

ALBERTA LAW REFORM INSTITUTE

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

VOLUME 2

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PROPOSALS FOR A LAND RECORDING AND REGISTRATION ACT FOR ALBERTA

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ALBERTA LAW REFORM INSTITUTE

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PROPOSALS FOR A LAND RECORDING AND REGISTRATION ACT FOR ALBERTA

VOLUME 2

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DISPOSITION OF LAND TITLES ACT PROVISIONS NOT PREVIOUSLY DEALT WITH

VOLUME 2

A. Introduction

In Volume 1 of this report we recommend that a new Land Recording and Registration Act be enacted to provide a modern and more efficient system of land recording and registration for Alberta. The new Act would replace the caveating and registration provisions of the Land Titles Act. It would contain some of the substantive law from the Land Titles Act, but not most of it, and it would not replace most of the mass of administrative provisions that are also contained in the Land Titles Act. We provided a draft Land Recording and Registration Act in Part III of Volume 1.

This volume carries out a scheme for disposing of all the provisions of the Land Titles Act that are not replaced by the draft Land Recording and Registration Act. This scheme is not an integral part of devising a better land recording and registration system, but it is a necessary collorary to it. Appendix A in Volume 1, *Schedule of Disposition of Land Titles Act Provisions*, lists all Land Titles Act provisions and shows how we propose to dispose of each one. A reader who wants to get a comprehensive view of the disposal scheme should look at Appendix A.

We repeat here some of the matter contained in Volume 1 which we think will help to give the reader an introduction to the materials contained in this volume.

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 get rid of the underbrush that, in the Land Titles Act, obscures the legislative exposition of the principles of land recording and registration. This underbrush consists of a great mass of substantive law provisions that are not

part of the law of recording and registration and a great mass of administrative directions that should not be in a statute at all.

(2) Criteria for disposition

We think that the provisions of the Land Titles Act should be disposed of as follows:

(a) provisions that are

- covered by the proposed Act,
- contrary to the policy of the proposed Act , or
- perform no function

should be deleted.

(b) substantive law provisions that are an integral part of land recording and registration should be accommodated in 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) other substantive law provisions should be put into the substantive real property statutes with which they are most closely related.

(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 land recording and registration system. Our project does not include the reform of statute law that is not directly related to land recording and registration. We are making proposals for the disposition of substantive Land Titles Act provisions not covered by the new 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 proposed 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 proposed Act contains provisions prescribing the basic structure 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 are all appropriate.

(4) Scheme for disposition

The scheme that we propose in this report for the disposition of the provisions of the Land Titles Act is as follows:

- (a) the recording and registration provisions of the Land Titles Act are replaced by the recording and registration provisions in Parts 1 to 8 of the draft Act which is Part III of 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 land recording and registration.
- (c) we have included in Part 9 of the draft Act in Part III of Volume 1 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 land 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 in Part III of Volume 1 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 of the draft Act in Part III of Volume 1 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 this Volume 2 an Appendix C entitled *Consequential Amendments to Statutes*. This appendix covers 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 this 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.

As we have said above, a reader who wants to get a comprehensive view of our scheme for the disposition of the Land Titles Act should look at Appendix A, which appears in Volume 1.

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, Appendix A in Volume 1 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.

APPENDIX C

CONSEQUENTIAL AMENDMENTS TO STATUTES

A SCHEDULE SETTING OUT, WITHOUT RECOMMENDATION FOR OR AGAINST ADOPTION, A SCHEME FOR DISPOSITION OF SUBSTANTIVE LAW PROVISIONS OF THE LAND TITLES ACT

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ADMINISTRATION OF ESTATES ACT

The Administration of Estates Act is amended by repealing section 32 and substituting the following:

Ownership of personal representatives

32(1) When the owner of land dies, the land vests in the personal representative of the deceased owner.

(2) The title of the executor or the administrator to the land relates back and takes effect from the date of the death of the deceased owner.

(3) After the issue of a grant, no person other than the legal representative to whom it is issued has power to act in the estate comprised in or affected by the grant until the grant has been recalled or revoked or the legal representative discharged.

Annotation

1. AEA 32(1) and (2) are substantive law provisions. Because they relate to estates it is appropriate to put them into the Administration of Estates Act. Alternatively, they could be put into the Law of Property Act.
2. AEA 32(1) carries forward the substance of LTA 116(1).
3. In LTA 116(1) the words "for which a certificate of title has been granted" follow "land" where it first appears, and the words "subject to this Act" follow "land" where it next appears. The effect of the deletions is to make the section apply to all land. The recording and registration provisions of the Land Recording and Registration Act will apply to the ownership interests of personal representatives.
4. AEA 32(2) reproduces LTA 116(7).
5. AEA 32(3) is the existing section 32.

Transfer by personal representative to himself

32.1 An executor, administrator or trustee may make a valid transfer to himself in his personal capacity.

Annotation

1. AEA 32.1 reproduces LTA 119.

2. AEA 32.1 is a substantive law provision. Because it relates to estates, it is appropriate to put it into the Administration of Estates Act. Alternatively, it could be put into the Law of Property Act.

Tenure of person holding land in place of deceased owner

32.2(1) Subject to the *Land Recording and Registration Act*, any person who holds land in place of a deceased owner shall hold the land on the trusts and for the purposes to which it is applicable by law and subject to any trusts and equities on which the deceased owner held it.

(2) Any person beneficially interested in any such land may apply to a court having jurisdiction to have it taken out of the hands of the trustee having by law charge of the land and to have it transferred to some other person or persons, and the court, on reasonable cause being shown, shall name some suitable person or persons as owner of the land, and the court may order the person or persons named to give approved security for the due fulfilment of the trusts.

Annotation

1. AEA 32.2(1) carries forward the substance of the first part of LTA 118(1). LTA 118(1) applies only to a "person registered in place of a deceased owner". The policy reasons behind the subsection apply whether or not the person is registered and AEA 32.2(1) applies generally to "any person who holds land in place of a deceased owner", whether registered or not. The subsection may only repeat the general law but is included here because it is now in the Land Titles Act.
2. LTA 118(1) concludes by saying "but for the purpose of any registered dealings with the land he shall be deemed to be the absolute and beneficial owner thereof". Since that has to do with land registration, it is covered by LTRA 10.2(2), and section 32.2 is made subject to the Land Recording and Registration Act.
3. Section 32.2(2) reproduces the first part of LTA 118(2).
4. LTA 118(2) goes on to give the court power to order the Registrar to cancel the existing certificate of title and issue a new one. Part 8 of the Land Registration and Recording Act confers power on the court to order the counterpart registrations under the LTRA, so that this part of LTA 118(2) is not carried forward.
5. Under the Administration of Estates Act, "court" means the Surrogate Court.

AGRICULTURAL AND RECREATIONAL LAND OWNERSHIP ACT

The Agricultural and Recreational Land Ownership Act is amended by adding the following section after section 2:

Statutory declaration required

2.1(1) A Registrar under the *Land Recording and Registration Act* shall refuse to register the transfer or transmission of any estate or interest in land, to record any estate or interest in land or to register or file a plan of subdivision unless the transfer, transmission, recording document or plan of subdivision is accompanied by a statutory declaration in the form and containing the information prescribed by regulations under this Act and section 33 of the *Citizenship Act (Canada)* and made by the person required by those regulations to make it.

(2) The Registrar shall refuse to register a transfer, transmission or plan of subdivision, or record any interest described in subsection (1) if he has reason to believe that the transfer, transmission, caveat or plan of subdivision results in the taking or acquisition directly or indirectly of, or the succession to, an estate or interest in land by a person contrary to regulations made under this Act and section 33 of the *Citizenship Act (Canada)*.

(3) This section applies notwithstanding the *Land Registration and Recording Act*.

Annotation

1. Section 2.1 carries forward the substance of LTA 31. Its terminology has been adapted so as to fit in with the terminology of the Land Registration and Recording Act.
2. LTA 31 does not relate to land recording and registration. It carries out the policy of the Agricultural and Recreational Land Ownership Act. It is appropriate to put its successor into the latter Act. Because the section imposes a procedural requirement that is contrary to the Land Recording and Registration Act it has to be made to override that Act.
3. The regulations under ARLOA will have to be changed to fit into this structure, but their substance can remain unchanged.

DOWER ACT

The Dower Act is amended as follows:

Claim for compensation

- (a) *in section 13(b), by striking out "out of the Assurance Fund" and substituting "under Part 7 of the Land Recording and Registration Act".*

Payment of judgment

- (b) *by adding the following subsection after section 16(3):*
- (4) **Except as provided in this Act, the spouse has no right of action for the recovery of compensation under the *Land Recording and Registration Act*.**

Annotation

1. Sections 13 to 17 of the Dower Act contain a complete code covering a spouse's remedies flowing from a wrongful disposition of a homestead. The Dower Act is the appropriate place for that code.
2. LTA 159(1) provides that the spouse has whatever right of action for the recovery of damages from the assurance fund that is provided by the Dower Act. It is not necessary to carry this forward as the Dower Act itself confers the right of action. LTA 159(1) then goes on to say that the spouse has no right of action for the recovery of damages from the assurance fund pursuant to the Land Titles Act. While it may not be necessary to say this, the amended DA 17(4) repeats it with necessary changes in terminology.

DRAINAGE DISTRICTS ACT

The Drainage Districts Act is amended by striking out section 182(3)(d) and (e) and substituting the following:

Prior interests

- (d) a servitude as defined in the *Land Recording and Registration Act* registered or recorded prior to the registration of the adjudication, and
- (e) any notice endorsed on the register under section 11 of the *City Transportation Act* prior to the registration of the adjudication.

Annotation

1. LTA 65(2) provides that "land mentioned in a certificate of title issued under . . . Part 4 of the Drainage District Act . . . , notwithstanding any other Act, is, by implication and without any special mention therein, subject to" five kinds of interests and entries that are listed in the subsection "if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication on the rate enforcement return under . . . the *Drainage District Act*". It is not clear why the subsection says that land is "without any special mention" in the certificate of title subject to things that the subsection later requires to be mentioned in the existing certificate of title. Whatever the reason, we do not think that the subsection is intended to confer any form of interest that would override the register, or that it should do so.
2. Section 182(3) of the DDA provides that the estate in fee simple obtained by a Drainage District Board in rate enforcement proceedings is free from all other estates, etc., with 5 listed exceptions, the first three of which (Government of Canada claims, drainage district debentures, and taxes) do not concern us. Under section 182(3)(d) and (e), the two classes that do concern us are excepted, and therefore derogate from the estate in fee simple, only if a memorandum has been made or the interest has been registered. It is not clear whether the memorandum or registration must have taken place before the adjudication or whether it is enough that it has taken place before the registration of the adjudication.
3. LTA 65(2) and DDA 182(3)(d) and (e) overlap each other to a very considerable extent. DDA 182(3)(d) and (e) provide that an estate in fee simple resulting from an adjudication under the DDA is subject to certain things if they are on the certificate of title at the time of the adjudication. LTA 65(2) provides that the certificate of title that results from the adjudication is subject to certain things if they have been registered, recorded or entered at the time of the adjudication. But if the fee simple

estate was subject to certain things, and if those things are on the certificate of title at the time of the adjudication, the certificate of title would be subject to them anyway.

4. The combined effect of the two provisions appears to be merely to allow the taxpayer owner to grant certain interests up to the time of the registration of the adjudication, and to give those interests, if on the title at the time of the registration of the adjudication, priority over the DDA title.
5. The things listed in DDA 182(3)(d) and (e) are: easements and incorporeal rights memoranda of which have been made under LTA 70 or 72 (utility rights of way); and conditions or covenants running with or annexed to the land under LTA 52. The things listed in LTA 65(2) include all those things and, in addition, easements or incorporeal rights memoranda of which have been made under LTA 72.1 (revived rights of way on closed roads), and notices endorsed pursuant to section 11 of the City Transportation Act.
6. We think that there should be one provision only; that it should be in the Drainage District Act; and that it should subject a DDA title to all those things that the present legislation shows a legislative intention to protect. Since these things will necessarily be on the register, the Registrar will merely carry them forward when they register the new owner under the DDA. Since the legislative intention of LTA 65(2) was clearly to protect things entered or registered before the registration of the adjudication rather than the time of the adjudication, we think that the DDA provision should refer to the time of registration.
7. We think that DDA section 182(3), amended by the substitution of the new DDA 182(3)(d) and (e) set forth above, carries out this view. The defined word "servitude" includes all the things listed in both LTA 65(2) and DDA 182(3)(d) and (e) except the notice under the City Transportation Act.
8. LTA 65(2) deals with certificates of title issued under the Irrigation Act and the Tax Recovery Act as well as with the DDA. See the annotations to the proposed amendments to those Acts.

EVIDENCE ACT

The Evidence Act is amended by adding the following section after section 54:

Use of instrument as evidence of transfer, etc.

54.1(1) When in a proceeding affecting land for which a register has been established under the *Land Recording and Registration Act* it becomes necessary to determine the fact whether the transferee, mortgagee, encumbrancee or lessee is a transferee, mortgagee, encumbrancee or lessee for valuable consideration or not, any person who is party to the proceeding may give in evidence any transfer, mortgage, encumbrance, lease or other instrument or any caveat or recording affecting the land in dispute, although it is not referred to in the certificate of title or has been cancelled by the Registrar.

(2) In this section, "mortgage", "mortgagee", "encumbrance", and "encumbrancee" have the meanings given to them in section 1(2) of the *Law of Property Act*.

Annotation

1. Section 54.1 reproduces LTA 192 with necessary changes. It enacts a rule of evidence that belongs in the Evidence Act, not the Land Recording and Registration Act.
2. It is proposed that the definitions of the words listed in EA 54.1(2) will be moved from the Land Titles Act to the Law of Property Act.

IRRIGATION ACT

The Irrigation Act is amended by striking out section 157(4)(d),(e) and (f) and substituting the following:

Interests having priority

- (d) a servitude as defined in the *Land Recording and Registration Act* registered or recorded prior to the registration of the adjudication,
- (e) any notice endorsed on the register under section 11 of the *City Transportation Act* prior to the registration of the adjudication.

Annotation

1. LTA 65(2) provides that "land mentioned in a certificate of title issued under . . . Part 5 of the *Irrigation Act* . . ., notwithstanding any other Act, is, by implication and without any special mention therein, subject to" five kinds of interests and entries that are listed in the subsection "if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication on the rate enforcement return under . . . the *Irrigation Act*". It is not clear why the subsection says that land is "without any special mention" in the certificate of title subject to things that the subsection later requires to be mentioned in the existing certificate of title. Whatever the reason, we do not think that the subsection is intended to confer any form of interest that would override the register, or that it should do so.
2. IA 157(2) vests a fee simple estate in an Irrigation District Board and IA 157(3) provides for the issue of a certificate of title to the board. IA 157(4) then provides that the certificate of title is issued clear except for a number of things of which only those listed in IA 157(4)(d), (e) and (f) concern us here. The things listed in those three paragraphs are protected only if a memorandum has been made or the interest has been registered. It is not clear whether the memorandum or registration must have taken place before the adjudication or whether it is enough that it has taken place before the registration of the adjudication.
3. LTA 65(2) and IA 157(4)(d), (e) and (f) overlap each other to a very considerable extent. IA 157(4)(d), (e) and (f) provide that a certificate of title under the IA is free of everything except for certain things if those things were on the certificate of title at the time of the adjudication. LTA 65(2) provides that the certificate of title that results from the adjudication is subject to certain things if they have been registered, recorded or entered at the time of the adjudication.

4. The combined effect of the two provisions appears to be merely to allow the taxpayer owner to grant certain interests up to the time of the registration of the adjudication, and to give those interests, if on the title at the time of the registration of the adjudication, priority over the IA title.
5. The things listed in IA 157(4)(d), (e) and (f) are: easements and incorporeal rights memoranda of which have been made under LTA 70 or 72 (utility rights of way); and conditions or covenants running with or annexed to the land under LTA 52. The things listed in LTA 65(2) include all those things and, in addition, easements or incorporeal rights memoranda of which have been made under LTA 72.1 (revived rights of way on closed roads), and notices endorsed pursuant to section 11 of the City Transportation Act.
6. We think that there should be one provision only; that it should be in the Irrigation Act; and that it should subject an IA title to all those things that the present legislation shows a legislative intention to protect. Since these things will necessarily be on the register, the Registrar will merely carry them forward when they register the new owner under the IA. Since the legislative intention of LTA 65(2) was clearly to protect things entered or registered before the registration of the adjudication rather than the time of the adjudication, we think that the DDA provision should refer to the time of registration.
7. We think that IA 157(4), amended by the substitution of the new IA 157(4)(d) and (e) set forth above, carries out this view. The defined word "servitude" includes all the things listed in both LTA 65(2) and the present IA 157(4)(d), (e) and (f) except the notice under the City Transportation Act.
8. LTA 65(2) deals with certificates of title issued under the Drainage District Act and the Tax Recovery Act as well as with the IA. See the annotations to the proposed amendments to those Acts.

LAW OF PROPERTY ACT

The Law of Property Act is amended:

- (a) *by striking out section 1 and substituting the following:*

Definitions

1(1) In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "Registrar" means a Registrar under the *Land Recording and Registration Act*;
- (c) An encroachment agreement executed by the owner of a parcel of land to permit the encroachment of improvements made on an adjoining parcel of land;
- (d) "mineral unit operation" means an operation where, pursuant to an agreement, interests in a mineral are merged, pooled, consolidated or integrated as a single unit, without regard to the boundaries of the separate parcels, for the purposes of
 - (i) the development or production of the mineral within, on or under the parcels, or any specified stratum or strata or portion thereof within the parcels, or
 - (ii) the implementing of a program for the conservation of the mineral, or the co-ordinated management of interests in the mineral, and
- (e) "mineral unit operation agreement" means an agreement for a mineral unity operation.
- (f) "party wall agreement means
 - (i) an agreement created by the owners of adjoining parcels of land, or
 - (ii) a declaration made by a person who is the owner of adjoining parcels of land,

declaring certain existing walls or walls that are to be constructed on those parcels to be party walls and setting

forth the rights, privileges, easements and covenants that exist in respect of the party walls.

- (g) "utility interest" means a right on, over or under the land for
- (i) carrying, laying, constructing, maintaining or using conduits, cables, wires, poles or transmission lines,
 - (ii) laying, constructing, maintaining and operating pipelines for the transmission, transportation or conduct of any substance,
 - (iii) conveying water,
 - (iv) drainage, irrigation, flooding or erosion,
 - (v) disposing of sewage,
 - (vi) constructing or maintaining a public work,
 - (vii) constructing, maintaining and operating a railway, street railway or light rail transit, or
 - (viii) constructing, maintaining and operating a temporary roadway.

(2) In Parts 1.1, 1.2, 3.1, 6.1 and 6.2

- (a) "encumbrance" means any charge on land created or effected for any purpose whatever, inclusive of mortgage, mechanics' or builders' liens, when authorized by statute, and executions against land, unless expressly distinguished;
- (b) "encumbrancee" means the owner of an encumbrance; and
- (c) "encumbrancer" means the owner of any land or of any estate or interest in land subject to any encumbrance.
- (d) "mortgage" means a charge on land created merely for securing a debt or loan;
- (e) "mortgagee" means the owner of a mortgage;
- (f) "mortgagor" means the owner or transferor of land or of any estate or interest in land charged as security for a debt or a loan.

Annotation

1. The definition of "Court" in LPA 1(1)(a) is unchanged, and the definition of "Registrar" is changed only to conform to the enactment of a new Land Recording and Registration Act.
2. The definitions of encroachment agreement, mineral unit operation, mineral unit operation agreement, party wall agreement and utility interest are taken from LTA sections dealing with these interests. Some of these interests and some aspects of others of them are not known to the law. All require definition, and all should be declared by a substantive law statute to be interests in land. They are all dealt with in the proposed Part. Since the interests are not all known to law, they must be defined somewhere, and the appropriate place is in the Act that makes them legal interests. See the proposed Part 6.2, Servitudes and mineral unit operation agreements, below.
3. The definitions of "mortgage" and "encumbrance", etc., come from LTA 1. They are brought forward to ensure that carrying forward the substantive provisions from the Land Titles Act that are referred to below will not change the law laid down by those sections. In particular, the definition of "encumbrance" is different in ordinary usage so that shifting the sections to a different Act would change their effect if the definition did not go with them. Upon enactment of the proposed legislation it may be possible to integrate those sections better into the LPA.
4. It is necessary to have definitions of "encroachment agreement", "mineral unit operation agreement", "party wall agreement" and "utility interest" in the LPA as they are cross-referenced by the definitions in the Land Recording and Registration Act.

(b) by adding the following Parts after Part 1:

PART 1.1 IMPLIED COVENANTS AND POWERS

Annotation to Part 1.1

Part 1.1 reproduces without change in principle the LTA sections that imply covenants and powers in land instruments. Since the proposed LPA 9.5, which carries forward LTA 63, applies to all instruments in which covenants are implied by the Land Titles Act, and not to instruments in which covenants are implied in some other way, these provisions should be put into one Part and cross-references should be to covenants implied "under this Part". LPA 61, for example, implies covenants in mortgages that do not come from the Land Titles Act, so that applying the proposed LPA 9.5 to covenants implied "under this Act" would change its scope.

Covenant implied in transfers, mortgages and encumbrances

9.1 In every instrument transferring, encumbering or charging land there shall be implied the following covenant by the transferor or encumbrancer: That the transferor or encumbrancer will do any acts and execute any instruments that in accordance with this Part are necessary to give effect to all covenants, conditions and purposes expressly set forth in the instrument or by this Part declared to be implied against that person in instruments of a like nature.

Annotation

1. Except as mentioned in Annotation 2 below, section 9.1 reproduces LTA 61. Since it implies a covenant in certain land instruments it is substantive and should go into the Law of Property Act.
2. LTA 61 applies only if the land that is transferred, encumbered or charged is "land for which a certificate of title has been issued". While the point is academic, there is no reason to imply the covenant where registered land is involved and not to imply it where registered land is not involved. LPA 9.1 therefore applies to all land. For reasons given in the Annotation to Part 1.1 it applies only to instruments and covenants under the Part.

Covenant implied in transfers

9.2 In every instrument transferring land subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee both with the transferor and the mortgagee: That the transferee will pay the principal money, interest, annuity or rent charge secured by the mortgage or encumbrance, after the rate and at the time specified in the instrument creating it, and will indemnify and keep harmless the transferor from and against the principal sum or other money secured by the instrument and from and against the liability in respect of any of the covenants therein contained or under this Act implied on the part of the transferor.

Annotation

1. Except as mentioned in Annotation 2 below, section 9.2 reproduces LTA 62. Since it implies a covenant in certain transfers it is substantive and should not be in the Land Recording and Registration Act. Since the transfers that it relates to are land transfers, the Law of Property Act is an appropriate place to put it.
2. LTA 62 applies only if the land that is transferred is "land for which a certificate of title has been issued". While the point is academic, there is no reason to imply the covenant where registered land is involved and not to

imply it where registered land is not involved. LPA 9.2 therefore applies to all land.

Covenants implied in leases

9.3 In every lease of land other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, there shall be implied the following covenants by the lessee, unless a contrary intention appears in the lease:

- (a) that he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes that may be payable in respect of the demised land during the continuance of the lease;
- (b) that he will at all times during the continuance of the lease keep and at the termination thereof yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty and reasonable wear and tear excepted.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.3 reproduces LTA 99. Since it implies covenants in leases of land and it is substantive, the Law of Property Act is an appropriate place to put it.
2. LTA 99 applies only to "a lease referred to in section 98". LTA 98 refers only " when land for which a certificate of title has been granted is intended to be leased or demised for a life or lives, or for a term of more than 3 years". There is no reason to imply the covenants where registered land is involved and not to imply them where registered land is not involved, nor is there any reason to imply them in leases for more than 3 years and not to imply them in leases for less than 3 years.. LPA 9.3 therefore applies to all leases of land except those covered by the special statutes mentioned in the section.

Powers implied in leases

9.4 In every lease other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, there shall also be implied the following powers in the lessor, unless a contrary intention appears in the lease:

- (a) that he may, by himself or his agents, enter on the demised land and view the state of repair thereof, and may serve on the lessee, or leave at his last or usual place

of abode, or on the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be therein mentioned, to repair it, in so far as the lessee is bound to do so;

- (b) that in case the rent or any part thereof is in arrear for the space of 2 calendar months, or in case default is made in the fulfilment of any covenant, whether expressed or implied in the lease, on the part of the lessee, and is continued for the space of 2 calendar months, or in case the repairs required by the notice, as aforesaid, are not completed within the time therein specified, the lessor may enter on and take possession of the demised land.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.4 reproduces LTA 100. Since it implies powers in leases of land it is substantive and the Law of Property Act is an appropriate place to put it.
2. LTA 100 applies only to "a lease referred to in section 98". LTA 98 applies only "when land for which a certificate of title has been granted is intended to be leased or demised for a life or lives, or for a term of more than 3 years". There is no reason to imply the powers where registered land is involved and not to imply them where registered land is not involved, nor is there any reason to imply them in leases for more than 3 years and not to imply them in leases for less than 3 years.. LPA 9.4 therefore applies to all leases of land except those covered by the special statutes mentioned in the section.

Negation and modification of implied covenants

9.5(1) Every covenant and power declared to be implied in any instrument by virtue of this Part may be negated or modified by express declaration in the instrument.

(2) In an action for a supposed breach of any such covenant, the covenant alleged to be broken may be set forth and it may be alleged that the party against whom the action is brought did so covenant, precisely in the same manner as if the covenant had been expressed in words in the transfer or other instrument, any law or practice to the contrary notwithstanding.

(3) Every such implied covenant has the same force and effect and is enforceable in the same manner as if it had been set out at length in the transfer or other instrument.

(4) When any transfer or other instrument is executed by more parties than one, the covenants that are by this Part to be implied in instruments of a like nature shall be construed to be several and not to bind the parties jointly.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.5 reproduces LTA 63. Since it relates to covenants implied by this Part in certain land instruments, it is substantive and the Law of Property Act is an appropriate place to put it.
2. LTA 63(4) applies "when any transfer or other instrument in accordance with this Act is executed by more parties than one". Moving the subsection to the LPA makes the words "in accordance with this Act" undesirable. They have been dropped from LPA 9.5(4). Since the subsection applies whenever a covenant is implied under this Part and does not apply in any other case, the meaning of the subsection is not changed.

PART 1.2

ASSIGNMENTS, TRANSFERS AND POSTPONEMENTS

Assignment of contract

9.6(1) Any contract in writing for the sale and purchase of any land, mortgage or encumbrance is assignable notwithstanding anything to the contrary therein contained, and any assignment of any such contract operates according to its terms to transfer to the assignee therein mentioned all the right, title and interest of the assignor both at law and in equity, subject to the conditions and stipulations contained in the assignment.

(2) Nothing in this section shall be deemed to affect any rights at law or in equity of the original vendor or owner of the land, mortgage or encumbrance, until notice in writing of the assignment has been either sent to him by registered mail or served on him in the way process is usually served, and a notice of a recording under the *Land Recording and Registration Act* shall be deemed to be such notice.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.6 reproduces LTA 150. It deals with a substantive right of assignment of land contracts and its consequences and is therefore appropriate for the LPA.
2. LTA 150(2) refers to a notice of caveat under LTA 134. LPA 9.6(2) refers to the LRRRA counterpart, a notice of recording.

Liability of transferee

9.7 On the transfer of any mortgage, encumbrance or lease, the estate or interest of the transferor, as set forth in the instrument, with all the rights, powers and privileges thereto belonging or appertaining, passes to the transferee, and the transferee thereupon becomes subject to and liable for all the same requirements and liabilities to which he would have been subject and liable if named in the instrument.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.7 reproduces LTA 111. It makes a statement of substantive law about rights under instruments relating to land and is therefore appropriate for the LPA.
2. LTA 111 applies "on the registration of a transfer", etc. There is no reason why the covenant should not be implied immediately upon the execution of the instrument, and the words "registration of" have therefore been deleted.

Rights of transferee

9.8(1) By virtue of a transfer of any mortgage, encumbrance or lease, the right to sue on any mortgage or other instrument and to recover any debt, sum of money, annuity or damage thereunder, and all interest at the time of the transfer in the debt, sum of money, annuity or damages, are transferred so as to vest them in law in the transferee thereof.

(2) Nothing herein contained prevents the Court from giving effect to any trust affecting the debt, sum of money, annuity or damages in case the transferee holds it as trustee for any other person.

Annotation

1. Except as mentioned in Annotation 2 below, LPA 9.8 reproduces LTA 112. It makes a statement of substantive law about rights under instruments relating to land and is therefore appropriate for the LPA.
2. Two drafting changes are made to LTA 112(1). The opening words are "by virtue of every such transfer", which refer back to LTA 111. The opening words of the LPA 9.8 make unnecessary the reference back to the preceding section. The words "annuity or damage" appear in LTA 112 as "annuity of damage". Until the 1980 revision of the statutes, they read "annuity or damage". The meaning of the latter term is not entirely clear, but it seems preferable to the former. Perhaps it might be changed further

to "annuity or damages" as the latter term appears to make more sense and is used in LTA 112(2) and LPA 9.8(2).

Postponements

9.9 A postponement agreement under which the owner of an interest agrees to subordinate the enforcement of that interest to another interest has the effect of postponing the rights under the postponement agreement to the rights under the interest to which it is postponed.

Annotation

1. LTA 108.1(1) provides that "a person entitled to the benefit of a mortgage, encumbrance, lease or other instrument or a caveat . . . may postpone his rights" by filing a postponement. LTA 108.1(2) provides that the registration of a postponement postpones the rights as if the postponed instrument or caveat were registered after the instrument or caveat to which it is to be postponed.
2. LRRA 1.1(k) defines "postponement" as either the process of subordination or the document effecting a postponement. LRRA 5.1(1)(g) provides for the registration of the interest under a postponement agreement. We think that these provisions are sufficient to ensure the validity of a postponement agreement and to change the priorities of registered and recorded interests as provided in it. However, LTA 108.1 was added to the Land Titles Act in 1985 to meet a felt need. So that users cannot be in any doubt about the effectiveness of a postponement, we have included LPA 9.9 in these consequential amendments. It declares that a postponement agreement has the legal effect of postponing the rights, which is a statement of substantive land law. Then the LRRA, as noted, provides for the registration of the interest under the agreement.

(c) by adding the following Part after Part 3:

PART 3.1 MORTGAGES AND ENCUMBRANCES

Mortgage as security

34.1 A mortgage or encumbrance has effect as security but does not operate as a transfer of the land thereby charged.

Annotation

1. Except as mentioned in Annotation 4, LPA 34.1 reproduces LTA 106. If the LTA definition of mortgage is inserted in LTA 106 (leaving out the

reference to an encumbrance) the section reads as follows: "[A charge on land created merely for securing a debt or loan] under this Act has effect as a security but does not operate as a transfer of the land thereby charged". On the face of it, this is a statement of the obvious.

2. However, the Australian prototype of LTA 106 was introduced in order to get rid of the common law mortgage, which involved a conditional transfer of title to the mortgagee, subject to redemption by paying the money (see, e.g., Whalan, *The Torrens System in Australia*, 1982, The Law Book Company at pages 167 to 169.). From the beginning, either the Land Titles Act itself or, as is now the case, regulations under the Act, have provided a form of mortgage the essence of which is the statement that the mortgagor mortgages their estate or interest to secure the money. The result has been that the Torrens mortgage is used almost exclusively, if not exclusively, in Alberta.
3. LTA 106 makes a statement of substantive law about the effect of mortgages and encumbrances as defined and it is therefore appropriate to put it into the Law of Property Act.
4. LTA 106 applies only to mortgages and encumbrances "under this Act". There is no reason why it should not apply to all mortgages and encumbrances as defined, and the words "under this Act" have therefore been deleted.

Mortgages affected by conditional sales agreement

34.2 A mortgage, charge or encumbrance on land or on any estate or interest therein contained in, endorsed on or annexed to a written order, contract or agreement for the purchase or delivery of any chattel or chattels, is void to all intents and purposes whatsoever, notwithstanding anything in any Act.

Annotation

1. LPA 34.2 reproduces LTA 107(1).
2. The statement that a mortgage, etc., with certain characteristics is void is a statement of substantive law and it is therefore appropriate to put it into the Law of Property Act.
3. LTA 107(2) provides that no such mortgage, etc., shall be registered and that any registration thereof is void. These provisions are not necessary and have not been carried forward. If a mortgage is void, it is not an interest in land. Under the LRA, the Registrar is not to record anything that is not an interest in land, and the recording or registration of anything that is not an interest in land is void.

Transfer of part of sum secured

34.3 Any mortgagee may transfer a part of the sum secured by the mortgage, and the part so transferred continues to be secured by the mortgage and may be given priority over the remaining part or may be deferred or may continue to rank equally with it under the security of the original mortgage, as stated in the transfer, and the Registrar shall enter on the appropriate register a memorandum of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank.

Annotation

1. LTA 110(2) requires the transfer to be in prescribed form, which is covered by the Land Recording and Registration Act and regulations. In LTA 110(2), the reference is to "the certificate of title" rather than to "the appropriate register". Otherwise LPA 34.3 reproduces LTA 110(2).
2. The first part of the subsection may merely declare the general law. However, it exists in the Land Titles Act and is carried forward in order to assure users that transfers can be made as set out in the subsection. The subsequent direction to the Registrar is primarily administrative but does show that a transfer of the kind referred to is registrable.

Short form of mortgage

34.4(1) When in a mortgage the forms of words in column 1 of Schedule A and distinguished by any number therein are used, the mortgage shall be taken to have the same effect and be construed as if the words used had been those contained in column 2 of Schedule A and distinguished by the same number.

(2) Every such expression of words shall be deemed a covenant by the mortgagor with the mortgagee and his transferees, binding the former and his heirs, executors, administrators and transferees, but it is not necessary in any such mortgage to insert any such number and there may be introduced into or annexed to any of the expressions in column 1 any expressed exceptions from the same or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding expression in column 2.

Annotation

1. Except as noted in Annotation 3, LPA 34.4 reproduces LTA 113. The Schedule referred to by the section appears as Schedule A to the Law of Property Act below.

2. We doubt very much that this section and the Schedule are used extensively. They may not be used at all. They appear in the Land Titles Act, however, and we accordingly include them here. The section gives substantive meaning to the words in the Schedule and it is therefore appropriate to put it into the LPA.
3. LTA 113 refers to "a mortgage made under this Act". This limitation has been deleted. There is no reason why LTA 113 should apply to mortgages under the LTA but not to other mortgages.

(d) by adding the following Parts after Part 6:

**PART 6.1
LEASES**

Short form of lease

50.1(1) When in a lease other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, the forms of words in column 1 of Schedule B and distinguished by any number therein are used, the lease shall be taken to have the same effect and be construed as if the words used had been those contained in column 2 of Schedule B and distinguished by the same number.

(2) Every such expression of words shall be deemed a covenant by the lessee with the lessor and his transferees, binding the former and his heirs, executors, administrators and transferees, but it is not necessary in any such lease to insert any such number and there may be introduced into or annexed to any of the expressions in column 1 any expressed exceptions from it, or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in corresponding expressions in column 2.

Annotation

1. Except as noted in Annotation 3, LPA 50.1 reproduces LTA 102. The Schedule referred to appears below as Schedule B to the Law of Property Act.
2. We doubt very much that this section and Schedule are used extensively. They may not be used at all. They appear in the Land Titles Act, however, and we accordingly include them here. The section gives substantive meaning to the words in the Schedule and it is therefore appropriate to put it into the LPA.
3. LTA 113 refers to "a lease made under this Act". There is no reason why LTA 113 should apply to leases under the LTA but not to other leases.

Consent to surrender

50.2 A surrender of a lease is not effective unless consented to by every recorded or registered mortgagee or encumbrancee.

Annotation

LPA 50.2 carries forward the substantive law enacted by LTA 103(3)(a).

PART 6.2

SERVITUDES AND MINERAL UNIT OPERATION AGREEMENTS

Closed road

50.3(1) When

- (a) an authority permanently closes a public road, and
- (b) a utility interest
 - (i) existed in respect of the land that comprised the road immediately before the land became a public road, and
 - (ii) would still exist in respect of that land if the land had not become a public road,

the utility interest revives at the time the road is permanently closed.

- (2) The authority shall notify the Registrar of the closure of the road and the existence of the utility interest.
- (3) The notice is deemed for the purposes of the *Land Recording and Registration Act* to be a request to the Registrar to register the utility interest.

Annotation

1. When land is taken for a road, a utility interest registered or recorded against the land is cancelled. When the road is closed, title to the land normally goes back to the adjoining landowners. If nothing is done, the new title will not show the utility interest. The utility operator will have been deprived of any right to continue its pipeline or power line across the land. This is not an appropriate result.
2. LTA 72.1 is intended to rectify this situation. First, it requires the road authority to give the Registrar particulars of the utility interest. Then, it

requires the Registrar to enter the utility interest on the certificate of title to the land in the cancelled road. Third, it revives the interest when the entry is made.

3. LPA 50.3 does two things. First, it declares that the utility interest is revived when the road is closed. Second, it requires the authority to notify the Registrar of the closure of the road and the existence of the utility interest. The notice being deemed to be a request to register the interest, the Registrar must register it under LRRA 5.2. This achieves the desired result. Since it has substantive effect, it is appropriate to put it into the LPA.

Modification of restrictive covenant

50.4 A condition or covenant that annexed to any land for the benefit of any other land may be modified or discharged by order of the Court, on proof to the satisfaction of the Court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant or that the condition or covenant conflicts with the provisions of a land use by-law or statutory plan under the *Planning Act*, and the modification or discharge is in the public interest.

Annotation

1. Except as noted in Annotation 2, LPA 50.4 reproduces the latter part of LTA 52(3). It confers a substantive power on the court to modify or discharge a restrictive covenant affecting land. It is therefore appropriate to put it into the LPA.
2. LTA 52(3) applies only to restrictive covenants that are registered. There is no reason why the power should apply to a registered restrictive covenant and not to one that is not registered. The limitation is deleted. LPA 50.4 is therefore not restricted to registered covenants.

Grant of easement, etc. by owner to himself

50.5(1) An owner may grant to himself an easement or restrictive covenant for the benefit of land which he owns and against land which he owns.

(2) When the dominant and servient tenements are registered in the name of the same person, an easement under subsection (1) is not merged by reason of the common ownership.

Annotation

1. Except as noted in Annotation 2, LPA 50.5 reproduces LTA 71. It enacts substantive law and it is appropriate to put it into the LPA.
2. LTA 71(1) goes on to provide that an easement or restrictive covenant granted under the section may be registered. It is unnecessary to say this in the LRA as servitudes, which include easements and restrictive covenants, are registrable under LRA 5.1(d).

Utility interest

50.6(1) A utility interest granted by the owner of land to the Crown or a corporation is an interest in land.

(2) The Crown or a corporation as a registered owner may grant a utility interest to itself.

(3) The grantee has the right to use the land in accordance with the terms of the grant and that right runs with the land notwithstanding that the benefit of the right is not appurtenant or annexed to any land of the grantee.

(4) A utility interest that is subject to a mortgage or encumbrance shall not be surrendered unless the surrender is consented to by the mortgagee or encumbrancee.

Annotation

1. "Utility interest" is defined in the proposed LPA 1(1)(f) above.
2. A utility interest may not be recognized as an interest in land at common law, as it may be, in effect, an easement without a dominant tenement. LTA 72 confers on the grantee the right to use the land and makes the right run with the land. It thus makes the utility interest an interest in land. This is substantive land law and it is appropriate to put it into the LPA.
3. LPA 50.6 explicitly makes a utility interest an interest in land and carries forward the LTA definition of what the interest entails. It also includes the ancillary substantive provisions of LTA 72. It does not carry forward the administrative directions given by LTA 72 as these flow from the registration provisions of the Land Recording and Registration Act.
4. LTA 72 applies only to registered utility interests. There is no reason to apply its provisions to registered utility interests and not to apply them to unregistered utility interests, and LPA 50.6 therefore applies to both.

Party wall agreement

50.7(1) A party wall agreement as defined in this Act creates an interest in land.

(2) The land referred to in a party wall agreement

(a) is subject to, or

(b) has as appurtenant to it, or enjoyed with it, any rights, privileges, easements and covenants

that are set for in the party wall agreement in respect of the party wall.

(3) The rights, privileges, easements and covenants shall be deemed to run with the land.

Annotation

1. A party wall agreement may confer rights and obligations that are not easements or restrictive covenants under the common law. The effect of LTA 72.2 is that party wall agreements can be registered and that the rights and obligations under them run with the land. This is tantamount to saying that they confer interests in land. This is substantive law and it is appropriate to put it into the LPA.
2. The proposed LPA 1(1)(f) defines a party wall agreement. The definition includes an agreement created by the owners of adjoining parcels of land. It also includes a declaration made by a person who is the owner of adjoining parcels. The other element in the definition is that the agreement or declaration must declare an existing or contemplated wall to be a party wall and set forth the rights and liabilities in connection with the party wall. The resulting document is a registrable "servitude" under the LRA, as the definition of servitude in LRA 1.1(p) includes a party wall agreement as defined in the Law of Property Act.
3. LPA 50.7 declares that the rights and obligations under a party wall agreement are interests in land. It applies whether or not the agreement is registered.

Encroachment agreement

50.8 An encroachment agreement executed by the owner of a parcel of land to permit the encroachment of improvements made on an adjoining parcel of land

(a) creates an interest in land, and

- (b) is binding on and enures to the benefit of all persons subsequently acquiring interests in the parcels of land affected by that agreement to the same extent as if it were an easement.

Annotation

1. "Encroachment agreement" is defined in the proposed LPA 1(1)(c) above.
2. LTA 72.3 permits the registration of an encroachment agreement and provides that after registration the agreement binds and enures to the benefit of successors as if it were an easement. LPA 50.8 declares that an interest under an encroachment agreement is an interest in land and is binding on and enures to the benefit of successors. It applies whether or not the encroachment agreement is registered.

Unit operation

50.9(1) An interest under a mineral unit operation agreement is an interest in land.

(2) Where there is filed with the Registrar

- (a) a discharge in respect of an agreement for a unit operation that
- (i) is executed by the person who is the unit operator, and
 - (ii) specifies the land to which the discharge applies,
- and
- (b) an affidavit of the unit operator stating
- (i) that he is the unit operator for the agreement,
 - (ii) that he has the authority pursuant to the agreement or a collateral agreement to discharge the agreement in respect of the land specified in the discharge, and
 - (iii) that he has given notice of his intention to effect a discharge to the parties that will be affected by the discharge,

the Registrar shall, in accordance with the discharge, cancel the registration of the agreement for the unit operation in respect of the land specified in the discharge.

Annotation

1. "Mineral unit operation" and "mineral unit operation agreement" are defined by the proposed LPA 1(1)(d) and (e) above. The definitions come from LTA 53.
2. LPA 50.9 carries forward the substantive law that is enacted by or flows from LTA 53. LPA 50.9(1) declares interests under mineral unit operation agreements to be interests in land. LPA 50.9(2) creates a statutory agency in the same terms as LTA 53(4). The purely administrative directions given by LTA 53 have not been carried forward to LPA 50.9 as they are covered by the Land Recording and Registration Act.

(e) by adding the following Schedules at the end of the Act:

SCHEDULE A

(Section 34.4)

SHORT COVENANTS IN MORTGAGE

COLUMN 1

1. Has a good title to the said land.

COLUMN 2

1. And also that the said mortgagor at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every part of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisoes or conditions, except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, encumber or defeat the same.

2. Has the right to mortgage the land.

2. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to mortgage the said land, tenements, hereditaments, and all and singular other the premises hereby mortgaged or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns in manner aforesaid, and according to the true intent and meaning of these presents.

3. And that on default the (*mortgagee*) shall have quiet possession of the land.

3. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above covenant mentioned or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of same one or more of the covenants in this mortgage particularly set forth, contrary to the true intent and meaning of these presents, then and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators and assigns, peaceably and quietly to enter into, have, hold, use occupy, possess and enjoy the aforesaid land, tenements, hereditaments and premises, hereby mortgaged or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, or assigns, or any other person or persons whomsoever.

4. Free from all encumbrances.

4. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable on or in respect of the said land, tenements, hereditaments and premises, or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner or other charges or encumbrances whatsoever.

5. Will execute such further assurances of the land as may be requisite.

5. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said covenant mentioned or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants in this mortgage, particularly set forth, contrary to the true intent and meaning of these presents and of the said covenants then and in every such case the said mortgagor, his heirs and assigns, and all and every other person or persons whosoever having, or

lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land, tenements, hereditaments and premises hereby mortgaged, or mentioned, or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying the said land, tenements, hereditaments and premises, with the appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.

6. Has done no act to encumber the land.

6. And also, that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof, the said land, tenements, hereditaments and premises hereby mortgaged or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate, or otherwise howsoever.

SCHEDULE B

(Section 50.1)

SHORT COVENANTS IN LEASE

COLUMN 1

1. Will not, without leave in writing, assign or sublet.

2. Will fence.

3. Will cultivate.

4. Will not cut timber.

5. Will not carry on offensive trade.

COLUMN 2

1. The covenantor, his executors, administrators, or transferees, will not, during the said term, transfer, assign or sublet the land and premises hereby leased, or any part thereof, or otherwise by any act or deed procure the said land and premises, or any part thereof, to be transferred or sublet without the consent in writing of the lessor or his transferees first had and obtained.

2. The covenantor, his executors, administrators, or transferees will during the continuance of the said term erect and put on the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.

3. The covenantor, his executors, administrators, or transferees, will, at all times during the said term, cultivate, use and manage in a proper husbandlike manner, all such parts of the land as are now or shall hereafter, with the consent in writing of the said lessor or his transferees, be broken up or converted into tillage and will not impoverish or waste the same.

4. The covenantor, his executors, administrators, or transferees will not cut down, fell, injure or destroy any living timber or timber-like tree standing and being on the said land, without the consent in writing of the said lessor or his transferees.

5. The covenantor, his executors, administrators, or transferees will not, at any time during the said term, use, exercise, or carry on, or permit or suffer to be used, exercised or carried on, in or upon the said premises, or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or on the said premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

PLANNING ACT

The Planning Act is amended as follows:

(a) by adding the following sections after section 105:

Plan of survey re subdivision

105.1(1) A plan of survey subdividing land may be registered under the *Land Recording and Registration Act*

(2) A plan of subdivision that is submitted for registration shall

- (a) be signed by the registered owner of the land except in the case of land included in a plan of subdivision referred to in section 105.2(2)(a), (b), (c) or (d),**
- (b) show the numbers or letters of the parcels illustrated on the plan, and**
- (c) show all public roadways and other areas dedicated or set apart for public purposes and indicate the courses and width of each of them.**

(3) The registration under this section of a plan of subdivision vests title, free of all encumbrances, to all land

- (a) that is shown on the plan as**
 - (i) an environmental reserve or municipal reserve, or**
 - (ii) a public utility parcel,**

in the municipality in which the land is situated, or in the Crown in right of Alberta in the case of land that is situated in an improvement district or special area,

- (b) that is shown on the plan as school reserve, in the school authority as defined in the *Planning Act*, or**
- (c) that is shown on the plan as a municipal and school reserve,**
 - (i) in the school authority as defined in the *Planning Act* and the municipality, or**

- (ii) in the school authority as defined in the *Planning Act* and the Crown in right of Alberta in the case of land that is situated in an improvement district or special area.
- (4) The registration of a plan of subdivision does not affect the title to mines and minerals in the land affected by the plan.
- (5) On registration of a plan of subdivision under this section, the Registrar shall
- (a) cancel the existing parcel register, except as to mines and minerals,
 - (b) establish new parcel registers for the parcels as shown on the plan, including the reserves and public utility parcels referred to in subsection (3), and
 - (c) not establish a parcel register for land that is shown on the plan as a public highway, road, street or lane.

Annotation

1. PA 105.1 reproduces LTA 85 with a necessary change to refer to the LRRA.
2. PA 105.1 transfers ownership of dedicated areas upon registration of a plan of subdivision. It therefore has a substantive effect on land ownership. Because this is associated with the subdivision process it is appropriate to put it into the Planning Act. (The section also gives administrative directions, but it is not practicable to separate these from the substantive provisions.)
3. It is the registration of the subdivision plan that transfers the dedicated areas. This is exceptional because the Land Recording and Registration Act generally deals with the recording and registration of interests that have already come into existence. However, transfer by plan registration is an integral part of a scheme to deal efficiently with the dedication of land on subdivision and it is therefore carried forward.

Signatures of encumbrancees

105.2(1) A plan that has the effect of subdividing land shall be signed by each person having a registered or recorded interest in the land included in the plan other than

- (a) a mortgage of a utility right of way,
- (b) a restrictive covenant,

- (c) a zoning restriction, or
- (d) a writ of execution,

if the interest is affected by the subdivision.

- (2) Subsection (1) does not apply to the following:
- (a) a plan of subdivision or other instrument prepared under section 80;
 - (b) a plan of subdivision prepared pursuant to a replotting scheme under this Act;
 - (c) a plan of subdivision prepared pursuant to a land boundary adjustment scheme under the *Crowsnest Pass Municipal Unification Act*;
 - (d) a plan of subdivision approved by the Minister of Municipal Affairs pursuant to section 149 relating to an Innovative Residential Development Area;
 - (e) a plan of subdivision, other than a condominium plan or strata space plan, in which there is no dedication of land for any public purposes.

(3) A person whose signature is required on a plan under subsection (1) may, instead of signing the plan, sign a consent in the form prescribed under this Act or the *Land Recording and Registration Act*.

(4) If for any reason a signature required under this section cannot be obtained, an application by originating notice may be made to the Court for an order dispensing with the signature on any terms and conditions that the Court may impose.

Annotation

1. PA 105.2 reproduces LTA 86 with necessary changes.
2. PA 105.2 is administrative in appearance. However, it is included in the PA because its effect is to lay down conditions to be satisfied before a subdivision plan can be registered under PA 105.1 and it is therefore part of the substantive scheme laid down by that section.

Sale of subdivided land

105.3(1) No lots shall be sold under agreement for sale or otherwise according to any townsite or subdivision plan until a plan creating the lots has been registered.

(2) A person who contravenes subsection (1) is guilty of an offence.

(3) No party to a sale or agreement for sale is entitled in a civil action or proceeding to rely on or plead the provisions of this section

(a) if the plan of subdivision by reference to which the sale or agreement for sale was made is registered when the action or proceeding is commenced, or

(b) if, pursuant to the arrangement between the parties, it was the duty of the party who seeks to rely on or plead the provisions of this section to cause the plan of subdivision to be registered.

Annotation

1. PA 105.3 reproduces LTA 95.
2. PA 105.3 prohibits certain dealings, creates an offence, and deals with the civil relationship between certain parties. It is therefore substantive in effect and it is therefore appropriate to put it into the Planning Act.

(b) by adding the following Division after Division 2 of Part 6:

Division 2.1

Registration and recording of interests in land

Interest acquired in contravention of Act

151.1(1) Notwithstanding the *Land Recording and Registration Act*, no interest that is acquired in contravention of this Act or the regulations may be recorded or registered under that Act.

(2) Notwithstanding subsection (1), an interest acquired in good faith and for value from a person who has recorded or registered the interest in contravention of subsection (1) is valid.

Annotation

1. PA 151.1 reproduces the substance of LTA 77. It would be possible to put it into the Land Recording and Registration Act by making exceptions to

the provisions for registration and recording in that Act, but it is more appropriate to put it in the Planning Act as it reflects policy having to do with planning controls.

2. PA 86 prohibits the Registrar from accepting some subdivision plans for registration without subdivision approval. It therefore overlaps PA 151.1. The assumption is that since both PA 86 and LTA 77 now exist they both have offices to perform.

PUBLIC WORKS ACT

The Public Works Act is amended by adding the following subsection after section 20(2):

Mines and minerals in expropriated land

20(3) The Crown is not entitled to any mines or minerals in land vested in it under this section, and the title to the mines and minerals is not affected by the registration of a notification, plan of survey or certificate of approval, unless the mines and minerals are expressly acquired by the Crown.

Annotation

1. LTA 83 provides that a Registrar is to register a notification or plan of survey that is prepared in respect of a public work under the Public Works Act or the Municipal Government Act and a certificate of approval "that is prepared in respect of works to which the Expropriation Act applies". LTA 83(3) provides that the registration vests the land in the Crown or other authority. It is adequately dealt with in the statutes mentioned. LTA 84(4) excludes the mines and minerals unless they are expressly acquired by the Crown or other authority. It is adequately dealt with in the Municipal Government Act but the Public Works Act does not contain any counterpart provision. The appropriate place for the definition of the substantive rights of the parties is in the statute that gives the authority to expropriate. The proposed PWA 20(3) therefore reproduces LTA 83(4) insofar as it affects the Crown.

2. We have assumed that the "works to which the *Expropriation Act* applies" are public works under the Public Works Act and the Municipal Government Act. If there are other "works to which the *Expropriation Act* applies", and if public policy is that the mines and minerals should not pass with respect to them unless expressly acquired, a consequential amendment to the Expropriation Act would be needed.

SEIZURES ACT

The Seizures Act is amended by adding the following sections after section 15:

Sale by sheriff

15.1(1) No sale by a sheriff or other officer, under process of law,

(a) of any land, or

(b) of a lease of land or a mortgage or encumbrance on land

is of any effect until it has been confirmed by the Court.

(2) A Registrar shall not register under the *Land Recording and Registration Act* an instrument executed by the sheriff or other officer to give effect to a sale unless

(a) an order of the Court confirming the sale is endorsed on the instrument or attached to the instrument, and

(b) the requirements of that Act for the registration of an order of the Court have been complied with.

Annotation

1. Except as noted below, SA 15.1 reproduces LTA 125 with necessary changes. Under the Seizures Act, "Court" means the Court of Queen's bench.
2. SA 15.1 deals with the effect of a transfer by a sheriff and attaches conditions to its registration. It is therefore substantive. While the Seizures Act might not be considered the most appropriate place to deal with sale of land, SA 15 already deals with aspects of that subject and it seems appropriate to put SA 15.1 in the same place.
3. SA 15.1(2) gives an administrative direction. However, it has the effect of making unregistrable a sheriff's transfer which might otherwise require revision of registrations under LRRA 5.4(1) as a transaction binding the registered owner, and it therefore has more than a merely administrative effect.
4. LTA 125(1)(a) refers to "land for which a certificate of title has been granted". There is no reason for that restriction. The limitation has therefore been deleted and the section is of general application.

5. In our Report 61, *Enforcement of Money Judgments*, we make different proposals for dealing with sales of land in proceedings for the enforcement of money judgments. The proposal made here is temporary, pending implementation of that report. The same is true of the next two proposed sections.

Registration of transfer of land sold by sheriff

15.2 A transfer of land sold under process of law shall be registered within a period of 2 months of the date of the order of confirmation, unless that period is extended by an order of the Court filed with the Registrar, and if not registered within that period or within the time fixed by the order, ceases to be valid as against the owner of the land sold and any person claiming by, from or through him.

Annotation

1. SA 15.2 reproduces LTA 126.
2. SA 15.2 terminates the validity of a sheriff's transfer if it is not registered within the specified time. It is therefore substantive. It is appropriate to put it into the Seizures Act along with SA 15.1.
3. The proposal is intended to have temporary effect only. See Annotation 5 to SA 15.1.

Application for confirmation of sale

15.3 The application for confirmation of a sale of land made under process of law may be made by the sheriff or other officer making the sale or by any person interested in the sale, on notice to the owner, unless the judge to whom the application is made dispenses with the notice, and if the sale is confirmed the costs of confirmation shall be borne and paid out of the purchase money or as the judge directs, but if the sale is not confirmed the purchase money paid by him shall be refunded to the purchaser, and the judge may make any order as to the costs of all parties to the sale and of the application for its confirmation that he thinks just.

Annotation

1. SA 15.3 reproduces LTA 127.
2. SA 15.3 could be covered by the Rules of Court. However, it has some substantive effect and is closely associated with SA 15.1 and 15.2, so that it is appropriate to put it into the Seizures Act.
3. The proposal is intended to have temporary effect only. See Annotation 5 to SA 15.1.

TAX RECOVERY ACT

The Tax Recovery Act is amended by striking out section 23(6)(c) and substituting the following:

Interests having priority

- (c) a servitude as defined in the *Land Recording and Registration Act*, and
- (c.1) any notice endorsed on the register under section 11 of the *City Transportation Act* prior to the registration of the adjudication.

Annotation

1. LTA 65(2) provides that "land mentioned in a certificate of title issued under . . . *Tax Recovery Act* . . . , notwithstanding any other Act, is, by implication and without any special mention therein, subject to" five kinds of interests and entries that are listed in the subsection. There is a curious difference between its treatment of Drainage District Act and Irrigation Act titles on the one hand and Tax Recovery Act titles on the other: in the case of the first two Acts the five kinds of interests have priority only "if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication on the rate enforcement return under the *Irrigation Act* or the *Drainage District Act*". No similar statement is made about TRA titles. From the enactment of the prototype of LTA 65(2) as section 57a by 1928 SA c. 29 s. 2 to 1941, the section required the interests then being protected to be registered before the tax caveat, but SA 1941 c. 24 s. 2 deleted that requirement, so that the intention must be to give priority to the protected interests even if they are not filed before a tax notice is entered on the certificate of title. Presumably, however, the Legislature did not intend to allow registration, endorsement or caveating after the taxing authority acquires title.
2. It is not clear why the subsection says that land is "without any special mention" in the certificate of title subject to things that the subsection later requires to be mentioned in the existing certificate of title. Whatever the reason, we do not think that the subsection is intended to confer any form of overriding interest.
3. TRA 23(6) provides for the issue of a certificate of title to a municipality or tax sale purchaser clear except for a number of things of which only those listed in TRA 23(6)(c) concern us here: registered easements and instruments registered pursuant to section 72 of the Land Titles Act. These are protected only if a memorandum has been made or the interest has been registered. The latest time for the registration of a protected interest

must therefore be the time at which the certificate of title is issued in the tax enforcement proceedings.

4. LTA 65(2) and TRA 23(6) overlap to a very considerable extent. TRA 23(6) provides that a certificate of title under the TRA is free of everything except for certain things. LTA 65(2) provides that the certificate of title that results from the adjudication is subject to certain things if they have been registered. The combined effect of the two provisions appears to be merely to allow the taxpayer owner to grant certain interests up to the time of the cancellation of the owner's certificate of title in the tax enforcement proceedings.
5. We think that there should be one provision only; that it should be in the Tax Recovery Act; and that it should subject a TRA title to those things that the present legislation shows a legislative intention to protect. Since these things will necessarily be on the register, the Registrar will merely carry them forward when they register the new owner under the TRA.
6. We think that TRA 23(6) as amended by the substitution of the new TRA 23(6)(c) and (c.1) set forth above, carries out this view. The defined word "servitude" includes all the things listed in both LTA 65(2) and TRA 23(6)(c) except the notice under the City Transportation Act.

TRUSTEE ACT

The Trustee Act is amended by adding the following section after section 29:

Transfers to trustees and joint owners

29.1(1) On the transfer of land to 2 or more persons as joint owners, to be held by them as trustees, the transferor may insert in the transfer or other instrument, the words "no survivorship" and the Registrar shall in that case include the words in the resulting registration.

(2) Any 2 or more persons who are joint owners of land held by them as trustees may by writing under their hand authorize the Registrar to enter the words "no survivorship" on the register.

(3) After the entry of the words "no survivorship" has been made by the Registrar pursuant to this section it is not lawful for any less number of joint owners than the number entered to transfer or otherwise deal with the land without obtaining the sanction of the Court of Queen's Bench or the Surrogate Court.

Annotation

1. Except as noted in Annotation 3 below, TA 29.1 reproduces LTA 197 with necessary changes.
2. The general effect of TA 29.1 is to remove the power, if any, of a number of trustees or other joint owners less than the number shown in the register to deal with land transferred or declared to be on a "no survivorship" basis. This is substantive. The administrative directions given by the section are closely related to the substantive provision. It is therefore appropriate to put TA 29.1 into the Trustee Act.
3. LTA 197(1) applies only to a transfer of land "for which a certificate of title has been granted". There is no reason for this limitation and it has been deleted.

Notice of court order

29.2 Before making any order under section 29.1 the court shall, if it seems requisite, cause notice of intention to do so to be properly advertised, and appoint a period of time within which any person interested may show cause why the order should not be made, and thereupon the court may order the transfer of the land to any new owner or owners, solely or jointly with or in the place of any existing owner or owners, or may make any order in the premises that the

court thinks just for the protection of the persons beneficially interested in the land or in the proceeds thereof, and on the order being deposited with the Registrar he shall make a memorandum thereof on the certificate of title and on the duplicate certificate when it is produced to him, and on the memorandum being made the person or persons named in the order shall be the owner or owners of the land.

Annotation

1. TA 29.2 reproduces LTA 198 with necessary changes.
2. TA 29.2 might more appropriately be left to the combined effects of the Rules of Court and the provisions of the LRRA relating to the revision of registrations. However, it is closely associated with TA 29.1 and it is suggested that it be put into the Trustee Act with the latter section.

APPENDIX D

CONSEQUENTIAL REGULATIONS

*A SCHEDULE SETTING OUT IN REGULATION FORM, WITHOUT
RECOMMENDATION FOR OR AGAINST ADOPTION, A SCHEME FOR
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CONSEQUENTIAL REGULATIONS

PART 1 TRANSITIONAL

Continuation of land registration districts and land registration offices

R1.1

- (1) The following land registration districts are continued for the purposes of the Act:
- (a) "North Alberta Land Registration District", being composed of all that portion of Alberta lying to the north of the 9th correction line;
 - (b) "South Alberta Land Registration District", being composed of all that portion of Alberta lying to the south of the 9th correction line.
- (2) The Land Titles Office for the North Alberta Land Registration District is continued as the Land Registration Office for that district.
- (3) The Land Titles Office for the South Alberta Land Registration District is continued as the Land Registration Office for that district.

Annotation

Regulation R1.1 continues the existing Land Registration Districts under their current names. It also continues the existing Land Titles Offices under the new names of Land Registration Offices. It would be promulgated under LRRA 2.1 which requires the Lieutenant Governor in Council to establish land registration districts and land registration offices.

Continuation of appointments

R1.2

- (1) Until a Registrar General is appointed under section 7(1) the Inspector of Titles appointed under the former Act has all the powers and duties of the Registrar General.
- (2) A Registrar, Deputy Registrar or other employee appointed under the former Act is a Registrar, Deputy Registrar or employee under section 7(4) until his appointment is terminated.

Annotation

1. Regulation R1.2 continues the appointments of existing officials and employees. The Inspector of Titles would effectively become the Registrar General pending specific appointment to that office.
2. Under LRRA 2.2, appointments are to be made by the responsible minister. Pending such appointments, Regulation 1.2 would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act.

**PART 2
MANAGEMENT**

Oaths of office

R2.1 The Registrar General and every Registrar, Deputy Registrar and Assistant Deputy Registrar shall take an oath of office prescribed by the *Oaths of Office Act*.

Annotation

Regulation R2.1 carries forward the substance of LTA 10. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act.

Business on premises

R2.2 The Registrar General and every Registrar, Deputy Registrar, Assistant Deputy Registrar and clerk

- (a) shall not directly or indirectly act as the agent of any person investing money and taking securities on land within any registration district, advise, for any fee or reward or otherwise, on titles to land or practise as a conveyancer, and
- (b) shall not carry on or transact within a Land Titles Office any business or occupation whatsoever other than his duties as such.

Annotation

R2.2 carries forward the substance of LTA 13 and 14. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act.

Office hours

R2.3 A Land Titles Office shall be kept open during the hours and on the days fixed by the [minister charged with the administration of the Act].

Annotation

Regulation R2.3 reproduces LTA 15(1). It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and would delegate part of that general power to the responsible minister.

Administration of oaths

R2.4 The Registrar General and any Registrar, Deputy Registrar or Assistant Deputy Registrar may administer any oath or take any affirmation or declaration in lieu of an oath respecting titles to land from anyone entitled by law to affirm or declare.

Annotation

Regulation R2.3 reproduces LTA 12 with necessary changes. It would be promulgated under the authority of LRRA 2.3(g).

PART 3 FEES

Registration and assurance fund fees

R3.1

(1) Except as otherwise provided in the Act, the Registrar shall not perform any duty to be performed by him under this or any other Act until he has received

- (a) the fees for the performance of that duty, and**
- (b) the assurance fund fees**

prescribed by the Fees Regulation.

(2) If he considers it appropriate to do so, the Registrar may enter into an agreement with any person whereby the fees and other charges payable by that person to the Registrar under subsection (1) will be charged to the credit of that person on a continuing basis and on the conditions the Registrar considers necessary and in that case the amounts so charged shall be deemed to have been paid in accordance with subsection (1).

(3) If any amount charged to the credit of a person under subsection (2) is not paid within 15 days, or some other period that the Registrar may require, of a request for payment by the Registrar, no further amounts may be charged to the account of that person until all amounts owing are paid in full.

(4) The Registrar may terminate an agreement under subsection (2) with any person on 7 days' notice in writing sent by registered mail to the person at his last address known to the Registrar.

Annotation

Regulation 3.1 reproduces LTA 154(1),(6),(7) and (8) with changes to fit the circumstances. It would be promulgated under the authority of LRRRA 2.3(a).

Security interest

R3.2 If a security interest is recorded, the fees payable for the recording shall be the same as if a security interest securing the same amount were being registered.

Annotation

Regulation R3.2 reproduces LTA 133 with changes to fit the circumstances. It refers to security interests rather than to mortgages and encumbrances as does LTA 133. It could be put into the *Fee Regulation* but is noted here so that it will not be overlooked. It would be promulgated under the authority of LRRRA 2.3(a).

Valuation of land

R3.3

(1) The value of land for the purpose of this Act may be ascertained by the oaths or affirmations of the transferee or transferor of the land or of some other person on the behalf of either whom the Registrar believes to be acquainted with the value of the land and whose oath or affirmation he is willing to accept.

(2) The oaths or affirmations may be in the prescribed form.

(3) If for any reason the valuation of land given to the Registrar is unsatisfactory to him, he may cause a valuation to be made by an inspector of transfers and his valuation shall be taken to be the value of the land.

(4) The costs of any such valuation shall be borne by the person or persons, and either altogether or in part, whom the Registrar directs.

Annotation

Regulation R3.3 reproduces LTA 154(2) to (5) with necessary changes. Part of LTA 154(3) dealing with the issue of duplicate certificates of title has been deleted. The regulation would be promulgated under the authority of LRRA 2.3(a) relating to fees, supported by the general power to make regulations required to achieve the purposes of the Act and regulations.

Inspectors of transfers

R3.4 The Attorney General may appoint one or more inspectors of transfers and the inspectors shall investigate any valuations the Registrar requires and report thereon, and shall perform any other duties the [minister] may from time to time assign to them.

Annotation

Regulation R3.4 reproduces LTA 155 with necessary changes. It would be promulgated under the authority of LRRA 2.3(a).

Accounting for money received

R3.5 A Registrar shall keep a correct account of all sums of money received by him in accordance with this Act and shall pay the money to the Provincial Treasurer at the times and in the manner directed by the Lieutenant Governor in Council.

Annotation

Regulation R3.4 reproduces LTA 156. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act.

Assurance fund

R3.6

(1) An assurance fund shall be formed by the Provincial Treasurer from the money paid to and received by him for that purpose by and from the Registrars as hereinbefore provided.

(2) The assurance fund may be invested in

- (a) securities or obligations of the Government of Alberta,**
- (b) the Consolidated Cash Investment Trust Fund established under the *Financial Administration Act*, or**

- (c) any document evidencing an interest in a debt obligation if the payment of the debt and interest is insured under a policy of insurance issued by a company registered under the *Canadian and British Insurance Companies Act* (Canada).

(3) Any income earned from investments made under this section accrues to the General Revenue Fund.

(4) When the assurance fund reaches the sum of \$75 000 any sum in excess of that amount may, by direction of the Lieutenant Governor in Council, from time to time be transferred to and form part of the General Revenue Fund.

Annotation

1. Regulation R3.6 reproduces LTA 157, but has been changed so that it provides authority for the creation and maintenance of an assurance fund. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act.
2. LRRRA 7.7 requires the Provincial Treasurer, subject to regulations prescribing a maximum amount payable, to pay the amount of any agreed settlement or court judgment for compensation under Part 7 of the Act. It does not require the creation of an assurance fund, which is already almost a notional concept. However, if an assurance fund is to be maintained, Regulation R3.6 could be adopted.

PART 4 RECORDING AND REGISTRATION PROCEDURE

Daily record

R4.1

(1) The Registrar shall keep a daily record which shall contain particulars of every document accepted by the Registrar for recording or registration.

(2) The Registrar shall cause each document received by him for registration or recording to be examined and if it conforms to the regulations the Registrar shall endorse on the document the identifier assigned to it and the date on which the identifier is assigned.

Annotation

Regulation R4.1 reproduces LTA 16(1) and (2) with changes to fit the circumstances. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act.

Entries

R4.2

(1) Every entry on a register shall

- (a) set out the nature of the interest granted by a registered document,
- (b) state that the entry is a recording if that is the case, or
- (c) state the nature of any other entry

and shall set out

- (d) the identifier of the document,
- (e) the date on which the identifier was assigned, and
- (f) any other particulars the Registrar considers to be appropriate.

(2) In the correction of any error or in the making of any cancellation, correction, or completion or in the making of any entry or addition, the Registrar shall keep a record of the original words and he shall mark the date on which the cancellation, correction, completion, entry or addition was made or supplied.

Annotation

Regulation R4.2(1) is a somewhat redrafted version of LTA 27. Regulation R4.2(2) reproduces LTA 178(1). Both subsections would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act.

Notice of recording

R4.3

(1) When the Registrar records an interest, he shall forthwith send notice of the recording and of the interest claimed thereunder by mail addressed to

- (a) the person against whose title the recording is made, and
- (b) if the interest recorded is under a charging instrument as defined in section 9.1 of the Act, to the debtor.

(2) If the interest claimed is a lien under the Builders' Lien Act, the Registrar shall send notice of lien and of the amount claimed

- (a) to the registered owner of the land,

- (b) to the person alleged on the claim for lien to be the owner of the land, and
 - (c) to the person for whom the work referred to in the claim for lien was done or proposed to be done, or the materials were furnished or to be furnished.
- (3) The notice referred to in subsection (2) may be addressed to the registered owner of the land and sent through the post office to the person alleged in the claim to be the owner of the land and to the person for whom the work was or was proposed to be done, or the materials to be supplied, each at their respective residences as stated in the claim for lien.

Annotation

1. Regulation R4.3(1) carries forward the substance of LTA 134(1) and Regulation R4.3(2) and (3) carry forward the substance of LTA 149. Both have been revised to fit the circumstances. The regulation would be promulgated under LRRA 2.3(c) which authorizes the making of regulations prescribing notice requirements.
2. Regulation 4.3(2) and (3) have been drafted on the assumption that builders' liens will be recorded rather than registered. LRRA 5.2(2) provides that if another Act authorizes the registration of an interest and the interest is not qualified for registration under LRRA 5.1(1), the interest shall be recorded.

Registration of transfer affecting joint tenancy

R4.4 The Registrar shall not register a transfer that has the effect of severing a joint tenancy unless

- (a) the transfer is executed by all the joint tenants,
- (b) all the joint tenants, other than those executing the transfer, give their written consent to the transfer, or
- (c) the Registrar is provided with evidence satisfactory to him that all the joint tenants who have not executed the transfer or given their written consent to the transfer have by
 - (i) personal service, or
 - (ii) substitutional service pursuant to a court order,
 been given written notice of the intention to register the transfer.

Annotation

1. Regulation R4.4 reproduces LTA 68.1. It would be promulgated under the authority of LRRRA 2.3(c), which provides for regulations prescribing notice requirements.
2. What LTA 68.1 and Regulation R4.4 boil down to is that a transfer severing a joint tenancy cannot be registered unless all the joint tenants who have not acquiesced have been given notice or have signified their acquiescence in the severing. The effect is to require a procedural step that has no direct substantive consequences, so that a regulation is sufficient authority for requiring it.

Undivided fractional interest in minerals

R4.5 The Registrar may refuse to accept for registration any document transferring, encumbering, charging or otherwise disposing of an undivided fractional interest in a parcel of land containing mines and minerals, or any mineral, and being less than an undivided 1/20 of the whole interest in mines or minerals, or in any mineral contained in that parcel of land.

Annotation

Regulation R4.5 reproduces LTA 55 with necessary change. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Registration of copies

R4.6 The Registrar may register or record in the Land Registration Office of a registration district a certified copy of any document that has been registered or recorded in the Land Titles Office of any other land registration district.

Annotation

Regulation R4.6 reproduces LTA 60 with necessary changes. It would be promulgated under the authority of LRRRA 2.3(a) relating to fees, supported by the general power to make regulations required to achieve the purposes of the Act and regulations.

Documents in favour of corporations**R4.7**

- (1) The Registrar may reject any document, including a recording document, under which an interest in land is claimed or dealt with on behalf of a corporation unless he is satisfied that the corporation is**
- (a) registered under the *Companies Act*,**
 - (a.1) registered, incorporated or continued under the *Business Corporations Act*,**
 - (b) a loan corporation or trust corporation,**
 - (c) licensed under the *Insurance Act*,**
 - (d) registered under the *Societies Act*,**
 - (e) registered under the *Co-operative Associations Act* or the *Rural Utilities Act*,**
 - (f) incorporated under the *Credit Union Act*,**
 - (f.1) incorporated under the *Agricultural Societies Act*,**
 - (g) incorporated in Alberta by or pursuant to a public or private Act,**
 - (h) incorporated under the *Bank Act (Canada)* or the *Railway Act (Canada)*, or**
 - (i) an agent of the Crown in right of Canada.**
- (2) In the case of any corporation to which subsection (1)(a), (a.1), (b), (c), (d), (e), (f) or (f.1) applies, the receipt by the Registrar of a certificate from**
- (a) the Registrar of Companies that a corporation is registered under the *Companies Act*,**
 - (b) the Registrar as defined in the *Business Corporations Act* that a corporation is registered, incorporated or continued under that Act,**
 - (c) the Registrar as defined in the *Business Corporations Act* that a corporation is registered under the *Societies Act*, the *Co-operative Associations Act* or the *Rural Utilities Act*,**

- (d) the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act* that a corporation is a loan corporation or trust corporation,
- (e) the Superintendent of Insurance that a corporation is licensed under the *Insurance Act*,
- (f) the member of the Executive Council responsible for the administration of the *Credit Union Act* that a corporation is incorporated under the *Credit Union Act*, or
- (g) the Director of Agricultural Societies that a corporation is incorporated under the *Agricultural Societies Act*,

shall be sufficient to satisfy the Registrar in relation to every submission for registration or filing thereafter made in relation to that corporation until the Registrar is informed by the Registrar of Companies, the Registrar as defined in the *Business Corporations Act*, the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act*, the Superintendent of Insurance, the member of the Executive Council responsible for the administration of the *Credit Union Act* or the Director of Agricultural Societies, as the case may be, that the certificate issued in respect of that corporation is no longer valid.

(3) The Registrar of Companies, the Registrar as defined in the *Business Corporations Act*, the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act*, the Superintendent of Insurance, the member of the Executive Council referred to in subsection (2)(d) and the Director of Agricultural Societies, as the case may be, shall notify the Registrars of each registration district forthwith, on any corporation for which they may have issued their respective certificates being dissolved or liquidated and dissolved or ceasing to be registered or licensed, that the certificate issued in respect of that corporation is invalid.

- (4) Except in respect of a corporation
 - (a) that is a loan corporation or trust corporation, or
 - (b) licensed under the *Insurance Act*,

a certificate of a solicitor who is a member of The Law Society of Alberta stating that the corporation is registered under the *Companies Act*, the *Societies Act*, the *Co-operative Associations Act*, the *Rural Utilities Act* or the *Agricultural Societies Act*, or is incorporated, continued or registered under the *Business Corporations Act* or the *Credit Union Act* shall be sufficient to satisfy the Registrar in relation to the submission for registration or recording of the document to which the certificate is attached and of which it forms part.

(5) Notwithstanding subsections (1) to (4), the Registrar may register a lien under the *Builders' Lien Act* by an extra-provincial corporation that is not registered in Alberta.

Annotation

Regulation R4.7 reproduces LTA 30 with necessary changes. It would be promulgated under the general power in LTRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Cancellation of certain mortgage registrations

R4.8

(1) The Registrar shall cancel the registration of a mortgage or encumbrance upon the production to the Registrar of a request for cancellation of the mortgage or encumbrance that complies with the regulations and satisfies the following rules:

- (a) when it is expressly stated in a mortgage or encumbrance to 2 or more mortgagees or encumbrancees that the money has been advanced on a joint account, it is sufficient if the discharge of the mortgage or encumbrance is signed by any one of the mortgagees or encumbrancees, or
- (b) when it is expressly stated in a mortgage or encumbrance that the mortgage or encumbrance is held in joint tenancy by 2 or more mortgagees or encumbrancees, it is sufficient, on the death of a joint tenant, if the discharge of the mortgage or encumbrance is signed by the surviving mortgagees or encumbrancees.

Annotation

Regulation 4.8 carries forward the substance of LTA 108(1)(a)(i) and (ii).

PART 5 REGISTERS AND RECORDS

Photostatic negative of register

R5.1

(1) When a register is torn, damaged, frayed, mutilated or is otherwise rendered unfit, in the opinion of the Registrar, for continued use, the Registrar may cause a photostatic negative to be made of the face of the register and a photostatic negative to be made of the reverse side of the register.

(2) The Registrar shall endorse and sign a memorandum on the reverse side of each photostatic negative stating the date on which the negative was made.

(3) The Registrar may remove the register and shall replace it with the 2 photostatic negatives.

(4) The 2 negatives shall be deemed for all purposes of this Act to be the register and after the date on which they were made the Registrar shall record thereon the particulars of each instrument, dealing or other matter required to be registered or recorded in the register by this Act and affecting the land included in the register.

Annotation

1. Regulation R5.1 reproduces LTA 19 with necessary changes. It would be promulgated under the authority of LRRA 2.3(d)(ii).
2. Assuming that the regulation is needed at all, it would have to be revised if it should appear that all entries will be made on the face of registers and none on the reverse sides.

Duplicate records

R5.2

(1) The Registrar shall, by any method he considers appropriate, keep a duplicate record of the following:

- (a) a register when it is cancelled;
- (b) a new register when it is issued;
- (c) a register after a memorandum is endorsed on it;
- (d) a document accepted for registration or recording, after the identifier has been entered on the register.

(2) Where a duplicate record has been made of a document, the original document may be destroyed after such period of time as may be prescribed by regulation.

Annotation

Regulation R5.2 reproduces LTA 20 with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

District boundaries

R5.3 On receipt of a copy of the order forming the district or of any other order altering the content of the district from the drainage council or irrigation council, as the case may be, the Registrar shall note on each register for a parcel of land shown in the order the fact that the parcel forms part of the district or, as the case may be, shall remove the note to that effect.

Annotation

Regulation R5.3 reproduces LTA 23. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Land in one register

R5.4

- (1) A register shall not include the following:
- (a) more than 1 section of land;
 - (b) parcels of land that are described by reference to different registered plans;
 - (c) land described in parts, where one part is described by reference to a registered plan and another part is described by any other kind of description.
- (2) Unless the Registrar otherwise permits, a register shall include only land that consists of a contiguous area.
- (3) The Registrar may cancel a register that does not comply with subsection (1) or (2), or both of them, and issue in substitution for it new registers to the land that was included in the cancelled register.

Annotation

Regulation R5.4 reproduces LTA 29 with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations, supplemented by the power in LRRA 2.3(d)(ii).

Land identification number

R5.5

(1) The Registrar may assign to a parcel of land a number for the purpose of facilitating the identification of the parcel in records, registers and documents.

(2) The Registrar may require the number assigned under subsection (1) to be set forth as part of the description of land.

Annotation

Regulation R5.5 reproduces LTA 54.1 with necessary change. It would be promulgated under the authority of LRRA 2.3(e).

PART 6 SPECIAL REGISTRATIONS

Closed roads

R6.1 When the Registrar is notified of the closure of a road and of the interests that existed in respect of the land immediately before the land became a public road, and would still exist in respect of the land if the land had not become a public road, the Registrar shall register the interests.

Annotation

Regulation R6.1 carries forward the substance of LTA 72.1(2). It is administrative. The substantive parts of LTA 72.1 have been carried forward into section 50.3 of the *Law of Property Act*. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Quieting title

R6.2

(1) Any person recovering against a registered owner of land a judgment declaring that the person recovering the judgment is entitled to the exclusive right to use the land or that he be quieted in the exclusive possession thereof, pursuant to the *Limitation of Actions Act*, may file a certified copy of the judgment in the Land Titles Office for the proper registration district.

(2) Subject to section 8.5, The Registrar shall cancel existing registrations in whole or in part according to the terms of the judgment and register the person recovering the judgment as owner according to the terms of the judgment.

Annotation

1. Regulation R6.2 reproduces LTA 74 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.
2. A judgment of the kind referred to in Regulation R6.2 is an event affecting an interest. It is therefore a transaction under LRRRA 1.1(u), and it is binding on the registered owner. It is registrable under LRRRA 5.1 and entitles the party in whose favour it is made to have registrations revised. The regulation may therefore, strictly speaking, be unnecessary. It may nevertheless be considered to be a useful direction to users of the system.

Statutory proceedings

R6.3

(1) When by virtue of any statutory proceedings, land or an interest therein, belonging to any person, has become vested in any other person, and no other express authority exists for making the necessary revisions of registrations, cancellations of recordings and establishment of new registers, the Registrar shall make the revisions, cancellations and establish the new registers that he would have made and established if there had been a transfer of the land or interest from the first mentioned person to the other person.

(2) On revising registrations upon receipt of a certificate of approval under the *Expropriation Act*, the Registrar shall cancel the recording of the notice of intention to expropriate respecting the land to which the certificate applies which had been filed by the expropriating authority.

Annotation

Regulation R6.3(1) reproduces LTA 34 with changes necessary to fit the circumstances. Regulation R6.3(2) does the same for LTA 58. Both would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations, though both flow from the substantive effects of the statutes under which land is taken.

Registration of owner arising out of tax recovery proceedings

R6.4 When a caveat or notification is forwarded to the Registrar under the *Tax Recovery Act* with respect to any parcel of land the title to which is not registered under this Act, together with an affidavit that the person named therein is the owner of the parcel and that he resides at an address therein given, the Registrar shall notify that person by registered mail that unless the latter shows cause why he should not be registered as owner of the parcel within one month from the posting of the letter, he will so register

him, and shall, on being satisfied that any such person or any other person is the owner of the land, establish a parcel register showing the named person as the owner of the land.

Annotation

Regulation R6.4 reproduces LTA 37 with necessary changes. Presumably LTA 37 is intended to provide a certificate of title against which a tax caveat or notification is forwarded to the Registrar can be entered. It presupposes that there is a parcel of land that has not been brought under the Land Titles Act but which is owned by someone. If the regulation is necessary, it is authorized by LRRA 2.3(d)(i), which provides for regulations about requirements with respect to the establishment of registers for land not previously under the Act.

PART 7 FORMALITIES

Transfers

R7.1

- (1) When land for which a parcel register has been established is intended to be transferred, the owner may execute a transfer in the prescribed form.
- (2) When land for which a parcel register has been established is intended to be made subject to a right of way or other easement, the registered owner may execute a document granting the easement or right of way in the prescribed form.
- (3) A transfer made pursuant to subsection (1) or a document made pursuant to subsection (2) shall
 - (a) give a description of the land that is sufficient to identify it, and
 - (b) contain an accurate statement of the estate or interest intended to be transferred or created.

Annotation

Regulation R7.1 reproduces LTA 68 with necessary changes. It is authorized by LRRA 2.3 (form and content of documents) and 2.3(e) (land descriptions).

Attestation within Alberta

R7.2 Subject to Regulation R7.6, every document executed within the limits of Alberta and that may be registered under this Act shall be witnessed by a person, who shall sign his name to the document as a witness and make an affidavit in the prescribed form.

Annotation

Regulation R7.2 reproduces LTA 151 with necessary changes. It is authorized by LRRA 2.3(b)(iii) (verifying authenticity).

Attestation outside Alberta

R7.3 Subject to Regulation R7.6, every document executed outside the limits of Alberta and that may be registered under this Act, shall be witnessed by one person, who shall sign his name to the document as a witness and who shall appear before one of the following persons and make an affidavit in the prescribed form:

- (a) if made in any province of Canada, before a judge of any court of record, a commissioner authorized to take affidavits in the province for use in any court of record in Alberta, or before a notary public under his official seal;
- (b) if made in Great Britain or Northern Ireland, before a judge of the Supreme Court of Judicature in England or Northern Ireland, or of the Court of Session or of the Judiciary Court in Scotland, or a judge of any of the county courts within his county, or the mayor of a city or incorporated town, under the common seal of the city or town, or before any commissioner in Great Britain or Northern Ireland, authorized to take affidavits therein, for use in any court of record in Alberta, or a notary public under his official seal;
- (c) if made in any British Dominion, colony or possession out of Canada, before a judge of any court of record, the mayor of a city or incorporated town under the common seal of the city or town, or a notary public under his official seal;
- (d) if made in any foreign country, before the mayor of any city or incorporated town, under the common seal of the city or town, or before the Canadian or British consul, vice-consul or consular agent residing therein or before a judge of any court of record or a notary public under his official seal.

Annotation

Regulation R7.3 reproduces LTA 152 with necessary changes. It is authorized by LRRRA 2.3(b)(iii) (verifying authenticity).

Ineligibility to act as witness

R7.4 An individual is not eligible to be a witness to an document if that individual is

- (a) a party to the document, or
- (b) a spouse who consents to the instrument pursuant to the *Dower Act*.

Annotation

Regulation R7.4 reproduces LTA 152.01 with necessary changes. It is authorized by LRRRA 2.3(b)(iii) (verifying authenticity).

Execution by interested commissioner for oaths or notary public

R7.5 A Registrar is not required to register or record a document if the individual who acted as a commissioner for oaths or notary public in respect of that document is

- (a) a party to the document, or
- (b) a spouse who consents to the document pursuant to the *Dower Act*.

Annotation

Regulation R7.5 reproduces LTA 152.02 with necessary changes. It is authorized by LRRRA 2.3(b)(iii) (verifying authenticity).

Exceptions to Regulations R7.2 and R7.3

R7.6 Regulations R7.2 and R7.3 do not apply to the following:

- (a) a grant from the Crown;
- (b) an order in council;
- (c) a regulation filed under the *Regulations Act*;

- (d) a notification referred to in section 32;
- (e) an document under the seal of a corporation;
- (f) a recording document;
- (g) an order of a court or judge;
- (h) an execution;
- (i) a certificate of a judicial proceeding attested as such;
- (j) an document executed by a Minister of the Crown or by a person authorized by him to execute the document;
- (k) an document, including any document executed before the coming into force of this section, that is provided for under another Act, its predecessor or a regulation and that does not under that Act or regulation require a witness to the document.

Annotation

Regulation R7.6 reproduces LTA 152.1 with necessary changes. It is authorized by LRRA 2.3(b)(iii) (verifying authenticity).

Application of Dower Act

R7.7 When no consent is produced as required under the *Dower Act*, the Registrar shall, before registering any transfer, lease, mortgage or other security interest require an affidavit of the transferor, lessor, mortgagor or encumbrancer

- (a) that the land described in the document is not subject to the *Dower Act*, or
- (b) that he is not married

and the affidavit shall be supported by any other evidence by affidavits or otherwise that the Registrar may prescribe, but if the document is executed under a power of attorney the party executing it may make the affidavit if he is acquainted with the facts.

Annotation

Regulation R7.7 reproduces LTA 153 with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations, as prevention of the registration of a transaction forbidden by law falls within those purposes.

Proof of age

R7.8 In all cases of transfers, mortgages or other documents conferring security interests, or leases, the Registrar may require satisfactory evidence that the person making the documents is an adult.

Annotation

Regulation R7.8 reproduces LTA 47 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations, as prevention of the registration of documents executed with capacity falls within those purposes.

Formalities in document

R7.9

(1) The Registrar shall decide whether any document presented to him for registration or recording is substantially in conformity with the proper prescribed form or not and may reject any document that he decides for any reason to be unfit for registration or recording.

(2) When an document is presented to the Registrar for registration or recording subject to any condition, the Registrar shall reject the document for registration or recording if the condition is not satisfied at the time the document would otherwise be registered or recorded.

(3) The Registrar may reject any document submitted for registration or recording which is in his opinion for any reason unsuitable to be duplicated pursuant to Regulation R5.2.

Annotation

Regulation R7.9 reproduces LTA 54 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations. Regulation R7.9(3) would fall within LRRRA 2.3(b)(i) as well.

**PART 8
MARRIED PERSONS AND ESTATES**

Change of name of married persons

R8.1

(1) When a married person who is the owner of an interest in land adopts the surname of the spouse, the Registrar may make a memorandum of the change of name in the appropriate register on production of

- (a) an affidavit by that person verifying**
 - (i) the date of the marriage,**
 - (ii) the place where the marriage was solemnized, and**
 - (iii) the spouse's full name, and**
- (b) a certificate of marriage or any other evidence that the Registrar may require to substantiate the identity of that person.**

(2) When an interest in land is registered in the name of a person under the surname of that person's spouse or former spouse and that person now uses

- (a) the person's original surname,**
- (b) a hyphenated surname that incorporates the person's original surname and the surname of the person's spouse or former spouse, or**
- (c) the surname of a spouse from a previous marriage,**

the Registrar may make a memorandum of the change of name in the appropriate register on the production of

- (d) an affidavit by that person verifying the surname now used by that person, and**
- (e) a certificate of marriage or any other evidence that the Registrar may require to substantiate the identity of that person.**

Annotation

Regulation R8.1 reproduces LTA 128 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Transmission of title on death

R8.2

(1) A personal representative of a deceased owner of land before dealing with the land shall apply in writing, executed by himself or his solicitor, to the Registrar to be registered as owner and shall produce to and leave with the Registrar probate of the will of the deceased owner, or letters of administration, or order of the court authorizing him to administer the estate of the deceased owner, or a certified copy of the probate, letters of administration or order, as the case may be.

(2) For the purposes of this Act, the probate of a will or letters of administration, or other legal document purporting to be of the same nature, granted by the proper court of any province or territory of Canada, or of the United Kingdom of Great Britain, or of Northern Ireland, or of any other British dominion or possession, or an exemplification thereof shall be deemed sufficient if it has been re-sealed with the seal of the court in Alberta having jurisdiction in such matters.

(3) On the registration of the application, the Registrar shall cancel the registration of the deceased owner and register the executor or administrator, in his capacity as the executor or administrator, as owner of the land.

(4) For the purposes of section 10.2 of the Act only, the Registrar shall, on registering an executor, administrator or trustee under a will, as owner, describe the owner as the executor, administrator or trustee.

Annotation

Regulation R8.2 reproduces LTA 116(2),(3),(4) and (6) with necessary changes. It would be promulgated under the general power in LRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(b)(iii) (verifying authenticity of documents).

Transmission of estate or interest under will or in intestacy

R8.3

(1) When an estate or interest in land for which a register has been established is transmitted in consequence of the will or intestacy of the deceased owner,

- (a) the probate of the will of the deceased owner,**
- (b) the letters of administration,**
- (c) the order of the court authorizing a person to administer the estate of the deceased owner, or**

- (d) a certified copy of the probate, letters of administration or order, as the case may be,

accompanied by an application in writing from the executor, administrator or other person applying to be registered as owner in respect of the estate or interest shall be filed with the Registrar, who shall thereupon register the executor, administrator or other person as owner of the estate or interest.

- (2) Regulation R8.2(2) applies to transmissions under this Regulation.

Annotation

1. Regulation R8.3 reproduces LTA 117(1) and (3) with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRRRA 2.3(b)(iii) (verifying authenticity of documents).
2. Regulation R8.3 overlaps Regulation R8.2. The two might be merged.

PART 9 NAMES AND ADDRESS

Post office address

R9.1

(1) An owner or mortgagee of land for which a parcel register has been established shall deliver to the Registrar a memorandum in writing of some post office address to which it shall be sufficient to mail all notices that under this Act are required to be sent to an owner or mortgagee.

(2) An owner or mortgagee shall from time to time in like manner notify the Registrar of any change in his address.

(3) Notwithstanding subsection (1), the Registrar may proceed without a memorandum of address.

Annotation

Regulation R9.1 reproduces LTA 48. It is authorized by LRRRA 2.3(c).

Names and addresses on documents

R9.2

(1) If a document other than a copy of a writ of execution is presented to the Registrar for registration and does not disclose, in respect of any person who is a party to the document, whether or not he signed it, or who issued or is affected by the document,

- (a) his surname and at least one given name in full, in the case of a natural person, and
- (b) an address giving the municipal number and the street or avenue, if any, or an address that is in the opinion of the Registrar sufficient for the purpose of giving notice by mail to that person,

the Registrar may refuse registration or recording of the document until either the document is changed to contain the information required by him or there is furnished to him a memorandum by or on behalf of the person presenting the document for registration setting out the information required by the Registrar.

(2) A recording document shall disclose the information set out in subsection (1) with respect to the claimant.

Annotation

Regulation R9.2(1) reproduces LTA 49. Regulations R9.2(2) requires a claimant to give similar information and carries forward part of LTA 131(1). The regulation would be promulgated in part under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and in part under LRRA 2.3(c).

Address for service of notice

R9.3

(1) Any person having a registered interest in any land may file with the Registrar of the proper Land Titles Office a notice giving his address for service, and any notice that is required to be given by the Registrar pursuant to this or any other Act shall be deemed to have been duly served on the notice being sent by regular mail addressed to the person at his address for service, if any, and if he has no address for service then at his address as shown by the registered instruments.

(2) The Registrar may require that the notice contain a description of the registered interest and the land in which the person claims to be interested.

(3) Where a description is given under subsection (2), the notice shall have effect only as to the interest and the land mentioned in the notice.

Annotation

Regulation R9.3 reproduces LTA 205. It is authorized by LRRA 2.3(c).

PART 10
EXECUTIONS AFFECTING LAND

Certified copy of writ

R10.1 A Registrar may enter a subsisting writ of execution or other writ affecting land in the general register upon receiving a copy of the writ certified by the sheriff under his hand and seal of office.

Annotation

Regulation R10.1 follows LTA 122(1).

Address of creditor

R10.2 Every person delivering or transmitting any writ for entry in the general register under section 9.6 of the Act shall deliver or transmit therewith an address where notice may be served on the judgment creditor, and the address shall be at some building of which the street and number, and in the case of an office building the number of the room, shall be given, or of which the location is otherwise accurately determined, which shall be known as his registered address, and no writ of execution shall be entered unless that address is furnished.

Annotation

Regulation R10.2 reproduces LTA 122(5) with necessary change. It is authorized by LRRRA 2.3 (c).

Change of address

R10.3 A judgment creditor may from time to time change his registered address by giving notice in writing to the Registrar of a new address.

Annotation

Regulation R10.3 reproduces LTA 122(6). It is authorized by LRRRA 2.3 (c).

Name of debtor, etc.

R10.4 The Registrar shall not register any such writ unless a copy transmitted to him sets forth or has endorsed thereon in full the given name or names and surname of the debtor and his residence and occupation.

Annotation

Regulation R10.4 reproduces LTA 122(8) It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

Evidence of identity

R10.5 The Registrar may, at any time in his discretion, before recording the interest of the creditor under a writ under section 9.6 of the Act, require evidence that the registered owner of the land to be affected thereby and the execution debtor are one and the same person, and on the exercise of any such discretion shall not make any memorandum until he is satisfied of the identity.

Annotation

Regulation R10.5 reproduces LTA 122(9) with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

PART 11 PLANS

Annotation to Part 11

In a Land Registration Office, the usual function of a plan of survey is to facilitate land transactions by providing land descriptions that efficiently identify and define parcels of land. Plans are kept on file for that purpose, and Part 11 will use the term "file" to describe what is done with a plan. If plan of survey, such as a plan of subdivision, affects the ownership of interests in land, it may be registered: see, e.g., the proposed section 105.1 of the *Planning Act*, which appears in Appendix B.

Illustration of plan of survey

R11.1

- (1) A plan of survey shall not be filed unless the plan of survey**
 - (a) illustrates and represents the survey as made on the ground in accordance with the *Surveys Act*,**
 - (b) is prepared**

- (i) to the satisfaction of the Registrar, so that it contains the information and details that the Registrar considers appropriate, and
 - (ii) on a medium or material approved by the Registrar,
 - (c) states the purpose of the survey, and
 - (d) is certified in the prescribed form by the Alberta land surveyor who carried out the survey illustrated on the plan of survey.
- (2) The illustration of a survey made under subsection (1)(a) shall include
- (a) the position and nature of all survey monuments found and placed in the course of the survey,
 - (b) subject to subsection (3), the original boundary lines of any parcel of land affected by the survey and any boundary line established by the survey, and
 - (c) a sufficient number of measurements,

as is necessary to enable the position of the parcels established by the survey to be located on the ground.

(3) If, in the opinion of the Registrar, it is not necessary to show all of the original boundaries of a parcel of land in order to determine the position of the land intended to be dealt with, it shall be sufficient to show only the information in regard to the boundaries that the Registrar determines to be necessary.

Annotation

Regulation R11.1 reproduces LTA 78 with necessary change. It is authorized by LRRRA 2.3(e).

Copy of plan

R11.2

- (1) When a plan is submitted for filing, it shall be submitted to the Registrar accompanied by an extra copy.
- (2) Notwithstanding that this or any other Act may require a plan to be submitted to the Registrar accompanied by extra copies of the plan, the Registrar may in his discretion accept for filing a single copy of a plan and, after filing the plan, cause it to be reproduced by any method that he considers appropriate.

Annotation

Regulation R11.2 reproduces LTA 79 with necessary change. It is authorized by LRRRA 2.3(e).

Requirements for registration

R11.3 Before a plan is filed, amended, altered or corrected the Registrar may do one or more of the following:

- (a) require a written explanation of**
 - (i) any apparent discrepancy between the plan and the description of the land in the register or any former plan,**
 - or**
 - (ii) any other matter shown on or affecting the plan,**

that in his opinion requires an explanation;

- (b) require the plan of survey to be submitted to the Director of Surveys for confirmation that the survey as represented by the plan complies with the requirements of the *Surveys Act*;**
- (c) require the Director of Surveys to cause the survey as illustrated on the plan to be verified on the ground.**

Annotation

Regulation R11.3 reproduces LTA 80(1) with necessary changes. It is authorized by LRRRA 2.3(e).

Survey re transfer

R11.4

(1) Where the owner of land or a person who claims an interest in land desires to transfer or otherwise deal with the land or interest, the Registrar may, before revising registrations or recording an interest, require the owner or other person

- (a) to have the land surveyed by an Alberta land surveyor, and**
- (b) to submit for registration a plan of survey signed by the owner or the other person.**

(2) Registrations shall not be revised and no interest shall be recorded with respect to the land referred to in subsection (1) until the owner or other person has complied with the Registrar's requirements under subsection (1).

Annotation

Regulation R11.4 reproduces LTA 81 with necessary changes. It is authorized by LRRA 2.3(e).

Filing of plan of survey

R11.5

(1) A plan of survey prepared in respect of land may be filed, where the land is required for one or more of the following:

- (a) an easement or a right of way;**
- (b) a purpose incidental to the undertaking for which a right of way is required;**
- (c) a purpose with respect to a railway;**
- (d) another purpose approved by the Registrar and not otherwise referred to in this Act.**

(2) A plan referred to in subsection (1) shall be signed by the person who requested the plan of survey to be made.

(3) The filing of a plan under this section does not

- (a) affect the title to the land shown on the plan, or**
- (b) convey any interest or right to any person.**

Annotation

1. Regulation R11.5 reproduces LTA 82 with necessary changes. It is authorized by LRRA 2.3(e).
2. Regulation R11.5(3) is, strictly speaking, unnecessary, but it may be considered helpful to users of the system.

Plan of survey re public works, etc.

R11.6

(1) When

- (a) a notification or a plan of survey that is prepared in respect of a public work under the *Public Works Act* or the *Municipal Government Act*, or
- (b) a certificate of approval that is prepared in respect of works to which the *Expropriation Act* applies,

is submitted for registration, the Registrar shall

- (c) register the notification, plan or certificate,
 - (d) make the necessary endorsements on or cancellations of the appropriate registers, and
 - (e) establish, when appropriate, free of all encumbrances, a new parcel register for the area taken in accordance with the notification, plan or certificate.
- (2) Notwithstanding subsection (1)(e), where the area taken consists of a public highway, road, street or lane, a register shall not be established with respect to that area.
- (3) For the purpose of excepting an area that is required for a public work from a register as the register is issued when land is granted by the Crown, the Registrar may accept for filing a plan prepared by the Director of Surveys showing the area affected by the public work.

Annotation

1. Regulation R11.6 reproduces LTA 83(1),(2) and (5) with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.
2. Regulation R11.6 does not carry forward LTA 83(3) and (4), which read as follows:
 - (3) Where an instrument is registered under subsection (1), that registration vests the interest taken in the Crown in right of Alberta or in a municipality or other authority, as the case may be, but does not affect the right of a person who held an interest in the land to compensation for that interest.

- (4) The Crown, municipality or other authority is not entitled to any mines or minerals in land vested in it under this section, and the title to the mines and minerals is not affected by the registration of a notification, plan of survey or certificate of approval, unless the mines and minerals are expressly acquired by the Crown, municipality or other authority, as the case may be.

These provisions are substantive in nature as they purport to vest interests and exclude other interests from the vesting.

3. Our reason for not including LTA 83(3) is that in our view it is not necessary:
- (a) section 19 of the *Expropriation Act* provides that a certificate of approval of an expropriation may be registered and that the registration vests title in the expropriating authority. This gives substantive effect to the expropriation, and no further substantive authority is needed in the *Land Recording and Registration Act* or in regulations under it.
 - (b) expropriations for public works authorized by the *Public Works Act* and the *Municipal Government Act* are carried out under the *Expropriation Act*, which, as noted above, gives substantive effect to the expropriations.
 - (c) section 136 of the *Municipal Government Act*, which provides a simplified procedure for the agreed acquisition of land for various kinds of public works, provides that title to the land may be vested in the appropriate authority by filing a plan of survey in the Land Titles Office together with an affidavit proving the agreement and other things. The section itself therefore provides the substantive effect and nothing substantive is needed in the *LRRA*.

We therefore think that the subject-matter of LTA 83(3) is adequately covered elsewhere.

4. LTA 83(4) is unnecessary with respect to expropriations under the *Municipal Government Act*, as section 138 provides that an expropriating municipality does not acquire minerals except in the specific case of coal mining rights acquired to prevent the working of coal mines, and section 136(2) provides that a plan of survey effecting an acquisition by agreement does not give a municipality an entitlement to mines and minerals. Since the *Public Works Act* does not exclude mines and minerals from the land acquired for public works, an amendment to that Act may be necessary and is provided for in Appendix A. If the "works to which the *Expropriation Act* applies includes works other than public works under the *PWA* and the *MGA*, a further consequential amendment to the *Expropriation Act* would be needed if the policy of LTA 83(4) is to be fully implemented.

Plan of survey re transfer, etc.

R11.7

- (1) A registered owner who desires to transfer or otherwise deal with land described in a register may
- (a) have the boundaries of the land surveyed by an Alberta land surveyor, and
 - (b) submit for filing a plan of survey of the land.
- (2) A plan of survey that is submitted for filing under this section shall be signed by the registered owner of the land.
- (3) On filing the plan of survey, the Registrar shall cancel the existing parcel register and establish a new parcel register for the land as shown on the plan showing the registered owner as owner of the land as shown on the plan.

Annotation

Regulation R11.7 reproduces LTA 84 with necessary changes. It is authorized by LRA 2.3(e).

Strata space

R11.8

- (1) In this section, "strata space" means volumetric space, whether it is
- (a) located below or above or below and above the surface of the land, or
 - (b) occupied in whole or in part by any structure,
- and that is shown as strata space on a strata space plan.
- (2) A registered owner subdividing volumetric space, other than mines and minerals lying on or under the surface of the land, into strata spaces shall present a plan of survey to the Registrar for filing under this Act.
- (3) Volumetric space shall not be subdivided into strata spaces unless the land in relation to which the subdivision is to be made is shown as a single parcel on a plan of survey registered under this Act.
- (4) The boundaries of a strata space

- (a) may consist of vertical, horizontal or inclined planes or curved surfaces that are satisfactory to the Registrar, and
 - (b) shall conform to or lie within the boundaries of the single parcel referred to in subsection (3).
- (5) A strata space plan shall
- (a) show
 - (i) the boundaries of the volumetric space that is to be subdivided into strata spaces, and
 - (ii) the boundaries of each strata space,
 - (b) include a diagram to scale of the survey of the perimeter of the land affected,
 - (c) have noted on it the elevation of each corner or angle of the strata spaces in relation to monuments of known elevation or survey control markers in accordance with the *Surveys Act*,
 - (d) assign a suitable letter or number to each strata space and designate each space as a strata space,
 - (e) be signed by the registered owner of the land, and
 - (f) show any other details that the Registrar may require.
- (6) On filing of the strata space plan the Registrar shall cancel the existing register to the extent necessary and issue new registers to the strata spaces shown on the strata space plan.

Annotation

Regulation R11.8 reproduces LTA 87 with necessary changes. It is authorized by LRRRA 2.3(e).

Statutory plans

R11.9

- (1) A plan prepared in accordance with
- (a) an Act of the Parliament of Canada, or
 - (b) an Act of the Legislature of Alberta,

that is deposited, filed or registered with the Registrar in accordance with that Act shall be dealt with and recognized by the Registrar insofar as it is capable of being dealt with and recognized under this Act.

(2) A plan that is to be deposited, filed or registered with the Registrar pursuant to another Act of the Legislature of Alberta shall be prepared in a manner that is satisfactory to the Registrar notwithstanding the provisions of that other Act.

Annotation

Regulation R11.9 reproduces LTA 88. It is authorized by LRRRA 2.3(e).

Filing of descriptive plans

R11.10

- (1) The Registrar may
 - (a) cause a plan that illustrates boundaries to be prepared and filed in respect of a parcel of land described in a register, or
 - (b) permit a plan that is not a plan of survey to be registered if the Registrar
 - (i) is satisfied that the circumstances do not justify the preparation of a plan of survey, and
 - (ii) has given his prior approval to the plan's being prepared.
- (2) If a plan referred to in subsection (1)(b) has the effect of subdividing land, it shall not include
 - (a) more than 2 parcels of land, or
 - (b) any land dedicated for public purposes.
- (3) A plan prepared under subsection (1) shall
 - (a) be styled as a "descriptive plan",
 - (b) be prepared in a manner and on a medium or material that is satisfactory to the Registrar,
 - (c) contain sufficient detail so that, in the opinion of the Registrar, the parcel boundaries can be ascertained from the plan, and
 - (d) if the plan was prepared under subsection (1)(b), be signed by

- (i) an Alberta land surveyor, and
 - (ii) any other person whose signature would be required if the plan were a plan of survey.
- (4) When a descriptive plan is filed under subsection (1)(a), the Registrar shall
- (a) cancel the existing register and establish a new register to the parcel as shown on the plan, and
 - (b) notify the registered owner and all other persons having a registered or recorded interest in the parcel that the description of the parcel has been changed.
- (5) When a descriptive plan is filed under subsection (1)(b), the Registrar shall deal with the plan as if it were a plan of survey.

Annotation

Regulation R11.9 reproduces LTA 89 with necessary changes. It is authorized by LRRA 2.3(e).

PART 12 BOUNDARIES AND DESCRIPTIONS

Change in natural boundary

R12.1

(1) Where a parcel of land that adjoins land owned by the Crown in right of Alberta has a natural boundary, the Registrar, on application by the registered owner of the parcel or the Crown, may amend the description of the parcel to reflect the current location of the natural boundary.

(2) Where a parcel of land

- (a) had adjoined land owned by the Crown in right of Alberta, and
- (b) had a natural boundary that no longer exists,

the Registrar, on application by the registered owner of the parcel, may amend the description of the parcel to reflect the non-existence of the natural boundary.

(3) An application under subsection (1) or (2) shall be accompanied

- (a) in the case where the natural boundary still exists, by a plan of survey or other evidence satisfactory to the Registrar showing the location of the natural boundary,
- (b) in the case where the natural boundary no longer exists, by evidence satisfactory to the Registrar of the non-existence of the natural boundary,
- (c) by the consent of the Minister charged with the administration of the adjoining land or a person authorized by him, where the Crown is not the applicant, and
- (d) by the consent of the registered owners of parcels that may be adversely affected by the amendment of the description.

Annotation

1. Regulation R12.1 reproduces LTA 90 with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.
2. The purpose of LTA 90 appears to be to adjust the register to reflect the true ownership of the land affected by a change in natural boundaries. Such a change would be "an event...affecting an interest..." and would therefore be a "transaction" under LRRA 1.1(u). It would be a "transaction which binds the registered owner" under LRRA 5.4(1) and would therefore require the Registrar to revise registrations accordingly. Regulation R12.1 may therefore not, strictly speaking, be necessary, but it provides a useful procedure.
3. Regulation R12.1 calls for consent. The substantive effect of the amendment of the description would therefore be authorized by those whose interests are affected. There is an exception from this, namely, that the consent of interests less than the fee simple is not required. However, as indicated above, the regulation appears to provide a procedure for giving effect to actual legal rights.

Actual area of land

R12.2 Every parcel of land described in a register consists only of the actual area within its legal boundaries and no more or less, notwithstanding that a certificate of title or other instrument that describes the parcel expresses an area that is more or less than the actual area.

Annotation

Regulation R12.2 reproduces LTA 91 with necessary change. It is authorized by LRRA 2.3(e), prescribing requirements as to legal descriptions of parcels.

Change of legal description

R12.3

(1) The Registrar may change the legal description assigned to a parcel of land if

- (a) the Registrar is satisfied that the change will not adversely affect any person, and**
- (b) the change does not alter the boundaries of the parcel.**

(2) On making a change under subsection (1), the Registrar shall notify the registered owner and all other persons having a registered or recorded interest in the parcel that the description of the parcel has been changed.

Annotation

Regulation R12.3 reproduces LTA 94 with necessary change. It is authorized by LRA 2.3(e).

Correction of registered plan

R12.4 When there is an omission, clerical error or other defect in a registered plan, the Registrar may correct the plan if

- (a) the Registrar is satisfied that the correction will not adversely affect any person, or**
- (b) where the correction may adversely affect a person, that person has consented to the correction,**

and the Alberta land surveyor who signed the plan or, if the Alberta land surveyor is not available, the Director of Surveys has consented to the correction.

Annotation

Regulation R12.4 reproduces LTA 93 with necessary change. It is authorized by LRA 2.3(e).

New certificates re consolidations, etc.

R12.5

(1) On the application by or on behalf of the registered owner of land, the Registrar may separate or consolidate parcels or interests in land by

cancelling the existing parcel register for that parcel or interest and issuing in substitution for that certificate of title 1 or more new parcel registers.

- (2) Where an application is made under subsection (1)**
- (a) for the purpose of consolidating 2 adjacent parcels of land into 1 parcel register, and**
 - (b) one of the parcels included in the consolidation was**
 - (i) formerly**
 - (A) a public road, right of way, drainage ditch or canal,
or**
 - (B) the bed and shore of a body of water,**
 - or**
 - (ii) transferred to or vested in the registered owner to accommodate an encroachment or rights to exclusive possession,**

all encumbrances registered or recorded against the other parcel immediately prior to the application shall be deemed to apply to all the land comprised in the consolidated parcel.

Annotation

1. Regulation R12.5 reproduces LTA 76 with necessary changes. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.
2. A consolidation under Regulation R12.5 would extend to coverage of an encumbrance (which in LTA 76 is presumably not restricted to a money charge despite the definition of "encumbrance" in LTA 1). This is not a derogation from the rights of the owner of the encumbering interest. The regulation would not derogate from the rights of anyone but the applicant, whose application would indicate consent.

PART 13 BRINGING LAND UNDER THE ACT

Annotation to Part 13

We doubt that the procedures set out in Part 13 are ever used nowadays. They are carried forward here simply because they appear in the Land Titles Act.

Application for registration

R13.1

(1) The application to bring land under the operation of the Act shall be made in the prescribed form to the Registrar of the registration district in which the land is situated, shall be verified by the affidavit in the prescribed form of the applicant or someone on his behalf and shall be accompanied by

- (a) all deeds in possession of the applicant, if any,
- (b) a certificate showing all registrations affecting the title down to the time when the application is filed, with copies of any registered documents the original whereof he is unable to produce, and
- (c) a certificate from the sheriff showing that there is no execution in his hands against the applicant's land.

(2) In no case is it necessary for any applicant to produce copies of any documents under subsection (1) if the originals are of record at the time when the application is made in the office of the Registrar to whom the application is made.

(3) It is not necessary for the Hudson's Bay Company, in the case of land the title of which has passed to that company before January 1, 1887, either by notification made under the *Dominion Lands Act (Canada)* or by letters patent issued thereunder prior to that date, to produce to the Registrar any of the certificates mentioned in this section if the application is accompanied by an affidavit, in the prescribed form, to be made by any officer of the company, approved by the Attorney General.

(4) For the purpose of the application, all transfers of land executed in the manner in which transfers are required to be executed under this Act shall be taken to be effectual to vest the title to the land in the transferee therein mentioned.

Annotation

Regulation R13.1 reproduces LTA 38. It would be promulgated under the general power in LRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d). It prescribes the material that is to be brought to a Registrar in order to bring land under the Act and is therefore procedural.

Delivery of certificate of title when applicant is original grantee

R13.2

- (1) On the filing of the application,**
- (a) if the applicant is the original grantee of the Crown of the land and no deed, transfer, mortgage or other encumbrance or document or interest affecting the title thereto appears to have been recorded, or**
 - (b) if the applicant is not the original grantee, all the original title deeds are produced and no person other than the applicant is in actual possession of the land and no interest has been recorded.**

the Registrar if he entertains no doubt as to the title of the applicant shall establish a parcel register as hereinafter provided.

(2) If there is a mortgage or encumbrance against the land at the date of the application, the filing with the Registrar of the original mortgage or the document creating the encumbrance or a copy of the mortgage or document having endorsed thereon or attached thereto a receipt for the payment of the amount thereby secured signed by the mortgagee or encumbrancee attested by an affidavit of the witness, operates a discharge of the security created by the mortgage or encumbrance.

(3) The receipt may be in the prescribed form.

(4) If any person other than the applicant is admitted or appears to be interested in the land, then if his interest is by virtue of a mortgage, encumbrance, lease, or charge created by any other document and the document is at the time of the application of record in the office of the Registrar to whom the application is made, or, if not of record, the document is produced to the Registrar, and if the applicant desires to have his title registered, subject to the interest of the other person, the Registrar, if he entertains no doubt as to the extent and nature of the interest or of the title of the applicant, may register the title and grant a certificate of title and issue a duplicate certificate of title subject to the interest.

(5) In any case where the person who is admitted or appears to be interested in land is a consenting party to an application, the Registrar may, if he entertains no doubt as to the title of the applicant, grant a certificate of title, subject to the terms of the consent, but the consent shall be in writing by the consenting party in the presence of a witness and attested in the manner provided for by this Act.

Annotation

Regulation R13.2 reproduces LTA 39 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d).

Reference to judge

R13.3 In all cases other than those provided for in Regulation R13.2, the Registrar shall forthwith, having given the applicant a certificate of the filing of his application, transmit the application, with all evidence supplied, to a judge to be dealt with as hereinafter mentioned.

Annotation

Regulation R13.3 reproduces LTA 40 with necessary change. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d).

Examination by judge

R13.4 The judge shall examine without delay all titles submitted to him, and for that purpose shall when necessary hear all persons interested and shall hear and consider the claims as against the applicant of any person who is in possession of the land, and the judge has all the powers for compelling the attendance of persons and the production of documents that usually appertain to courts of civil justice in civil actions brought therein.

Annotation

Regulation R13.4 reproduces LTA 41. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d). While it purports to give directions to the judge, it is administrative in nature.

Adverse claims

R13.5

(1) Any person having an adverse claim or a claim not recognized in the application for registration may, at any time before the judge has approved of the applicant's title, file with the Registrar a short statement of his claim, verified by affidavit, and shall serve a copy thereof on the applicant, his solicitor or agent.

(2) If an adverse claim is filed, the judge shall proceed to examine into and adjudicate thereon, and no certificate of title shall be granted until the adverse claim has been disposed of.

Annotation

Regulation R13.5 reproduces LTA 42. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d). It is procedural in nature.

Publication of application

R13.6

(1) In any case before him the judge may direct that notice of the application be published in some newspaper or newspapers in a form and for a period the judge thinks expedient.

(2) No order for registration shall be granted by the judge until after the expiration of at least 4 weeks from the first publication of the notice, if he has directed it to be published.

Annotation

Regulation R13.6 reproduces LTA 43. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d). It is procedural in nature.

Direction for registration

R13.7 The judge if satisfied with the applicant's title shall thereupon make an order directing the Registrar to register it after the expiration of 4 weeks from the date thereof, unless in the meantime the order is appealed from.

Annotation

Regulation R13.7 reproduces LTA 44. It would be promulgated under the general power in LRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRA 2.3(d). It is procedural in nature, as it merely directs the judge to make an order. LRRA Part 8 gives jurisdiction to the court to make such an order if it is judicial in nature.

PART 14
DISPOSITION OF CROWN LAND

Minerals owned by Crown

R14.1 When the Crown is the owner of a mineral,

- (a) no person shall register, nor shall the Registrar accept for registration any lease, assignment, or encumbrance affecting that mineral or any interest therein, and shall not record any interest therein**

- (b) the Registrar may correct the register by cancelling the registration of a lease, assignment, or encumbrance or a recording in so far as it affects a Crown mineral or any interest therein and by making any necessary memorandum or endorsement on the certificate or duplicate certificate of title, if any, and on any other instrument.**

Annotation

1. Regulation R14.1 reproduces LTA 194 with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations.

2. The situations in which someone may wish to register or record an interest in Crown minerals are as follows:
 - (a) the minerals have not been brought under the *LRRRA*. In that situation, interests cannot be registered or recorded, so that Regulation R14.1 is not necessary.

 - (b) the minerals have been brought under the *LRRRA* and the Crown is registered as owner. Interests could be registered or recorded, but the Crown can have the register cancelled and avoid this. In any event, the Registrar will presumably decline to register or record an interest under the authority of Regulation 14.1.

 - (c) the minerals have been brought under the *LRRRA* and are registered in the name of someone other than the Crown, but the Crown is the legal owner. The only likely way for this to happen is that a Crown reservation of minerals from a patent or notification is overlooked. Under the existing *Land Titles Act*, such a reservation is an overriding interest and any conflicting registration would be overridden. Under *LRRRA* 6.1(a), a Crown reservation is still an overriding interest, but if someone other than the Crown is "expressly registered" as owner of the minerals, that registration would override the exception.

3. We think that Regulation R14.1 is an appropriate response to the problem of Crown minerals. It recognizes the policy of having lesser mineral interests recorded in the Government's register. In the theoretically possible but by now highly unlikely case in which Government minerals become registered under the *LRRA* and someone acquires an interest in them on the strength of the register, we think that the *LRRA* should prevail.

Letters patent and notifications

R14.2

- (1) When any land is granted in Alberta by the Crown and the letters patent therefor have been forwarded from the office whence the letters patent are issued to the Registrar of the registration district in which the land so granted is situated, the Registrar shall retain the letters patent in his office, and shall establish a parcel register, as provided by this Act, with any necessary qualifications, registering the land in the name of the grantee.
- (2) The notification to the Hudson's Bay Company by the Minister of the Interior under the *Dominion Lands Act (Canada)* of the survey and confirmation of the survey of any township or part of a township shall be accepted by a Registrar as equivalent to and dealt with by him in all respects in the same manner as if the notification were letters patent to and in favour of the company granting to the company in fee simple the sections or portions of sections to which it is entitled in the townships or parts of townships under the *Dominion Lands Act (Canada)*.
- (3) A notification to the Registrar from the Minister of the Interior of Canada that the land described therein has been granted to the Canadian Pacific Railway Company or to any other railway company entitled to Dominion land under authority of an Act of the Parliament of Canada shall be accepted by the Registrar and dealt with by him in all respects as if it were letters patent in favour of the company.
- (4) A notification received by the Registrar from the Minister of Transportation and Utilities of the abandonment by the Crown of any roads or road allowances or trails that now are or that may hereafter be vested in the Crown in right of Alberta has the same effect as a patent issued by the Crown to the person mentioned in the notification as transferee and shall be so treated by the Registrar, and the notification shall state the nature of the grant and shall specify any mines, minerals, easements or rights that are excepted therefrom.
- (5) A certified copy of an order in council passed by the Government of Canada or other notification that the land described in the order in council or notification has been granted to the Crown in right of Alberta is of the same effect as a patent issued by the Crown and shall be so treated by the Registrar.

(6) On the receipt by the Registrar of a notification affecting any land vested in the Crown in right of Alberta, issued and executed in the manner provided in any statute in force in Alberta relating to the disposition of the land first mentioned, that any parcel of the land described therein or any interest in any such land has been granted to any person pursuant to that statute, the notification shall be accepted by the Registrar and be dealt with by him in all respects as if it were letters patent in favour of that person, and he shall establish a register in conformity with the terms of the notification.

Annotation

Regulation R14.2 reproduces LTA 32, except LTA 32(2), with necessary changes. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and under LRRRA 2.3(d).

National Parks leases

R14.3 A Registrar shall accept for registration and register duplicate originals, or copies certified under the hand of the deputy or acting deputy of the Minister charged with the administration of the *National Parks Act (Canada)* of any leases or other registerable instrument or instruments in connection with or relating to the title to land situated within the area set apart for National Parks.

Annotation

R14.3 reproduces LTA 33. It would be promulgated under the general power in LRRRA 2.3 to make regulations required to achieve the purposes of the Act and regulations and LRRRA 2.3(d). LRRRA 3.1(4) requires a Registrar to establish interest registers for National Parks leases and other registrable interests so that there is a substantive requirement to bring them under the *LRRRA*.

Transfer of Crown land

R14.4

(1) When land which is registered under the Act in the name of the Crown in right of Alberta is intended to be transferred, or any right of way or other easement is intended to be created or transferred, a Minister of the Crown or any person authorized by statute or by order in council to do so may execute a transfer in the prescribed form or to the like effect.

(2) If subsection (1) applies, it is not necessary for the Crown or an agent of the Crown to make and subscribe an oath or affirmation required by the transferor of land under section 154 of this Act or any affidavit or certificate required by the *Dower Act*.

Annotation

R14.4 reproduces LTA 69 with necessary changes. It is authorized by LRRRA 2.3(b)(iii).

**PART 15
PAYMENT OF JUDGMENT OUT OF ASSURANCE FUND**

Payment of judgment out of assurance fund

R15.1

- (1) The Provincial Treasurer shall pay the amount of any**
- (a) judgment recovered against the Registrar, or**
 - (b) claim directed to be paid pursuant to section 16(3) of the *Dower Act*,**

as the case may be, out of

- (c) the assurance fund, and**
 - (d) to the extent that the assurance fund is insufficient to pay the judgment or claim, out of the General Revenue Fund.**
- (2) Notwithstanding subsection (1), no judgment or claim shall be paid out of the General Revenue Fund in respect of any amount that exceeds an amount equal to \$31 000 000 plus the amounts paid into the assurance fund after March 31, 1983, less the amounts paid out of the assurance fund and the General Revenue Fund, if any, pursuant to claims under this Act after March 31, 1983.**

Annotation

Regulation R15.1 reproduces LTA 165(2) with necessary changes. The limitation on amounts is authorized by LRRRA 2.3(f). Financial administration legislation will have to ensure that the designation as to source of payments has a proper legislative foundation.

Error in mines and minerals**R15.2**

(1) In an action against the Registrar as nominal defendant for any loss or damage sustained by reason of any error, omission or misdescription relating to mines and minerals in the register, the claimant is entitled to recover as liquidated damages

- (a) the money actually paid out by him for the interest in mines and minerals, or when the claimant is not a purchaser for value, the money actually paid out by the last preceding purchaser for value of that interest,**
- (b) if the claimant fairly and reasonably expended money in the development of the mines and minerals before their loss to him and the development enures to the benefit of the person to whom the mines and minerals are awarded or restored, the money expended therefor and not by the claimant otherwise recovered or recoverable, and**
- (c) the fair appraised value, at the time the action was brought, of the mines and minerals lost to the claimant, but damages awarded under this clause shall not exceed in the aggregate the sum of \$2500 for each hectare of mines and minerals lost by the claimant.**

(2) In the case of a disposition by sale, lease, assignment, agreement or other instrument executed on or after March 29, 1949, by which the person who purports to be the registered owner of an interest in mines and minerals disposes of all or any part of that interest, any party to the disposition and his successors and assigns may apply to the Registrar for a mineral certificate.

(3) The Registrar shall search and examine the register to ascertain as at the date of the purported disposition the ownership of the mines and minerals purporting to be dealt with by the disposition and he shall issue a mineral certificate in the prescribed form if he is satisfied that the purported ownership is correct.

(4) Notwithstanding subsection (1), no action arising out of a disposition of an interest in mines and minerals executed on or after March 29, 1949, lies against the Registrar for any loss or damage sustained by reason of any error, omission or misdescription in the register relating to the interest in mines and minerals, unless the Registrar has issued in respect of that disposition the mineral certificate provided for in subsection (3) or has registered the disposition under subsection (5).

(5) No disposition of an interest in mines and minerals executed on or after March 29, 1949 shall be registered, though it may be recorded, unless

the Registrar is satisfied that the person purporting to dispose of the interest is the correct registered owner.

(6) Notwithstanding subsection (5), a disposition of the surface of land including mines and minerals may be registered but in that case no action lies against the Registrar in respect of the interest in mines and minerals until the Registrar has issued a mineral certificate.

Annotation

Regulation R15.2 reproduces LTA 169 with necessary changes. It provides a scheme to limit the amount of compensation recoverable under the *LRRRA*. As such, it is authorized by LRRRA 2.3(f). As part of the scheme it forbids registration of an interest in minerals unless the Registrar has issued a mineral certificate, and it also allows the Registrar to refuse to register a disposition unless they are satisfied that the person disposing of it is the correct registered owner. These parts of the regulation are authorized by the general power under LRRRA 2.3 to make regulations required to achieve the purposes of the Act and by LRRRA 2.3(b)(iii).

Approval of compensation payments

R15.3 An agreement to pay compensation under section 7.5 of the Act requires the approval of

- (a) the Attorney General in the case of a claim for \$5000 or less, or**
- (b) the Lieutenant Governor in Council, on the recommendation of the Attorney General, if the claim is for more than \$5000.**

Annotation

Regulation R15.3 carries forward the substance of LTA 170(1). It is authorized by LRRRA 2.3(f).