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REGISTRATION OF TITLE TO LAND DiCastrì Release No. 1, January 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in April 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the April release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Registration of Title to Land is the authoritative treatise on land titles in Canada. This three-volume supplemented work provides detailed analysis of the underlying principles, theory and operation of land titles systems in Canada, the adaptation of the Torrens model in the western provinces, and makes a comparative study of the principles of the title registrations embodied in the Ontario Land Titles Act and the English statutes upon which it is based.

This release updates case law and commentary in the following chapters: 6 (Land Descriptions and Registered and Deposited Plans of Survey), 12 (Leases), 15 (Lis Pendens), 16 (Transmission), 17 (Registration), 18 (Statutory Exceptions To Indefeasibility Of Title), 19 (Fraud), 20 (Builders', Construction and Mechanics' Lien Legislation) and 21 (Judgments and Writs of Execution).

Highlights

- **Leases — Option to Renew and Relief from Forfeiture** — In *Narwhal International Limited v. Teda International Realty Inc.*, 2021 CarswellOnt 13230, 2021 ONCA 659, the trial judge dismissed a tenant's application for a declaration of entitlement to renew a commercial lease and for an order settling rent. The Court of Appeal dismissed the tenant's appeal. The parties relied on two different lease agreements with distinct renewal provisions and the judge provided cogent reasons for accepting the respondent's document. That document provided that renewal rent be "discussed between landlord and tenant." The term required that the landlord negotiate in good faith but did not create an enforceable contract. The landlord acted in good faith during negotiations, including by making a reasonable final offer that the tenant rejected.
- **Leases — Quiet Enjoyment** — During the COVID-19 pandemic, the tenant's retail store was ordered by the government to close, then to operate only under restrictions. The tenant paid partial rent for a time before closing permanently. The landlord brought an action for rent arrears, and a motion for summary judgment. The Superior Court of Justice granted judgment. The lease's *force majeure* clause referred to government laws and regulations, indicating that such events were contemplated by parties. That clause did not relieve the tenant of its obligation to make prompt and timely rent payments, but did relieve the landlord of its obligation to provide quiet enjoyment of the premises during the lockdown. Where the *force majeure* clause applied, the tenant could not rely on the doctrine of frustration. *Braebury Development Corporation v. Gap (Canada) Inc.*, 2021 CarswellOnt 13191, 2021 ONSC 6210.
- **Registration — Correction by Order of Court and Statutory Exceptions to Indefeasibility of Title — Easements — Essential Characteristics** — In *Michael Fred Flewelling et al. v. The Estate of the Late Gwendolyn Elaine Jones*, 2021 CarswellNB 476, 2021 NBQB 182, the applicants owned lots with title deeds granting the right to use neighbouring property to access a beach. When the owner of that beachside property migrated title to the land titles system, that right of way was not disclosed or certified. The applicants' application to rectify the respondent's title by registering their easement leading to the beach was granted. Wording in applicants' deeds reflected the intention of original grant. The court heard evidence of the parties' discussions before the transfer to land titles, and no evidence the respondents ever attempted to block the applicants' access.

- **Builders', Construction and Mechanics' Lien Legislation — Prefatory and Nature of Lien — A Statutory Creation—** In *Mahendran v. 9660143 Canada Inc. et al*, 2021 CarswellOnt 13812, 2021 ONSC 6678, the applicant brought an application to discharge a builder's lien on the basis that the plaintiff was not a "contractor", but a partner in the construction of the residence. The Superior Court of Justice granted the application, finding that the plaintiff had agreed to be paid for materials and services out of the proceeds when the property was sold. That agreement created an ownership interest in the premises. The plaintiff could not be both an owner and a contractor. The court ordered that the lien be discharged and that the certificate of action be vacated.

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