I. INTRODUCTION

The intent of this memorandum is to examine the purpose and function of sections 97 to 103 of the Alberta Land Titles Act[7] and to determine whether sections 98 to 103 should continue to be included in the Act. The sections in issue provide:

> **97.** (1) When any 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 three years, the owner shall execute a lease, in Form 16 in the Schedule.
>
> (2) Every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such other description as is necessary to identify the land.
>
> (3) A right for the lessee to purchase the land described in the instrument may be stipulated in the instrument, and if the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in the instrument, the lessor is bound to execute a transfer to the lessee of the land, and to perform all necessary acts by this Act prescribed for the purpose of transferring the land to the purchaser.
>
> (4) No such lease of mortgaged or encumbered land is valid and binding against the mortgagee or encumbrancee unless the mortgagee or encumbrancee has consented to the lease prior to its being registered, or subsequently adopts it.
> [R.S.A. 1955, c. 170, s. 98]
>
> **98.** In every such lease, unless a contrary intention appears therein, there shall be implied the following covenants by the lessee, that is to say:
>
> (*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. [R.S.A. 1955, c. 170, s. 99]
>
> **99.** In every such lease, unless a different intention appears therein, there shall also be implied the following powers in the lessor, that is to say:
>
> (*a*) that he may, by himself or his agents, enter upon the demised lands and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be therein mentioned, to repair the same, 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 two 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 two 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 upon and take possession of the demised land. [R.S.A. 1955, c. 170, s. 100]

100. In any such case the Registrar, upon proof of his satisfaction of lawful re-entry and recovery of possession by a lessor, or his transferee by a legal proceeding, shall make a memorandum of the same upon the certificate of title and upon the duplicate thereof when presented to him for that purpose, and the estate of the lessee in the land thereupon determines and the Registrar shall cancel the lease if delivered up to him for that purpose, but the lessee is not thereby released from his liability in respect of the breach of any covenant in the lease, expressed or implied. [R.S.A. 1955, c. 170, s. 101]

101. (1) Whenever in any lease made under this Act the forms of words in column one of Form 17 in the Schedule 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 two of the said Form 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 one 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 corresponding expressions in column two.
[R.S.A. 1955, c. 170, s. 102]

102. (1) Whenever any lease or demise required to be registered by this Act is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of a surrender in law, the Registrar shall, upon the production to him of the surrender in Form 18 in the Schedule, make a memorandum of the surrender upon the certificate of title in the register and upon the duplicate certificate.

(2) When the memorandum has been so made the estate or interest of the lessee in the land vests in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed.

(3) Notwithstanding subsection (1), no lease that is subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.
[R.S.A. 1955, c. 170, s. 103]

103. (1) Any person claiming to be interested in any land for which a certificate of title has been granted may apply to a judge for a certificate that any lease or demise registered pursuant to the provisions of this Act has expired, and the judge upon being satisfied that the lease or demise in respect of which the application is made has expired and is no longer of any force or effect, may grant a certificate to this effect.

(2) Upon the certificate being filed with the Registrar he shall cancel the registration of the lease or demise mentioned in the judge's certificate and any caveat based on the existence thereof, and make an entry of such cancellation in the register and upon the certificate of title to the land affected thereby, and upon the duplicate certificate of title thereof, upon the same being produced to him for this purpose.

A lease has been defined as:

> ". . . a conveyance by which a person having an estate in hereditaments transfers a portion of his interest therein to another, usually in consideration of a certain periodical rent or other recompense, and it imports that kxclusive possession is given of the premises conveyed."[2]

Stouds Judicial Dictionary defines a lease as follows:

> "A lease doth properly signify a demise or letting of lands, rent, common, or any hereditament, unto another for a lesser time than he that doth let it hath in it. But the word 'lease' does not in law import a written instrument except, it may perhaps be added, in those cases where, by statute, a writing is required, or where a writing is implied."[3]

A lease is not defined in the Alberta Land Titles Act (hereinafter referred to as the Act). However it has been said that:

> "Apart from the need for registration common to all dealings . . .[see s. 65 Alta. Act] a lease of land under the Real Property Act differs but little from a lease under the general law. A lease for a term not exceeding three years (one year in the case of South Australia), which does not need to be registered, does not differ at all from a lease under the general law. Accordingly the subject of leases offers little scope for comment which is referable to the Torrens system, as distinct from the general field of law relating to landlord and tenant."[4]

This memorandum will review historically the Alberta statute law regarding land leases and will review comparatively the statute law in other Torrens jurisdictions. It will also review the available case law in order to determine whether there are problems in content or wording which require changes in any of the above-mentioned sections.

II. EXPOSITION

A. Legislative History of s. 97

The legislation equivalent to section 97 of our present Act first appeared in western Canada as s. 70 of the Territories Real Property Act[5]. That provision was in all essential elements the same as the present section; there have been no significant alterations other than the relatively minor one of dividing the section into four parts[6].

B. The Effect and Application of s. 97

(i) s. 97(1)

> Where any 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 three years, the owner shall execute a lease in Form Sixteen of the schedule.[7]

This provision assures the lessee for a life or lives or for a term of more than three years of the right to protect his interest by registering his lease and thereby giving notice of it to any purchaser of the reversion. The Land Titles Office will refuse to register any lease which does not substantially conform to the requirements of Form 16 in the Schedule.

When third parties become involved the need for formality and for registration become most important, that is, when the lease is for a life or lives or a period of more than three years. Should registration not occur the bona fide third party acting on the faith of the register can take the property free and clear.

Johnson, J.A., in Protective Holdings v. M & P Transport Ltd., enunciates this principle when he states:

> "By virtue of these provisions [s. 63(1), s. 64(1)(d) and s. 203 of the Act] the owner of land acquired by transfer is not affected by notice of any unregistered interest in the land unless it is an interest 'implied' under the Act. The appellant, in accepting the transfer in June, 1960, was unaffected by any notice under which the respondent held the land because the lease was for more than three years and was unregistered. It could have ignored the respondent and its lease."[8]

Woodman and Grimes state that:

> "Registration of a lease is thought also to be an advantage to the lessor, as it protects him from liability on the covenant for quiet enjoyment after he has disposed of the reversion; see, e.g., Munro v. Stuart (1924) 41 S.R. (N.S.W.) 203."[9]

The onus is upon the lessee to protect himself. Should he not register his interest he can be ejected by a subsequent purchaser, who, as owner of the fee simple, is entitled to possession of the property.

In the case of DiGiacinto v. Horncastle, where the buyer of the fee had constructive notice of a lease for a period greater than three years, the court held that the buyer acquired the property free of the lesses's interest.[10] By the New Brunswick Registry Act actual notice was held to be required.[11]

The term of the lease is the significant factor affecting the possibility of registration under section 97(1), The Land Titles Act does not make any provision for the registration of a lease for a term of three years or less. Section 97(1) deals only with a lease for more than three years or for a life or lives.

The determination of the term of the lease has caused some difficulty in the past but now appears to be settled. Scott, J. in Le Corporation Episcopale de St. Albert v. Sheppard & Co.[12] followed the case of Hand v. Hall[13] and held that a lease for a year certain in which the right was reserved to the tenant to renew from year to year for a term exceeding three years from the making was not a lease for more than three years and was therefore within the exception [s. 64(d)]

The major issue arising from the application of the section concerns the question whether a lease for a period not exceeding three years can be registered. Thoms argues:[14]

[The question of whether or not a lease for a period not exceeding three years can be registered was answered in the negative by the master of titles of Saskatchewan] He pointed out that the only provision in the Saskatchewan *Land Titles Act* for the registration of a lease is contained in s. 92 (r) which concerns itself only with a lease "for a life or lives or for a term of more than three years" and this is borne out by s. 60 (s) which provides that the land mentioned in any certificate of title shall by implication and without any special mention, unless the contrary is expressly declared, be subject to, *inter alia,* "any subsisting lease or agreement for a lease for a period not exceeding three years where there is actual occupation of the land under the same." The learned master went on to say that the argument that because leases for a term of less than three years are not directly prohibited from registration therefore they may be registered is faulty. The system of land registration in force in Saskatchewan is a statutory one, the provisions of which are set forth in *The Land Titles Act.* [No instrument can therefore be registered in a land titles office unless it is one of the instruments whose registration is provided for and in form and execution conforms with the requirements of that Act.] Certain documents, although valid in the sense of securing substantial interests in land, cannot be registered simply on account of their not being in compliance with the forms prescribed by the Act. [Ordinarily this class of document can and should be protected by caveat, but in the case of a lease for a term of not more than three years where there is actual occupation of the land, there is no necessity for this as the lessee is protected in his rights by s. 60 (t) of the Act without any special mention in the certificate of title.] There is a very practical reason why the lease for a term of three years or less should not be registered, and that is the Act provides that "upon registration of the lease the registrar shall retain possession of the duplicate certificate of title on behalf of all persons interested in the land covered thereby" (u).

In other words, one result of the registration of a lease is the impounding by the registrar of the duplicate certificate of title and the lessor may very reasonably object to this impounding except in the case of a lease for a life or lives or for a term of more than three years. Even if a lessor consents at the time to the registration of the lease, there would seem to be nothing to prevent his repenting his good nature and subsequently demanding back his duplicate certificate of title from the registrar, as the registration would be at best only a voluntary one not provided by the Act (v)

The practical reason for not registering a lease for a term of three years or less noted above does not apply in Alberta. In this province the duplicate certificate of title is sent to the conveyancer after the Land Titles Office has completed the registration.[15] However, there may be some practical difficulty in obtaining for registration the duplicate certificate from the lessor, especially since he is not bound in any way to provide it.

Registration of a lease for a term of less than three years would be valuable where s. 64(1)(d) the exception to indefeasability does not apply. That is, where there is no actual occupation of the land by which the purchaser would acquire notice of the lessee's intereest. A lessee for a term of less than three years and not in possession of the land has no protected interest under our Act, unless he chooses to place a caveat on the property.

The Registrar in Alberta will not register a lease for a term of less than three years. However, an example to the contrary is to be found in New South Wales where the common practice to lodge leases for a period not exceeding three years for registration has been confirmed: Parkinson v. Braham [1962] N.S.W.R. 165[16] The judgment in the Parkinson case sheds little light on the reasoning behind the courts decision. Owen, J. cites the cases of Dockrill v. Cavanaugh[17], Arnold v. Wallwork[18] and Beckenham and Harris's book on the Real Property Act at p. 122 where it is said that:

> "Registration of leases is also desirable in the interests of the lessors. In the event of sale or mortgage of land subject to an unregistered lease, the lessee may be

> evicted by the predecessor or mortgagor and the lessor become liable to the lessee under his covenant of quiet enjoyment. In practice, leases for any term, if they comply with forms required by the Act, will be accepted for registration."[19]

Else-Mitchell, J. at page 172, discusses the issue and refutes the argument that only leases for a term of more than three years are registrable. He appears to rely on "the regular practice, for a long period, of registering leases for less than three years"[20] and the wishes to "conform with the practice of conveyances and decisions of the court".[21]

Any court deciding the issue in Alberta would not encounter the same difficulties as those above. There is no practice at all of registering leases for a term of less than three years, neither are there precedents to follow. The protection of the lessor by allowing such registration would have some merit. However, would the administrative difficulties likely to ensue warrant such a change in practice or policy especially in view of the fact that a lessee who wishes to protect himself may lodge a caveat expressing his interest in the property.

(ii) s. 97(2)

> Every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such other description as is necessary to identify the land."[22] [my underlining]

Section 2, ch. 11 of the Act provides as follows:

> "'land' or 'lands' means lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description,

> and every estate or interest therein, whether such estate or interest is legal or equitable, together with paths, passages, ways, watercourses, liberties, privileges and easements appertaining thereto and trees and timber thereon, and mines, minerals and quarries thereon or thereunder lying or being unless any are specially excepted:"[23]

Section 97(2) provides for the proper description of leased property. The Alberta Land Titles Practice Manual states that all of the requirements of transfer as to the description of the land apply to the description of the land in the lease.[24] The legal description must be the same on the lease as in the title; if the lease is for part of the parcel, the consent of the Planning Authority must be stamped on the lease pursuant to sections 23 and 24 of the Planning Act.[25]

Form 16 provides for the description of the property as follows . . . part of . . . section . . . township . . . range . . . (or as the case may be).

Section 97 is of procedural importance and has an obvious effect and application - - the accurate determination of the property demised. It follows that if it is possible to accurately describe the "land", in order to differentiate it sufficiently from neighbouring or adjoining "lands" that the requirements of the section have been filled.

The question has arisen whether it is possible to register a lease for a portion of a building or property for which a certificate of title has been registered. The practice at the Northern Alberta Land Titles Office is not to do so. In Alberta it is possible to obtain a certificate of title to part of a building if the application conforms to the requirements of the Condominium

Property Act.[26] That Act is a specialized one and not applicable to the vast variety of possible instances where registration may be desired.

This question has been answered positively in Saskatchewan by Milligan J. in Re Land Titles Act: Re Northern Crown Bank.[27] He decided to allow the registration of a lease of a special area, such as a basement, ground floor, second floor, provided there is a certificate from a Saskatchewan surveyor that the premises are actually part of the lot. The court held:

> "With this condition, I see nothing in The Land Titles Act to prevent a lease for any part of the land owned by the lessor being registered, and in the lease the area to be leased should be described as a part of the land, whether it is the basement or a room in the top story.[28]

The section of the Saskatchewan Land Titles Act interpreted by the court in this instance does not differ from s. 97(2) of our Act. Collins beginning at 861 in his mannual Land Titles In Saskatchewan discusses the method used in that province for registering leases of property in shopping centres. Such leases are not registered in Alberta, despite the fact that the relevant sections of the Act are virtually the same as in Saskatchewan (see Appendix). Their position as relates this matter is set out below:

Leases in Shopping Centres

The usual pattern in modern shopping centres is for a large area of land to be set aside for use as a shopping "plaza". A relatively small portion of this area will be devoted to the erection of some 20 or more shops; the remainder will be devoted to parking area, access ways and possibly landscaped areas. The whole of this area will be shown as one lot or parcel (or possibly two lots) on a plan of subdivision of record in the land titles office. This plan will not show the land taken for particular shops or for parking and access.

Title to the whole of this lot or parcel will usually be vested in a company which will proceed to build the shops and lay

out the parking and other areas. Each shop will then be leased for a period (usually 20 or 30 years) to a retail company. This lease will, in addition, confer rights to use the parking and other areas in common with all others similarly entitled. These rights will consist of easements of right of way and parking and will be appurtenant to the leased premises. Modern shopping habits make these rights very important to the shopkeeper and they therefore form an essential part of the lease. The practice is often for a lease in this form to be protected by way of caveat. No special problem occurs when this course is taken. However, a lessee's solicitor will often wish to have the lease itself registered. Registrars will therefore need to know:

(1) whether such a lease is registrable;

(2) if so, the proper manner of registration; and

(3) whether a plan of survey should be required under section 104

The short answers to these questions are:

(1) Yes, provided (a) the lease is in Form L; [now Form 16]

(b) it is for a term of more than three years;

(c) it is clear that both the shop itself and the area over which easement rights are granted are contained within the limits of a particular certificate of title;

(2) The lease should be endorsed on the certificate of title in this way:- "as to the portion of Parcel A shown outlined in red on the plan annexed to the lease and as to rights of access and other easements over other portions of Parcel A". It will be shown in this way on any abstract of title.

(3) A plan of survey should not normally be required for registration of the usual kind of lease but I think a plan of survey should be required for a long lease (e.g. 75 years or more) or a mortgage or transfer of a portion of the parcel.

These short answers should, perhaps, be expanded as follows:-

Form L

The essential features of Form L, are:-

(a) that the lessor declares himself to be the registered owner of the land demised;

(b) that the term of the lease and the rent are clearly set out;

(c) that the lessee declares his acceptance of the lease.

As long as the document displays these features, it should not be rejected on account of any small verbal divergence from Form L.

It will be observed that Form L itself envisages that rights of way and other easements may be leased along with the land.

The demised premises

The lease will relate to the shop itself of which exclusive possession is given, and to the parking areas and vehicular and pedestrian ways etc. to which the lease gives only a use in common with others. These areas, of necessity, will be defined by reference to a plan attached to the lease. This plan will normally be a print of the architect's drawing of the site layout and will be drawn in accordance with professional standards of draughtsmanship. Any attempt to use a rough sketch not meeting these standards should be resisted.

The remarks of Milligan, M.T. quoted above in regard to leases of suites in a building apply equally to cases of leases in shopping centres. The lease will usually be in some such form as the following:

"A.B. Ltd., being registered owner of Parcel A in..... according to a plan of record in the land titles office for the .....Land Registration District as No. ..... hereby leases to E.F. Ltd. all that portion of the said Parcel A shown edged red on the plan annexed hereto together with the store erected thereon and together also with the right for the said E.F. Ltd., its servants, agents and licensees to use for the purpose of access to and egress from the said store the portion of the said Parcel A shown on the said plan as access way and for the purpose of vehicular parking the portion of the said Parcel A shown on the said plan as parking space
to be held by the said E.F. Ltd. as tenant..... "

In this case, it is clear from the wording that the lease is limited, as regards both the shop premises and the access and parking areas, to land within the confines of Parcel A shown on a plan of survey, of record in the Land Titles Office. The registrar is thus left in no doubt as to which certificate of title is affected.

It is important that notice be made on the certificate of title that rights of access, etc. are granted over other portions of the parcel. A prospective lessee or mortgagee can then see, by referring to the leases themselves, which portions have been let as shops and over which portions rights in common have been granted.

The registrar would be in no position to guarantee the limits of any of these portions. Each person searching the title and the instrument would have to satisfy himself as to the extent of each lease. For this reason, the registrar must not issue an abstract for part of the land, nor allow title to be split. If at any time, the developing company desires to divide up its holdings, this should be done by plan of survey and when such a plan is sent by the Chief Surveyor to a registrar for comment, the registrar should discuss with the Chief Surveyor the means by which the plan can enable him to decide which leases fall on either side of the new boundary line. However, this is not likely to be of frequent occurrence; any such plans are likely to be of portions not affected by the shop leases, but which are to be devoted to service stations and similar purposes.

Certificates of Lease and Certificates of Charge

These will be issued in the normal way; in neither case will any reference to land descriptions appear.

Certificates of Title

The certificates of title to a shopping centre will bear a number of endorsements and those relating to the shop leases will take up more space than usual. The large form of certificate should therefore always be used.

(iii) s. 97(3) Option to Purchase

In the Acts of Alberta, Canada and Saskatchewan a lease may stipulate a right or option by the lessee to purchase the leased land.[34]

> 97(3) A right for the lessee to purchase the land described in the instrument may be stipulated in the instrument, and if the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in the instrument, the lessor is bound to execute a transfer to the lessee of the land, and to perform all necessary acts by this Act prescribed for the purpose of transferring the land to the purchaser.

Ewing, J.A. in the case of Yanik v. Conibear[35] defines an option:

> "An option is a right acquired by contract to accept or reject a present offer within a limited, or it may be, a reasonable, time in the future. It is to be distinguished from an agreement for sale in that, inter alia, the option ordinarily is signed only by the optionor; and there are no covenants initially binding on the optionee."

By this section Alberta also imposes a statutory duty on the lessor to execute a transfer of the property subject to a registered lease and option to purchase agreement. Woodman and Grimes referring to the equivalent section in their Act state in their book The Torrens System in N.S.W., at page 262, that:

> "[the section] Gives the lessee whose lease contains an option to purchase the equivalent of a registered contingent interest in the demised land. Provided the lessee complies with the stipulated conditions precedent there is nothing that the lessor, nor any successor in title to the reversion, can do to deprive the lessee or his successors of the right to purchase the reversion."[36]

However, this interpretation is partially dependant upon the extended meanings given to lessor and lessee under s. 3(b) of their Act which are deemed to include "the executors, administrators and assigns of such person."[37]

In Alberta the same reasoning may not apply as there appears to be conflict whether or not an option can be assigned. C.P.R. v. Rosin (1911) 2 O.W.N. 610 held that an option cannot be assigned by an optionee before it is exercised, unless the option expressly or by necessary intendment, provides that the benefit of the option is for the optionee and his assigns. There was also the view that an option, being an interest in land, is assignable unless there is something in the context to show that it is personal to the grantee-optionee: Griffith v. Pelton (1958) 1 Ch. 205; In Re Button's Lease; In Man v. Brittin (1964) 1 Ch. 263. The latter two mentioned cases also express doubt as to whether an assignment by a lessee of his lease includes, without express mention, an option to purchase the fee simple included in the lease.[38]

One may ask why the option to purchase has been singled out as a specifically registrable interest whereas the Act extends no specific protection to the lessee by reason of his lease containing an option to renew.

Baalman discusses the issue:

> "The general scheme of the Torrens statutes seems to have been, in the first place, to confine one instrument to one purpose and to make that purpose attainable only by a formal registration. In the second place, to exclude from the benefit of registration, instruments which did not create rights in rem. Registration of a lease including an option to purchase the reversion, offends both these principles. Probably the practice at common law of including options in leases was too well settled and too convenient to the parties, to justify being

abrogated merely on the ground of principle.[39]

Dr. Helmore, in his book, The Law of Real Property in N.S.W. finds the solution to the apparent anomaly in the rules of English common law:

> "An option for renewal runs both with the land and the reversion at law as well as in equity, and so binds successors in title of the lessor and enures to the benefit of successors in title of the lessee. But an option to purchase the freehold when included in a lease is purely collateral, is not incidental to the relationship of landlord and tenant, and does not run with the land. It is on the same footing as an option to purchase 'in gross'."[40]

The option to purchase contained in a lease is not a term of the tenancy.[41] Notice of a lease, its terms and conditions would not constitute notice of an option to lease contained in the lease. By specifically allowing registration of the option the Act provides for the benefit and burdens of the option to run with the land.

The majority of the High Court in the New Zealand case of Fels v. Knowles[42] in their consideration of the equivalent section to s. 97(3) state the reasons for inserting such a provision in the Act:

> "1. to authorize the registration of a lease containing a right to purchase.
>
> 2. to give notice of the convenant to persons dealing with the land.
>
> 3. to make the covenant run with the reversion."

Woodman and Grimes determine the reason for the enactment of the equivalent of our s. 93(3) as:

> "Probably because the practice at common law of including in leases options to purchase was so well settled, and so convenient to the parties, s. 53(3) was enacted to resolve any possible doubt as to the juridical status of such an option. The only practicable alternative machinery would be to call upon each optionee, at his peril to protect his right by caveat, on the basis that his option creates such an interest in land as will support a caveat.[43]

Registration of an Option to Purchase

It has been said that "registration of a lease containing an option, while it lasts, cures inherent defects in the granting of an option at least in favour of a bona fide transferee".[44]

However, Francis contends that not all kinds of defects could be cured by registration of the lease embodying the option, particularly those which are nugatory rights such as where an option were void for uncertainty.[45]

The Registrar must guard against including in a statutory instrument a further estate or interest which would not be indicated in the register by the registration of the instrument.[46] For "nothing can be registered, the registration of which is not expressly authorized by statute."[47]

I have been unable to locate any cases which deal specifically with void options which have been registered and relied on by third parties. Any person relying on the registered notation of a lease containing an option to purchase would naturally apprise himself of the terms and conditions therein. If the defect Francis speaks of were not really apparent on the face of the instrument I believe the subsequent purchaser would be able to rely on the mirror principle.

In Waimia Sawmilling Co. v. Waione Timber Co.[48] the Judicial Committee of the Privy Council adopted the words of N.Z.C.A. in Fels v. Knowles[49] where it said:

> "Everything which can be registered gives, in the absence of fraud, an indefeasible title to the estate or interest or in the case in which registration of a right is authorized, as in the case of easements or incorporeal rights, to the right registered."

In the Canadian case of M. Rumsly Co. v. The Registrar of the Saskatchewan Land Registration District (1911) 4 S.L.R. 466, Lamont J. said at p. 474:

> "It is not the intention of the Land Titles Act to provide for the registration of all agreements or arrangements which a man may enter into in respect of his land, but only for those instruments specifically mentioned in this Act. If a man executes an agreement in respect of his land the registration of which is not provided for in the Act, the document may be enforceable as against the owner, but it is not registrable in the Land Titles Office. The system is not intended to restrain a man's dealings with his own land, but it limits the class of documents which can be registered to those specified in the Act, and a man cannot obtain registration of a non-registrable form if the effect is to vary the legal consequence of the latter. The result of such taking is to prevant the registration of that instrument which would otherwise be registrable."

In Re North-west Telephones Co. Limited (1909) 25 L.R. 379, Newlands J. said:

> "The system of land registration in force in this Province is a statutory one, the provisions of which are set forth in the Land Titles Act. No instrument can therefore be registered in a land titles office unless it is one of the instruments whose registration is provided for, and in form and execution, conforms with the requirements of that Act."

The option to purchase, being an equitable interest in land, not running with the land and not a term of the tenancy but collateral to the lease, would not be "registrable" in the M. Rumsly Co. sense as part of a lease. If the act did not specifically include a provision making the option registrable in a lease, the only method a lessee would have to protect his interest would be by caveat.

The case of Woodall v. Clifton, [1905] 2 Ch. 25 (C.A.) decided that a covenant giving an option to purchase was not one running with the land and, by virtue of the English Grantees of Reversions Act,[50] with the reversion, so as to enable the assignee of the lessor to be sued. Where specific performance cannot be granted, such as where the rights of bona fide purchasers without notice have intervened, then damages may be recovered from the vendors for breach of contract, but not from such innocent purchasers.[51]

It is submitted that registration of the option to purchase as an instrument gives notice to the world of the optionee's right to purchase and guarantees that right even in the face of a sale of the reversion to a third party subsequent to registration. The optionee would be entitled to specific performance of the land in question from the transferee of the reversion, rather than only an action for damages against the optionor.

Little has been recorded in Canada discussing the the effects of registration of an instrument. However, such is not the case in Australasia and Edwards, J. in the case of Horne v. Horne[52] makes the following remarks:

> "It lies upon the party claiming registration to produce to the registrar an instrument which is valid and entitled to registration under the provisions of the Act. If, however, innocently, he produces for registration an instrument which from its own inherent defects, apart from any question of defect of title or authority in the registered proprietor under whom he claims or purports to claim, is not entitled to registration, then, even though he honestly believes such instrument to be valid and entitled to registration, he cannot himself take advantage of such registration, although a bona fide purchaser for value could do so (Ex parte Davy, 6 W.Z.L.K. (C.A.) 960; Gibbs v. Messer, 1891 A.C. 248; Moore v. Public Trustee 20 N.Z.L.R. (C.A.) 288)"

The reason of dicta in the Alberta case of St. Germain v. Reneault[53] is consistent with that of the previously mentioned Horne case. The St. Germain case held that as the option to purchase was invalid up to the moment of registration that statute [Land Titles Act] could not be used by the lessee to give validity to the option. However, going further the court stated as dicta that a person purchasing from the original lessee and relying on a registered lease containing an option to purchase clause and acting on the faith of such registration would be entitled to claim the benefit of the section [to be granted specific performance on fulfillment of the conditions precedent].

Since an option to purchase for valuable consideration and, a fortiori, a binding agreement to purchase for valuable consideration in futuro, create an equitable interest in th land, and the registration of the lease containing the option or covenant has the effect of imputing notice of the existence of this outstanding equitable interest, and the even more drastic effect, no doubt, of notifying this outstanding equitable interest on the register, it would seem that the "indefeasibility" provisions of the enactments could not operate to protect a registered proprietor against it.[54]

(iv) s. 97(4)

> No such lease of mortgaged or encumbered land is valid and binding against the mortgage or encumbrance unless the mortgagee or encumbrancee has consented to the lease prior to its being registered, or subsequently adopts it.[55]

History of Section

The equivalent of s. 97(4) has been a provision present in the Alberta Land Titles system since 1906. From that time to the present the wording has not been changed.

The Saskatchewan and Manitoba Acts also contain such a provision.[56] The only differences between the three provincial enactments are that the Saskatchewan section requires the written consent of the mortgagee while the Manitoba section does not to refer to subsequent adoption.

Meaning of the section

If the owner of land mortgages it and thereafter leases it, the lease is binding upon the tenant, who is not

permitted to dispute his landlord's title, and so long as the mortgagee does not interfere with the tenant's possession the mortgagor may receive the rent and distrain for it. The lease is also binding by estoppel on the mortgagor and all persons claiming under him except the mortgagee, and gives to the tenant a sufficient interest in the equity of redemption to entitle him to redeem the mortgage.[57]

A lease made after the land has been mortgaged, unless it is made by authority of the mortgagee or pursuant to a power to lease contained in the mortgage, is not at common law binding upon the mortgagee. The mortgagee, so soon as he becomes entitled to possession under the mortgage, may without notice eject a tenant who has been let into possession under the lease.[58]

A lease by a mortgagor is, therefore, subject to the mortgage. A registered lessee, like any other registered proprietor, holds his interest subject to any interest recorded on the Register prior to registration of his lease [s. 58 of our Act].[59]

Section 97(4) is a codification of the common law and invalidates, as against a mortgagee or encumbrance, a lease to which he has not consented prior to its registration, in the sense that he may exercise his powers in a manner which could overreach the lessee's interest.[60]

In New South Wales, this section, because it contemplates a lease which is necessary to be registered, has been held not to refer to a "verbal lease".[61]

A different point of view on the effect of N.S.W. s. 53(4) (our s. 97(4)) is expressed by Owen J. and Else-Mitchell

in Braham v. Parkinson [1962] N.S.W.R. 165, who see no warrant for limiting the effect of the subsection to leases which are required to be registered and extend it also to leases which may be registered.[62] However, the Parkinson reasoning allowing registration of leases for a period of less than three years has not been accepted in Canada and it can probably be assumed that the effect of s. 97(4) would be limited to registered leases, following the previously cited Daniherr[63] case.

Where a mortgagor in possession makes a lease after the mortgage, reserving the rent, the mortgage apart from statute cannot, by merely giving the lessee notice of the mortgage and that principal and interest are in arrear, establish the relationship of landlord and tenant.[64] Such a relationship can only be created by a contract assented to by both parties.[65]

With regard to a lease by the mortgagee alone, at common law, he equally with the mortgagor, was unable to grant a valid lease withou the concurrence of the mortgagor. It is apparent, therefore, that apart from express agreement or statutory provisions, that once land has been mortgaged, that a lease binding on both mortgagor and mortgagee can only be made by the concurrence of both parties.[66]

(v) s. 98

> In every such lease, unless a contrary intention appears therein, there shall be implied the following covenants by the lessee, that is to say:
>
> (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 tentantable repair, accidents and damage to buildings from fire, storm and tempest or other casuslty and reasonable wear and tear excepted.[67]

History of s. 98

This section has been present in Alberta since its inception in western Canada as s. 71 of the Territories Real Property Act[68] of 1886, the equivalent of section 98 has remained consistent in wording and intent.

Comparison with other Provinces

The Saskatchewan and Manitoba Acts differ from Alberta's in that they do not imply a covenant to pay all rates and taxes, but rather to pay the rent only.[69] Manitoba's Act differs from those of Alberta and Saskatchewan by excluding the words "or other casualty" [our s. 98(b)] and including "lightning" after "fire".[70] British Columbia has not included implied covenants in a lease in their Land Registry Act.[71]

Application and Effect of s. 98

Kerr states in his book The Principles of Australian Land Titles:[72]

> "The covenants contained in a lease are such as are agreed upon by the lessor and lessee, subject to any overriding statutory provision. If the contract for a lease is silent as to covenants, then under the general law covenants are implied to pay the rent and taxes (except the lessor's taxes), and to keep up and deliver the premises at the end of the term in good repair. Under the Torrens System however, if a contract for a lease is silent as

> to the covenants to be inserted therein, then all either party can demand is the execution of the lease in statutory form, in which lease no covenants will be specified, but certain covenants will be implied by the Torrens Statute."[73]

It should be noted that there is no statutory implied covenant for quiet enjoyment and it is not one of the "usual" covenants which will be implied by Hampshire v. Wickens? However, a covenant for quiet enjoyment will be implied from the relationship of landlord and tenant.[74] In Renshaw v. Moore (1917) 34 W.N. (N.S.W.) 95 at 97, Cullen C.J. held that there "was nothing in the Act to get rid of the old principle of law that "He who lets agrees to give possession', or to impose a liablitity on the tenant to go on paying rent although he does not get the land out of which the rent is to issue".

Woodman and Grimes consider the issue:

> "Therefore, a lessor will be exposed to the risk of an action if the lease is not registered and the interest of the lessee is subsequently defeated by registration of a transfer of the reversion. The problem has now to some extent been solved by the inclusion of [s. 64(1)(d)], providing for protection of leases not exceeding three years. Where the lease is for a period in excess of three years [s. 97(1)] it requires execution of an approved form which must be registered, leaving the lessee little choice in the matter of registration. Because a lessor is not usually in position to force registration of the lease and, further, the unregistered lessee can be overreached by a registered transferee of the reversion, thus exposing the original lessor to action upon any covenant for quiet enjoyment contained or implied in the lease, it is desireable to qualify the covenant for quiet enjoyment by a provision that, if the lease should remain unregistered, the covenant should not extend to the acts of a transferee of the reversion."[75]

From the above suggestion the question arises whether it would be advisable to insert as a point of clarification an implied covenant for limited quiet possession in the Act.

The implied covenants under the Act may be expressly negatived or modified by express declaration in the instrument or endorsed thereon.

The Implied Covenant to Pay Rent

The implied covenant to pay the rent by the statutory lease reserved at the times therein mentioned will have the same effect as an express covenant to that effect contained in a general law lease.[76]

Under the general law the proper place to make payments of rent is upon the demised premises, hence the landlord had to go to the rented premises to collect the rent, unless there was an express covenant to pay the rent. When there is an express covenant to pay the rent, it is the duty of the tenant to seek the landlord out, and pay him.[77] By virtue of the implied covenant this would be the duty of the lessee.[78]

The Implied Covenant to Pay Rates and Taxes

A covenant to pay taxes, was held to be a "usual" covenant, implied when a lease is silent as to the covenants contained in the lease.[79] However, the question of what constitutes "usual covenants" is one of fact gleaned from the evidence as to modern practices among conveyancers and from standard books of reference on the subject[80] and therefore is subject to change. The inclusion of this implied covenant in the statute is a codification of the common law and depends upon a policy decision in preference for greater clarity. In view of the fact that Saskatchewan, Manitoba

and British Columbia do not include such a covenant in their Acts, its presence appears not to be strictly necessary to the Land Titles System.

The Implied Covenant to Repair

> "Between landlord and tenant, apart from statute and in the absence of express agreement on the part of the tenant to repair, there is no obligation on the tenant to put or keep the demised premises in repair; there is, however, an implied covenant by the tenant to treat the premises in a tenant-like manner, which may be displaced by express agreement. And, in the case of agricultural property, the duty is cast upon the tenant to cultivate in a husband-like way in accordance with the custom of the country; and this duty may also be displaced by an express agreement. Generally speaking a tenant may not commit waste."[81]

As in the case of a covenant to pay rent, a covenant to repair imposes an absolute obligation for the non-performance of which the covenantor remains liable, notwithstanding that owing to some extraneous cause beyond his control he is unable to execute the necessary work.[82]

Cheshire sets out the extent of the obligation to repair:

> "After making due allowance for the locality character and age of the premises at the time of the lease, the tenant must keep them in the condition in which they would be kept by a reasonably minded owner."[83]

He continues:

> ". . . it is generally admitted that such epithets as 'good', 'perfect' or 'substantial' do not increase the burden counted by the simple word 'repair'. By way of caution, it should be noticed that, it the premises are in a state of disrepair at the beginning of the

> the lease, a covenant by the tenant to 'keep' them in repair obliges him to put them in the repaired state at his own expense."[84]

William discusses the meaning of "good and tenantable repair" at p. 477:

> "Under an agreement to keep a house in good and tenantable repair, and so leave it at the expiration of the term, the tenant must, if the premises are out of repair when he takes them, put them in good tenantable repair: Proudfoot v. Hart (1890), 25 2 B.D. 42 (C.A.) But if there is a general covenant to repair, the age and general condition of the house at the commencement of the tenancy are to be taken into account: Lister v. Lane and Nesham [1893] 2 Q.B. 212 (C.A.) (a tenant who enters into an old house is not bound to leave it in the same state as if it were a new one)."[85]

Therefore, it is the lessee's duty to keep the premises as nearly as may be in the same state in which they were at the time of the demise by the timely expenditure of money and care, but their age and condition must be considered and due allowance made for fair wear and tear.[86]

The Alberta case of Telfer Brothers v. Fisher (1910) 15 W.L.R. 400 was an action for breach of the statutory implied covenant to repair under s. 98 contained in an unregistered two year lease. Even though the lease was unregistrable it was stated to be made pursuant to the Land Titles Act, and was in the form prescribed by the Act for leases for terms exceeding three years. It was expressed to be made subject to the covenants and powers implied except as therein modified.

The defendants leased the building and three months later all three floors collapsed.

The court held that there was nothing to prevent the

parties from contracting themselves into the terms of the Land Titles Act, where they would not otherwise have been brought within them and they had so contracted. Therefore, the covenant for repairs was implied in the lease and the lessees were bound thereby and were liable to rebuild the whole building. Since the plaintiffs had rebuilt the structure the defendants were liable to the amount properly expended to them.

The court also found that the parties, having covenanted to restore the building were bound to do so, even if there were some latent defects in its construction.

Held, also, that where the tenants covenant to repair contains no provision as to notice the landlord is under no obligation to give the tenant notice to repair before doing the repairs himself and proceeding to recover the cost.

The collapse of the building did not come within the exception as to "other unavoidable casualty" in the express provision of the lease, or within the exception of "accident or other casualty" in the implied consent.

It is usual to qualify the the covenant to repair by a clause to the effect that the covenantor shall not be liable for "fair wear and tear". The effect of these words is to exempt the covenantor from liability for damage that is due to the ordinary operation of natural causes, always presuming he has used the premises in a reasonable manner.[87] But where the defect, though initially due to natural causes, will obviously cause further and lasting damage unless rectified, the clause will not continue to avail a convenantor who stands idly by and allows the ravages of time and nature to take their course.[88]

The obligation to keep the premises in a tenant-like manner, implied in the absence of express provision to repair by stature or otherwise is an expression, according to Cheshire,[89] which is obscure if not unintelligible. All that it means apparently is that the tenant must do such work as is necessary for his own reasonable enjoyment of the premises.[90] There is some authority for the view that he must keep the premises wind and water tight in the sense that, although he is not bound to do anything of a substantial nature, he must carry out such repairs as are necessary to prevent the property from lapsing into a state of decay.[91] The existence of thus obligation has been doubted by the Court of Appeal.[92]

The inclusion of the words "or other casualty" in the exceptions to the requirement to repair has been interpreted broadly by the Saskatchewan District Court in the case of Roberts v. McMannis [1935] 1 W.W.R. 193. In that case it was held that the words "or other casualty" are not restricted to a casualty of the same nature as fire, storm or tempest, but mean any unforeseen and unavoidable occurence as distinguished from a happening which could have been avoided. It was held also that the word "fire" because of its conjunction with the words preceding and following it, must be limited to such fires as are purely accidental. No person is liable for any fire accidentally began.

The Lessors Remedy for Breach

The lessor's remedy for breach of the general covenant to repair is an action in damages. Where the action is brought by a lessor against his lessee during the currency of the tenancy, the true measure of damages is not the sum required to put the premises into repair, but the loss to the landlord measured by the depreciation in the saleable

value of his reversion. At the end of the term the landlord is entitled to recover the amount necessary to put the premises in repair, and where there has been a recovery during the term but no repairs have been executed, the damages at the end of the term would be the amount necessary to put the premises in repair less the amount before recovered, and a sum for such depreciation as would have accrued had the repairs been executed during the term.[93]

Where a lessee covenants to deliver up the premises in good repair at the end of the term, but fails to do so, the lessor is entitled not only to the cost of putting them in repair, but also to compensation for the non-user of the premises while undergoing repairs afterwards.[94]

From the foregoing it can be seen that the covenants expressed in s. 98 are not simply codifications of common law, but rather go beyond it and thereby serve a useful purpose in further protecting the landlord's interests.

(vi) s. 98 Implied Powers of the Lessor

> "In every such lease, unless a different intention appears therein, there shall also be implied the following powers in the lessor, that is to say:
>
> (a) that he may, by himself or by his agents enter upon the demised lands and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be therein mentioned, to repair the same, insofar 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 two calendar months, or in case default is made in the fulfillment of any covenant, whether expressed or implied in the lease, on the part of the

> lessee, and is continued for the space of two calendar months, or in case the repairs required by notice, as aforesaid, are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land."[95]

(vii) s. 99

History and Comparison of s. 99

The equivalent of section 99 first appeared in western Canada as section 72 of the Territories Real Property Act[96] of 1886. It has remained essentially unchanged since that time.

The Acts of Saskatchewan, Manitoba and Canada contain provisions allowing the lessor to enter and view the leased property and demand repair within a reasonable time and to re-enter and repossess upon default in payment of rent or the performance of any covenant.[97] British Columbia has included similar conditions as optional provisos in the Short Form of Leases Act.[98]

Saskatchewan has also included in their equivalent of section 99 a provision allowing re-entry if anyone is convicted of keeping a disorderly house on the premises. Alberta has a similar provision in Form 17 of the Schedule Short Covenants in Lease, covenant 5.

The Effect and Application of s. 99

The powers contained in a lease are such as are agreed upon between the lessor and lessee, subject to any overriding statutory provision which has not been negatived by the parties. Under the common law, if the contract for a lease is silent as to powers, the lessor has no right to enter and view the

premises to determine what repairs are required[99] nor has he a right of re-entry; re-entry for breach of covenant can only be exercised when such right is expressly reserved in the lease or is given by statute.[100] Under the Torrens System, however, if a contract for a lease is silent as to the powers to be inserted therein, all either party can demand is the execution of the lease in statutory form and certain powers will be implied by virtue of the Torrens Statute.[101]

The effect of section 99 is essentially an expansion of the lessor's rights under the general law. Hogg believes the lessor's rights under the general law remain unimpaired when he says:

> "Notwithstanding the power of re-entry on breach of covenants, the lessor is entitled to have the lessee restrained by injunction from committing such breaches [eg. waste]. There seems no doubt that a lessor has the same power to distrain for rent as under the general law."[102]

The usual remedy for breach of the covenant to repair is damages.[103] Thus the statute expands the lessor's remedies when re-entry and forfeiture are allowed.

The right of re-entry and forfeiture is advantageous to the lessor. It relieves him frmm the necessity of complying with the strict common law rules governing making a demand for rent in the instance where the rent is two months in arrears.[104]

Under this statutorily imposed forfeiture clause the lessor reserves to himself a right to re-entry and the lease continues unless and until he exercises it; the lease is thus voidable by the lessor (but not the lessee).[105] The

virtue of this is that the lessor, if he finds himself saddled with in impecunious tenant who is a persistent defaulter in the payment of rent, may regain possession instead of being driven to constant litigation.[106]

A proviso for re-entry and forfeiture acts as a further safeguard to the landlord to ensure the observance of all the other covenants.[107]

When a landlord is entitled to re-enter, he can enforce his right either by making peaceable entry on the land[108] or by commencing an action for possession.[109] However, in order to have the registrar to make an appropriate memorandum on the certificate of title by the decision in Re Tucker and Armour[110] proof must be shown that a civil or criminal proceeding or inquiry in which evidence was, or could have been given or an arbitration took place.

(viii) s. 100 Registrar's Duties upon re-entry

> "In any such case the Registrar upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor, or his transferee by a legal proceeding shall make a memorandum of the same upon the certificate of title and upon the duplicate thereof when presented to him for that purpose, and the estate of the lessee in the land thereupon determines and the Registrar shall cancel the lease if delivered up to him for that purpose, but the lessee is not thereby released from his liability in respect of the breach of any covenant in the lease, expressed or implied.

History and Comparison of s. 100

While the registration of a lease confers on the lessee an indefeasible title, at least where the instrument

creating it is a valid one, the nature of the estate makes it but a conditional indefeasibility. It is dependent upon the observance by the lessee of covenants and conditions contained in the lease. Section 100 recognizes the right of the lessor to defeat the registered title by re-entry and recovery of possession by a legal proceeding while maintaining the lessee's liability in respect of any breach.

Since its inception in 1886, the intent of the equivalent of section 100 has remained constant though the wording has undergone some changes not worthy of mention.

The Acts of Alberta, Saskatchewan and Canada make mandatory a notation of re-entry on the certificate of title upon proof of a legal proceeding. In addition, the cancellation of the leasehold title becomes mandatory upon delivery of the lease.[111] The Real Property Act of Manitoba makes a similar provision except that the district registrar "may [my underlining] cancel any leasehold title issued in respect of the land and dispense with the production of the duplicate certificate of title for the leasehold estate."[112]

It can be argued that Manitoba's position is the better one as it eradicates the necessity for the lessee's co-operation in clearing the register of his defunct estate while leaving the Registrar with discretion in the matter of cancellation.[113] There may be situations where such discretion could be of some value.

British Columbia's Land Registry Act also contains such a provision however it is of a permissive rather than mandatory nature and requires thirty days' notice to the lessee or purchaser before cancellation may be made.[114]

The Application and Effect of s. 100

To justify the recording of re-entry and recovery of possession in the Register, the Registrar must be satisfied that there has been a lawful re-entry and recovery of possession by the lessor. The simple act of taking peaceful possession by the lessor is not sufficient to remove the lease from the register.

The registrar's action is authorized only when there is recovery of possession by a legal proceeding for the following reason:

> "The consequences of the registrar's act point also to the conclusion that Parliament could not have intended to permit the cancellation of the lease on the bare taking of possession perhaps without the knowledge of the lessees. For many years the courts have relieved against the consequences of forfeiture for nonperformance of covenants and particularly the covenant to pay rent, but in the present case how could the lessee, assuming that he had the right to relief, obtain redress and repossess himself of the property? His lease being cancelled and his estate in the land being determined, he is prohibited by The Land Titles Act from maintaining an action for ejectment without which he could not regain possession against a resisting lessor."[115]

Woodman and Grimes state in reference to the Real Property Act of N.S.W. s. 55 that:

> "There is nothing in the Act to suggest that physical exclusion of a defaulting tenant is a condition precedent to recording in the Register of the determination of a lease by re-entry. The Act is concerned with title - not with physical occupation - and "possession" must be taken to mean possession at law. Whether or not a lessor who has re-entered succeeds in ejecting an ex-tenant who has become a trespasser is a question with which the registrar is not concerned."[116]

Section 100 is a housekeeping section making it possible for the registrar to keep affected certificates of title currently accurate in order to reflect a true picture to the bona fide purchase for value.

(ix) s. 101 Short Form of Leases - Wording

> **101.** (1) Whenever in any lease made under this Act the forms of words in column one of Form 17 in the Schedule 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 two of the said Form 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 one 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 corresponding expressions in column two.

To enable the shortening of the language of leases the Torrens-statutes provide short forms of covenant with their statutory interpretation, e.g. covenants to cultivate, fence, not to assign etc.[7] The parties may by express words add to or modify any short form.

These short forms are of distinct practical value, allowing speedy preparation of leases when time is short and providing a more complete explanation of certain covenants for the uninformed.

FORM 17

(Section 101)

SHORT COVENANTS IN LEASE.

COLUMN ONE	COLUMN TWO
1. Will not, without leave in writing, assign or sublet.	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. Will fence.	2. The covenantor, his executors, administrators, or transferees will during the continuance of the said term erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.
3. Will cultivate.	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. Will not cut timber.	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 upon the said land, without the consent in writing of the said lessor or his transferees.
5. Will not carry on offensive trade.	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 upon 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.

History of s. 101 and Form 17

Since its first appearance as section 74 of the Territories Real Property Act[118] the equivalent of section 101 has remained constant in its meaning and intent. Over the years the wording, punctuation and layout have undergone changes apparently in the interests of greater clarity, however the effect of the section appears not to have changed. The covenants contained in Form 17 today are exactly the same in all respects as those set out in Form I of the Territories Real Property Act.[119]

Some sort of short form of leases is common to the legislation of all the western provinces and also Ontario. Alberta and Saskatchewan make provision for Short Forms in the Land Titles Act while British Columbia, Manitoba and Ontario have created separate Acts fulfilling the same function.[120]

Common Covenants

See attached page.

Covenants	Alberta	Sask.	Canada	Ontario	Manitoba	B.C.
1. to pay rent	LTA. S.98	LTA. S.120(a)	LTA. S.89(a)	SH. F. Cov. 2	R.P.A. S.89(a)	SH.F. Cov. 1
2. to pay taxes	LTA. S.98(a)	SH.F. Cov. 1	LTA. S.89(a)	SH.F. Cov. 3 except local improvements	SH.F. Cov. 2	SH. F. Cov. 2
3. to repair reas. wear & tear excepted / damage by fire, lightning, tempest	LTA. S.98(b) "or other casualty"	LTA. S.120(b) "or other casualty"	LTA. S.89(b) "or other casualty"	SH. F. Cov. 4 except local improvements fire/lightning/tempest	R.P.A. S.89(b) "Storm" SH.F. Cov. 3	SH.F. Cov. 3 (no exceptions)
4. and to keep up fences	SH.F. Cov. 2	SH.F Cov. 3	SH.F. Cov. 2	SH.F. cov. 5	SH.F. Cov. 4	SH.F. Cov. 4
5. and not to cut down timber	SH.F. Cov. 4	SH.F. Cov. 5	SH.F. Cov. 4	SH.F. cov. 6	SH.F. Cov. 5	SH.F. Cov. 5
6. to enter & view / notice in writing / reas. wear and tear excepted	LTA. S.99(a) "reas" notice	LTA. S.121(a) "reas." notice	LTA. S.90(a) reasonable notice	SH.F. cov. 7	SH.F. cov. 6 R.P.A. S.90 "reas" time	SH. F. Cov. 9 w/in 3 mos.
7. leave in good repair	LTA. S.98(b) "or other casualty"	LTA. S.120(b) "or other casualty"	LTA. S.89(b) "or other casualty"	SH.F. cov. 9 reas wt. / fire lightning & tempest excl.	R.P.A. SH.F Cov 8. S.89(b) "Storm"	SH.F. cov. 13 reas. w+tear + fire excepted
8. proviso for re-entry after ___ days / default in covenants	LTA. S.99(b) 2 mos.	LTA. 2 mos.	LTA. S.90(b) 2 mos.	SH.F. cov. 12 15 days	SH.F. Cov. 9 R.P.A. S.90(b) 2 mos 15 days	SH.F. Cov. 14 15 days
9. covenant for quiet enjoyment				SH.F. Cov. 13	SH. F. Cov. 10	SH. F. Cov. 15
10. will cultivate	SH.F Cov. 3	SH.F. Cov. 4	SH.F Cov. 3			
11. Provided that in event of fire, etc. rent shall cease until the premises are rebuilt.				SH.F. Cov. 11		
12. Lessee may remove his fixtures				SH.F. Cov. 10		
13. will not assign or sub-let without leave	SH.F. Cov. 1	SH. F. cov. 2	SH.F. Cov. 1	SH.F. Cov. 8	SH.F. Cov. 7	SH.F. Cov. 11 / assign Cov. 12 / sub-let
14. to paint outside every ___ year.						SH.F. Cov. 6
15. to paint + paper every year.						SH.F. Cov. 7
16. to insure from fire to show receipts to rebuild in case of fire						SH.F. Cov. 8
17. lessee will not use the premises as a shop						SH.F. Cov. 10
18. will not carry on offensive trade	SH.F. Cov. 5	SH.F. Cov. 6 L.T.A. S. 121(c)	SH.F. Cov. 5		s 17(2) Man. Landlord / Tenant Act - Guaranteed fire-entry on criminal conviction	

See Appendix II for complete covenants

SH. F = Short Forms of Leases - Ontario RSO 1970, c 436; RSBC 1960, c. 357, R.S.M. 1970, c. C320

L.T.A. = Land Titles Act - Alberta RSA 1970, c 198, Saskatchewan RSS 1965, c. 115; RSC c. L-4

R.P.A. = Real Property Act - Manitoba RSM 1960, c 230

Covenants Implied by the Land Titles Acts

The implied covenants and powers of sections 98 and 99 of our Act are covenants common to all western provinces and Ontario. The major difference between the provinces arises from the effect given the covenants. In Saskatchewan and Alberta and Canada the following covenants are automatically implied by the Land Titles Acts and must be either expressly negatived or altered to change their effect:

- to pay rent
- to repair, reasonable wear and tear and damage by fire, lightning and tempest or other causes excepted
- to leave in good repaire
- to enter and view and leave notice in writing to repair etc.
- proviso for re-entry and possession for default in rent of two months or default in any other covenant

It should be noted that Alberta is the only province of the five under comparison which makes specific provision for the tenant to pay rates and taxes in the Land Titles Act.

Otherwise, the inclusion of other covenants found in the short forms is optional according to the wishes of the parties.

Covenants in the Short Forms

a. Common to all

All of the provinces have included the following convenants in their short forms sections [see Table]

- to keep up fences

- not to cut down timber
- will not assign or sublet without leave
- a proviso for re-entry [after a default in rent for fifteen days however]

b. What we have and others don't

Alberta, Saksatchewan and Canada include a short covenant in a lease prohibiting the carrying on of offensive trade. Ontario, Manitoba and British Columbia do not have such a covenant.

The Saskatchewan Land Titles Act,[121] s. 121(c), gives a right of re-entry if the lessee or any other person is convicted of keeping a disorderly house on the demised premises.

Section 17(2) of the Manitoba Landlord and Tenant Act[122] provides that the landlord shall have a right of re-entry if the tenant or any other person is convicted of keeping a disorderly house within the meaning of the Criminal Code (Canada), on the demised premises or any part thereof. By section 17(1) this provision applies to every demise, whether by parol or in writing whenever made.

By s. 185 of the Criminal Code, R.S.C. 1970, c. C-34 everyone as owner, landlord, tenant, occupier, or agent, knowingly permits a place to be let or used for the purposes of a common gaming house or common betting house is guilty of an offence, and . 193(2)(c) contains similar provisions relating to common bawdy houses. In the latter case, where a notice of conviction has been served on the owner, landlord or lessor, and such person fails forthwith to exercise any right he may have to determine the tenancy or right of occupation of the person so convicted, and thereafter

implied from the use of the word "lease". But the qualified covenant above is confined to the acts of the lessor, and those lawfully claiming under him. When the lessee under such a lease is evicted by title paramount to the lessor, he cannot recover under the covenant, nor on the implied covenant contained in the word "demise" as it is controlled by the express covenant for quiet enjoyment.[131]

In the absence of fraud or a contractual right to compensation, the lessee, who discovers a title defect which he might have discovered on investigation before completion cannot recover where the implied covenant is excluded by an express covenant for quiet enjoyment.[132]

The express covenant does not protect the lessee against the acts of a stranger.[133]

2. Destruction of Demised Premises Fire Covenant

"Provided that in event of fire etc. rent shall cease until the premises are rebuilt."

Where there is no statute or stipulation to the contrary, a lessee who has entered into a covenant to repair, must pay rent though the premises are destroyed by fire.[134] This is so even if the landlord has insured the premises and received the insurance money without restoring the property.[135]

Most leases contain specific provisions dealing with abatement of rent in the case of fire.[136] An ordinary provision of this nature applies only to future rent.[137]

The Statutes

The Short Forms Acts contain provisions relieving

if any person is convicted of such an offence in respect of the same premises, the person on whom the notice was served is deemed to have committed an offence under s. 193(1), unless he proves that he has taken all reasonable steps to prevent a recurrence of the offence.[123]

c. What they have and we don't

1. Covenant for Quiet Enjoyment

The covenant for quiet enjoyment is an assurance against the consequences of a defective title including any disturbance founded thereon, and against any substantial interference, by the covenantor or those claiming under him, with the enjoyment of the premises for all usual purposes. If the covenant is express, it displaces any implied covenant. An express covenant may be restricted or absolute. If there is no express covenant, a restricted covenant for quiet enjoyment will be implied from the mere contract of letting. The principle that no one is allowed to derogate from his own grant is applicable to lessors, and even an express covenant for quiet enjoyment will not permit a lessor to derogate from his grant by using adjoining premises in such a way as to be an injury to those demised.[124]

The implied covenant is displaced by an express covenant and the tenant may not fall back on the implied covenant if the express covenant does not go far enough. Nor can the tenant rely on proof of a parol agreement that the right to quiet enjoyment is to be subject to a condition.

The implied covenant protects against lawful, and not tortious, interruptions, because the lessee has his remedy against wrongdoers.[125]

The express covenant is a matter of contract. The covenant may be, and usually is, "restricted" or "qualified" so that it applies only to the acts of the lessor and those lawfully claiming under him. But the convenant may be absolute in its terms.

The Ontario Short Forms of Leases Act, R.S. 1970, c. 436 (see §14.18), provides at Schedule B:

13. The said lessor covenants with the said lessee for quiet enjoyment.	13. And the lessor doth hereby covenant with the lessee, that he paying the rent hereby reserved and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, or any other person or persons lawfully claiming by, from or under him.

Similar Legislation:

British Columbia: R.S. 1960, c. 357, Sched. 2, covenant 15.
Manitoba: R.S. 1970, c. S120, Sched. 3, covenant 10.
Newfoundland: R.S. 1952, c. 140, s. 11(*b*) (1).
Nova Scotia: R.S. 1967, c. 56, Sched. C, covenant 13.
Prince Edward Island: R.S. 1951, c. 138, Sched. 3, covenant 10.

As distinct from the implied covenant where the liability of the landlord is limited to the duration of his own interest,[126] an express covenant will continue in force until the end of the term[127] and this is so even when the covenant is entered into by a tenant for life.[128]

When the covenant is limited to the acts of the lessor or those claiming under him, as above, it does not extend to wrong acts.[129]

In a Saskatchewan case[130] it was held that a lessee who finds himself dispossessed, owing to his lessor's want of title, may recover damages for breach of the covenant

against rent in the event of fire. The Ontario covenant (R.S. 1970, c. 436) follows:

> 11. Provided, that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt.

> 11. Provided, and it is hereby expressly agreed, that in case the premises hereby demised or any part thereof shall, at any time during the said term, be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injuries sustained shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.

There is no similar provision in the Short Forms Acts of the other provinces, except for Nova Scotia,[138] but the Manitoba Act, R.S. 1970, c. S120 Third Schedule, adds to the covenants to pay rent, to repair and to repair on notice, specific provisions relating to the rights and obligations of the parties in the event that the demised premises are destroyed or rendered unfit for occupation as a result of fire, tempest or act of God, such that in certain circumstances the tenant will have the right to surrender with a consequential cessation of rent from the date of damages.

(x) s. 102

> **102.** (1) Whenever any lease or demise required to be registered by this Act is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of a surrender in law, the Registrar shall, upon the production to him of the surrender in Form 18 in the Schedule, make a memorandum of the surrender upon the certificate of title in the register and upon the duplicate certificate.
>
> (2) When the memorandum has been so made the estate or interest of the lessee in the land vests in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed.
>
> (3) Notwithstanding subsection (1), no lease that is subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.

History and Comparison

An equivalent to s. 102 has been part of the Land Titles Act since its inception. Over the years minor changes in wording and format have been made. For example, in 1942 the verb "shall vest" s. 102(2) was changed to "vests". At the same time the words "Provided that no lease subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee" became (3) above. Essentially however the meaning and effect of the section have remained constant.

Eachoof the Acts under discussion contain specific sections allowing surrender but provisions differ greatly. Manitoba's provision, Real Property Act, R.S. 1970, c. R30 is the tersest:

> s. 88(2) "A lease of land may be terminated by the registration of a surrender of lease in the form set out in Schedule E, executed by the registered owner of the lease."

The prohibition against registration of a surrender without the consent of the mortgagee or encumbrancer is contained in s. 92 of the Real Property Act, R.M. 1970, c. R30 (see appendix).

The form of surrender in Manitoba differs from that in Alberta; (Saskatchewan's form is exactly the same as Alberta's) it appears to be somewhat more specific in content. The Alberta Form says "I do hereby surrender and yeild up . . ." where the Manitoba form states: ". . . do hereby surrender to the said C.D., that lease together with all my rights, powers, title, and interest therein."

FORM 18

(Section 102)

In consideration of.....dollars to me paid by (*lessor or his assigns, as the case may be*) I do hereby surrender and yield up from the day of the date hereof..... unto..... the lease (*describe the lease fully*) and the term therein created.

Dated the..... ....day of..... ....A.D. 19.....

SIGNED by the above named } .....
in the presence of..... } (*Signature.*)

[R.S.A. 1970, c. 198, Schedule, Form 18]

SCHEDULE E

(Section 88(2))

SURRENDER OF LEASE

I, A.B., being registered owner of a lease numbered affecting the following land, in consideration of the sum of dollars paid to me by C.D., the registered owner of the said land, do hereby surrender to the said C.D., that lease together with all my rights, powers, title, and interest therein, and request the district registrar of the Land Titles District to cancel any certificate(s) of title for a leasehold estate issued pursuant to that lease.

I, E.F., the registered owner of mortgage No. or encumbrance No. affecting the leasehold estate surrendered herein, do hereby consent to the surrender of that lease.

(Delete consent of mortgagee or encumbrancer if not required. See section 92).

R.S.M. 1970, c. R30

The Manitoba form also makes provision for the consent of the mortgagee or encumbrancer. It is more easily readable and more complete. Should Alberta consider changing the Form 18 to resemble Schedule E?

The Saskatchewan Land Titles Act, R.S. 1965, c. 115 at one time contained a surrender section close to the present Alberta one. There were some differences:

1. Instead of: "Whenever any lease or demise required to be registered . . ." s. 102 R.S.A. 1970, c. 198 it said: "When a lease or demise that has been registered . . ." s. 124(1) R.S.S. 1965, c. 115

In 1966, the Land Titles Act in Saskatchewan was amended by s. 7, S.S. 1966, c. 96; subsection (1) of s. 24 and the proviso thereto was repealed and the following substituted:

> "(1) Subject to subsection (1B), [see 4 below], where a lease that has been registered under s. 119, but in respect of which no certificate of title has been issued, [my underlining] is intended to be surrendered, and the surrender is effected otherwise than by the operation of law, the registrar shall upon the production of a surrender (form O) [the same as our Form 18] make a memorandum thereof upon the certificate of title of the owner of the reversion expectant upon the determination of the term created by the lease and upon the duplicate thereof.
>
> (1A) Subject to subsection (1B), [see 4 below] where a certificate of title has been issued in respect of a leashold estate and that estate is intended to be surrendered, and the surrender is effected otherwise than by the operation of law, the registrar, upon registration of a surrender, shall cancel the certificate of title and the duplicate thereof and shall enter a memorandum of the surrender on the certificate of title of the owner of the reversion to whom the surrender is made.

The present Saskatchewan provision is more explicit than the previous one, or our s. 102. It specifically deals with leases which have been registered against the title and leases where a separate certificate of title has been issued. Our Act talks about "any lease or demise required to be registered by the Act." What happens in the instance where a lease for a period of more than three years has not been registered, even though required to be, nor has a subsequent surrender been registered. Would it not be possible to impeach the validity of the surrender or the whole transaction based on the words "required to be"? The argument might appear to be a specions one but it does indicate, I think, a lack

of clarity in the wording of s. 102 -- a lack which should be remedied.

2. Instead of: ". . .the estate or interest . . vests. . ." s. 102 R.S.A. 1970, c. 198, it said: ". . . the estate or interest . . . shall vest . . ." s. 124(2) R.S.S. 1965, c. 115, and still remains the same. In Alberta "shall vest" was changed to "vest" in R.S.A. 1942, c. 205, s. 99.

3. Instead of: ". . . or other person in whom, having regard to intervening circumstances if any, the land would have vested if the lease had never been executed." s. 102(2) R.S.A. 1970, c. 198, it said: ". . . or other person entitled to the land on expiry or determination of the lease." s. 124(2) R.S.S. 1965, c. 115, and now says: ". . . the owner of the reversion expectant upon the determination of the term created by the lease . . ." (in the case of a registered lease - no certificate of title).

   ". . . the owner of the reversion to whom the surrender is made." (in the case of a certificate of leasehold title) S.S. 1966, c. 96, s. 7(1) and (1A)

The words in s. 102(2) ". . . having regard to intervening circumstances, if any, the land would have vested if the lease had never executed" have not to my knowledge, been judicially interpreted. However, the subjunctive mood creates a sence of tentativeness, rather than positivity and should be avoided if at all possible. This unhappy wording is convoluted and does not contribute to a clear and ready understanding of the Act and should be changed. I believe the present Saskatchewan wording would constitute a improvement.

The point has been raised whether a registered

lease can be vacated from the title by a surrender of lease that, prima facie, has been executed after the lease has expired. It would seem that the Act, having authorized registration of a lease, also contemplates a voluntary surrender by the lessee or his assignees as shown on the title, so as to remove the registered lease.

To hold that a lessee who had registered his lease has nothing to surrender after the expiry of his lease would render meaningless the provision in s. 124 that "when the memorandum has been so made" the estate or interest of the lessee shall vest in the lessor or other person entitled to the land on expiry or determination of the lease.

In any event, a surrender executed by the present registered holder of the lease would effectively operate by way of estoppel to bar any future action by him under the lease or under any further term therein provided. A surrender of lease, no matter when executed, is therefore registrable and vacates the registered lease.[140]

4. Instead of: "Notwithstanding subsection (1), no lease that is subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee." s. 102(3), R.S.A. 1970, c. 198

   It said: "Provided that no lease subject to mortgage shall be surrendered without the consent of the mortgagee." s. 124(2) R.S.S. 1965, c. 115

   and now says: "No lease shall be surrendered without the consent of all persons appearing by the records of the land titles office to have any mortgage or lien upon, or estate, right or interest in or to the leasehold estate created by the lease." s. 7(1B) S.S. 1966, c. 96

The present Saskatchewan consent clause set out above, as amended in 1966, has a broader scope than s. 102(3) of our Act. In effect it requires that all interested parties in the leasehold be given notice of the surrender and consent to it, rather than just the mortgagee or encumbrancee. The question of the operation of a surrender is important in cases where a sub-lease has been created. Although this section grants no specific protection of a sub-lessee's interest, it would guarantee him notice and the opportunity to negotiate in the face of intended surrender by the head-lessee.

Section 54 of the Qld Act, requirement of consent, extends to that of a sublessee, as well as that of a mortgagee or encumbrancee, where the leasehold estate so surrendered is subject to a mortgage encumbrance or sublease. The S.A. Act, s. 120, the W.A. Act s. 102, and the N.Z. Act s. 102(2) provide similarly.[141]

The British Columbia Land Registry Act, R.S. 1960, c. 208 s. 182(1) sets out a general provision applying to the satisfaction, surrender, release or discharge of a chargee. (see appendix)

The Application and Effect of s. 102

This provision provides registered owners of property with a vehicle for removing notations from their certificate of title, without the necessity of a court order. It also protects owners of mortgages and encumbrances registered against the leasehold.

I believe there is no question that the section serves a useful and necessary function and should remain in the Act. The only issue then is in what form and wording

should it be retained. In the previous pages the significant differences between the various Alberta, Saskatchewan and Manitoba section have been set out. The Saskatchewan "equivalent" appears to be the most specific and complete of the three, while the Manitoba section leaves a considerable amount of room for judicial interpretation. Following the belief that the Land Titles Act should be as explicit and clear as possible the Saskatchewan wording seems preferable.

(xi) s. 103 Cancellation of an expired lease

> **103.** (1) Any person claiming to be interested in any land for which a certificate of title has been granted may apply to a judge for a certificate that any lease or demise registered pursuant to the provisions of this Act has expired, and the judge upon being satisfied that the lease or demise in respect of which the application is made has expired and is no longer of any force or effect, may grant a certificate to this effect.
>
> (2) Upon the certificate being filed with the Registrar he shall cancel the registration of the lease or demise mentioned in the judge's certificate and any caveat based on the existence thereof, and make an entry of such cancellation in the register and upon the certificate of title to the land affected thereby, and upon the duplicate certificate of title thereof, upon the same being produced to him for this purpose. [R.S.A. 1970, c. 198, s. 103]

A lease for a term of years may come to an end either by re-entry by the lessor, surrender by the lessee or by the filing of a judges certificate of expiration with the Registrar for those cases of registered leases where the term has, prima facie, expired and the owner cannot procure a surrender of the lease. There is no express statutory provision on this point, and the registrar has no authority to vacate the registration on his own motion.[142] In such cases, an order of a judge under section 103 of The Land Titles Act would be required.

The original provision governing the cancellation of an expired lease was added by an amendment to the Land Titles Act in 1928, c. 29 s. 5 "91a". The wording today is the same in almost all respects as the original.

Section 103 is a rather unusual provision. Not because of what it does - providing a method of removing misleading or incorrect notations from the register without the necessity of relying on the Registrar's discretion or the commencement of a legal proceeding - but because it stands without a fair equivalent to be found in the Canadian Land Titles Act or in any of the western Acts except that of Saskatchewan.

Power to make vesting order or to cancel or amend instrument, etc.

89. A judge of the Court of Queen's Bench may, upon such notice as he deems fit or, where in his opinion the circumstances warrant, without notice:

(*a*) make a vesting order and may direct the registrar to cancel the certificate of title to the lands affected and to issue a new certificate of title and duplicate thereof in the name of the person in whom by the order the lands are vested;

(*b*) direct the registrar to cancel any instrument or any memorandum or entry relating thereto or to amend any instrument or any memorandum or entry relating thereto in such manner as the judge deems necessary or proper.

This subsection (b) authorizes a judge of the Court of Queen's Bench to direct the registrar to cancel any instrument or any memorandum or entry relating thereto or to amend any instrument in such manner as the judge deems necessary or proper. At this point it may be noted that this section 89 not only permits a judge of the Court of Queen's Bench to cancel any instrument, but authorizes the judge to make a vesting order cancelling titles and

issue new titles in the name of the person in whom, by the order, the lands are vested. It may be noticed that the authority given in section 89 is to a judge of the Court of Queen's Bench. The authority is not just to a "judge". If it were, under the definition of a "judge" in section 2 of The Land Titles Act, a local master could make an order, and as stated in Chapter 23, below, a local master has not jurisdiction to make an order under the said section 89. This should be emphasized in view of the fact that orders have been made in the past without authority.[143]

The Acts of Manitoba and Canada make no specific provision for the removal of a lease from the register, outside of those governing re-entry and surrender. The only apparently applicable provisions under those Acts are the equivalents of our s. 188(1), R.S.A. 1970, c. 198 setting out the power of a judge to cancel, correct etc. in any proceeding.[144]

In British Columbia an expired lease may be cancelled by the Registrar upon application and payment of the proper fee.[145] However, a notice of intention to cancel is always given by the registrar to the lessee as it appears that if a lease contains a covenant for renewal at the option of the lessee the option can be exercised at any time after the lease expires so long as the lessee remains in possession with the sanction of the lessor;[146] and further, the general rule, apart from statute, is that if a landlord consents to an overholding tenant remaining in possession there is a rebuttable implication of law that the tenant holds over from year to year on the terms of the old tenancy so far as they are not inconsistent with a tenancy for year to year.[147]

It appears that Alberta and Saskatchewan are the only western jurisdictions where an order of the court is required to cancel the memorandum of lease appearing on the

register.

Should a Court order be Necessary?

> **56.** After a certificate of title has been granted for any land, no instrument is effectual to pass any estate or interest in that land (except a leasehold interest for three years or for a less period) or to render that land liable as security for the payment of money, unless the instrument is executed in accordance with the provisions of this Act and is duly registered thereunder, but upon the registration of any such instrument in the manner hereinbefore prescribed the estate or interest specified therein passes or, as the case may be, the land becomes liable as security in manner and subject to the covenants, conditions and contingencies set forth and specified in the instrument or by this Act declared to be implied in instruments of a like nature. [R.S.A. 1970, c. 198, s. 56]
>
> **57.** So soon as registered, every instrument becomes operative according to the tenor and intent thereof, and thereupon creates, transfers, surrenders, charges or discharges, as the case may be, the land or the estate or interest therein mentioned in the instrument.

The above provisions of the Act indicate the necessity of registering an instrument to create or remove an interest in land. However, the Registrar could be specifically empowered to enter a memorandum of expiry of a lease. This is the position taken in New South Wales:

> "When a registered lease has expired by effluxion of time, bringing to an end the term or limited estate created by its registration, this fact is readily ascertainable by search and reference to the registered instrument, the expiry being self-evident. It has long been the practice in New South Wales for the Registrar-General, upon request by the registered proprietor, to enter a notification of expiry of a lease. No evidence is required to support the application unless the lease contains an option to purchase or to renew, in which event a

> statutory declaration that such option has not been exercised may be required. By N.S.W. s. 38(6) the Registrar General is now empowered to destroy a registered lease after its expiry. A similar practice of notifying upon application the expiry of a registered lease has been followed in Victoria, where it is justified by Vic. s. 106(c).[148]

Woodman and Grimes state:

> "Where the Registrar General is satisfied that a lease has lawfully been determined by expiry, the registration will be cancelled on request, on the basis that it 'does not affect the land to which the recording purports to relate', within the meaning of N.S.W. s. 32(5)"[149]

a section giving the Registrar power to cancel in such manner as he considers proper and recording in the Register which he is satisfied does not affect such land.

It must be noted that in Alberta there is no equivalent to W.S.W. s. 32(5) above. The powers of the Registrar are of a more specific nature.

It is suggested that, it should be felt more advantageous to the system to retain a provision like section 103 that the Saskatchewan apporach, using a general vesting order provision may be better.

Another reason why a registrar should not remove a lease where the term has expired without an order of the judge is, that as a matter of law, if the lease contains a covenant for renewal at the option of the lessee, the option can be exercised at any time after the lease expires so long as the lessee remains in possession with the sanction of the lessor. See Guardian Realty Company of Canada v. John Stark & Company, 64 S.C.R. 207.

Section 103 offends against Torren's original goals of ease of handling and flexibility in the land tenure system. It requires a lawyer's appearance before a judge and therefore entails an expenditure of time and money that an automatic lapsing provision, except for covenants to purchase or renew, would avoid. However, in return for the greater effort required to remove a memorandum of lease from a certificate of title section 103 guarantees a more accurate mirror of present interests in the land, especially in view of the numerous oil and gas leases, containing indeterminate terms, filed against certificates of title in Alberta.

Appendix I

Land Titles Act R.S.A. 1970, c. 198 ALBERTA	or lives, or for a term of more than three years, the owner shall execute a release, in Form 16 in the schedule	of title or shall give such other description as is necessary to identify the land.	the lessor is bound to execute a transfer to the lessee of the land and to perform. All necessary acts by this Act prescribed for the purpose of transferring the land to the purchaser.	the mortgagee or encumbrancee has consented to the lease prior to its being registered, or subsequently adopts it.
Land Titles Act R.S.A. 1965, c. 115 SASKATCHEWAN	s.119(1) life or lives or ≤ 3 yrs lessor shall execute	*s.119(2) = our s.34 re C.T. to leasehold s.119(1) also includes requirements re description → refer to the C.T. or give such other description as will identify it.	s.119(3). A right for the lessee to purchase the land therein described may be stipulated in the instrument.	s.119(4). No lease of mortgaged land shall be valid against the mortgagee unless he has consented in writing to the lease prior to registration or subsequently adopts the same.
Real Property Act R.S.M. 1970, c. R30 (N.B. Am. S.M. 1968, c.54, s. 48) MANITOBA	s.88(1) where land under the new system is intended to be leased or devised for a life or lives, or for a term of years, the owner may execute a lease in Form D...which lease may be registered and a certificate of title for a leasehold estate may issue to the lessee.			RSM 1970, c. R30 Real Prop. Act. s. 92. No lease of mortgaged or encumbered land is valid and binding as against a mortgagee or encumbrancer, unless he has consented to the least prior to the registration thereof; and no surrender of a registered lease shall be registered without the consent in writing of mortgagees or encumbrancers of the land
Land Registry Act, RSBC 1960, c. 208 BRITISH COLUMBIA	35. Except as against the person making the same, no instrument executed before the first day of July, 1905, to take effect after the 30th day of June, 1905, and no instrument executed and taking effect after the 30th day of June, 1905, purporting to transfer, charge, deal with, or affect land or any estate or interest therein, shall become operative to pass any estate or interest, either at law or in equity, in the land (except a leasehold interest in possession for a term not exceeding three years) until the instrument is registered in compliance with the provisions of this Act; but every such instrument confers on each person benefited thereby, and on every person claiming through or under him, whether by descent, purchase, or otherwise, the right to apply to have the instrument registered, and to use the names of all parties to the instrument in any proceedings incidental or auxiliary to registration, and that whether or not a party has since died or become legally incapacited.		165. Upon application being made for registration of a charge, and upon the Registrar being satisfied that a good safe-holding and marketable title to the charge has been established by the applicant, and after giving notice if he sees fit, as provided in section 142, the Registrar shall register the title claimed by the applicant by endorsing a memorandum thereof on the register. The memorandum shall also be endorsed on the duplicate certificate of title if it has been produced. R.S. 1948, c. 171.	
RSC 1970, c. L-4 CANADA	88.(1) When any 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 three years, the owner shall execute a lease in Form L, [and every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of title of the land, or shall give such other description as is necessary to		(2) A right for the lessee to purchase the land therein described may be stipulated in the instrument. (3) In case the lessee pays the purchase money stipulated, and otherwise observes his covenants expressed and implied in the instrument, the lessor is bound to execute a transfer to such lessee of the land, and to perform all necessary acts by this Act prescribed for the purpose of	(4) No lease of mortgaged or encumbered land is valid and binding against the mortgagee or encumbrancee, unless the mortgagee or encumbrancee consents to the least prior to the lease being registered, or subsequently adopts the lease. R.S., c. 162 s.88.

plied venants plied venants berta	R.S.A. 1970, c. 198 s.98 In every such lease, unless a contrary intention appears therein, there shall be implied the following covenants by the lessee, that is to say: (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.	s.98(b) that he will at all times during the continuance of the lease keep and at the terimination thereof yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest and other casualty and reasonable wear and tear excepted.
     sk.	R.S.S. 1965, c. 115 s.120 (a) In every lease unless a contrary intention appears therein there shall be implied covenants by the lessee: (a) that he will pay the rent thereby reserved at the times therein mentioned	s.120(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.
     1.	R.S.M. 1960, C.R30 s.89 In the memo of the lease, unless a contrary intention appears therein there shall be implied the following covenants by the lessee, that is to say, (a) that he will pay the rent thereby reserved at the times therein mentioned and	(b) that he will at all times during the continuance of the lease keep, and at the termination thereof yield up, the demised property in good and tenantable repair, accidents and damage to buildings from fire, lightning, storm and tempest, and reasonable wear and tear, excepted. R.S. 1970 c. S120 Sched. 3. Cov. 8 Man. Short Form of Leases Act See Appendix II
rt Form Leases C 1960, 57 enants nd 2	1. That the said [lessee] covenants with the said [lessor] to pay rent: 1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators, and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever; 2. and to pay taxes; 2. and also will pay all taxes, rates, duties, and assessments whatsoever, whether parochial, municipal, parliamentary, or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor, on account thereof, except such taxes, rates, duties and assessments which the lessee is by law exempted from; 3. and to repair; 3. and also will, during the same term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in	good and substantial repair, and all fixtures, and things thereto belonging or which at any time during the said term shall be erected and made, when, where, and so often as need may be. 13. And that he will leave premises in good repair. RSBC '60, c. 357 13. And, further, that the said lessee, his executors, administrators, and assigns, will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor, his heirs, executors, administrators, or assigns, the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
1970, -4 da	89. In every lease, unless a contrary intention appears therein, there shall be implied covenants by the lessee (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, and	(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. R.S.c.

Implied Power of the Lessor Alberta	s.99 LTA RSA '70, c.198 In every such lease, unless "different intent appears therein, there shall also be implied the following powers in lessor: (a) he may, by himself or his agents, enter upon the demised lands and view the state of repair thereof, and may serve upon the lessee, or lease at his last or usual place of abode or upon the devised land, a notice in writing of any defect, req. the lessee within a reasonable time to be therein mentioned, to repair the same insofar as the lessee is bound to do so.	(b) in case the rent or any part thereof is in arrear for a space of two calendar months, or in case default is made in the fulfillment of any covenant, whether expressed or implied in the lease on the part of the lessee, and is continued for the space of two calendar months, or in case the repairs required by notice, "are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land.
RSS 1965, c. 115 s. 121 Sask.	In every lease unless a contrary intention appears implied power L-or (a) may by himself or his agents enter upon the demised land and view the state of repair and may serve upon lessee or leave at his last or usual place of abode or upon the demised land a notice in writing of any defect, requiring him with reasonable time to be therein mentioned to repair the same insofar as the tenant is bound to do so.	(b) that if the rent reserved, or any part thereof, is in arrear for the space of two calendar months, although no formal demand therefor has been made, or if default is made in the performance of any covenant on the part of the lessee, whether express or implied, and the default is continued for two calendar months, or if the repairs required by the notice are not completed within the time therein specified, it shall be lawful for the lessor at any time thereafter, into and upon the demised premises or any part thereafter, into and upon the demised premises or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate; (c) that if the lessee or any other person is convicted of keeping a disorderly house, within the meaning of the Criminal Code, on the demised premises, or any part thereof, it shall be lawful for the lessor at any time thereafter, into and upon the demised premises to re-enter and the same to have again, repossess and enjoy as of his former estate. 1960, c. 65, s. 114.
RSM 1970, c. R30 Real Property Act Manitoba	90 In the memorandum of lease, unless a contrary intention appears therein, there shall also be implied the following powers in the lessor, that is to say, (a) that he may, by himself or his agents, enter upon the demised property and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode or upon the demised property, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair it; (b) that in case the rent or any part thereof is in arrear, 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 the default is continued for the space of two calendar months, or in case the repairs required by the notice have not been completed within the time therein specified, the lessor may enter upon and take possession of the demised property. R.S.M., c. 220, s. 94; am.	Short Form of Leases Act, RSM 1970, c. S120. Part A 9 Proviso for re-entry by the said (lessor) on non-payment of rent or performance of covenants. Part B 9 Provided, always, and it is hereby expressly agreed, that, if the rent hereby or any part thereof shall be unpaid for fifteen days after any of the days on which it ought to have been paid, although no formal demand shall have been made thereof, of the breach or non-performance of any of the covenants or agreements herein on the part of the lessee, his executors, administrators or assigns, then, and in either cases, it shall be lawful for the lessor at any time thereafter, into and upon the said premises, or any part thereof in the name of the whole, to re-enter, and the same to repossess and enjoy as of his or their former estate, anything hereinafter contained notwithstanding.
Short Form of Leases Act c.357 RSBC 1960 Cov,9 & 14 B.C.	9. And the said [lessor] may enter and view state of repair, and that the said [lessee] will repair according to notice. 9. And it is hereby agreed that it shall be lawful for the said lessor and his agents, at all reasonable times during the said term, to enter the said demised premises, or any of them, and to examine the condition thereof; and, further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in wriging shall be left at the premises, the said lessee, his executors, administrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.	14. Proviso for re-entry by the said lessor on non-payment of rent, or non-performance of covenants. 14. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, or assigns, then and in either of such cases it shall be lawful for the said lessor, his heirs, executors, administrators, or assigns, at any time thereafter, into and upon the same demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
RSC 1970, c.L-4 Canada	90. In every lease, unless a different intention appears therein, there shall also be implied powers in the lessor (a) that, by himself or his agents, he may enter upon the demised land and view the state of repair thereof, and may serve upon the lessee, or lease at his latest or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair the defect, in so far as the tenant is bound so to do, and	(b) that in case the rent or any part thereof is in arrears for the space of two calendar months, or in case default is made in the fulfilment of any covenant in such lease on the part of the lessee, whether expressed or implied, and is continued for the space of two calendar months, or in case the repairs required by such notice as aforesaid are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land. R.S., c. 162.

. .970 98 ıtry ta	100. In any such case the Registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor, or his transferee by a legal proceeding, make a memorandum of the same upon the certificate of title and upon the duplicate thereof when presented to him for that purpose, and the estate of the lessee in the land	thereupon determines and the Registrar shall cancel the lease if delivered up to him for that purpose, but the lessee is not thereby released from his liability in respect of the breach of any covenant in the lease, expressed or implied. (R.S.A. 1970, c. 198, s. 100; 1971, c. 96, s. 5 Eff. March 1/71]
. 1965 15	122.--(1) Upon proof to his satisfaction of lawful re-entry and recovery of possession of leased land by a lessor or his transferee, by a legal proceeding, the registrar shall make a memorandum of the same upon the certificate of title and upon the duplicate thereof when presented to him for the purpose, and the estate of the lessee in the land shall thereupon determine but without releasing the lessee from his liability in respect of the breach of any covenant theretofore committed.	(2) The registrar shall cancel the lease if delivered up to him for that purpose. 1960. c. 65, s. 115. Section 122 amended 6.--(1) Subsection (1) of section 122 is amended by inserting after the word "title" in the fifth line the words "of the lessor or his transferee." (2) Subsection (2) of section 122 is repealed and the following subsection is substituted therefor: "(2) Where a leasehold estate is determined under subsection (1), the registrar shall cancel any certificate of title issued in respect of that leasehold estate and also any duplicate thereof."
Prop. 1970, 30 toba	Notation of re-entry by lessor. 91. A district registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession of land by a lessor, (a) shall note it by entry in the register and upon the lease; and (b) may cancel any leasehold title issued in respect of the land and dispense with the production of the duplicate certificate of title for the leasehold estate;	and the estate of the lessee in the land thereupon determines, but without releasing the lessee from his liability in respect of the breach of any covenant in the lease expressed or implied. R.S.M. c. 220, s. 95: am. S.M. 1968, c.54 s. 50: am.
Reg. 1960, 8	Cancellation upon breach covenant. 185. (1) In the case of a registered lease or agreement of sale and purchase of land, the Registrar may, (a) upon proof to his satisfaction of breach of covenants and re-entry and recovery of possession by the lessor or owner of the reversion or by the vendor or owner of the lands subject to the agreement; and (b) upon thirty days' notice to the lessee or purchaser; and (c) upon hearing all parties attending on the return of said notice, cancel the registration of the lease or agreement upon the register; and thereupon the estate of the lessee or purchaser in the land described in the lease or agreement, and the lease or agreement so far as it affects the said land, shall cease and determine.	Personal liability preserved. (2) Such cancellation does not release the lessee or purchaser from his liability in respect of any covenant in the lease or agreement, expressed or implied. (3) If any person appears on the register as holder of a derivative charge, that is to say, a sub-lease, sub-agreement, or other charge derived through the lease or agreement, the Registrar may require the applicant for cancellation to give thirty days' notice to that person, and if the Registrar proceeds to cancel the registration of the lease or agreement he may also cancel the derivate charge; and thereupon the estate of the holder of the derivative charge in the land described in the instrument under which the derivative charge is registered and the instrument, so far as it affects the said land, shall cease and determine; but the cancellation does not release any party to the instrument from liability in respect of any covenant therein, express or implied.
1970, -4. ada	91. (1) In any such case, the resitrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor, or his transferee by a legal proceeding, shall make a memorandum of the same upon the certificate of title, and upon the duplicate thereof when presented to him for that purpose, and the estate of the lessee in such land thereupon determines, but without releasing the lessee from his liability in respect of the breach of any covenant in the lease, expressed or implied.	(2) The registrar shall cancell the lease, if delivered up to him for that purpose. R.S., c. 162, s. 91. (3) If any person appears on the register as holder of a derivative charge, that is to say, a sub-lease, sub-agreement, or other charge derived through the lease or agreement, the Registrar may require the applicant for cancellation to give thirty days' notice to that person, and if the Registrar proceeds to cancel the registration of the lease or agreement he may also cancel the derivative charge; and thereupon the estate of the holder of the cerivative charge in the land described in the instrument

L.T.A. RSA '70 c.198 Alberta	Short Form--Wording of lease 101.(1) Whenever in any lease made under this Act the forms of words in column one of Form 17 in the Schedule 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 two of the said Form 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 one 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 corresponding expressions in column two. [R.S.A. 1970, c. 198, s. 101]
RSS 1965, c.115 Sask.	123.--(1) When in a lease made under this Act any of the forms of words in column one of form N, and distinguished by any number therein, is used, the lease shall be taken to have the same effect and be construed as if there had been inserted therein the form of words contained in column two of the said form and distinguished by the same number: Provided that it shall not be necessary in any such lease to insert any such number.	(2) Every such form shall be deemed a covenant binding upon the covenantor, his executors, administrators and assigns in favour of the covenantee and his executors, administrators and assigns. (3) There may be introduced into or annexed to any of the forms in the first column 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 corresponding forms in the second column. 1960, c. 65, s. 116.
RSM 1970, c.3 s. 120 Short forms Act Manitoba	2. Where a deed of conveyance, or deed of mortgage, or deed of lease, respectively made according to the forms set forth in the First, Second, and Third Schedules to this Act, or respectively expressed to be made "in pursuance of the Act respecting Short Forms of Indentures," or otherwise referring to the above recited Act, or any Act having that title, or made prior to the coming into force in the province of any Act entitled "An Act respecting Short Forms of Indentures," contains any of the forms or words set out in any one of the numbered paragraphs in any one of those Schedules under the heading "Part A," the deed shall be taken to have, and shall be held always to have had, since the execution thereof,	the same effect as if it contained, and had always contained, and shall be construed as if it contained, and had always contained the form of words set out in that same numbered paragraph of that Schedule under the heading "Part B"; and it shall not be deemed necessary in any such deed to insert, or have inserted any such paragraph number or heading and shall be construed as if it contained and had always contained, the form of words in column two under the same Schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be deemed necessary in any such deed to insert or to have inserted such number or numbers.
RSBC 1960, c. 357 Short Form of Leases Act. B.C.	3. Where a lease of lands made according to the form in the First Schedule, or any other lease of lands expressed to be made in pursuance of this Act, or referring thereto, or expressed to be made in pursuance of the Leaseholds Act, or referring thereto, contains any of the forms of words contained in Column I of the Second Schedule, and distinguished by any	number therein, such lease shall have the same effect and be construed as if it contained the form of words contained in Column II of Second Schedule, and distinguished by the same number as is annexed to the form of words used in such lease; but it is not necessary in any such lease to insert any such number. R.S. 1948, c. 307, s. 3.
RSC 1970, c.L-4 Canada	92.(1) Whever, in any lease made under this Act, the forms of words in column one of Form M, and distinguished by any number therein, are used, the lease shall be taken to have the same effect, and shall be construed as if there had been inserted therein the form of words contained in column two of the said Form and distinguished by the same number, but it is not necessary in any such lease to insert any such number.	(2) Every such form shall be deemed a covenant by the covenantor with the covenantee and his transferees, binding the former and his heirs, executors, administrators and transferees. (3) There may be introduced into or annexed to any of the forms in the first column any expressed exceptions from the forms or expressed qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column. R.S., c. 162, s.92.

Surrender of Lease Alta.	LTA, RSA 1970, c. 198 102.(1) Whenever any lease or demise required to be registered by this Act is intended to be surrendered and the surrender thereof is effected otherwise than through the operation of a surrender in law, the Registrar shall, upon the production to him of the surrender in Form 18 in the Schedule, make a recommendation of the surrender upon the certificate of title in the register and upon the duplicate certificate.	(2) When the memorandum has been made the estate or interest of the lessee in the land vests in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed.	(3) Notwithstanding subsection (1), no lease that is subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.
Sec. 124 amended Sask.	ss. 1966, c. 96 7. Subsection (1) of section 124 and the proviso thereo are repealed and the following substituted therefor: (1) Subject to subsection (1B), where a lease that has been registered under section 119, but in respect of which no certificate of title has been issued, is intended to be surrendered, and the surrender is effected otherwise than by the operation of law, the registrar shall upon the production of a surrender (form O) make a memorandum thereof upon the certificate of title of the owner of the reversion expectant on the determination of the term created by the lease and upon the duplicate thereof.	"(1A) Subject to subsection (1B), where a certificate of title has been issued in respect of a leasehold estate and that estate is intended to be surrendered, and the surrender is effected otherwise than by the operation of law, the registrar, upon registration of a surrender (form O), shall cancel the certificate of title and the duplicate thereof and shall enter a memorandum of the surrender on the certificate on title of the owner of the reversion to whom the surrender is made. AM. ss 1966. c.96 ¶1B)No lease shall be surrendered without the consent of all persons appearing by the records of the land titles office to have any mortgage or lien upon, or estate, right or interest in or to, the leasehold estate created by the lease." SS. 1966, c. 96, s. 7	(2) When the memorandum has been so made the estate or interest of the lessee shall vest in the lessor or other person entitled to the land on expiry or determinatio of the lease. 1960, c. 65, s. 117
Manitoba	Real Property Act,RSA 1970,c.R30 88(2) A lease of land may be terminated by the registration of a surrender of lease in the form set out in Schedule E, executed by the registered owner of the lease.	s. 92 no lease of mortgaged or encumbered land is valid and binding as against a mortgagee or encumbrancer, unless he has consented to the lease prior to the registration thereof; and no surrender of a registered lease shall be registered without the consent in writing of mortgagees or encumbrancers of the land."	
B.C.	L.R.A. RSBC 1960, s. 208 182.(1) Where any registered charge has been satisfied, surrendered, released, or discharged in whole or in part, the Registrar shall, upon satisfactory proof, cancel the registration of the charge in whole or in part accordingly.	186. In case of the cancellation of the registration of a charge, the land or estate or interest in respect of which the charge has been registered shall be deemed to be discharged and released from the charge as from the date of entry of cancellation on the register. In cases where a reconveyance, surrender, or transfer would otherwise have been necessary, cancelation of registration as aforesaid shall operate as and shall for all purposes be deemed to be a reconveyance, surrender, or transfer in favour of the person entitled to the equity of the land in question, and the charge shall no longer affect the land or estate or interest in respect of which it was registered. R.S. 1948, c.171, s.185.	See Definition of Change at back of Appendix I
RSA c.L-4 Canada	93.(1) Whenever any lease or demise that is required to be registered by this Act is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law, upon the production of the surrender, in Form N, to the registrar, he shall make a memorandum of the surrender upon the certificate of title in the register and upon the duplicate certificate, but no lease subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.	(2) When the memorandum has been so made, the estate or interest of the lessee in the land vests in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed. R.S., c.	

Cancellation of expired lease LTA, RSA. 1970, c.198 Alta.	103.(1) Any person claiming to be interested in any land for which a certificate of title has been granted may apply to a judge for a certificate that any lease or demise registered pursuant to the provisions of this Act has expired, and the judge upon being satisfied that the lease or demision respect of which the application is made has expired and is no longer of any force or effect, may grant a certificate to this effect.	(2) Upon the certificate being filed with the Registrar he shall cancel the registration of the lease or demise mentioned in the judge's certificate and any caveat based on the existence thereof, and make an entry of such cancellation in the register and upon the certificate of title to the land affected thereby, and upon the duplicate certificate of title thereof, upon the same being produced to him for this purpose. [R.S.A. 1970, c. 198, s. 103]
RSS. 1965, c. 115 Sask.	s. 89 general provision A judge of the Court of Queen's Bench may, upon such notice as he deems fit, or where in his opinion that the circumstances warrant it, without notice: (b) direct the registrar to cancel any instrument or any memorandum or entry relating thereto or to amend any instrument or any memorandum or entry relating thereto in such manner as the judge deems necessary or proper.	
R.P.Act, RSM 1970, c. R30 (nearest provision to s.103 above) Manitoba	Judge may order district registrar to issue, cancel, or correct, certificates. 161. In a proceeding respecting land, or in respect of a transaction or contract relating thereto, or in respect of an instrument, caveat, memorial, or other entry affecting land, the court, may, by order, direct the district registrar to cancel, correct, substitute, or issue, a certificate of title, or make an endorsement or entry on any instrument, or to do or refran from doing any act, or make or refrain from making any entry necessary to give effect to the judgment, or order of the court. AM.S.M., 1968,	c.54, s. 73; R.S.M., c. 220, s. 166; am. S.M., 1968, c. 54, s. 73.
L.R.A. RSBC'60 c.208 B.C.	(nearest provision to s.103 above) 184.(1) In the case of a registered *charge which, by the terms of the instrument creating or evidencing the charge, is determined by the effluxion of time or the happening of any event, the Registrar shall cancel the registration of the charge on the effluxion of the time or the happening of the event. (2) Where the instrument creating the charge gives a right of renewal which is shown on the register, then, upon application by the owner of the charge, made before the cancellation of the registration, and upon proof of the exercise of the right of renewal, the Registrar shall renew the registration of the charge accordingly. R.S. 1948, c. 171, s.183. *See Def. of "Change" s.2(1) LRA "Encumbrance" s.145 LRA	187. Where in any suit pending in the Supreme Court a question is raised as to the validity of any registered charge, or as to any money owing upon or rights concerning any registered charge, and where in the opinion of the Judge the question raised is sufficiently material for the application of the provisions of this section, then, upon affidavit or other proof of the bona fides of the question raised, the Judge may order the cancellation of the registration of the charge upon the bringing into Court by the person claiming relief of such sum of money as the Judge may see fit to order, and upon such other terms as to security and otherwise as the Judge may see fit to impose; but no order shall be made for the cancellation of the registration of any mortgage, except upon payment into Court of the full amount which the mortgagee, or person entitled to the mortgage, has stated upon affidavit to be due thereon, unless under special circumstances to be established to the satisfaction of the Judge.
Land Titles Act, RSC 1970, c.L-4 Canada	(nearest provision to s.103) s-157. "In any proceeding respecting land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order, may direct the registrar to cancel, correct, substitute, or issue any duplicate certificate, or make any memorandum or entry thereon or on the certificate of title, and otherwise to do every act necessary to give effect to the decree or order.	

L.R.A. RSBC 1960, c. 208

"charge" means any estate less than the fee-simple, and shall include any equitable interest in land, and any encumbrance upon land, and any estate or interest registered as a charge under s. 145.

s. 145 The owner of the surface of land is alone entitled to be or remain registered as owner of the fee-simple. The owner of any part of land above or below its surface who is not also the owner of the surface is only entitled to register his estate or interest as a charge. If no Crown grant of the surface has been registered, the Registrar shall enter the Crown in the register.

Short Form of Leases Act, Ontario R.S. 1970, c. 436

SCHEDULE B

COLUMN ONE	COLUMN TWO
1. The said lessee covenants with the said lessor:	1. And the said lessee doth hereby covenant with the said lessor in the manner following, that is to say:
2. To pay rent.	2. That he, the said lessee, will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned, without any deduction whatsoever.
3. And to pay taxes, except for local improvements.	3. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.
4. And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.	4. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear and damage by fire, lightning and tempest only excepted.
5. And to keep up fences.	5. And also will, from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.
6. And not to cut down timber.	6. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees.
7. And that the said lessor may enter and view state of repair; and that the said lessee will repair according to notice in writing, reasonable wear and tear and damage by fire, lightning and tempest only excepted.	7. And that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly, reasonable wear and tear and damage by fire, lightning and tempest only excepted.
8. And will not assign or sub-let without leave.	8. And also that the lessee shall not, nor will during the said term, assign, transfer or set over or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor first had and obtained.
9. And that he will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.	9. And further, that the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all the buildings, erections and fixtures erected or made by the lessor thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

COLUMN ONE	COLUMN TWO
10. Provided, that the lessee may remove his fixtures.	10. Prov ded, and it is hereby expressly agreed that the lessee may at or prior to the expiration of the term hereby granted, take, remove and carry away from the premises hereby demised all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon the said premises in the nature of trade or tenants' fixtures or other articles belonging to or brought upon the said premises by the said lessee, but the lessee shall in such removal do no damage to the said premises, or shall make good any damage which he may occasion thereto.
11. Provided, that in the event of fire, lightning or tempest, rent shall cease until the premises are re-built.	11. Provided, and it is hereby expressly agreed, that in case the premises hereby demised or any part thereof shall, at any time during the said term, be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injuries sustained shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.
12. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	12. Provided, and it is hereby expressly agreed, that if and whenever the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, then and in either of such cases it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as of his former estate; anything hereinafter contained to the contrary notwithstanding.
13. The said lessor covenants with the said lessee for quiet enjoyment.	13. And the lessor doth hereby covenant with the lessee, that he paying the rent hereby reserved and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, or any other person or persons lawfully claiming by, from or under him.

SECOND SCHEDULE

(Sections 3, 7)

Directions as to the Forms in This Schedule

1. Parties who use any of the forms in the first column of this Schedule may substitute for the words " lessee " or " lessor " any name or names [*or other designation*]; and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms 6 and 7 in the first column of this Schedule so employed by them with any words or figures; and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the corresponding forms in the second column.

4. Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised shall be of freehold tenure, the covenants 1 to 13, inclusive, shall be taken to be made with, and the proviso 14 to apply to, the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns.

6. Such parties may introduce into any lease such other or further covenants, powers, and provisions as may be agreed upon between them.

Column I	Column II
1. That the said [*lessee*] covenants with the said [*lessor*] to pay rent;	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators, and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever;
2. and to pay taxes;	2. and also will pay all taxes, rates, duties, and assessments whatsoever, whether parochial, municipal, parliamentary, or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor, on account thereof, except such taxes, rates, duties, and assessments which the lessee is by law exempted from;
3. and to repair;	3. and also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, and all fixtures, and things thereto belonging or which at any time during the said term shall be erected and made, when, where, and so often as need may be;
4. and to keep up fences;	4. and also will from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made, in a good and husband-like manner, and at proper seasons of the year;
5. and not to cut down timber;	5. and also will not, at any time during the said term, hew, fell, cut down, or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down, or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs or firewood, or for the purpose of clearance, as herein set forth;

6. and to paint outside every year;	6. and also that the said lessee, his executors, administrators, and assigns, will in every year in the said term paint all the outside woodwork and ironwork belonging to the said premises with two coats of proper oil colours, in a workmanlike manner;
7. and paint and paper every year;	7. and also that the said lessee, his executors, administrators, and assigns, will in every year paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner; and also repaper, with a paper of a quality as at present, such parts of the premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now plastered;
8. and to insure from fire, in the joint names of the said [*lessor*] and the said [*lessee*];	8. and also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full insurable value thereof, in some respectable insurance office, in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, or assigns, and keep the same so insured during the said term; and will, upon the request of the said
to show receipts;	lessor or his agent, show the receipt for the last premium paid for such insurance for every current year; and as often as the said premises hereby demised shall
and to rebuild in case of fire.	be burnt down or damaged by fire, all and every the sums or sum of money which shall be recovered by the said lessee, his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down or damaged by fire, as aforesaid.
9. And the said [*lessor*] may enter and view state or repair, and that the said [*lessee*] will repair according to notice.	9. And it is hereby agreed that it shall be lawful for the said lessor and his agents, at all reasonable times during the said term, to enter the said demised premises, or any of them, and to examine the condition thereof; and, further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.
10. That the said [*lessee*] will not use premises as a shop.	10. And also that the said lessee, his executors, administrators, and assigns, will not convert, use, or occupy the said premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
11. And will not assign without leave.	11. And also that the said lessee, his executors, administrators, or assigns, shall not, nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises, or any of them, or the term hereby granted, to be assigned, transferred, or set over, unto any person or persons whomsoever, without the consent in writing of the said lessor, his heirs, executors, administrators, or assigns, first had and obtained.
12. And will not sublet without leave.	12. And also that the said lessee, his executors, administrators, and assigns, shall not, nor will, during the said term, sublet the said premises hereby granted, or any part thereof, to any person or persons without the consent in writing of the said lessor, his heirs, executors, administrators, or assigns, first had and obtained.
13. And that he will	13. And, further, that the said lessee, his executors,

COLUMN I	COLUMN II
	surrender and yield up unto the said lessor, his heirs, executors, administrators, or assigns, the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
14. Proviso for re-entry by the said lessor on non-payment of rent, or non-performance of covenants.	14. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, or assigns, then and in either of such cases it shall be lawful for the said lessor, his heirs, executors, administrators, or assigns, at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
15. The said [*lessor*] covenants with the said [*lessee*] for quiet enjoyment.	15. And the lessor doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his heirs, executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them. R.S. 1948, c. 307, Second Sch.

Saskatchewan Land Titles Act, Short Covenant, R.S. 1965, c. 115

FORM N.

(Section 123 (1))

SHORT COVENANTS IN LEASE.

COLUMN ONE.	COLUMN TWO.
1. Will pay taxes.	1. That I, the said lessee, will pay all taxes, rates, duties and assessments whatsoever, whether municipal or provincial, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.
2. Will not without leave, assign or sublet.	2. That I, the said lessee, 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 first had and obtained.
3. Will fence.	3. That I, the said lessee, will during the continuance of the said term erect and put upon the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.
4. Will cultivate.	4. That I, the said lessee, 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 be broken up or converted into tillage and will not impoverish or waste the same.
5. Will not cut timber.	5. That I, the said lessee, will not cut down, fell, injure or destroy any living timber or timberlike tree standing and being upon the said land without the consent in writing of the said lessor.
6. Will not carry on offensive trade.	6. That I, the said lessee, 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 whatever shall at any time during the said term be done in or upon the said premises or any part thereof that shall or may be or grow to annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

Manitoba, Short Forms, R.S. 1970, C. S.120

THIRD SCHEDULE

DEED OF LEASE

This indenture, made the day of , in the year of our Lord thousand nine hundred and , in pursuance of The Short Forms Act, between , of the first part, and , of the second part; (any recitals required may be inserted); Witnesseth that in consideration of the premises and (if any recitals; if not, of the premises and) of the rents, covenants and agreements hereinafter reserved and required on the part of the party of the second part, his (or their) executors, administrators and assigns, to be paid, kept, observed and performed, he (or they), the said party of the first part hath (or have) demised and leased, and by these presents doth (or do) demise and lease, unto the said party of the second part, his (or their) executors, administrators and assigns, all that messuage or tenement, lands and premises situate (or all that parcel or tract of land and premises lying and being; here insert a description of the premises with sufficient certainty);

To have and to hold the said demised premises for and during the term of computed from the day of , one thousand nine hundred and , and from thenceforth next ensuing and fully to be complete and ended; yielding and paying therefor, yearly and every year during the said term hereby granted, unto the said party of the first part, his (or their) heirs, executors, administrators or assigns, the sum , to be payable on the following days and times, that is to say: (on, etc.), the first of such payments to become due and be made on the day of next.

(Here insert any provisoes, conditions and covenants required).

In witness whereof, etc.

Signed, sealed and delivered
in the presence of

Part A

1 That the said (lessee) covenants with the said (lessor) to pay rent.

Part B

1 And the said lessee doth hereby, for himself, his heirs, executors, administrators and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore, mentioned without any deduction whatsoever:

(a) Provided that, in the event of the said demised premises being destroyed by fire or tempest, or the act of God, during the said term, or not being totally destroyed to such an extent as to render the same unfit for occupation, the said lessee, his or her executors, administrators and assigns, may, at any time within ten days after such destruction or injury to said premises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased, and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall within three days, give notice to the lessee that he intends so to repair; and upon failure to repair within such time as may be so certified to by such architect as reasonably sufficient, make the necessary repairs, the said lease shall then determine;

(b) Provided, further, that, if the lessor do not so give notice within such days, the lessee may either surrender the said premises or repair the same and charge against the rent thereafter to be paid.

And the said lessor may at any time within ten days after the destruction by accident to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair said premises, whereupon the said lessee may either surrender the said premises or repair the same and charge it against the rent to be thereafter paid;

(c) Provided, always, that in case the tenant surrender said premises under any of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid.

(d) Provided, further, and it is expressly understood by and between the parties hereto that the said lessee, his executors, administrators and assigns shall not be bound to repair, where the same may be necessary from reasonable wear and tear, or the damage caused by fire, tempest or the act of God.

Part A

2 And to pay taxes.

Part B

2 And, also, will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof.

Part A

3 And to repair.

Part B

3 And, also, will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises, with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made, when, where and so often as need shall be:

(a) Provided that, in the event of the said demised premises being destroyed by fire, tempest or the act of God, or during the said term, or not being totally destroyed but to such an extent as to render the same unfit for occupation, the said lessee, his or her heirs, executors, administrators and assigns, may, at any time within ten days after such destruction or injury to said premises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased; and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall, within three days, give notice to the lessee that he intends so to repair, and upon failure to so repair within such time as may be so certified to by such architect as reasonably sufficient to make the necessary repairs, the said lease shall then determine;

(b) Provided, further, that if the lessor do not so give notice within such three days the lessee may either surrender the said premises or repair the same and charge it against the rent thereafter to be paid:

And the said lessor, may at any time within ten days after the destruction by accident to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair the said premises, whereupon the said lessee may either surrender the said premises or repair the same, and charge it against the rent to be thereafter paid;

(c) Provided, always, that, in case the tenant surrender said premises under either of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid;

(d) Provided, further, and it is expressly understood by and between the parties hereto, that the said lessee, his executors, administrators and assigns, shall not be bound to repair where the same may be necessary from reasonable wear and tear, or the damage is caused by fire, tempest or the act of God.

Part A

4 And to keep up fences.

Part B

4 And also will, from time to time during the said term, keep up the fences, walls of or belonging to the said premises, and make anew in a good and husbandlike manner and at proper seasons of the year, any parts thereof that may require to be new-made.

Part A

5 And not to cut down timber.

Part B

5 And also will not at any time, during the said term, hew, fell, cut down or destroy or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary fuel or firewood, or for the purpose of clearance as herein set forth.

Part A

6 And that the said (lessor) may enter and view state of repair, and that the said (lessee) will repair according to notice.

Part B

6 And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof, and, further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises of the said lessee, his executors, administrators and assigns, will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly:

(a) Provided that, in the event of the said demised premises being destroyed by fire, tempest, or the act of God, during the said term, or not being totally destroyed but to such an extent as to render the same unfit for occupation, the said lessee, his or her heirs, executors, administrators and assigns, may at any time within ten days after such destruction or injury to said premises, give notice to the lessor requiring the said premises to be repaired and put in such condition as may be necessary to render them suitable for occupation for the purposes for which they have been leased; and with such notice shall serve a certificate of an architect as to the time within which such premises could be so repaired; and the lessor shall, within three days, give notice to the lessee that he intends so to repair, and upon failure to so repair within such time as may be so certified to by such architect as reasonably sufficient to make the necessary repairs, the said lease shall then determine;

(b) Provided, further, that, if the lessor do not so give notice within such three days the lessee may either surrender the said premises or repair the same and charge it against the rent thereafter to be paid:

And the said lessor may at any time within ten days after the destruction or injury to the said premises as aforesaid, give notice to the lessee that it is not his intention to repair the said premises, whereupon the said lessee may either surrender the said premises or repair the same and charge it against the rent to be thereafter paid;

(c) Provided, always, that, in case the tenant surrender said premises under either of these conditions, rent shall cease to be payable after such damage or destruction as aforesaid;

(d) Provided, further, and it is expressly understood by and between the parties hereto that the said lessee, his executors, administrators and assigns, shall not be bound to repair where the same may be necessary from reasonable wear and tear or the damage is caused by fire, tempest or the act of God.

Part A

7 And will not assign or sublet without leave.

Part B

7 And, also, that the lessee shall not nor will, during the said term, assign, ... or set over, or otherwise by any act or deed, procure the said premises or any of them ... gned, transferred, set over or sublet, unto any person or persons whomsoever without ... nt in writing of the lessor, his heirs or assigns first had and obtained.

Part A

8 And that he will leave the premises in good repair.

Part B

8 And, further, the lessee will, at the expiration or other sooner determination of ... term, peaceably surrender and yield up unto the said lessor the said premises hereby ... with the appurtenances, together with all buildings, erections and fixtures thereon, ... and substantial repair and condition, reasonable wear and tear and damage by fire, ... the act of God only excepted.

Part A

9 Proviso for re-entry by the said (lessor) on non-payment of rent or ... rmance of covenants.

Part B

9 Provided, always, and it is hereby expressly agreed, that, if the rent hereby ... or any part thereof shall be unpaid for fifteen days after any of the days on which ... ought to have been paid, although no formal demand shall have been made thereof, ... of the breach or non-performance of any of the covenants or agreements herein ... on the part of the lessee, his executors, administrators or assigns, then, and in either ... cases, it shall be lawful for the lessor at any time thereafter, into and upon the said ... premises, or any part thereof in the name of the whole, to re-enter, and the same to ... repossess and enjoy as of his or their former estate, anything hereinafter contained ... trary notwithstanding.

Part A

10 The said (lessor) covenants with the said (lessee) for quiet enjoyment.

Part B

10 And the lessor doth hereby, for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns, that he and they, paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

R.S.M., c. 243, Third Schedule; am. S.M., 1955, c. 69, s. 12.

F O O T N O T E S

1 R.S.A. 1970, c. 198

2 per Fergerson, J., Garland Mfg. Co. v. Northcumberland Paper etc. (1899) 31 O.R. 40 (C.A.)

3 3 Strouds Judicial Dictionary (4th ed.) 1502

4 Woodman and Grimes, The Torrens System in New South Wales (2nd ed. 1974) 258

5 49 Vict., c. 51

6 Done in R.S.A. 1955, c. 170 s. 98

7 R.S.A. 1970, c. 198

8 (1969) 70 W.W.R. 591, at p. 597

9 The Torrens System in N.S.W. (2nd ed. 1974) 258

10 [1953] 4 D.L.R. 625 (N.B.C.A.)

11 R.S.N.B 1927 c. 167, s. 29(1)(3). (3) No lease for a term not exceeding three years, where the actual possession goes along with the lease, need be registered, nor shall such lease be deemed fraudulent and void merely by reason of its not being registered; but this subsection shall not extend or apply to any lease for a greater term than 3 years; nor to any where the actual possession does not go along with the lease.

12 (1913) 3 W.W.R. 814; 9 D.L.R. 619

13 2 EXD. 355 46 L.J.Q.B. 603

14 Dicastri, Thoms Canadian Torrens System, (2nd ed. 1962) pp. 582-83

15 Land Titles Practice Manual (Alberta) (2nd ed. 1975) p. D-35

16 Woodman and Grimes, The Torrens System in New South Wales, (2nd ed. 1974) p. 172

17 (1944), 45 S.R. (N.S.W.) 78, at p. 89

18 (1899), 20 L.R. (N.S.W.) 368

19 Parleinsim v. Braham [1962] N.S.W.R. 165 at p. 168

20 Id. p. 172

21 Id. p. 172

22 R.S.A. 1970, c. 198

23 Id.

24 (2nd ed. 1975) pp. D-34, D-5

25 R.S.A. 1970, c. 276

26 s. 3 provides for the subdivision of the building into units by the registration of a condominium plan

s. 4 provides for the issuance of a certificate of title for each separate unit

s. 5 provides for the issuance of a certificate of title to indicate ownership of a share in the common property

27 [1918] 1 W.W.R. 421

28 Id. at p. 422. Note that such a lease could not be registered if made by a corporation claiming to be a mortgagee in possession unless proof were given to the registrar that the owner and other parties interested were served with notice of intention to exercise the power to enter into possession

29 Collins, Land Titles in Saskatchewan (1966) pp. 62-64

NOTE: That the footnotes 30 to 33 are numbers that were not included in my footnoting, and in order to save a bit of time decided not to renumber.

34 Canada s. 88(2), Sask. s. 119(3). See Appendix A. Such right to purchase is not provided for specifically in the Acts of B.C. or Manitoba but registration is permitted in practice: Dicastri, Thoms Canadian Torrens System, (2nd ed.) p. 251

Similar provisions found in Australian Acts: N.S.W s. 53(3), 21d. s. 53, S.A. s. 117, Tas. Act. s. 47(3), A.C.T. s. 83, N.Z. s. 118

35 (No. 2) (1945) 1 W.W.R. 33; (1945) 1 D.L.R. 230, (1944) 2 W.W.R. 273 (Alta. S.C.A.D.) relying on the case of Paterson v. Houghton (1909) 19 Man. R. 1968; 12 W.L.R. 330

36 Woodman and Grimes, The Torrens System in N.S.W. (2nd ed. 1974) p. 262

37 Real Property Act, 1862, 26 Vict.

38 Tomblin, Problems in Real Estate, Law Refresher Course (1973) p. 28

39 Commentary on the Torrens System in N.S.W., at p. 232

40 (2nd ed. p. 254) cases cited by Dr. Helmore in support: Isteed v. Stoneley (1580) 1 And. 82; Woodall v. Clifton [1905] 2 Ch. 257; Buckland v. Papileom (1866) 2 Ch. App. 67; Sherwood v. Tucker [1920] 2 Ch. 440; Griffith v. Peltin [1958] Ch. 205 found in Woodman and Grimes, p. 262

41 Williams Canadian Law of Landlord and Tenant (4th ed. 1973) p. 668

42 (1906) 26 N.Z.L.R. 604

43 The Torrens System on N.S.W. (2nd ed. 1974) p. 262

44 Dicastri, Thoms Canadian Torrens System p. 251

45 Baalman: Commentary on the Torrens System in N.S.W.; at p. 233

46 Torrens Title in Australasia, Vol. 1 1972, p. 280

47 Fels v. Knowles, (1906) 26 N.Z.L.R. 604

48 [1926] A.C. 101 at 106

49 (1906) 26 N.Z.L.R. 604 at 620

50 H. VIII 1540, c. 34

51 Rhodes, Williams Canadian Law of Landlord and Tenant, (4th ed. 1973) p. 673

52 26 N.Z.L.R. 1208; 9 GLR 245

53 (1909) 12 W.L.R. 169 (Alta. S.C.T.D.)

54 Francis, Torrens Title in Australasia Vol. 1 1972, p. 279

55 R.S.A. 1970, c. 198

56 Sask. s. 119(4); Man. s. 92 [see Appendix]

57 Falconbridge on Mortgages (3rd ed., 1942) p. 296

58 Id. p. 296

59 Woodman and Grimes, The Torrens System in N.S.W.(2nd ed. 1974) p. 265

60 Id. p. 265

61 Daniherr v. Fitzgerald (1919), 19 S.R. (N.S.W) 260 at 265

62 Francis, Torrens Title in Australiasia, (Vol. 1 1972) p. 395

63 Daniherr v. Fitzgerald (1919), 19 S.R. (N.S.W) 260

64 Aikenhead v. Spivak [1931] 2 W.W.R. 721; 4 D.L.R. 174 (C.A.)

65 Mnfrs. Life Insur. Co. v. David Spencer Ltd. [1933] 1 W.W.R. 319

66 Dicastri, Thoms Canadian Torrens System (2nd ed., 1962) p. 536

67 R.S.A. 1970, c. 198

68 49 Vict., c. 51

69 R.S.S. 1965, c. 115 s. 120(a); R.S.M. 1960, c. R30 s. 89(a) see Appendix for complete wording

70 R.S.S. 1965, c. 115 s. 120(b); R.S.M. 1960, c. R30 s. 89(b)

71 R.S.B.C. 1960, c. 208; see appendix for inclusions in the B.C. Short Form of Leases Act, R.S.B.C. 1960, c. 357 covenants 1., 2., 3. and 13.

72 (1st ed. 1927) p. 331

73 (1878), 7 Ch. D-555

74 Budd-Scott v. Daniell [1902] 2 K.B. 351; Markham v. Paget [1908] 1 Ch. 697

75 The Torrens System in N.S.W. (2nd ed., 1974) p. 319

76 Kerr, The Principles of the Australian Land Titles, (1st ed. 1927) p. 335

77 Haldane v. Johnson, 8 Ex., 689

78 Kerr, The Principles of the Australian Land Titles (1st ed., 1972) p. 335

79 Re C.P.R. and Toronto (1903) 5 O.L.R. 717; varied [1905] A.C. 33

80 Rhodes, Williams Landlord and Tenant (4th ed. 1973) p. 110

81 Rhodes, Williams Landlord and Tenant (4th ed. 1973) p. 419

82 Burn, Cheshires Modern Law of Real Property (11th ed. 1972) p. 409

83 Modern Law of R.P. (11th ed. 1972) p. 406 cites Proudfoot v. Hart (1890), 25 Q.B.D. 42; Lurcott v. Wakeley and Wheeler [1911] 1 K.B. 905; Anstruther-Gough-Calthorpe v. McOscar, [1924] 1 K.B. 716; Lloyds Bank Ltd. v. Lake [1961] 1 W.L.R. 884; [1961] 2 All E.R. 30

84 Id. p. 406; Payne v. Harris (1846), 16 M & W 541

85 Rhodes, William Landlord and Tenant (4th ed. 1973) p. 447

86 Kerr, The Principles of the Australasian Land Titles (1st ed., 1927) p. 337

87 Haskell v. Marlow [1928] 2 K.B. 45,59

88 Burn, Cheshires Modern Law of Real Property (11th ed. 1972) p. 408

89 Id. p. 402

90 Warren v. Keen [1954] 1 Q.B. 15; [1953] 2 All E.R. 1118

91 Ferguson v. (1797), 2 Esp. 590

92 Warren v. Keen, supra

93 Henderson v. Thorn [1893] 2 Q.B. 164

94 Buscombe v. Starke [1917] 1 W.W.R. 204, 30 D.L.R. 736 (B.C.C.A)

95 R.S.A. 1970, c. 198

96 49 Vict. c. 51

97 R.S.S. 1965, c. 115 s. 121(a) (b) (c), R.S.M. 1970, c. R30 s. 90 (a) and (b)

98 R.S.B.C. 1960, c. 357 Cov. 9 and Cov. 14. For exact wording of the above see the appendix

99 Hett v. Jansen (1892) 22 O.R. 414 (C.A.)

100 Fetherston v. Bice [1917] 1 W.W.R. 331 (Alta)

101 Kerr, Australian Lands Titles System (1st ed. 1927) p. 331

102 Hogg, Australian Torrens System (1905) p. 932

103 Rhodes, Williams on Landlord and Tenant (4th ed., 1973) p. 441

104 Ride v. Farr (1817) 6 M & S 121

105 Kuszlik v. Forsythe [1947] 1 W.W.R. 751, affirmed [1947] 1 W.W.R. 1104 (Sask)

106 Burn, Cheshires Modern Law of Real Property (11th ed., 11th ed. 1972) p. 425

107 Id. p. 430; Warner v. Linahan (1919) 14 A.L.R. 433 is an Alberta case where the lessee breached a specific covenant in his lease and was held (per Harvey, C.J. and Ives, J.) under the Land Titles Act to create a forfeiture gainst which the court should not relieve, and (per Beck and McCarthy, J.J., sustaining judgment of Simmon, J.) to be excusable under the circumstances so as to justify the court in relieving from forfeiture. A breach of covenant gives rise to forfeiture but where excuses for breaches are raised on equitable grounds the court is bound to consider them and in the proper case relieve for ferfeiture.

108 Aglionby v. Cohen [1955] 1 Q.B. 558

109 Megarry and Wade, The Law of Real Property (4th ed. 1975) p. 656

110 (1906) 4 W.L.R. 394, approved in Gulutzan v. McColl-Frontenac Oil Co. Ltd. (1961) 35 W.W.R. 337 at 366

111 R.S.S. 1965, c. 115, s. 112(1); R.S.C. 1970, c. L-4 s. 91(1) and (2) see appendix for exact wording

112 R.S.M. 1970, c. R30 s. 91(a) and (b)

113 In Australasia sections similar to s. 100 are common to the Torrens Acts. See Francis, Torrens Title in Asutralasia (Vol. 1, 1972) pp. 293-95

114 R.S.B.C. 1960, s. 208 s. 185(1) and (2) see appendix

115 Tucker v. Armour (1906) 4 W.L.R. 394; Followed in Toronto-Dominion Bank v. City of Saskatoon (1967) 60 W.W.R. (NS) 360

116 The Torrens System in N.S.W. (2nd ed. 1974) p. 269

117 Form 17 of the Schedule, R.S.A. 1970, c. 198

118 (1886) 49 Vict. c. 51

119 Id.

120 R.S.A. 1970, c. 198; R.S.S. 1965, c. 115; R.S.M. 1970, c. S120 Short Forms Act; R.S.B.C. 1960, c. 357 Short Form of Leases Act; R.S.O. 1970, c. 373 Schedule B Short Forms of leases

121 R.S.S. 1965, c. 115

122 R.S.M. 1970, c. L70

123 Rhodes, Williams on Landlord and Tenant (4th ed. 1973) p. 495

124 Rhodes, Williams on Landlord and Tenant, (4th ed. 1973) p. 346

125 A lease in the form of the Sask. Land Titles Act (now R.S. 1965, c. 115) using the word "leases" implies the covenant, and the law is not altered by the fact that the Act deals with other implied covenants: Forest v. Greaves [1923] 3 W.W.R. 658

126 Id. p. 357

127 Baynes & Co. v. Lloyd & Sons [1895] 2 Q.B. 610 (C.A.)

128 Williams v. Burrell (1845) 135 E.R. 596

129 Lock v. Furze (1866) L.R. 1 C.P. 441

130 Sanderson v. Berwick--upon-Tweed Corn. (1884) 13 Q.B.D. 547

131 Forrest v. Greaves [1923] 3 W.W.R. 658, 17 Sask. L.R. 460

132 Davis v. Pitchers (1874), 24 U.C.C.P. 516

133 Besley v. Besley (1878) 9 Ch. D. 103

134 Boyle v. Rusconi, [1921] 1 W.W.R. 354 (Sask)

135 Holtzapffell v. Baker (1811) 34 E.R. 261; Loft v. Dennis (1859) 120 E.R. 987

136 Leeds v. Cheetham (1827) 57 E.R. 533

137 Rhodes, Williams on Landlord and Tenant (4th ed. 1973) p. 199

138 Ryerse v. Lyons (1862) 22 U.C.Q.B. 12 (C.A.)

139 R.S. 1967, c. 56, Sched. C, Covenant 16

140 Collins, Land Titles in Saskatchewan (1966) p. 59

141 Francis, Torrens Title in Australasia (Vol. 1 1972) p. 284-85

142 Collins, Land Titles in Saskatchewan (19-6) p. 59

143 Id. p. 60 R.S.S. 1965, c. 115

144 R.S.M. 1970, c. R30, s. 161 ; R.S.C. 1970, c. L-4, s. 157 (see Appendix I)

145 R.S.B.C. 1960, c. 208, s. 184 (see Appendix I)

146 Dicastri, Thoms Canadian Torrens System (2nd ed. 1962) p. 597 reffering to Guardian Realty Co. v. John Stark and Co. (1922) 64 S.C.R. 207, 70 D.L.R. 333

147 Id. p. 597 referring to Dougal v. McCarthy [1893] 1 Q.B. 736, 62 L.J.Q.B. 462

148 Francis, Torrens Title in Australasia (vol. 1, 1972) p. 291

149 The Torrens System in N.S.W. (2nd ed.,1974) p. 268