved person

8.1 A person who objects to

- (a) a recording or the cancellation of a recording,**
- (b) a revision of registrations, or**
- (c) any decision of a Registrar with respect to any action he is required or authorized to take under this Act,**

may

- (d) require the Registrar to set forth in writing the reasons therefor, and**
- (e) apply to the court for an order requiring the Registrar to take any action he is required or authorized to take under this Act, and on the application the court may so order and make any further order it thinks proper.**

Annotation

Section 8.1

Section 8.1 provides, in effect, for judicial review of a Registrar's actions and decisions, which may affect only the applicant or may affect the relative rights of the applicant and others.

Application by Registrar General

- 8.2 The Registrar General may apply to the court for directions in respect of any matter concerning his or a Registrar's duties under this Act, and on the application the court may give any directions and make any further orders it thinks proper.**

General jurisdiction of Court

8.3

- (1) In any proceeding with respect to an interest, the court may direct a Registrar to
- (a) record an interest, cancel a recording in whole or in part, or revise the priority of recordings, or
 - (b) revise registrations.
- (2) In any proceeding in respect of a recording, the court may order that the claimant give an undertaking or security that the court considers sufficient to indemnify every person against damage that may be sustained by reason of any disposition of the property being delayed or to answer the costs of the respondent.
- (3) The court may make an order under subsection (1) notwithstanding the failure of a document to comply with formalities.

Annotation

1. Section 8.3(1) is intended to give the Court wide powers to order the making on the register of whatever entries are necessary to give effect to the relative rights of parties to any kind of legal proceeding.
2. Section 8.3(2) carries forward section 140(a) of the Land Titles Act. A recording, without more, is an unsubstantiated claim and it may be fair in a particular case to require a claimant to give and secure an undertaking to pay damages if the claimant proves unable to substantiate the interest.
3. Section 8.3(3) is intended to ensure that the Court can order the registration of an interest under a document that does not comply with the regulations. If the general law recognizes an interest conferred by such a document, and if the interest is registerable, the Court must have power to order that the interest be registered.

Method of application

- 8.4 An application to the court under this Act may be made in a summary manner in accordance with the Rules of Court by originating notice, petition or otherwise as the rules provide, and subject to any order respecting notice to interested parties, or any further order the court thinks proper.**

Registration of judgment, order or certificate

8.5

(1) Subject to subsection (3), the Registrar shall not register a judgment, order or certificate made in any proceedings of a court that operates to cancel a registration or recording unless the judgment, order or certificate

- (a) is consented to by all the parties to the proceedings or their solicitors,**
- (b) was granted *ex parte* and states that it does not have to be served on any person,**
- (c) is accompanied by a written undertaking from those persons having a right to appeal from the judgment, order or certificate, or their solicitors, that no appeal from the judgment, order or certificate will be commenced,**
- (d) is accompanied by a certificate of the clerk of the court that issued the judgment, order or certificate to the effect**
 - (i) that no defence or demand of notice of proceedings has been filed in the proceedings on behalf of any defendant, or**
 - (ii) that the time for appeal from the judgment, order or certificate has expired and that no notice of appeal has been filed,**

or

- (e) is accompanied by a certificate of a solicitor to the effect**
 - (i) that an appeal to the Court of Appeal has been finally disposed of or discontinued, that the time for an appeal to the Supreme Court of Canada has expired and that no notice of appeal has been filed, or**
 - (ii) that the judgment, order or certificate has been appealed to the Supreme Court of Canada and that the appeal has been finally disposed of or discontinued.**
- (2) If a judgment, order or certificate referred to in subsection (1) has been appealed to the Court of Appeal or to the Supreme Court of Canada, a copy of the final judgment shall accompany the solicitor's certificate referred to in clause (e) of that subsection.**
- (3) This section does not apply to**
- (a) an order removing a builders' lien or removing a certificate of *lis pendens* with respect to a builders' lien, or**

- (b) a judgment, order or certificate that expressly states that it shall be registered notwithstanding the requirements of subsection (1).**

Annotation

Section 8.5 reproduces section 180.1 of the Land Titles Act with necessary changes.

PART 9
EXECUTIONS AND OTHER CHARGING INSTRUMENTS

Definitions

9.1 In this Part,

- (a) "charging instrument" means a writ of execution or other instrument that**
 - (i) charges generally, or**
 - (ii) binds in the same manner as a writ of execution,****the property interests of a person.**
- (b) "creditor" means the person who is entitled to the benefit of a charging instrument or to receive payment of money thereunder.**
- (c) "debtor" means the person whose property interests are bound by a charging instrument.**

Annotation

1. The definitions in section 9.1 are drafting devices intended to carry forward the Land Titles Act provisions relating to writs of execution and other instruments that bind an owner's lands generally.
2. The definition of "charging instrument" is taken from LTA 17.1.

Division 1
Recording interests conferred by writs and other instruments

Recording charging interests

- 9.2 The interest of a creditor under a charging instrument may be recorded in a parcel register or interest register established for land in which the debtor has an interest.**

Annotation

Section 17.1 of the Land Titles Act provides a procedure for having a writ of execution entered on a certificate of title. Section 9.2, as amplified by section 9.3(3), brings the writ into the recording system. A creditor will be able to record against successive parcels either by cross-referencing the first recording or by again giving particulars or a copy of the writ.

Binding effect

9.3

- (1) Upon the recording of an interest under subsection (1),**
 - (a) in the case of a writ of execution, all legal and equitable interests of the debtor in the land included in the parcel or interest register are bound by the writ of execution, and**
 - (b) in the case of a charging instrument other than a writ of execution, the interests of the debtor in the land included in the parcel or interest register are bound or charged in accordance with the Act under which the interest of the creditor arises,**

during the period of time that the writ of execution or other instrument is in force.
- (2) Section 4.5(2)(b) does not make the interest of a creditor under a charging instrument enforceable with priority over an interest that, until the recording of the creditor's interest, was entitled to priority over the creditor's interest.**
- (3) The Registrar shall cancel the recording of the interest of a creditor under a writ of execution**
 - (a) in accordance with Parts 4 and 8, or**
 - (b) upon receiving evidence from the sheriff showing the expiration, satisfaction or withdrawal of the writ.**
- (4) If an action is brought on a judgment before the date when the taking of the action would be barred by the *Limitation of Actions Act*, and, at the time when the action is brought, there is recorded in a Land Registration Office the interest of the creditor under a writ of execution that was issued on the judgment and is still in force, and if, while that judgment is still in force or would be in force but for the obtaining of a judgment based thereon, the execution creditor records an interest under the writ of execution issued on a judgment in the action, the last mentioned recording has the same priority as affecting land situated within the land registration district as the recording first hereinbefore mentioned and the Registrar shall endorse on the second recording a memorandum to that effect.**
- (5) Except as provided in subsections (2), (3) and (4), Parts 1 to 8 apply to a recording under this section.**

Annotation

1. Section 9.3(1) carries forward the substance of section 17.1(8) of the Land Titles Act.
2. LRRRA 9.3(1)(a) makes a creditor's interest under a writ of execution recordable and makes it binding on any interest of the debtor in the land against which it is recorded. LRRRA 9.3(1)(b) provides for the recording of creditors' interests under charging instruments other than writs of execution but does not give them any effect that they do not have under another Act. LRRRA 9.3(2) makes the general recording scheme of the draft Act apply to all of them. This is an adaption of LTA 17.1(8) to the scheme of the draft Act.
3. LRRRA 9.3(1) gives a writ of execution binding effect during the period of time that the writ is in force. LTA 122(3) provides that a writ of execution lapses after 6 years unless it is renewed. Since LTA 122(3) is one of the provisions that LTA 17.1(11) makes applicable only to things in the general register during the 3 years after LTA 17.3 comes into force, the legislative intention appears to be that the 6 year lapse provision does not apply to writs of which memoranda are made on certificates of title. LRRRA 9.3 therefore does not make any provision for the lapse of recorded writs of execution though LRRRA 9.13 does provide for the lapse of writs entered in the general register.
4. LRRRA 9.3(2) has no counterpart in the Land Titles Act. It gives effect to the rule in *Jellett v. Wilkie* (1896), 26 S.C.R. 282. In effect, it provides that a writ of execution does not by being recorded or entered in the general register, acquire priority over a prior unregistered and unrecorded interest. It also applies to other charging instruments but its only effect with respect to them is to say that this Act does not give them priority over unrecorded and unregistered interests. It is for the Act under which they were created to establish their priority.
5. LRRRA 9.3(3) carries forward LTA 123(b) insofar as it refers to a writ that has been recorded. LTA 123(a) and (c) are covered by the general provisions relating to the cancellation of recordings and the powers of the court.

6. LTA 122(4) provides for the registration of a writ under a successor judgment that is obtained in order to avoid the statute-barring of the original judgment. LTA 122(4) is not included in the list of provisions that LTA 17.1(11) makes applicable only to things in the general register. We therefore assume that LTA 122(4) is intended to apply to writs of which memoranda are made on certificates of title, which suggests that it should apply under the draft Act to recorded writs. In addition, we think that it is appropriate to apply the draft Act's counterpart of LTA 122(4) to recorded writs so that the priority of the recording of the original writ can be continued by the successor writ. LRRA 9.3(4) therefore adapts LTA 122(4) to a recorded writ.

Record of names

- 9.4 The Registrar shall maintain a record that will enable him to provide a list of land owned by persons who have the same name as a person specified in a request made to the Registrar for a search of the parcel and interest registers.**

Annotation

1. Section 9.4 replaces section 17.3 of the Land Titles Act, which has not yet been proclaimed.
2. LRRRA 9.4 will not be proclaimed until the Land Registration Offices have the capacity to search all parcel and interest registers for a given owner's name and produce a list of all interests registered in the name of that owner. The achievement of that capacity will trigger the operation of LRRRA 9.14 to 9.16, under which no further entries may be made in the general register and entries existing at the time of proclamation will cease to have effect 3 years later. By that time, creditors will have had ample opportunity to record their writs in the appropriate registers.

**Division 2
General register**

Registration of writs of execution, etc.

9.5 The Registrar shall keep a register called the "general register"

- (a) in which shall be entered a record of all copies of charging instruments, and**
- (b) that shall set out in alphabetical order the names of the persons whose land is affected by charging instruments entered in the general register.**

Annotation

Section 9.5 is the authority for maintaining the general register. It carries forward section 17.1(1) of the Land Titles Act.

Writ of execution**9.6**

(1) On and after the entry by the Registrar of an execution or other writ affecting land in the general register,

(a) all legal and equitable interests of the execution debtor in any land there or thereafter registered in his name and including his interest, if any, as an unpaid vendor of the land, are bound by the execution, and

(b) no register shall be established and no transfer or other instrument executed by the execution debtor affecting the land is effectual except subject to the rights of the execution creditor under the writ while it is legally in force,

and the Registrar, on establishing a register and on registering any transfer or other instrument executed by the debtor affecting the land shall record the interest of the creditor under the execution or other writ in priority to the transfer or other instrument.

(2) A writ of execution a copy of which is transmitted to a Registrar is effectual as provided in this Part with respect to land belonging at any time during the currency of the writ to the execution debtor and situated anywhere within the land registration district, whether or not the land is within the judicial district of the sheriff to which the writ is directed and whether or not the judicial district is within the land registration district of the Registrar to which a copy of the writ has been transmitted.

(3) Section 4.2 does not apply to the recording of an interest under this section.

(4) Subsection (1)(b) does not apply where there is a material difference, within the meaning of section 9.8, between a name as it appears on a writ and the name as it appears on the instrument executed by the execution debtor.

Annotation

1. Sections 9.6(1), (2) and (4) carry forward sections 122(2), (2.1) and (7) of the Land Titles Act with necessary changes. They give binding effect to writs of execution and other writs affecting land and ensure that writs are recorded in priority to other registered dealings with the land if the name of the judgment debtor and that of the transferring owner are sufficiently similar. LRRA 9.6 does not give any validity or priority to charging instruments other than writs affecting land.

2. LRRR 9.6(3) exempts a carried-forward recording from the formal requirements of LRRR 4.2.

Priority of instrument in the general register

9.7

- (1) Land described in a parcel or interest register ceases to be bound by an instrument entered in the general register to the extent necessary to give priority to any interest acquired by**
- (a) the registration of, or**
 - (b) the recording of an interest under,**
- a document executed by the registered owner of the land, if,**
- (c) prior to the registration or recording, the interest under the instrument registered in the general register has not been recorded in the parcel or interest register, and**
 - (d) in the case of the recording of an interest, a general register certificate is obtained that**
 - (i) is dated the same day as the interest is recorded, and**
 - (ii) does not disclose the instrument registered in the general register.**
- (2) Compensation is not payable under section 7.1 by reason of the registration or recording of a document where there is a material difference, within the meaning of section 9.8, between the name of a person described in that document and the name of a person described in an instrument registered in the general register.**

Annotation

1. Section 9.7(1) reproduces section 122.1 of the Land Titles Act with necessary changes.
2. Under LRRA 6.1(d), decrees, orders and executions maintain priority without being registered or recorded. Under LRRA 9.6(1), writs of execution and other writs affecting land bind debtors' interests in land and must be recorded in priority to any later recordings or registrations based on instruments executed by debtors. LRRA 9.7(1) makes exceptions to these propositions. A later recorded interest will take priority over a general register interest if
 - (a) the general register interest is not recorded in the relevant parcel or interest register, and

- (b) the Registrar issues a general register certificate on the day of the later recording that does not disclose the general register instrument.

A later registered interest will take priority if the first condition is satisfied, that is, if the general register interest is not recorded in the relevant parcel or interest register.

- 3. LRRA 9.7(2) carries forward the substance of LTA 171(d.1). Its effect is that, if there is a material difference between the debtor's name in the charging instrument and the name in the document that confers the later registered interest, there will be no compensation. If the subsection were not there, a claim for compensation might arise despite material differences between a debtor's name in the execution register and in the name of the same debtor in a document brought in for recording or registration.

General register certificate**9.8**

- (1) A Registrar shall, when required, furnish under seal a general register certificate in the prescribed form.**
- (2) A general register certificate shall not disclose an instrument registered in the general register where there is a material difference between the name in the instrument and the name to be searched as set forth in the request for the certificate.**
- (3) There is a material difference in names for the purposes of this section and section 9.6 and 9.7 where**
 - (a) the surnames are not identical,**
 - (b) there is not any given name in one name that is identical to or a commonly used variation of any given name in the other name,**
 - (c) one name contains the same number of given names as the other name but one of the given names in one name is not identical to or a commonly used variation of any of the given names in the other name, or**
 - (d) one name contains fewer given names than the other name but one of the given names in the name with the fewer given names is not identical to or a commonly used variation of any of the given names in the other name.**
- (4) In subsection (4)(c) and (d),**
 - (a) "given name" includes an initial used in the place of a given name, and**
 - (b) an initial and a given name shall be considered to be commonly used variations of each other only where the initial is the same as the first letter of the given name.**

Annotation

Section 9.8 reproduces section 24 of the Land Titles Act with necessary changes.

Transfer or postponement of writ**9.9**

- (1) A writ may be transferred in whole or in part or postponed by the judgment creditor.**
- (2) An assignment of a judgment in respect of which a writ is entered in the general register may be accepted by the Registrar as a transfer of the writ.**

Annotation

Section 9.9 reproduces section 122.2 of the Land Titles Act with a necessary change.

Satisfaction of obligation

9.10

- (1) If the obligation in respect of which a charging instrument was entered in the general register under section 9.5 has been satisfied, the creditor shall furnish the debtor with a request for cancellation of the entry of the charging instrument in the general register or of the recording of the charging instrument, or both, as the case may be.**
- (2) A creditor who, without reasonable cause, files or continues the entry referred to in subsection (1) is liable to make compensation to any person who has sustained damage thereby.**

Annotation

Section 9.4 reproduces sections 17.1(9) and 17.1(10) of the Land Titles Act with necessary changes.

Discharge of writ

9.11 The Registrar shall discharge a writ against all or a portion of the land bound by the writ on production to the Registrar of

- (a) a judge's order directing the discharge of the writ against all or a portion of the land,**
- (b) evidence from the sheriff showing the expiration, satisfaction or withdrawal of the writ, or**
- (c) a discharge executed by the judgment creditor.**

Annotation

Section 9.11 reproduces section 123 of the Land Titles Act.

Execution filed in error**9.12**

- (1) A registered owner of land whose dealings therewith are made or proposed to be made subject by the Registrar to an instrument entered in the general register may make an affidavit in duplicate in the prescribed form or to the like effect, and file it in the Land Registration Office for the land registration district in which his land is situated, or may mail it to the Registrar of the district in a fully prepaid registered letter.**
- (2) On request the Registrar shall, without charge therefor, deliver or forward by mail to any registered owner, duplicate copies of the prescribed form, and shall send with the duplicate copies a copy of this section.**
- (3) On the receipt of such request, the Registrar shall forthwith notify the execution creditor, in the prescribed form or to the like effect, at the office of his solicitor as appearing by the copy of the execution filed, if the solicitor is in actual practice, otherwise at the personal address of the execution creditor as it there appears, that the execution will not affect the land referred to in the notice after the expiration of the time set out in the notice, unless in the meantime the execution creditor files with the Registrar a statement, in the prescribed form or to a like effect, verified by affidavit, continuing the execution in effect as against the land beyond the time set out in the notice.**
- (4) If the solicitor resides or carries on business in the city where the Land Registration Office in which the land is registered is situated, the execution ceases to affect the land at the expiration of 10 days from the date of the service of the notice, and in all other cases the execution ceases to affect the land at the expiration of 20 days from the date of the service, and for the purpose of this subsection service shall be deemed to have been effected at 9 a.m. on the day following the day on which the letter containing the notice was delivered to the post office.**
- (5) If the execution creditor or his solicitor does not file with the Registrar the statement referred to in subsection (3), the execution no longer affects the land described in the notice and the Registrar shall accordingly cancel the recording as to the lands mentioned therein.**
- (6) If the execution creditor does file the statement and the registered owner has made an affidavit in the prescribed form, then the Registrar shall make any further inquiry or investigation that seems proper to him, and if satisfied that the claim of the execution creditor is unfounded, he shall without charge cancel the recording insofar as it affects the land described in the notice, and shall notify the execution creditor thereof.**
- (7) No action lies against the Registrar either personally or nominally under this Act, in respect of anything done by him under this section.**

- (8) A notice of any change of solicitors, in respect of an execution against land, that is certified by a sheriff or clerk of the court may be filed with the Registrar of the land registration district in which the execution is filed and on the notice being filed with the Registrar he shall note the change in the general register.
- (9) The Registrar may in his discretion allow the person making the application a sum not exceeding \$3 in payment of his costs, and the sum shall be paid out of the assurance fund on certificate of the Registrar to the Provincial Treasurer.
- (10) All registrations shall be without fee.
- (11) Nothing in this section prevents any person from commencing or maintaining against any other person an action to have an execution removed from his land.
- (12) When another Act provides that
- (a) an instrument may be registered in a Land Titles Office, and
 - (b) the effect of the instrument is to charge generally or to bind in the same manner as a writ the property interests of a person named in the instrument,
- then, notwithstanding that other Act, this section applies, with all necessary modifications, to that instrument as if it were a writ.

Annotation

Section 9.12 reproduces sections 124 and 124.1 of the Land Titles Act with necessary changes.

Termination of binding effect of writ**9.13**

- (1) Every writ of execution or renewal thereof ceases to bind or affect land by virtue of section 9.6 at the expiration of 6 years from the date of the receipt thereof by the Registrar of the district in which the land is situated, unless before the expiration of that period of 6 years a renewal of the writ is entered in the general register in the same manner as the original is required to be entered in the general register.**

- (2) If an action is brought on a judgment before the date when the taking of the action would be barred by the *Limitation of Actions Act*, and there is at the time when the action is brought on file in the office of a Registrar of Land Titles a certified copy of a writ of execution that is still in force and issued on that judgment and if, while that judgment is still in force or would be in force but for the obtaining of a judgment based thereon, the execution creditor files in the office of the Registrar a certified copy of a writ of execution issued on a judgment in the action, the last mentioned writ of execution has the same priority as affecting land situated within the land registration district as the writ of execution first hereinbefore mentioned and the Registrar shall endorse on it and enter in the execution register a memorandum to that effect.**

Annotation

Section 9.13(1) carries forward sections 122(3) and 122(4) of the Land Titles Act insofar as they relate to writs of execution registered in the general register.

No further entries**9.14**

- (1) Notwithstanding this or any other Act, no charging instrument that is presented to the Registrar after the coming into force of section 9.4**
- (a) shall be entered in the general register, or**
 - (b) shall charge or have any binding effect on any land in which the debtor has an interest unless the charging instrument has been recorded on the parcel register or interest register established for that land.**
- (2) During the 3 years after the coming into force of section 9.4, the creditor who is named in a charging instrument that is entered in the general register may, record his interest under the charging instrument.**

Annotation

Section 9.14 carries forward the effect of section 17.1 of the Land Titles Act.

Termination of the general register

- 9.15 Notwithstanding this or any other Act, on the expiry of 3 years after the coming into force of section 9.4,**
- (a) the general register shall cease to exist, and**
 - (b) any charging instrument that is entered in the general register ceases to charge or have any binding effect on any land in which the debtor has an interest unless the creditor's interest under the charging instrument has been recorded.**

Annotation

Section 9.15 carries forward the effect of section 17.1(12) of the Land Titles Act. Three years after LRRA 9.4, which carries forward LTA 17.3, comes into force, the general register will be discontinued and things registered in it will not have any effect.

Repeal

9.16 The following are repealed 3 years after section 9.4 comes into force:

- (a) Division 2 of Part 9, and
- (b) Section 6.1(e).

Annotation

When the general register ceases to exist under section 9.14, Division 2 of Part 9 has no further purpose and will be repealed. The same is true of section 6.1(e), which gives overriding effect to things registered in the general register.

PART 10
MISCELLANEOUS

Trusts

10.1

- (1) A trust is not registrable under this Act.**
- (2) A trustee who is registered as owner of an interest is deemed for the purposes of this Act to be the absolute and beneficial owner of the interest.**
- (3) Notwithstanding subsections (1) and (2), an executor or administrator of the will or estate of a deceased person shall, for the purposes of section 10.2, be registered as owner of an interest in his capacity as executor or administrator.**
- (4) A Registrar shall revise registrations as required by a transaction binding on a trustee referred to in subsection (2).**

Annotation

1. The provisions of section 10.1 are closely related to land recording and registration. They are therefore included in Part 10 of the draft Act.
2. Section 51 of the Land Titles Act provides that "no memorandum or entry shall be made . . . of any notice of trusts . . .". The section goes on to require that the Registrar treat an instrument containing any notice of a trust as if there were no notice of trust and that the trustee or trustees "shall be deemed to be the absolute and beneficial owners of the land for the purposes of this Act". We see no reason to change this policy, which tends to promote the facility of transfer that land recording and registration is intended to achieve. LRRRA 10.1(1) and 10.1(2) accordingly carry forward the policy of LTA 51, though LRRRA 10.1(1) is drafted differently.
3. LRRRA 10.3(4) has been added make it clear that a Registrar must accept a transfer or other document executed by a trustee, thus emphasizing the power of the trustee to convey a good title to an interest. Since registration is mandated by the draft Act, a beneficiary of an estate, like the holder of any other unrecorded and unregistered interest, would have no claim for compensation for the registration of a document executed by a trustee (although a minor might have a claim if a Registrar registered a document without having the material required by LRRRA 10.2).
4. LTA 114(4) and 114(6) and LTA 118(1) deal with the special case of the personal representative. These provisions are somewhat difficult to follow and to reconcile, but the policy that emerges from them appears to us to be this:

- personal representatives are to be registered in their capacity as personal representatives.
 - such registration is only for the purposes of LTA 120, under which the Registrar is prohibited from registering a document executed by a personal representative unless they are provided with the Public Trustee's consent to the disposition on behalf of minors, with specified evidence that no minor is interested in the estate, or with a judge's order for registration.
 - personal representatives are deemed, for the purpose of any registered dealings with the land, to be the absolute and beneficial owners of the land.
5. LRRRA 10.1(1) and 10.1(2) apply to personal representatives as well as to other trustees and therefore perform most of the office of the LTA provisions mentioned in Annotation 2. LRRRA 10.1(3) performs the office of LTA 114(6), which says that the Registrar shall issue a certificate of title describing a personal representative as executor, administrator or trustee for the purposes of LTA 120 only. (LRRRA 10.2 carries forward LTA 120.)
 6. If a beneficiary of an estate has an equitable interest in estate land, there is nothing in the draft Act to prevent the recording of the interest.

Conditions of registration of transfer, etc.**10.2**

- (1) The Registrar shall not register a document executed by an executor, administrator or trustee under a will except an application for transmission or a termination of a mortgage, unless**
- (a) a certificate of the Public Trustee, made subsequent to the grant of letters probate or administration or of resealing thereof, that he has no knowledge of minors being interested in the estate of the deceased owner, has been filed with the Registrar,**
 - (b) in cases where minors are interested, the instrument to be registered is accompanied by the consent of the Public Trustee to the proposed dealing,**
 - (c) the instrument to be registered is accompanied by an order of a judge of a court of competent jurisdiction, authorizing the proposed dealing, or**
 - (d) the instrument to be registered is accompanied by an affidavit made by the deponent of his own knowledge that there are no minors who are interested in the estate of the deceased owner, nor were there any minors interested in the estate of the deceased owner at the time of his death.**
- (2) If land in which minors are interested is subject to a general testamentary trust for sale, the Public Trustee may give one written consent, which shall refer to the trust and authorize the executor, administrator or trustee, as the case may be, to deal with the land, and after the general consent has been filed in a Land Registration Office the Registrar shall register any transfer, mortgage or other instrument executed by the executor, administrator, or trustee, as the case may be, without requiring any further consent to be filed.**

Annotation

1. Section 10.2 reproduces section 120 of the Land Titles Act with necessary changes.
2. LRRA 10.2 is included here because it is tied in with LRRA 10.1 and is closely related to land recording and registration.
3. The validity of the policy behind LRRA 10.2 is, in our view, questionable, and we think that it might usefully be reconsidered. We are, however, carrying it forward as a reflection of an existing provision the reform of which is outside the scope of this report.

Power of attorney

10.3

- (1) The owner of land may authorize and appoint any person to act for him or on his behalf with respect to the transfer or other dealing with the land or with any part thereof by executing a power of attorney.**
- (2) If the land referred to in a power of attorney is specifically and properly described, the Registrar shall make an entry of the existence of the power of attorney and its identifier on the appropriate register.**
- (3) While an entry under subsection (2) remains in the parcel register, the right of the owner to deal with the land for the purposes specified in the power of attorney is suspended, but the execution or registration of a general power of attorney does not in any way affect the right of the owner to transfer or otherwise deal with his land.**
- (4) The power of attorney may be revoked at any time and the Registrar shall thereupon cancel any entry made under subsection (2).**
- (5) After the cancellation of an entry under subsection (4), the Registrar shall not register any transfer or other document made or executed under the power of attorney unless the transfer or other document was executed prior to the revocation.**
- (6) Where an irrevocable power of attorney**
 - (a) is granted by a corporation in a registered document conferring a security interest, and**
 - (b) is to take effect when certain conditions, including default, occur,**
a certificate by the owner of the security interest may be filed with the Registrar in respect of land that is owned by the corporation,
 - (c) setting out the provisions from the document conferring the security interest that grant the power of attorney,**
 - (d) certifying that the power of attorney is in effect by virtue of the conditions having occurred,**
 - (e) where the owner of the security interest is not the attorney, certifying the appointment of the person who is authorized to act as attorney pursuant to the power of attorney,**
 - (f) describing the land in respect of which the power of attorney is to be exercised, and**

- (g) certifying that at least 15 days' notice has been given to the corporation of the intention of the attorney to file the certificate, and the Registrar shall make an entry of the existence of the power of attorney and its identifier on the appropriate register.
- (7) While an entry under subsection (6) remains on the register
- (a) the right of the owner to deal with the land for the purposes specified in the power of attorney is suspended, and
- (b) the Registrar shall accept a document that is executed by the attorney for a purpose specified in the power of attorney.
- (8) A transaction effected by a document referred to in subsection (7) is a valid transaction for the purposes of section 5.4(1)(b) and section 5.6.
- (9) Subject to subsection (10), a certificate under subsection (5) may be withdrawn by the owner of the security interest at any time.
- (10) The owner of the security interest shall withdraw a certificate entered under subsection (6) when the conditions permitting the certificate to be filed no longer exist and the Registrar shall thereupon cancel the entry of the certificate.

Annotation

1. Section 10.3 carries forward most of section 115 of the Land Titles Act.
2. An owner has power under the general law to grant a power of attorney to deal with the owner's land, so that LRRA 10.3(1) is not necessary and, if it were, could be put into another statute. However, the effect of LRRA 10.3(3) and (6) is to suspend an owner's right to deal with land. This is substantive and it relates very directly to land recording and registration. It is therefore appropriate to put the substance of LTA 115 into LRRA 10.3.
3. LTA 115(1) requires the Registrar to "register" a general power of attorney. Under the draft Act, a Registrar would merely hold a general power of attorney on file for reference.

False statements and tampering**10.4 Any person who knowingly makes a false statement in**

- (a) a document, including a recording document, or**
- (b) a written representation prepared in respect of**
 - (i) a document, including a recording document, or**
 - (ii) a submission to the Registrar to register or record an interest or make any other entry in a register,**

that could reasonably have the effect of misleading another person is guilty of an offence and subject to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.

(2) Any person who without lawful authority

- (a) destroys or alters the contents of, or**
- (b) removes from where it is stored or recorded,**

any document, including a recording document, or other land titles record, is guilty of an offence and subject to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months, or to both a fine and imprisonment.

Annotation

Section 10.4 carries forward the substance of section 202.1 of the Land Titles Act. It has to do with the land recording and registration system, so that it is appropriate to include it in the draft Act.

Execution of documents by corporation

10.5

- (1) A document executed by a corporation, notwithstanding anything to the contrary in the Act, statute, constating documents, charter or memorandum and articles of association incorporating the corporation, shall for the purposes of this Act be deemed to be sufficiently executed if the document is**
- (a) sealed with the corporate seal of the corporation and countersigned by at least 1 officer or director of the corporation, or**
 - (b) executed by at least 1 officer or director of the corporation who**
 - (i) has his signature attested to in accordance with the regulations, and**
 - (ii) verifies by affidavit in the prescribed form his authority to execute the document.**
- (2) A Registrar shall revise registrations as required by a transaction evidenced by a document deemed sufficiently executed under subsection (1).**
- (3) A transaction effected by a document deemed sufficiently executed under subsection (1) is a valid transaction for the purposes of section 5.4(1)(b) and section 5.6.**

Annotation

1. Section 10.5(1) reproduces section 152.3 of the Land Titles Act with necessary changes.
2. LRRRA 10.5(2) is substantive because it gives binding effect to documents that might not bind corporations under the general law. The rule laid down by LRRRA 10.5 is "for the purposes of this Act". It is accordingly appropriate to include it in the draft Act.
3. By requiring a Registrar to revise registrations as required by a document that satisfies LRRRA 10.5(1), LRRRA 10.5(2) authorizes the registration and therefore precludes compensation for the registration. LRRRA 10.5(3) protects the purchaser against a further revision of registrations.

Liability of surveyor

- 10.6 The filing of a plan under this Act does not relieve the Alberta land surveyor who conducted the survey and prepared the plan from any liability for damages suffered by any person as a consequence of the survey or the filing of the plan.**

Annotation

1. Section 10.6 reproduces section 80(1) of the Land Titles Act with necessary changes.
2. If LRRA 10.6 is needed at all (which is somewhat doubtful, as nothing in the Land Titles Act or the draft Act relieves a surveyor of the liability referred to), it lays down a substantive rule of law. Since it relates to the filing of plans under the draft Act it is appropriate to include it in the draft Act.

PART 11
TRANSITIONAL

Definition

11.1 In this Part, "former Act" means the *Land Titles Act*, R.S.A. 1980, c. L-5 as amended from time to time.

Certificates of title deemed parcel registers**11.2**

(1) A certificate of title that was

- (a)** granted for an estate in fee simple absolute, and
- (b)** recognized under the former Act at the commencement of this Act is deemed to be a parcel register under section 3.1(1).

(3) A certificate of title that was

- (a)** granted for an interest other than an estate in fee simple absolute, and
- (b)** recognized under the former Act at the commencement of this Act is deemed to be an interest register under section 3.1(3).

(4) Section 3.2 does not apply to a certificate of title that is deemed to be a parcel register or an interest register under this section.

Interests continued**11.3**

(1) Subject to this Act, an interest that was registered under the former Act at the commencement of this Act

- (a)** continues to have any validity and priority conferred on it by the former Act,
- (b)** is deemed to be registered under section 5.2 if it is an interest listed in section 5.1(1), and
- (c)** is deemed to be recorded under section 4.2(4) if it is not an interest listed in section 5.1(1).

- (2) Subject to this Act, an interest that, under the former Act, was claimed in a caveat or entered on a certificate of title in a way other than by registration or caveat**
 - (a) continues to have any priority conferred on it by the former Act, and**
 - (b) is deemed to be recorded under section 4.2(4).**
- (3) A right existing at the commencement of this Act**
 - (a) to have a registration revised, or**
 - (b) to have a caveat or other entry removed**

continues to exist, subject to this Act.

General register continued

11.4

- (1) The general register under the former Act is the general register under this Act.**
- (2) Subject to this Act, a writ of execution or other instrument that is entered in the general register at the commencement of this Act continues to have any validity conferred upon it by the former Act.**

Overriding interests

11.5

- (1) This section applies to an interest to which a certificate of title, at the commencement of this Act, was subject by implication and without any special mention under section 65(1) of the former Act.**
- (2) Notwithstanding sections 4.4 and 5.3, if the interest is of a kind described in section 6.1(a) to (d) or section 6.1(f) it shall be enforced with priority relative to all other interests according to law.**
- (3) If the interest is not of a kind described in section 6.1(a) to (d) or section 6.1(f),**
 - (a) if it is recorded within three years after the commencement of this Act, it shall be enforced with priority relative to other interests as if it had been recorded at the time of the commencement of this Act;**
 - (b) if it is not recorded within three years after the commencement of this Act, section 4.4 applies to it.**

Records continued

11.6

(1) In this section, "record" includes

- (a) an instrument as defined in the former Act, and**
- (b) any other record made or kept at a land titles office.**

(2) A record made or kept under the former Act

- (a) is a record under this Act, and**
- (b) has the same effect as a similar record made or kept under this Act.**

APPENDIX A

SCHEDULE OF DISPOSITION OF LAND TITLES ACT PROVISIONS

Abbreviations used in this Schedule		Description of Schedule
ABBREVIATION	FULL NAME	<p>This Schedule shows how all provisions of the Land Titles Act would be dealt with under the proposals made in this report.</p> <p>Every provision is listed in Column 1 and has been dealt with in one of the following ways:</p> <p>(a) if an "x" appears in Column 2, the provision has been deleted.</p> <p>(b) if a section or subsection number appears in Column 3, the provision is covered by that proposed section or subsection in the LRRA.</p> <p>(c) if an abbreviated statute name and a number appear in Column 4, the provision is covered by the proposed section as set out in Appendix C, <i>Consequential Amendments to Statutes</i>. Statutes appear in alphabetical order in Appendix C.</p> <p>(d) if a regulation number appears in Column 5, the provision is covered by that proposed regulation in Appendix D, <i>Consequential Regulations</i>.</p>
AEA	Administration of Estates Act	
ARLOA	Agricultural and Recreational Land Ownership Act	
CA	Citizenship Act (Canada)	
DDA	Drainage Districts Act	
EA	Evidence Act	
IA	Irrigation Act	
LPA	Law of Property Act	
LRRA	Draft Land Recording and Registration Act contained in Part III	
LTA	Land Titles Act	
PA	Planning Act	
Reg. or Regulation	Draft regulation contained in Appendix D, Volume 2	
SA	Seizures Act	
TA	Trustee Act	
TRA	Tax Recovery Act	

SCHEDULE OF DISPOSITION OF LAND TITLES ACT PROVISIONS

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
1 Definitions	x				LRRR provides its own definitions.
2 Existing LRDs		2.1(1)		R1.1(1)	LRRR 2.1(1) provides for the establishment of LRDs. Regulation 1.1(1) continues existing LRDs.
3 New LRDs		2.1(1)			LRRR 2.1(1) authorizes the establishment of new LRDs and changes in their boundaries.
4 LTOs		2.1(2)		R1.1(2)	LRRR 2.1(2) provides for the establishment of LROs. Regulation 1.1(2) continues existing LTOs as LROs.
5 Inspector		2.2(1)(2)			Inspector of Titles replaced by Registrar General.
6 Officials		2.2(4)			LRRR 2.2(4) provides for the appointment of Registrars, Deputy Registrars and staff.
7 Repealed					
8 Deputy Registrars		2.2(5)			LRRR 2.2(5) authorizes a list of officials who may perform the Registrar's duties and exercise the Registrar's powers. This, together with the <i>Interpretation Act</i> , gives adequate powers to a Deputy Registrar.
9 Department		2.2(6)			
10 Oaths of office				R2.1	Regulation R2.1 requires Registrars, Deputies and Assistant Deputies to take an oath of office.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
11 Seal	x				LTA 11 provides for a seal that may be printed, etc., on documents that are required to be sealed. There being no documents required to be sealed under LRRR, the section has been deleted. Regulations can provide for a seal if one is wanted.
12 Administration of oaths				R2.4	Registrars, Deputies and Assistant Deputies can administer oaths, etc., in relation to land.
13 Officials as agents and conveyancers acting as agents				R2.2(a)	Regulation R2.2(a) prohibits all LRD officials and clerks from acting as agents and conveyancers in relation to land.
14 Business on premises				R2.2(b)	Regulation R2.2(b) prohibits all LRD officials and clerks from carrying on any business or occupation in LROs.
15(1) Office hours				R2.3	
15(2) Repealed					
15.1 Form of records		2.4(1)			LRRR 2.4(1) requires records to be kept in writing, which includes the various forms of record listed in LTA 15.1. It leaves the precise form to administrative discretion.
16(1),(2) Daily record, serial number				R4.1(1), (2)	LRRR does not require a daily record. Regulation R4.1(1) does require it, and R4.1(2) requires the Registrar to give an identifier to all documents found to be in conformity with regulations.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
16(3),(4) Repealed					
16(5) Priorities		4.3(2) 4.4 4.5			LRRR 4.3(2) determines when recording occurs and LRRR 4.4 determines the priority of recordings, subject to LRRR 4.5. This replaces priority according to serial number as provided in LTA 16(5).
16(6) Duplicate certificate of title needed for registration	x				LTA 16(6) has been deleted because LRRR does not provide for a duplicate certificate of title.
17(1) Register		3.1			The parcel and interest registers under LRRR 3.1 replace the certificates of title under LTA 17.
17(2),(3),(4) Repealed					
17.1(1),(2) General register		9.1 9.5 9.14 9.15			For definition of instruments covered, see LRRR 9.1. For duty to keep general register, see LRRR 9.5. LRRR 9.14 terminates entries when LRRR 9.5 comes into force.
17.1(3)-(7) Recording charging instruments		9.2 4.2		R4.3	LRRR 9.2 provides for recording writs against specific land; LRRR 4.2 sets out recording requirements; and Regulation R4.3 provides for notices to be sent out.
17.1(8) Binding effect		9.3(1)			LRRR 9.3(1) provides that a recorded writ binds the debtor's interest in the described land, and other recorded charging instruments bind according to their authorizing statute.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
17.1(9),(10) Discharge and compensation		9.10 4.10			For entries in the general register, LRRR 9.10 requires a charging instrument holder to furnish a discharge upon satisfaction and requires payment of compensation in the event of failure to do so without reasonable cause. LRRR 4.10 renders a charging instrument holder liable for loss for wrongfully maintaining a recording after demand for cancellation.
17.1(11) Termination of listed provisions		LRRR 9.16			LRRR 9.16 repeals Part 9 Division 2 and LRRR 6.1(e) 3 years after LRRR 9.5 comes into force. Other provisions deal with the interim effect of the general register.
17.1(12) Termination of general register		9.15			LRRR 9.15 provides that the general register terminates 3 years after LRRR 9.4 comes into force.
17.2 Lapse of writ	x				LRRR 4.9 provides for lapse of recordings and applies to recorded writs.
17.3 Record of names		9.4			LRRR 9.4 requires the Registrar to maintain records from which a list of land owned by each owner can be prepared. It will remain unproclaimed until the capacity to provide the list has been created, as has LTA 17.3.
18 Search		2.4(2)			LRRR 2.4(2) requires the Registrar to provide copies of registers and documents.
19(1)-(3),(5) Photostatic negatives				R5.1	Regulation R5.1 continues to provide for photostatic negatives of a register that is in bad condition.
19(4) Repealed					

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
19(6) Negatives as evidence	x				A photostatic negative is deemed to be a register and is therefore admissible where a register would be admissible.
20 Duplicate records				R5.2	Regulation R5.2 provides for keeping duplicate records and the destruction of the originals.
21 Substitute instrument or caveat	x				LRRR 2.4(4) makes certified copies of registers or documents admissible to the same extent as the original. It does not deal with the "substitute" referred to in LTA 21, but it does not seem appropriate that the Registrar should create a "substitute" document from information that is not a copy.
22 Lost instrument	x				The court has inherent jurisdiction to determine the substantive rights of parties, and when those have been determined, the court has, under LRRR Part 8, all powers necessary to give effect to those rights. LTA 22 is subsumed in the court's powers.
23 District boundaries				R5.3	Regulation R5.3 provides for notes in registers that land is included in an irrigation or drainage district, which appears to be what LTA 23 refers to.
24 General register certificate		9.8			The complex provisions of LTA 24 are carried forward into LRRR 9.8.
24.1(1) Copies		2.4(2)			LRRR 2.4(2) requires the Registrar to provide a reproduction of any instrument or caveat.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
24.1(2) Information	x				LTA 24.1(2) has not been carried forward because the Registrar can provide available information without legislative authority.
25 When registration effected		4.3(2) 5.2(2)			LRRR 4.3(2) and 5.2(2) provide that an interest is recorded or registered when the identifier of the instrument is entered, as recorded or registered, in the appropriate register.
26 Repealed					
27 Contents of entries				R4.2	Regulation R4.2 provides for inclusion in every entry of the counterpart information to that required by LTA 27.
28 Entries on duplicate certificate	x				LRRR does not provide for duplicate certificate of title.
29 Land in one register				R5.4	Regulation R5.4 carries forward the LTA 29 limitations on the amount of land that can be covered by one parcel register and some other limitations.
30 Documents in favour of corporations				R4.7	Regulation R4.7 carries forward LTA 30 under which the Registrar can reject an instrument or caveat in favour of an unregistered corporation.
31 Agricultural & Recreational Land Ownership Act and Citizenship Act			ARLOA 2.1		ARLOA 2.1, Appendix C, would amend ARLOA to require a Registrar to refuse to accept a document that does not have the appropriate statutory declaration or that may contravene ARLOA or CA.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
32(1), (3)-(7) Letters patent and notifications				R14.2	Regulation R14.2 provides for acceptance and retention by a Registrar of patents and notifications of various kinds.
32(2) Duplicate certificate of title	x				LTA 32(2) requires the Registrar to issue homestead duplicate certificates of title without charge. This is deleted because LRRR does not provide for duplicate certificates of title.
33 National Parks		3.1(3.1)			LRRR 3.1(3.1) provides for the establishment of interest registers for interests in land in National Parks.
34 Statutory proceedings				R6.3(1)	Regulation R6.3(1) directs a Registrar to deal with a statutory vesting as if it were a transfer.
35(1) Certificate of title for life interest or lease		3.1(3)			LTA 35(1) provides for certificates of title for leaseholds. LRRR 3.1(2) provides for interest registers for any registered interest.
35(2) Effect of instruments	x				LTA 35(2) makes a lease/life estate certificate of title subject to prior entries in the source certificate of title. This is wrong in principle, as prior entries should appear in the interest register, and has been deleted.
36 Application to register	x				LRRR 5.1 provides that any interest of the kinds listed can be registered. No special provision like LTA 36 is needed.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
37 Registration of owner arising out of tax recovery proceedings				R6.4	Regulation R6.4 requires a Registrar to register a person as owner of then unregistered land upon receipt of a tax notification or caveat and affidavit that the person is the owner. This is an administrative direction. It follows LTA 37.
38 Application to bring land under Act				R13.1	LTA 38 to 44 provide an elaborate procedure for bringing land under the Act and disposing of adverse claims. This procedure is rarely used, if ever, but has been brought forward into Regulations 13.1-13.7. It is administrative in nature, as LRRA provides the substantive right to registration.
39 Delivery of certificate of title				R13.2	See note under LTA 38.
40 Reference to judge				R13.3	See note under LTA 38.
41 Examination by judge				R13.4	See note under LTA 38.
42 Adverse claims				R13.5	See note under LTA 38.
43 Publication of application				R13.6	See note under LTA 38.
44 Direction for registration				R13.7	See note under LTA 38.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
45 Delivery of duplicate	x				There were be no duplicate certificate of title under LRRR. LTA 45 provides for a duplicate certificate of title and is therefore deleted.
46 Certificate and duplicate on registration	x				LTA 46 deals with issuing certificates of title and delivery of duplicate certificates of title on registration of land. LRRR general provisions deal with establishment of registers. There are no duplicate certificates of title under LRRR. LTA 46 is therefore deleted.
47 Proof of age				R7.8	Regulation R7.8 allows a Registrar to require proof that a person who grants or transfers an interest is an adult. It follows LTA 47.
48(1),(2) and (4) Post office address 48(3) Repealed				R9.1	Regulation R9.1 requires owners and mortgagees to provide a post office address for mailing of notices. It follows LTA 48(1),(2) and (4).
49 Names and addresses on documents				R9.2(1)	Regulation R9.2(1) allows the Registrar to reject a document for registration unless it discloses specified information about the identity and address of parties. It follows LTA 49.
50 New certificate of title on transfer	x				A register will not be cancelled every time ownership is transferred. LTA 50 is therefore deleted.
51 Registration of trusts		10.1(1), (2)			LRRR 10.1(1) provides that a trust is not registrable and LRRR 10.1(2) provides that a trustee is deemed to be the absolute and beneficial owner. They thus give effect to LTA 51.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
52(1)-(3) Restrictive covenants		5.1	LPA 50.4		<p>LRRA 5.1 makes a restrictive covenant registrable as a "servitude". LRRA 5.2(1) and (2) require the Registrar to register and make the appropriate entry on the register. LRRA 5.3(1) and (3) confer ownership and priority. These provisions cover the subject matter of LTA 51(1),(2) and (3).</p> <p>The part of LTA 52(3) providing for the modification or discharge of a restrictive covenant under court order is moved to the <i>Law of Property Act</i> as LPA 50.4 as set out in Appendix C.</p>
52(4) Notice of restrictive covenant	x				<p>LTA 52(4) has been deleted because nothing in the LRRA makes a covenant run with the land if it does not do so under the general law, and the subsection is therefore unnecessary.</p>
52(5) Restrictive covenant not encumbrance	x (in part)		TRA 23(6)(c)		<p>The statement in LTA 52(5) that a restrictive covenant is not an encumbrance within the meaning of the LTA may mean that ownership is not free and clear of it under LTA 64. If so, it is contrary to the policy of the LRRA. The statement has been deleted.</p> <p>See Appendix C. The statement in LTA 52(5) that a restrictive covenant is not an encumbrance within the meaning of the <i>Tax Recovery Act</i> means that a tax recovery title remains subject to it. This is covered by the proposed TRA 23(6)(c) that would be substituted for the present provision.</p>

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
53 Unit operation agreement		5.1(h)	LPA 50.9		LRRR 5.1(h) makes a mineral unit operation agreement registrable. LPA 50.9 in Appendix C declares a mineral unit operation agreement to be an interest in land and carries forward the LTA 53 cancellation-of-registration provisions. Together these provisions carry forward the substance of LTA 53.
54 Formalities in instrument				R7.9	Regulation R7.9(1) requires a Registrar to decide whether a document substantially conforms to the proper prescribed form and authorities and authorizes him to reject it if it does not. R7.9(2) and (3) authorize a Registrar to reject a document that is subject to a condition or that is unsuitable for reproduction. R7.9 carries forward LTA 54.
54.1 Land Identification number				R5.5	Regulation R5.5 provides for a land identification number to be given to a parcel. It carries forward LTA 54.1.
55 Fractional interests in minerals				R4.5	Regulation R4.5 allows the Registrar to refuse to accept a document dealing with a less than 1/20 interest in minerals. It carries forward LTA 55.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
56 Necessity of registration	x (in part)	5.3(1) (in part)			LRRR 4.5(1)(a) provides that an interest is effective from the time of the transaction upon which it is based. It therefore reverses the first part of LTA 56. LRRR 5.3(1) declares that a registered owner is the owner of the registered interest, with 3 exceptions. It covers the ground of the part of LTA 56 that says that, upon registration, the estate or interest passes or the land becomes security.
57 Effect of registration		5.3(1)			See second note under LTA 56. LTA 57 reiterates the effect of the latter part of LTA 56 and is covered by LRRR 5.3(1).
58 Expropriation				R6.3(2)	Regulation R6.3(2) requires a Registrar to cancel a notice of intention to expropriate when the certificate of approval is received. It carries forward LTA 58.
59 Priority of registration				4.5(2) 5.3(3),(4)	LRRR 4.5(2) provides for priority according to time of recording. LRRR 5.3(3) incorporates LRRR 4.5(2), and LRRR 5.3(4) provides that an interest which was not previously recorded is recorded upon registration. These provisions provide for priority according to time of recording, and cover the ground covered by LTA 59.
60 Registration of copies				R4.6	Regulation R4.6 allows a Registrar to register or record a certified copy of an instrument registered or recorded in another Land Registration Office. It therefore covers LTA 60.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
61 Implied covenants			LPA 9.1		LTA 61 implies, in instruments transferring, mortgaging and encumbering land, covenants to do acts and provide necessary to give effect to express covenants, conditions and purposes. LPA 9.1, as set out in Appendix C, follows LTA 61.
62 Implied covenant to pay mortgage			LPA 9.3		LTA 62 implies in every transfer of land subject to mortgage or encumbrance a covenant with the transferor and mortgagee to pay the mortgage and indemnify the transferor. LPA 9.2, as set out in Appendix C, follows LTA 62.
63 Negation and modification of covenants			LPA 9.5		LTA 63 provides that every covenant and power implied in a document by the LTA may be negated or modified by express declaration in the document and deals with matters ancillary to implied covenants. LPA 9.5, as set out in Appendix C, follows LTA 63.
64 Effect of certificate of title		5.3(1),(6)			LTA 64 provides that a certificate-of-title owner, except in the case of fraud, holds subject only to implied incidents, interests on the certificate, and claims under a prior certificate of title. LRRR 5.3(1) and (6) set out the ownership rule and list what registered ownership is subject to. Other relevant provisions are LRRR 5.4(1) (revision of registrations); LRRR 6.1 (overriding interests); LRRR 5.7 (conflicting registers); and LRRR 1.2 (fraud).

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
65(1) Implied conditions	x (in part)	6.1 (in part)			LRRA 6.1 lists interests that override the register. Some of the interests listed in LTA 65(1) are not included in LRRA 6.1 and are accordingly not carried forward.
65(2) Conditions implied in special certificates of title	x (in part)		DDA 182(3)(d), (e) IA 157(4)(d), (e) TRA 23(6)(c)		LTA 165(2) provides that certificates of title issued after foreclosure proceedings and proceedings under the DDA, IA and TRA are subject to interests of specified kinds registered at specified times in relation to the proceedings. The proposed DDA 182(3)(d),(e), IA 157(4)(d),(e) and TRA 23(6)(c) as set out in Appendix C cover the substance of the references to those Acts in LTA 65(2). The reference to mortgage foreclosure certificates of title has not been carried forward, as it appears merely to say that a foreclosure title is subject to registrations that are prior to the mortgage registration, which does not appear necessary to say.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
66 Certificate as evidence of title		5.3(1), (6)			LTA 66 is an additional section protecting a registered owner by purporting to make a certificate of title evidence. This is covered by the declaration in LRRR 5.3(1) that a registered owner is the owner of the registered interest; having said that the registered owner is owner as a matter of law, it is not necessary to say that it is also a matter of evidence. See the notes under LTA 64 for references to LRRR sections dealing with fraud, revision of registrations, conflicting registers and overriding interests. LTA 66 also allows misdescription as an exception; LRRR as a matter of policy leaves misdescription to be dealt with by the general rules in the proposed Act.
67 Omission to send notice	x				LTA 67 provides that a purchaser, etc., for valuable consideration is not affected by an omission to give notice. Under LRRR, the failure to give a notice will not affect a purchaser, etc., and LTA 67 has therefore been deleted.
68 Transfers				R7.1	LTA 68 provides for transfers and grants of easements and rights of way to be in prescribed form and requires specified information. Regulation R7.1 follows LTA 68.
68.1 Transfers affecting joint tenancies				R4.4	LTA 68.1 prohibits the registration of a transfer severing a joint tenancy unless one of a number of conditions is satisfied, one of which is the giving of notice. Regulation R4.4 follows LTA 68.1.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
69 Transfer of Crown land				R14.4	LTA 69 provides that a Minister or order-in-council designee may execute transfers and grants of easements and rights of way, without affidavit of execution. Regulation 14.4 follows LTA 69.
70 Memorandum of easements	x				LTA 70 requires memoranda of easements on the certificates of title to the dominant and servient tenements. This is adequately covered by LRRR and Regulations and is not specifically carried forward.
71 Grant of easement to self			LPA 50.5		LTA 71 validates a grant of easement by an owner to himself. LPA 50.5, as set out in Appendix C, follows LTA 71.
72 Utility right of way			LPA 50.6		LTA 72 provides for the granting of a utility interest that would not be a valid easement at common law. LPA 50.6, as set out in Appendix C, follows LTA 72. LPA 1(c), as set out in Appendix C, defines "utility interest".
72.1 Rights of way on closed roads			LPA 50.3	R6.1	Under LTA 72.1(1), an authority who closes a road is to notify the Registrar of any utility rights of way that existed when the road was taken and would still exist. LTA 72.1(2) requires the Registrar to enter a memorandum of the rights on the new certificate of title and LTA 73.1(3) provides that the entry revives the right. LPA 50.3, as set out in Appendix C, would revive such rights of way, and require the authority to notify the Registrar. Regulation R6.1 would then require the Registrar to register the revived interests. The two provisions thus achieve the purpose of LTA 72.1.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
72.2 Party wall agreement			LPA 50.7		LTA 72.2 provides for party wall agreements which may not in their entirety be valid at common law. LPA 50.7, as set out in Appendix C, follows LTA 72.2.
73 Repealed					
74 Registration of judgment quieting title		1(t),(v)		R6.2	LTA 74 provides for registration of a judgment giving exclusive possession of land under the <i>Limitation of Actions Act</i> . The passing of an interest by the <i>Limitation of Actions Act</i> results in a transmission under LRRR 1(v) and is therefore a transaction under LRRR 1(t) which is binding on the owner. Regulation R6.2 gives administrative direction to the Registrar to register the new owner.
75 Repealed					
76 New Certificates re consolidations, etc.				R12.5	LTA 76 provides for new certificates of title upon parcel considerations or separations. Where roads or water body beds are added to a parcel for specified purposes, encumbrances against the parcel extend to the new area. Regulation R12.5 follows LTA 76.
77 Registration of instrument etc. re <i>Planning Act</i>			PA 151.1		LTA 77 provides that no instrument or caveat can be registered in contravention of the PA or its regulations, but that a registration or caveat ceases to be voidable in the hands of a purchaser for value. PA 151, as set out in Appendix C, follows LTA 77.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
78 Illustration of plan of survey				R11.1	LTA 78 to 84 and 87 to 89 give specific directions about the preparation and registration of plans. These are administrative in nature. Except where otherwise indicated, the proposed regulations R11.1 to R11.10 follow those sections.
79 Copy of plan				R11.2	See note under LTA 78.
80(1) Requirements before registration				R11.3	See note under LTA 78.
80(2) Liability of Alberta Land Surveyor		10.6			LTA 80(2) provides that an Alberta Land Surveyor is not relieved of liability by the registration of a plan under the LTA. LRRA 10.6 follows LTA 80(2).
81 Survey re transfer				R11.4	See note under LTA 78.
82 Registration of plan of survey				R11.5	See note under LTA 78.
83(1),(2) & (5) Plan of survey re public works, etc.				R11.6	See note under LTA 78.
83(3),(4) Plan of survey re public works, etc.	x				LTA 83(3) and (4) are deleted for reasons given in the Annotation to Regulation R11.6.
84 Plan of survey re transfer, etc.				R11.7	See note under LTA 78.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
85 Plan of survey re subdivision			PA 105.1		LTA 85 provides for the vesting of public use land upon registration of a subdivision plan. This is substantive. It also provides for the necessary signatures. PA 105.1, as set out in Appendix C, follows LTA 85.
86 Signatures of encumbrancees			PA 105.2		LTA 86 makes further provision about necessary signatures for subdivision plans. PA 105.2, as set out in Appendix C, follows LTA 85. It is part of the scheme of LTA 85 and 86 which affects rights and requires statutory authority.
87 Strata space				R11.8	See note under LTA 78.
88 Statutory plans				R11.9	See note under LTA 78.
89 Descriptive plans				R11.10	See note under LTA 78.
90 Change in natural boundary				R12.1	LTA 90 provides for amendments of parcel descriptions to reflect changes in natural boundaries. Regulation R12.1 follows LTA 90. Since no one can be affected without consent it is administrative.
91 Actual area of land				R12.2	LTA 91 provides that the area of a parcel is only the area within its boundaries despite a statement on a certificate of title that expresses a greater or less area. Regulation R1.12 follows LTA 91. It is authorized by LRRR 2.3(e).

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
92 Application to vary plan	x				LTA 92 provides for cancellation and revision of plans under court order, including vesting and revesting of land. But the court has power under LRRR Part 8 to revise registrations that do not reflect the substantive position of parties. That power would cover LTA 92, which is therefore deleted. (If there is no substantive effect, LTA 93, Regulation R12.4, would apply.)
93 Correction of registered plan				R12.4	LTA 93 provides for correction of plans by the Registrar if no one is adversely affected or by consent. This is administrative. Regulation R12.4 follows LTA 93.
94 Change of legal description				R12.3	LTA 94 authorizes the Registrar to change a legal description if no one is affected and boundaries are not changed. This is administrative. Regulation R12.3 follows LTA 94.
95 Sale of subdivided land			PA 105.3		LTA 95 prohibits sale of lots from an unregistered plan. It affects substantive rights and imposes a penalty. It therefore requires statutory authority. PA 105.3, as set out in Appendix C, follows LTA 95.
96, 97 Repealed					
98(1),(2) Requirements of lease	x				LTA 98(1) requires execution of a lease in prescribed form. LRRR 2.3(b) authorizes the making of regulations as to forms, and the Forms Regulation covers leases. LTA 98(1) and 98(2) are therefore unnecessary and are deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
98(3) Purchase option	x				LTA 98(3) permits a purchase option in a lease. The general law permits this, and LTA 98(2) is deleted as being unnecessary. A purchase option in a lease, for recording and registration purposes, will be an interest conferred by the document in addition to the leasehold interest.
98(4) Consent of mortgagee	x				LTA 98(4) provides that a lease is not binding on a mortgage or encumbrancee without the latter's consent. This is the general law. LTA 98(4) is therefore unnecessary and has been deleted.
99 Covenants implied in leases			LPA 9.3		LTA 99 implies in leases lessee's covenants to pay rent, repair and insure. LPA 9.3, as set out in Appendix C, follows LTA 99. It covers all leases (except <i>Residential Tenancies Act</i> and <i>Mobile Home Tenancies Act</i> leases), while LTA 99 applies only to leases under LTA for more than 3 years.
100 Implied powers of lessor			LPA 9.4		LTA 100 implies powers in the lessor to view and require repair; and to reenter on 2 months' default in rent or default in other covenant. LPA 9.4, as set out in Appendix C, follows LTA 100. For scope of the section, see note under LTA 99.
101 Re-entry	x				LTA 101 allows the Registrar to cancel the registration of a lease on proof of lawful reentry under LTA 100(b) and says that the estate is terminated. This should be a judicial function. LTA 101 has been deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
102 Short form of lease			LPA 50.1 Schedule B		LTA 102 provides short form clauses for leases. LPA 50.1, as set out in Appendix C, follows LTA 102, and attaches LTA Schedule A as LPA Schedule B.
103(1),(2) Surrender of lease	x				LTA 103(1) provides for registration of surrenders. It is administrative and is therefore deleted. LTA 103(2) provides for vesting of the estate upon surrender. It is covered by LRRA 5.4(6) under which cancellation of registration divests the registered interest, and is therefore deleted.
103(3) Surrender consents required			PA 50.2		LTA 103(3) requires consent to a lease surrender of all persons with interests if there is a leasehold certificate of title and all mortgagees and encumbrancees if there is not. PA 50.2, as set out in Appendix C, would require consent of mortgagees and encumbrancees in all cases.
104 Cancellation of expired leases	x				LTA 104 provides for court orders cancelling expired leases. LRRA 5.4(1) requires revision of registrations as required by a transaction binding the registered owner, and LRRA 1.1(t) defines a transaction to include an event affecting an interest by means which include expiration. LRRA Part 8 gives the court power to revise registrations. These provisions cover LTA 104, which is therefore deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
105 Mortgages and encumbrances	x				LTA 105(1) provides for the form of mortgages and encumbrances. LRRA 2.3(b) authorizes the making of regulations as to forms, and the Forms Regulation covers mortgages. LTA 105(1) is therefore deleted. LTA 105(2) provides for the registration of mortgages or encumbrances payable in grain. These fall within the definition of "security interest" in LRRA 1.1(n). LTA 105(2) is therefore unnecessary and is deleted.
106 Mortgage as security			LPA 34.1		LTA 106 provides that a mortgage or encumbrance has effect as security and does not transfer land. This is substantive. LPA 34.1, as set out in Appendix C, follows LTA 106. It does not limit the application to "a mortgage or encumbrance under this Act" as does LTA 106.
106.1 Priority of mortgage		4.6			LTA 106.1 gives priority to a mortgage for future advances. LRRA 4.6 covers the same ground with some differences in detail.
107(1) Mortgages affected by conditional sales agreements			LPA 34.2		LTA 107(1) invalidates mortgages, charges or encumbrances in agreements for the purchase or delivery of chattels. LPA 34.2, as set out in Appendix C, follows LTA 107(1).

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
107(2),(3) Registration	x				LTA 107(2), which prohibits registration of a mortgage, charge or encumbrance referred to in LTA 107(1) is not necessary and is deleted, as LRRR 5.2 requires the Registrar to register interests that are based on valid transactions and nothing directs them to register void interests. LTA 107(3) renders a registration nugatory. It is not necessary and is deleted because LRRR 5.2(3) says that a registration which is not authorized is void.
108(1) & (2) Discharge of mortgage or encumbrance	x			R4.8	To the extent that LTA 108(1)(a) requires the Registrar to discharge a mortgage or encumbrance upon production of a form signed by the holder, it is unnecessary and is deleted, as LRRR 5.4(1)(a) requires revision of registrations required by transactions binding on the owner. LTA 108(1)(b) and (c) are also unnecessary and are deleted because the court has power under LRRR Part 8 to make declarations and order revision of registrations. The reference to succession duty or other tax is obsolete and in any event is not good policy. LTA 108(1)(a)(i) and (ii) give administrative directions to the Registrar to accept specified signatures on discharges of mortgages in 2 exceptional cases. Regulation 4.9 follows the substance of these provisions.
108(3),(4),(5) Repealed					

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
108.1 Postponements			LPA 9.9		LRRA 5.1(g) makes an interest under a postponement agreement registrable, and LPA 9.9, as set out in Appendix C, gives substantive effect to a postponement agreement. The two provisions cover LTA 108.1
109 Memorandum in case of extinction of annuity, etc.	x				LTA 109 provides for the discharge of an encumbrance under judge's order when an annuity is terminated by death or other circumstance. LRRA 5.4(1)(a) requires registrations to be revised by transactions binding on registered owners, and death or extinction falls within the definition of "transaction" in LRRA 1.1(t). The Court's general powers under LRRA Part 8 would allow it to determine that the annuity is terminated and order a revision of registrations accordingly. LTA 109 is therefore unnecessary and is deleted.
110(1) Priority of transfers of mortgages	x				LTA 110(1) provides for transfers of mortgages and priorities among transferees. LRRA general provisions cover this, so that LTA 110(1) is unnecessary and is deleted.
110(2) Transfer of part of sum secured			LPA 34.3		LTA 110(2) provides for the transfer of part of the sum secured by a mortgage. LPA 34.3, as set out in Appendix C, follows LTA 110(2).
111 Liability of transferee			LPA 9.7		LTA 111 passes the rights and obligations under a mortgage, encumbrance or lease to a transferee. LPA 9.7, as set out in Appendix C, follows LTA 111.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRRA Section	Appendix C	Reg. No.	Annotation
112 Rights of transferee			LPA 9.8		LTA 112 passes to the transferee the right to sue under an instrument mentioned in LTA 111. LPA 9.8, as set out in Appendix C, follows LTA 112.
113 Short form of mortgage			LPA 34.4		LTA 113 provides short form clauses for mortgages, which are in Schedule A. LPA 34.4, as set out in Appendix C, follows LTA 112 and attaches Schedule A.
114 Duplicate certificate of title, re mortgage etc.	x				LTA 114 requires the surrender of the duplicate certificate of title in certain cases. It is deleted because there will not be any duplicate certificates of title under the LRRRA.
115 Powers of attorney		10.3			LTA 115 provides for powers of attorney and in certain cases suspends the power of a registered owner to deal with property and recognizes the power of the attorney to do so. LRRRA 10.3 follows LTA 115.
116(1),(7) Transmission of title on death			AEA 32(1),(2)		LTA 116(1) and (7) vest land in the personal representative and relate an executor's or administrator's title back to the date of death. AEA 32(1) and (2), as set out in Appendix C, follow LTA 116(1) and (7).
116(2),(3) Procedural provisions				R8.2	LTA 116(2) and (3) give administrative directions as to the material to be provided for a transmission and require the Registrar to register title in the name of the executor or administrator in that capacity. Regulation R8.2 follows those subsections.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
116(4) Registration of executor, etc.		10.1(2)		8.2(3)	LTA 116(4) instructs the Registrar to register an executor or administrator as owner in that capacity. Regulation R8.2(3) follows that part of LTA 116(4). LTA 116(4) also provides that the executor or administrator shall be deemed to be the owner of the land. LRRR 10.1(2) follows that part of LTA 116(4) with respect to trustees generally, including executors and administrators.
116(5) Repealed					
116(6) Registration as executor, etc.		10.1(3)			LTA 116(6) requires the Registrar to register an executor or administrator as such, for the purposes of LTA 120 only. LRRR 10.1(3) gives effect to the substance of this provision.
117(1),(3) Transmission of estate or interest under will or intestacy				R8.3	LTA 117(1) and (3) also give administrative directions to the Registrar and prescribe materials. Regulation R8.3 follows them.
117(2) Transmission		10.1(2)			LTA 117(2) provides that an executor or administrator, when registered, is deemed to be the owner of the estate or interest. LRRR 10.1(2) so provides with respect to trustees generally, including executors and administrators.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
118(1),(2) Tenure of person registered in place of deceased owner		10.1(2)	AEA 32.2		LTA 118 provides (a) that a person registered in place of a deceased owner is subject to trusts and purposes to which it is applicable and provides for the substitution of a judicially appointed trustee. AEA 32.2, as set out in Appendix C, follows LTA 118 in that respect. (b) that for the purposes of registered dealings, the person is deemed to be the absolute and beneficial owner. LRRR 10.1(2) covers this for executors and administrators.
118(3) Repealed					
119 Transfer by personal representative to himself			AEA 32.1		LTA 119 permits a personal representative to transfer to himself. AEA 32.1, as set out in Appendix C, follows LTA 119.
120 Conditions of registration of transfer, etc.		10.2			LTA 120 prohibits disposition of estate land without the Public Trustee's consent or judge's order unless it is shown that no minors are interest in the estate. While this is administrative in appearance, it merges into substantive law for the protection of minors. LRRR 10.2 follows LTA 120.
121 Repealed					

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
122(1) Writ of execution				R10.1	LTA 122(1) allows the Registrar to register a copy of a writ or execution or other writ affecting land that is certified by the sheriff. Regulation R10.1 follows LTA 122(1).
122(2),(2.1) Binding effect		9.6(1)			LTA 122(2) and (2.1) bind a debtor's lands on and after receipt a writ by the Registrar, unless there is a material difference in names. LRRR 9.6(1) follows LTA 122(2) and (2.1).
122(3),(4) Expiration and new writ		9.13 9.3(4)			LTA 122(3) and (4) provide for the lapse of a writ after 6 years and filing of a renewal in an action on the judgment. LRRR 9.13 follows LTA 12(3) and (4) insofar as the general register is concerned. LTA 122(3) will apply only to writs in the general register after LTA 17.3 is proclaimed and is therefore not carried forward with respect to recorded writs. LTA 122(4) is of general application and LRRR 9.3(4) carries it forward for recorded writs.
122(5),(6) Creditor's address				R10.2 R10.3	LTA 122(5) and (6) require a creditor to give an address for notice and provide for a change of address. Regulations 10.2 and 10.3 follow LTA 122(5) and (6).
122(7) Land not within judicial district		9.6(2)			LTA 122(7) recognizes a writ for general register purposes although the debtor's land is not in the judicial district of the sheriff to whom the writ is addressed. LRRR 9.6(2) follows LTA 122(7).
122(8),(9) Particulars of debtor				R10.4 R10.5	LTA 122(8) and (9) require particulars of the debtor and permit the Registrar to require evidence of identify. Regulations 10.4 and 10.5 follow the two subsections.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
122.1 Priority of instrument in the general register		9.7(1)			LTA 122.1 gives priority to subsequent registrations and caveats if a writ is not on the certificate of title and a general registration certificate of the same date does not disclose it. LRRR 9.7(1) follows LTA 122.1
122.2 Transfer or postponement of writ		9.9			LRRR 9.9 follows LTA 122.2, which authorizes transfers and postponements of writs.
122.3 Discharge of writ		9.11 9.3(3)			LRRR 9.11 follows LTA 123, which provides for the discharge of a writ, insofar as the general register is concerned. LRRR 9.3(3) makes similar provision with respect to recorded writs.
124, 124.1 Instrument registered in error		9.12			LRRR 9.12(1)-(11) follow LTA 124, which provides procedures for dealing with allegations that a registered owner is not the debtor in an instrument in the general register. LRRR 9.12(12) follows LTA 124.1, which makes the same procedure applicable to other instruments in the general register.
125 Sale by sheriff			SA 15.1		SA 15.1, as set out in Appendix C, follows LTA 125, which provides that a sale of land by a sheriff is not valid and cannot be registered without confirmation by the court.
126 Registration of transfer of land sold by sheriff			SA 15.2		SA 15.2, as set out in Appendix C, follows LTA 126 which invalidates a sheriff's transfer unless it is registered within 2 months of the confirming order.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
127 Application for confirmation of sale			SA 15.3		SA 15.3, as set out in Appendix C, follows LTA 127, which gives some directions about the conduct and effect of an application for confirmation of sheriff's sale.
128 Change of name of married persons				R8.1	Regulation R8.1 follows LTA 128, which provides for the procedure to be followed when a married person changes their name.
129 Assignment for benefit of creditors	x				LTA 129(1) provides for "registration" of assignments and then for registration of specific interests. Such an assignment is a "transaction" and the assignment is registrable under LRRR 5.4(1). LTA 129(1) says that upon transmission of title, the assignee's title relates back to the date of the assignment. If this is intended to give priority over intervening registrations, it is contrary to the policy of LRRR. For these reasons, LTA 129(1) is deleted. LTA 129(2) forbids reference to the assignee's trust capacity in the certificate of title and provides that the assignee shall be deemed to be the absolute owner. LRRR 10.1 covers these points.
129.1 Registration of amending agreement		5.1			LRRR 5.1 provides for the registration of the listed interests "and amendments thereto". This incorporates the substance of LTA 129.1, which provides for the registration of agreements amending instruments conferring interests.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
130 Filing of caveat	x				LRRR Part 4 provides a scheme for the recording of all interests in land, including recording requirements, procedures, priorities and the cancellation and lapse of recordings. Except as otherwise mentioned below, this scheme supersedes and is substituted for LTA 130-148.1.
131 Requirements of caveat	x				See note under LTA 130.
132 Address for service	x				See note under LTA 130.
133 Caveat based on unregistered mortgage				R3.2	Regulation R3.2 provides that if a security interest is recorded, the fees payable shall be the same as if a security interest securing the same amount were being registered. This incorporates the substance of LTA 133.
134 Duties of Registrar on receipt of caveat	x				See note under LTA 130.
135 Effect of caveat	x				See note under LTA 130. LRRR 4.4, as qualified by LRRR 4.5, provides a scheme of priorities.
135.1 Transfer of caveat	x				See note under LTA 130. LRRR 4.8 provides for registration of an assignment of the right to cancel a recording.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
136 Withdrawal of caveat	x				See note under LTA 130. LRRR 4.7 provides for cancellation of recordings and includes a special provision about the cancellation of the recording of a servitude that corresponds to LTA 136(2).
137 Lapse of caveat	x				See note under LTA 130. See also LRRR 4.9, which provides for a system for causing recordings to lapse similar to the LTA 137 system for causing caveats to lapse, though with some important differences in detail.
137.1 Caveat to protect restrictive covenant	x				See note under LTA 130. LRRR 4.9(1) includes a restrictive covenant recording among those which may lapse under the section, with service required on every registered owner of every dominant tenement identified in the registered document.
138 Extension of time for proceeding on caveat	x				See note under LTA 130. LRRR 4.9 does not provide for an extension of time to take proceedings to substantiate a recording.
139 Application to discharge caveat	x				See note under LTA 130. The Court has power under LRRR Part 8 to hear an application to have the rights of the parties determined, and it has the power to order the cancellation of a recording.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
140 Order for security	x				See note under LTA 130. LRRR 8.3(2) confers a power to order security for prospective damages and costs that may be caused by a recording similar to that conferred by LTA 140 in the case of a caveat.
141 Refusal to remove caveat	x				See note under LTA 130. LRRR does not have a special provision like LTA 141, which requires the court to refuse to order the removal of a caveat if it does not appear that the caveat should be removed. LTA 141 does not seem to perform any useful function.
142 Compensation in case of caveat filed wrongfully	x				See note under LTA 130. LRRR 4.10 provides a scheme for payment of compensation for recordings that are void or are not cancelled upon request when interests cease to exist which corresponds to that provided by LTA 142 for caveats, with differences in detail.
143 Number of caveats	x				See note under LTA 130. LTA 143 prohibits more than one recording in respect of the same matter without court order. LRRR does not have a counterpart provision but leaves the matter to the compensation provision, LRRR 4.10.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
144 Order re caveat	x				See note under LTA 130. LTA 144 makes procedural provisions for applications to obtain the discharge of Registrar's caveats. LRRR 8.4 leaves the procedure to ordinary Court procedures, with provision for summary applications.
145 Priority of caveat	x				See note under LTA 130. LTA 145 provides for the priority of interests protected by caveat. LRRR 4.4, as qualified by LRRR 4.5, provides a scheme of priorities for unrecorded and recorded interests and covers the ground covered by that part of LTA 145. The provision in LTA 145 for withdrawing a caveat and substituting the instrument under which the interest is claimed is not necessary, because a recording will continue to have its priority if the interest that was recorded is later registered.
146 Registration of certificate of <i>lis pendens</i>		4.2(1)(b)			LTA 146 allows a claimant to file a certificate of <i>lis pendens</i> in lieu of a caveat or where an interest is called into question. LRRR 4.2(1)(b) provides that an interest may be recorded by means of a certificate of <i>lis pendens</i> .
146.1 Compensation re certificate of <i>lis pendens</i>	x				See note under LTA 146. Since the interest is recorded by the certificate of <i>lis pendens</i> the compensation provisions of LRRR 4.10 apply.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
147 Memorandum on withdrawal of caveat	x				See note under LTA 130.
148 Caveat for Crown or person under disability	x				See note under LTA 130. LRRR 5.4(5) provides that if the Registrar obtains information which he reasonably believes indicates that a statutory interest to have registrations revised may exist, he may record the possible interest.
148.1 Cancellation of certificate of lis pendens	x				See note under LTA 130. The LRRR provisions about cancellation of recordings cover the cancellation of certificates of lis pendens.
149 Builders' liens				R4.3(2)	R4.3(2) follows LTA 149 by requiring the mailing of the same notices upon the recording of a builders' lien that LTA 149 requires. Under LRRR 5.1(2), builders' liens will be recorded rather than registered.
150 Assignment of contract			LPA 9.6		LPA 9.6, as set out in Appendix C, follows LTA 150, which provides that contracts for the sale of any land, mortgage or encumbrance is assignable.
151 Attestation within Alberta				R 7.2	Regulation R7.2 follows LTA 151 which requires a witness and affidavit of execution for documents executed in Alberta.
152 Attestation outside Alberta				R7.3	Regulation R7.3 follows LTA 152 which requires a witness and affidavit of execution for documents executed outside Alberta.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
152(2) Repealed					
152.01 Ineligibility to act as witness				R7.4	Regulation R7.4 follows LTA 152.01, which provides that a party to an instrument, or a consenting spouse, is not eligible to be a witness to an instrument.
152.02 Execution by interested commissioner for oaths or notary public				R7.5	Regulation R7.5 follows LTA 152.02, which provides that a Registrar is not obliged to accept an instrument if a party to the instrument or a consenting spouse acted as a commissioner for oaths or notary.
152.1 Exceptions to sections 151 and 152				R7.6	Regulation R7.6 follows LTA 152.1, which provides for exceptions from LTA 151 (Regulation R7.2) and LTA 152 (Regulation R7.3).
152.2 Effect of failure to comply with attestation requirements	x				LTA 152.2 provides that failure to comply with the formalities under LTA 151 (Regulation R7.2) or LTA 152 (Regulation R7.3) does not affect the validity of a registered instrument. This provision is not necessary under LRRR. LRRR 4.5(1)(a) provides that interests are valid from the times of the transactions upon which they are based. Failure to comply with attestation formalities will not invalidate a transaction.
152.3 Execution of documents by corporation		10.5			LRRR 10.5 follows LTA 152.3, which deems for LTA purposes that corporate documents are sufficiently executed if they comply with specific formalities.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRA Section	Appendix C	Reg. No.	Annotation
152.4 Power of the court		8.3(3)			LRRA 8.3(3) authorizes the court to make an order under LRRA 8.3(1) although a document fails to comply with formalities. This covers the ground covered by LTA 152.4.
153 Application of <i>Dower Act</i>				R7.7	Regulation R7.7 follows LTA 153, which, if no Dower consent is provided, requires an affidavit that a disposition of land be accompanied by a Dower affidavit establishing that the land is not a homestead.
154(1),(6),(7),(8) Registration and assurance fund fees				R3.1	Regulation R3.1 follows LTA 154(1), which provides that a Registrar shall not perform any duty until they have received the prescribed fees, and LTA 154(6),(7) and (8), which provide for credit accounts.
154(2)-(5) Valuation of land				R3.3	Regulation 3.3 follows LTA 154 (2)-(5), which provide a procedure for the valuation of land.
155 Inspectors of transfers				R3.4	Regulation R3.4 follows LTA 155, which provides for the appointment of inspectors of transfers.
156 Accounting for money received				R3.5	Regulation R3.5 follows LTA 156, which requires a Registrar to account for and pay over money received by them.
157 Assurance fund				R3.6	Regulation R3.6 provides for the establishment of an assurance fund and the disposition of money in the fund.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
158 Actions against Registrar		7.1 7.6			LRRR 7.1 confers a right of compensation for loss through malfunction of the system or official error. LRRR 7.6 provides that a person who is entitled to compensation may commence an action against the Registrar General. These sections correspond to LTA 158.
159 Right of action of spouse	x		DRA 13(b), 16(4)		DA 13 covers most of the ground covered by LTA 159, and after the amendment to DA 13(b) and 16 as set out in Appendix C, no part of LTA 159 will be necessary. LTA 159 is accordingly deleted.
160 Protection of bona fide purchasers and mortgagees	x				LTA 160 protects purchasers and mortgagees against actions for damages or ejection on the plea that the transferor or mortgagor, or a person from whom they derive their interest, has been registered through fraud or error. The scheme of the LRRR, and particularly LRRR 5.5, confers equal protection. LTA 160 excepts acquisition through misdescription from its protection, but LRRR does not. See the note under LTA 173.
161 Registrar as defendant	x				LRRR 7.6 sets out provisions for actions for compensation which correspond in general with LTA 161.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
162 Final judgment against Registrar in cases where co-defendant liable	x				Where there is a defendant other than the Registrar, LTA 162 precludes entry of judgment against the Registrar until it is ascertained that a judgment cannot be entered against the Registrar until the court declares that the amount is not recoverable from the other defendant. LRRR 7.6 makes no such requirement, and LRRR 7.8 instead gives the Government a claim over against a wrongdoer who is not merely careless or negligent.
163 Assignment of judgment to Provincial Treasurer	x				LTA 163 provides for an assignment of judgment to the Provincial Treasurer. LRRR 7.8(2) gives the Provincial Treasurer a direct claim against a wrongdoer who is more than merely careless or negligent and also provides that nothing in the Act affects the liability of any person to the Government under an assignment or subrogation.
164 Notice of action to Registrar	x				LTA 164 provides that no action may be brought against the Registrar without 3 months' notice. This is deleted as an unnecessary hurdle and one that may result in being deprived of a right of action by a limitation period that expires within the 3 month period.
165 Payment of judgment out of assurance fund				R15.1	
166 Actions against Registrar in his name of office	x				LTA 166 provides that actions are to be brought in the Registrar's name of office and do not abate upon a vacancy. LTA 166 is deleted as being unnecessary.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
167 Costs of action	x				LTA 167 provides that an unsuccessful plaintiff must pay the Registrar's full cost. Its policy is inconsistent with the compensation policy of LRRR and it is therefore deleted. The usual costs rules will apply.
168(1),(2) Limitation of action	x				LTA 168(1) imposes a 6 year limitation from deprivation or mistake. LRRR 7.3 substitutes a 2 year limitation from the time when the plaintiff knows or ought to know of the deprivation. LTA 168(2) provides that a person under disability has 6 years from the termination of the disability. LR 7.3(2) and (3) provide somewhat different relief in the case of disability.
168(3) Failure to caveat		7.4			LTA 168(3) deprives a plaintiff of their action if they wilfully or collusively failed to file a caveat when aware of "the delay". LRRR 7.4 deprives a plaintiff of their action if the plaintiff, knowing of an interest which could be recorded under LRRR 5.4(2), failed to record the interest promptly.
169 Error in mines and minerals				R15.2	Regulation R15.2 follows LTA 169, which imposes a monetary limit on claims against the Registrar in respect of mines and minerals, and provides that there is no claim at all unless the claimant has obtained a mineral certificate in respect of the disposition under which the claimant claims.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
170(1) Settlement of claim out of assurance fund				R15.3	Regulation 15.3 requires the approval of the Attorney General for a claim of \$5000 or less and the approval of the Lieutenant Governor in Council for a claim for more than that sum. This replaces LTA 170(1) with some difference.
170(2) Deeming payment on account of other person	x				LTA 170(2) provides that a payment shall be deemed to have been paid on account of, and is recoverable from, such person as the Attorney General may direct. This has been deleted as it appears to confer a right to impose liability without court intervention.
171 Liability of assurance fund	x				See discussion in Chapter 3, in Volume 1 of the report, heading B.8(c), "When compensation is payable".
172 Recovery of money paid out of assurance fund	x				LTA 172 provides a procedure for recovering money paid out of the assurance fund "on account of any person". LRRR 7.8 provides for recovery by action against a wrongdoer who is more than merely negligent or careless and replaces LTA 172 to that extent. To the extent that LTA 172 authorizes unilateral imposition of liability, it should not be replaced. LTA 172 has therefore been deleted.
173 Protection against ejection					LTA 173 protects owners against actions for ejection except in specified cases, and provides that in other cases the certificate of title bars any such action. The scheme of the LRRR, particularly LRRR 5.5, confers equal protection. See the note under LTA 160.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
174 Appeal to judge from acts of Registrar		8.1			LRRR 8.1 provides for judicial review of Registrars' actions.
175 Reference by Registrar to judge		8.2			LRRR 8.2 allows the Registrar General to apply to the Court for directions. This covers the substance of LTA 175.
176 Reservations in original grant from the Crown	x				LTA 176 authorizes the Registrar to make a memorandum of reservations or implied conditions under the original grant from the Crown is subject. LRRR 5.4 covers the ground.
177 Corrections	x				LTA 177 is the corrections section that has caused much confusion. Part of the confusion is due to the emphasis on the duplicate certificate of title, which will not exist under LRRR. The section is unnecessary and is deleted. Under LRRR 5.4(1)(a) and (b), registrations must be revised as required by transactions binding registered owners, or when a revision was not authorized by a valid transaction. Revisions may be effected by the Registrar or by the Court, depending on the circumstances, and LRRR 5.4(3) and (5) deal with doubtful situations. This scheme covers the situation, though differently from LTA 177.
178(1) Entry of correction				R4.2(2)	Regulation R4.2(2) follows LTA 178(1), which requires the Registrar to follow specified formalities in correcting errors.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
178(2) Effect of corrections	x				LTA 178(2) provides that corrected entries are as valid as if the errors had not been made. Prospectively, this is not necessary, as a revised register is the effective register. If the subsection acts retrospectively it is contrary to the policy of the LRRR.
179 Examination and orders by judge	x				LTA 179 provides a contempt procedure for refusal to deliver up a duplicate certificate of title or other instrument. The procedure serves no purpose, and the section is deleted.
180 Power of Judge to cancel, correct, etc., duplicate certificate	x				LRRR Part 8 confers powers on the Court to order revisions of registrations that include the powers conferred by LTA 180.
180.1 Registration of judgment, order or certificate		8.5			LRRR 8.5 follows LTA 180.1, which prohibits the revision of registrations under judge's order unless the time for appeal has passed or appeal has been waived. Exceptions are made for the removal of builders' liens, and an order can require registration despite the section.
181 Notice to interested parties	x				LTA 181 provides for notice of hearings. This is unnecessary and the section is deleted. LRRR 8.4 makes general court procedures applicable.
182 Inquiry	x				LTA 182 deals with procedural matters. This is unnecessary and the section is deleted. LRRR 8.4 covers them.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
183 Appeal from judge's decision	x				LTA 183 provides for appeals to the Court of Appeal. These should be governed by the usual appeal rules. The section is unnecessary and is deleted.
184 Reference by judge to Court of Appeal	x				LTA 184 provides for a reference of a matter by a judge to the Court of Appeal. There is no special need for such a power in land registration matters. The section is unnecessary and is deleted.
185 Payment of costs	x				LTA 185 gives the court power to order payment of costs. General court powers over costs are sufficient. The section is unnecessary and is deleted.
186 Enforcement of orders of court	x				LTA 186 provides that court orders may be enforced in the usual way. The section is unnecessary and is deleted.
187 Tariff of costs	x				LTA 187 provides that the judges of the Court of Appeal may provide a tariff of costs. The usual costs rules apply. The section is unnecessary and is deleted.
188 Repealed					
189 Loss or destruction of duplicate certificate	x				LTA 189 provides for a substitute duplicate certificate of title. The section has been deleted as LRRR does not provide for duplicate certificates of title.
190 Use of name of owner by beneficiary in action respecting land, etc.	x				LTA 190 requires an owner to allow his name to be used in an action by a beneficiary or person interested in land. This is covered by the general law, and the section has been deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
191 Repealed					
192 Use of instrument as evidence of transfer, etc.			EA 54.1		EA 54.1, as set out in Appendix C, follows LTA 192, which provides that a transfer, etc., may be used in evidence to show that the transferee, etc., gave value.
193 Reproduction of instrument or caveat		2.4(4)			LTA 193 provides that a certified reproduction of a Land Titles Office document is admissible in evidence as if it were an original. LRRR 2.4(4) covers the same ground.
194 Minerals owned by Crown				R14.1	Regulation R14.1 follows LTA 194, which prohibits the registration or caveating of interests in Crown-owned minerals, which are covered by the <i>Mines and Minerals Act</i> .
195 Protection of person accepting transfer, etc.		1.2 4.5(2)(b)			LTA 195 provides that a non-fraudulent purchaser from a certificate of title holder is not affected by constructive or actual notice of off-register interests (and possibly on-register trusts). That ground (and some additional ground) is covered in somewhat different ways by LRRR 1.2, which gives a partial definition of fraud, and LRRR 4.5(2)(b), which confers priority by recording in the absence of fraud.
196 Suit for specific performance	x				LTA 196 provides that the duplicate certificate of title is evidence of title in an action for specific performance. LRRR does not provide for a duplicate certificate of title, and the section is in any event unnecessary. The section is deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
197 Transfers to trustees and joint owners			TA 29.1		TA 29.1, as set out in Appendix C, follows LTA 197, which, in effect, allows the words "no survivorship" to be included in a certificate of title jointly held in trust, with the consequence that, without court sanction, it is not lawful for a disposition to be signed by less than the number of joint owners that appeared on the certificate of title.
198 Notice of court order			TA 29.2		TA 29.2, as set out in Appendix C, follows LTA 198, which provides procedures for obtaining the court sanction referred to in LTA 197 (TA 29.1).
199 Jurisdiction of courts	x				LTA 199 provides that the Act does not affect court jurisdiction over actual fraud and contracts. The section is not necessary, as nothing in LRRR takes away such jurisdiction, and it is deleted.
200 Effect of death, etc., on proceedings under Act	x				LTA 200 provides that proceedings under the LTA are not suspended by death, transmission or change of interest, and gives a judge power to make orders in relation to such proceedings. The general law is adequate. LTA 200 is unnecessary and has been deleted.
201 Effect of irregularity in proceedings	x				LTA 201(1) provides that irregularities not affecting substantial justice do not render documents and registrations invalid. LTA 201(2) and (3) make procedural provisions with respect to affidavits. These matters are all covered by general court powers and rules. LTA 201 is unnecessary and has been deleted.

Column No. 1	No. 2	No. 3	No. 4	No. 5	No. 6
LTA No.	Delete	LRRR Section	Appendix C	Reg. No.	Annotation
202 Protection of officers, etc.			LRRR 2.2(7)		LRRR 2.2(7) protects public officers and employees against liability for good faith acts and omissions. It covers the ground covered by LTA 202.
202.1 False statements		10.4			LRRR 10.4 follows LTA 202.1, which provide sanctions against making false statements and destroying, altering or removing of Land Titles Office records.
203 Forms, instruments, caveats	x				LRRR 2.3(b) provides for regulations about forms and replaces LTA 203(a). LTA 203(b), providing for registration or filing in another district would be included under the general regulation power in LRRR 2.3, if needed. Regulation R5.2 provides for duplicate records and the destruction of originals after a prescribed period of time and covers LTA 203(c). LTA 203 is therefore unnecessary and has been deleted.
204 Furnishing books, forms, etc.	x				LRRR 2.1(2)(b) requires the Lieutenant Governor in Council to provide each land registration office with supplies and equipment and therefore covers the ground covered by LTA 203(1). LRRR 2.3(g) authorizes regulations for the use of the International System of Units and therefore covers the ground covered by LTA 204(2). LTA 204 is therefore unnecessary and is deleted.
205 Address for service of notice				R9.3	Regulation 9.3 follows LTA 205, which permits an owner to give an address for service of notices.

APPENDIX B

LIST OF CONSULTANTS

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