

LRA For Litigators

LRA 101 – The Basics
January 21, 2009

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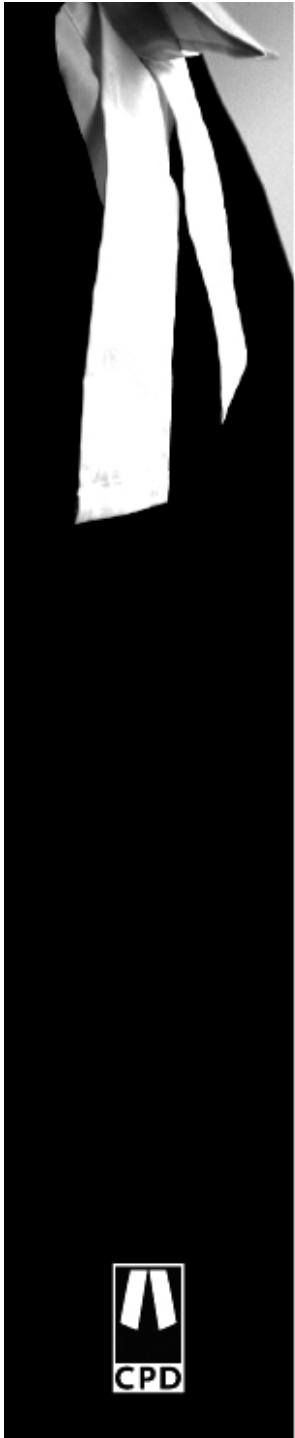
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TOPICS

- What are the key differences between registry and land registration?
- Migration - a quick overview of the process.
- What the government guarantee covers and what is not covered.
- Immediate versus deferred indefeasibility.
- Overriding interests under LRA.
- Adverse possession and prescriptive rights.
- Statutory changes to common law principles under LRA.
- Lis Pendens





REGISTRY vs. LAND REGISTRATION

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Registry

- Name based system for the public registration of instruments affecting title to land.
- Lawyers traditionally searched the index books and reviewed the instruments to determine the state of the title.
- No guarantee provided by the public registry. The lawyer provides a Certificate of Title or Opinion on Title.





Land Registration

- A parcel based system wherein instruments are registered/recorded by Parcel Identification Number (PID).
- Eliminates the need to carry out extensive searching.
- The system provides the guarantee (subject to certain exceptions and overriding interests).





Purpose of the Land Registration Act

2. The purpose of this Act is to

(a) provide certainty in ownership of interests in land;

(b) simplify proof of ownership of interests in land;

(c) facilitate the economic and efficient execution of transactions affecting interests in land; and

**(d) provide compensation for persons who sustain loss from a failure of the land registration system established by this Act.
2001, c. 6, s. 2.**



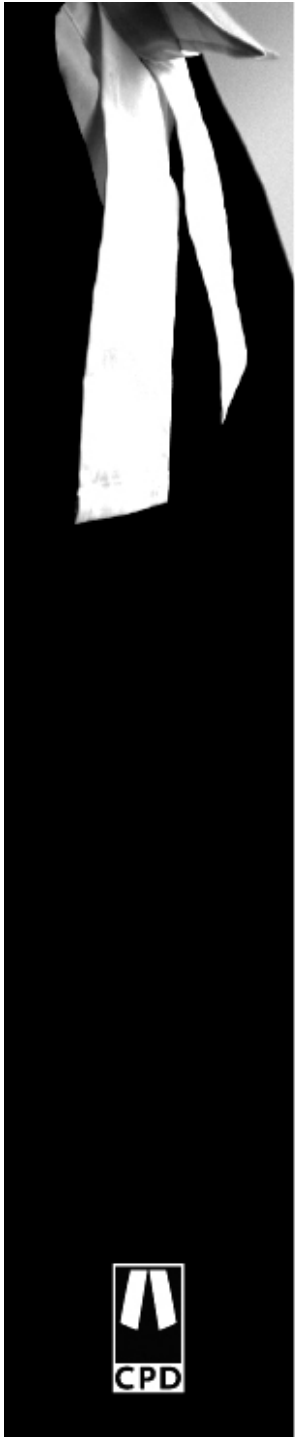


Land Titles (Torrens)

The Three Principles of Land Titles (Torrens):

- Mirror principle - the parcel register reflects (mirrors) accurately and completely the current state of the title.
- Curtain principle - one does not need to go behind the parcel register as it contains all the information about the title.
- Insurance principle - provides for compensation for losses.





THE MIGRATION PROCESS

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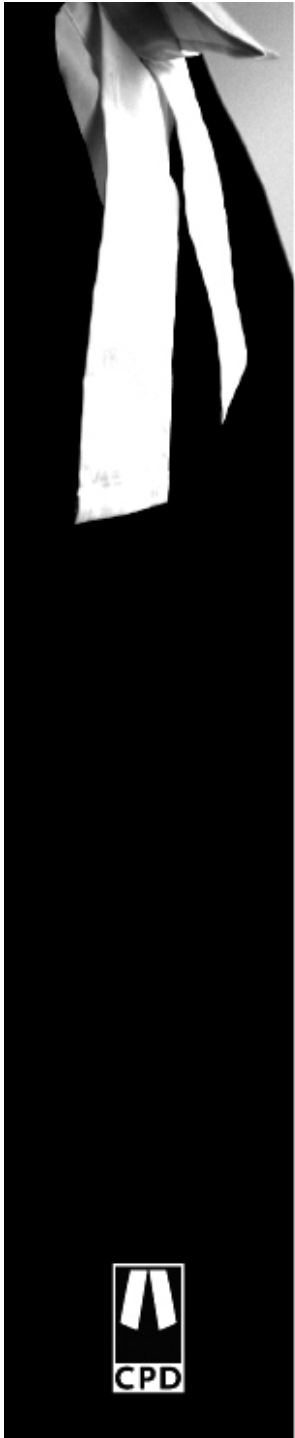
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Basic Steps

- Confirmation of the PID Number (request for PID assignment)
- Final historic search of title
- Parcel Description Certification Application (PDCA)
- Application for First Registration (AFR)





THE GOVERNMENT GUARANTEE

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The Guarantee – the Fine Print

- 20 (1) The registered owner of a registered interest owns the interest defined in the register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests
- (a) if the interest is registrable; and
 - (b) to the extent the interest is registrable by law.
- (2) The interest defined in the register is a registrable interest subject to any limitations, additions or encumbrances specified when the interest was added to the register or that have been added to the register.
- (3) A registered interest shall be enforced with priority over a prior interest where the subsequent interest
- (a) was obtained for value;
 - (b) was obtained without fraud on the part of the owner of the subsequent interest;
 - (c) was obtained at a time when the prior interest was unregistered; and
 - (d) was registered at a time when the prior interest was not registered or recorded.
- (4) Subsection (1) applies with respect to conflicting interests of successors to the owner of the registered interest.
- (5) In this Section,
- (a) if a subsequent interest will not be enforced with priority for an owner of that interest because the requirements of subsection (1) have not been satisfied, it will be enforced with priority for a subsequent owner of that interest when the requirements of subsection (1) are first satisfied; and
 - (b) once an interest is entitled to priority of enforcement, it remains so entitled when acquired by a successor. 2001, c. 6, s. 20.
- 21 (1) The legal description of a parcel in a register is not conclusive as to the location, boundaries or extent of the parcel.
- (2) Provincial mapping is not conclusive as to the location, boundaries or extent of a parcel.
 - (3) A registration may not be rejected only because the location, boundaries or extent of the parcel appear to overlap the location, boundaries or extent of another parcel.
 - (4) repealed 2004, c. 38, s. 7.
- 2001, c. 6, s. 21; 2004, c. 38, ss. 7, 26.





Bill 156

Sections 19A and 20 of Chapter 6 are repealed and the following Section substituted:

20 A parcel register is a complete statement of all interests affecting the parcel, as are required to be shown in the qualified lawyer's opinion of title pursuant to Section 37, subject to any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings in accordance with this Act.



Registered versus Recorded Interests

Registered Interests:

- a fee simple estate
- a life estate and the remainder interests
- an interest of Her Majesty

Recorded Interests:

- an interest which is not one of the above and is permitted to be recorded under the *Act*. (leasehold, easement, etc.)

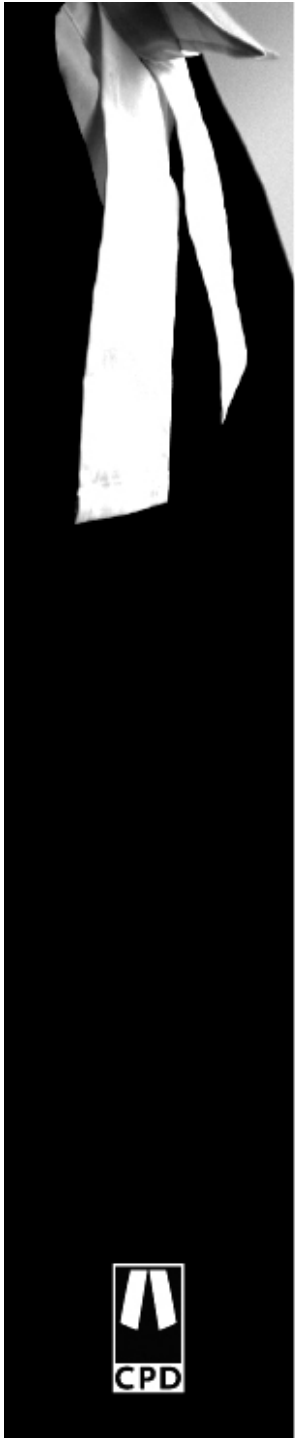




Registered versus Recorded

- Only registered interests are guaranteed.
- Recorded interests are assigned priority over other recorded interests in the order they are recorded.





INDEFEASIBILITY

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What is it?

- The essence of a Land Titles System.
- Immunity from attack by an adverse claimant.
- Title can not be defeated.





Immediate versus Deferred

Immediate – Owner's title can not be defeated even if acquired fraudulently or by mistake.

Deferred – Only those who deal innocently for value with a registered owner, regardless of how title was acquired, without actual notice of fraud, will acquire an interest. In other words title is deferred to the innocent person dealing with the registered owner.





Other Jurisdictions

Ontario

Household Realty Corp. v. Liu [2005] O.J. No. 5001

Lawrence v. Wright [2007] O.J. No. 381

Bill 152



Immediate versus Deferred

Immediate Indefeasibility

Susan Lawrence
Original Owner
Fraud Victim



Thomas
Wright

Fraudulently
acquires the
title.



Maple Trust
Mortgagee

Unaware of
Fraud.

Deferred Indefeasibility



But wait...



Deferred Indefeasibility





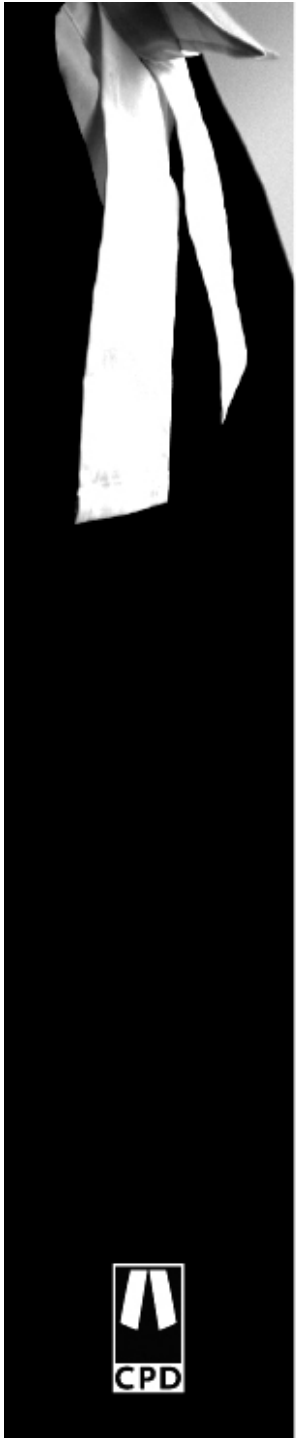
Immediate or Deferred in NS?

The *Land Registration Act* would appear to create a system based on immediate indefeasibility. (C. MacIntosh – NS Real Property Practice Manual)

Nova Scotia has a system of Deferred Indefeasibility. Title will be determined by the Court. (Mark Coffin – RELANS Meeting June 8, 2008)

No case law in Nova Scotia at present to support either view.





OVERRIDING INTERESTS

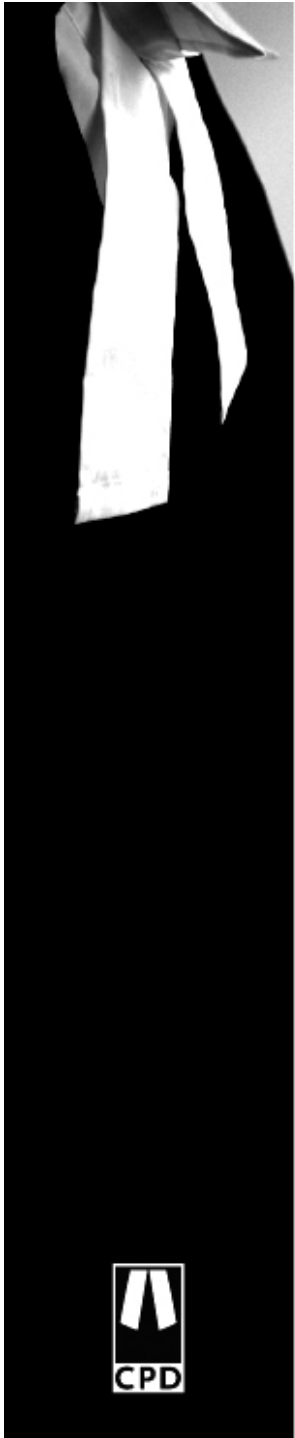
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Overriding Interests

- an interest of Her Majesty in right of the Province that was reserved in or excepted from the original grant of the fee simple absolute from Her Majesty, or that has been vested in Her Majesty pursuant to an enactment;
- a lien in favour of a municipality pursuant to an enactment;
- a leasehold for a term of three years or less if there is actual possession under the lease that could be discovered through reasonable investigation;
- a utility interest;
- an easement or right of way that is being used and enjoyed;
- any right granted by or pursuant to an enactment of Canada or the Province
 - (i) to enter, cross or do things on land for the purpose expressed in the enactment,
 - (ii) to recover municipal taxes, duties, charges, rates or assessments by proceedings in respect of land,
 - (iii) to control, regulate or restrict the use of land, or
 - (iv) to control, regulate or restrict the subdivision of land;
- a lien for assessments pursuant to the Workers' Compensation Act;
- an interest created by or pursuant to a statute that expressly refers to this Act and expressly provides that the interest is enforceable with priority other than as provided in this Act.



ADVERSE POSSESSION PRESCRIPTIVE RIGHTS

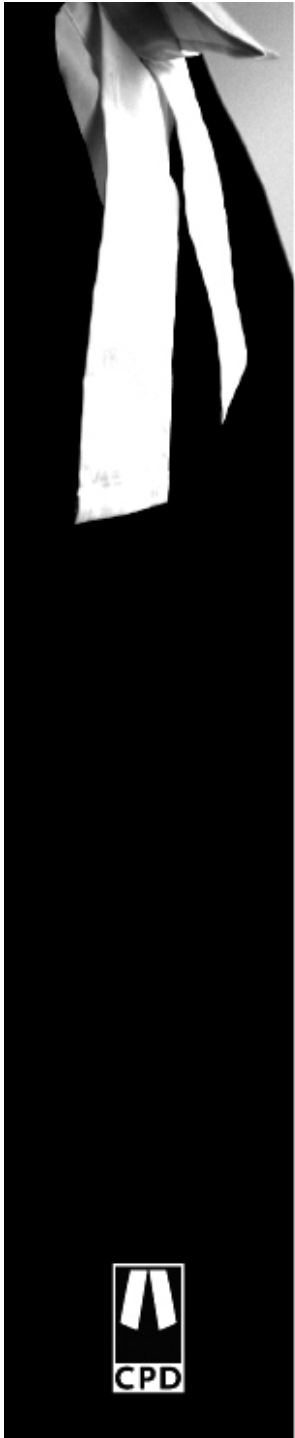
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Mature Interests & Wandering Boundaries

- 74 (1) Except as provided by Section 75, no person may obtain an interest in any parcel registered pursuant to this Act by adverse possession or prescription unless the required period of adverse possession or prescription was completed before the parcel was first registered.
- (2) Any interest in a parcel acquired by adverse possession or prescription before the date the parcel is first registered pursuant to this Act is absolutely void against the registered owner of the parcel in which the interest is claimed ten years after the parcel is first registered pursuant to this Act, unless
- (a) an order of the court confirming the interest;
 - (b) a certificate of lis pendens certifying that an action has been commenced to confirm the interest;
 - (c) an affidavit confirming that the interest has been claimed pursuant to Section 37 of the Crown Lands Act; or
 - (d) the agreement of the registered owner confirming the interest, has been registered or recorded before that time.
- (3) repealed 2004, c. 38, s. 22.
2002, c. 19, s. 32; 2004, c. 38, s. 22.
- 75 (1) The owner of an adjacent parcel may acquire an interest in part of a parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act, if that part does not exceed twenty per cent of the area of the parcel in which the interest is acquired.
- (1A) An owner of an undivided interest in a parcel may acquire the whole interest in the parcel by adverse possession or prescription after the parcel is first registered pursuant to this Act.
- (2) For the purpose of this Section, adverse possession and prescription include time both before and after the coming into force of this Act. 2001, c. 6, s. 75; 2002, c. 19, s. 33.





CHANGES TO CERTAIN COMMON LAW PRINCIPLES

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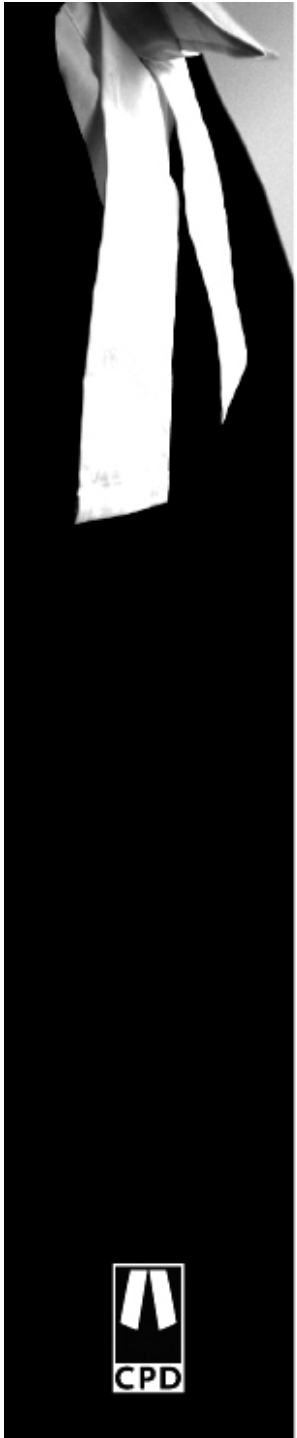
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Some Changes to the Common Law

- Ability to grant an easement to oneself
- Clarification of utility easements – elimination of the need for a Dominant/Servient tenement (Bill 156)





LIS PENDENS

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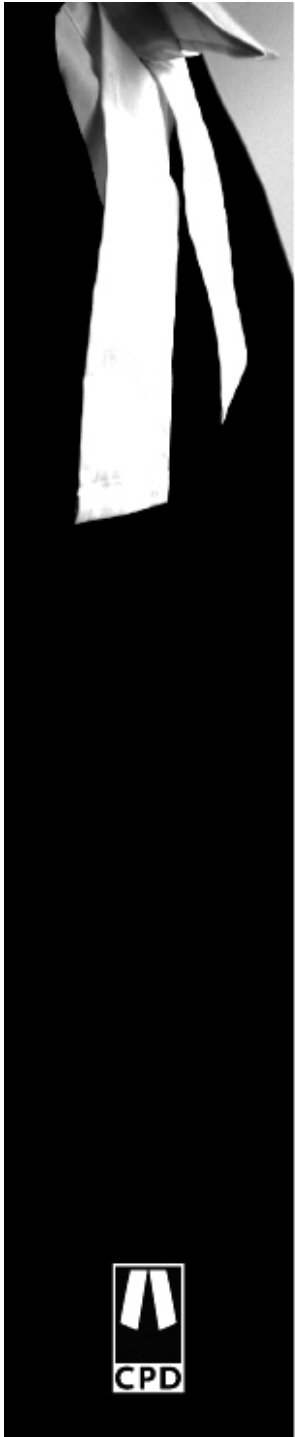
Recent Case Law

Dempsey v. Dempsey, [2008] N.S.J. No. 193

“The law respecting the doctrine of lis pendens can be found in Anger and Honsburger, Law of Real Property (3rd Edition) (2007, ch. 34: 100). Briefly summarized for the purposes of the present application, the term lis pendens means “lawsuit pending”. Once a Certificate of Lis Pendens is filed, it serves as notice to everyone that the title to a particular piece of land is being questioned in a legal proceeding and warns against dealing with the defendant with respect to that land until the title dispute is determined. Its practical effect is to act as an injunction so as to prevent the defendant from dealing with the land until the lawsuit is determined. In order to support a Certificate of Lis Pendens, it is necessary that the action call into question the title to, or an interest in, land.”

“In my interpretation of the Act, the legislative intent as it pertains to Certificates of *Lis Pendens* was designed as follows. As a safeguard against abuse of process, a Certificate of *Lis Pendens* must be signed by a prothonotary before it can be recorded under the Act. The role of the prothonotary therefore is to review the allegations pleaded in the Statement of Claim and if those allegations clearly call into question some title or interest in a specified parcel of land, the prothonotary should then sign the Certificate of *Lis Pendens* for recording under s. 58(1). It is then open to the defendant to make an application to the court under s. 58(2)(b) of the Act to discharge the *lis pendens*, using the legal test developed in the jurisprudence cited in Ch. 34:100 of the *Anger and Honsburger* text above mentioned. If a Certificate of *Lis Pendens* has been found by the court to have been recorded without reasonable cause, the court may order compensation to any person who may have sustained damage as a result.”





QUESTIONS?

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