

## Publisher's Note

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### **ANGER & HONSBERGER LAW OF REAL PROPERTY**

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#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in October 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 October 2021 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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## What's New in this Update:

This release includes updates to case citations and additional valuable commentary to Chapters 4 (The Estate in Fee Simple); 7 (Leaseholds); 11 (Trusts); 14 (Co-Ownership); 15 (Matrimonial Property); 16 (Covenants and Licences Affecting Land); 17 (Incorporeal Hereditaments); 18 (Boundaries); 19 (Rights Relating to Water); 21 (Contracts for the Sale of Land); 22 (Conveyancing); 23 (Remedies); 26 (Title by Will); 27 (Title on Intestacy); 28 (Other Types of Title); 29 (Extinguishment of Title); 30 (Recording and Examination of Title); 32 (Aboriginal Interests in Land); 33 (Mortgages); 34 (Other Encumbrances); 35 (Public Control Generally) and 36 (Planning Legislation).

## Highlights

The following cases are of note:

- *Pavlovich v. Danilovic*, 2020 BCCA 239 (B.C.C.A.) affg 2019 CarswellBC 258 (discussing the presumption of advancement to children): § 11:32.
- *Caja Paraguaya de Jubilaciones y Pensiones del Personal de Itaipu Binacional v. Garcia* (2020), 58 E.T.R. (4th) 161 (Ont. C.A.), leave to appeal refused 2021 CarswellOnt 2452, 2021 CarswellOnt 2453 (S.C.C.) (addressing elements applicable in a case of assisting in a breach of trust): § 11:70.
- *Fownes v. Ernst*, 2021 NSCA 8 (determining that there can be no partition of a contingent remainder and that only holders of a possessory interest can seek partition): § 14:30.
- *Nissen v. Nissen*, 2020 ABCA 8; *MAK v. TJK*, 2020 ABCA 196; *Cook v. Cook*, 2021 BCCA 194; *N.K. v. M.H.*, 2020 NCCA 121, and *Zilic v. Zilic*, 2021 BCCA 107 (discussing the unequal distribution of marital property): § 15:33.
- *The Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corporation* (2019), 24 B.C.L.R. (6th) 24 (B.C. C.A.), affd 2020 SCC 29, 19 R.P.R. (6th) 1 (addressing the circumstances when the burden of a covenant will run with the land in equity): § 16:3.
- *Re Restrictive Covenant Instrument 213AT*, 2021 ABCA 138 (discussing the circumstances when a building scheme exists): § 16:6.
- *Kent v. Panorama Mountain Village Inc.*, 2021 BCCA 332 (discussing the circumstances when a court may make an order discharging or modifying a restrictive covenant): § 16:16.
- *de Jocas v. Moldow Enterprises Inc.*, 2019 ONCA 389 and 2020 ONSC 7260 (discussing the characteristics of an easement and disturbance thereof): §§ 17:3, 17:17 and 17:18.
- *Hydro-Québec c. Matta*, 2020 SCC 37 (addressing the creation of an easement in favour of electrical transmission lines): § 17:4.
- *Paleshi Motors v. Woolrich*, 2020 ONCA 625 (in which the Ontario Court of Appeal addressed the requirement of accommodation in the case of a public authority): § 17:5.
- *Grunwald v. Le Marchant*, 2020 ONCA 442, 17 R.P.R. (6th) 16 (Ont. C.A.), affg 2019 ONSC 7513, 13 R.P.R. (6th) 147 (Ont. S.C.) (where on

the face of the deed there appears a manifest intention to create an easement, that intention will be given effect if the deed can bear that construction): § 17:10.

- *Miywasin Friendship Centre (Medicine Hat) v. 1927546 Alberta Ltd.*, 2021 ABCA 108 (addressing the elements of a quasi-easement): § 17:12.
- *Balogh v. R.C. Yantha Electric Ltd.*, 2021 ONCA 266 and *Klimack et al v. Kroeker et al*, 2020 MBCA 98 (addressing the requirements to establish a prescriptive easement): § 17:14.
- *Town of Oakville v. Sullivan*, 2020 ONCA 1, affg 13 R.P.R. (6th) 106 (Ont. S.C.J.) (to constitute an interference with an easement of a right of way, the interference must be substantial): § 17:18
- *NBC Holdings Ltd. v. Aarts Nursery Ltd.*, 2021 BCCA 7 (discussing the circumstances where an easement will be extinguished by the operation of law): § 17:26.
- *Becker v. Walgate*, 2020 ONCA 491 (discussing the interpretative approach to boundaries): § 18:11.
- *Waterway Houseboats Ltd. v. British Columbia*, 2020 BCCA 378 (discussing the B.C. *Water Sustainability Act* at length): § 19:29.
- *Hawryliw v. Smith*, 2020 SKCA 92 (discussing the law applicable to latent defects in the context of a purchase of real property): § 22:13.
- *Azzarello v. Shawqi*, 2019 CarswellOnt 16637 (Ont. C.A.), leave to appeal refused 2020 CarswellOnt 5261, 2020 CarswellOnt 5262 (S.C.C.) (addressing the consequences in terms of a deposit when the purchaser fails to complete the contract): § § 23:7, 23:33, 23:5 and 23:36.
- *Dhatt v. Beer*, 2021 ONCA 137; *Lucas et al v. 1858793 Ontario Inc o/a Howard Park et al.* (2020), 17 R.P.R (6th) 138 (Ont. S.C.J.), affd 2021 ONCA 52, and *Toor v. Dhillon*, 2020 BCCA 309 (discussing the uniqueness requirement for specific performance): § 23:12.
- *Lawen Estate v. Nova Scotia (Attorney General)*, 2021 NSCA 39 (in which the court overturned the trial judge who had concluded that the inclusion of non-dependent children in that province's dependent relief legislation was unconstitutional): § 26:91.
- *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, 2021 ONCA 201 (in which the court addresses adjoining owners agree on the location of a line, they are bound by an estoppel by convention): § § 28:3 and 28:6.
- *St Pierre v. Schenk*, 2020 ABCA 382 and *830480 Alberta Ltd. v. DJ Forbes Holdings Inc.*, 2021 ABCA 43 (in which the court discusses the mortgages and caveats in the context of land titles legislation): § 30:21.
- *R. v. Desautel*, 2021 SCC 17 (in which the Supreme Court of Canada has held that groups outside Canada (in this case a US citizen) can be considered aboriginal peoples of Canada: § 32:1.
- *Southwind v. Canada*, 2021 SCC 28 (in which the Court discusses the honour of the Crown in relation to aboriginal peoples): § § 32:4 and 32:25.
- *Walia v. 2155982 Ontario Inc.*, 2020 ONCA 493 (in which the Court discusses the purpose of s. 8 of the *Interest Act*): § 33:24.
- *Canadian Pacific Railway Company v. Kelly Panteluk Construction Ltd.*, 2020 SKCA 123 (discussing railways and exemptions from claims for liens): § § 34:18 and 34:21.
- *Chichak v. Chichak*, 2021 BCCA 286 (land sold under an execution is subject to the charges, liens and equities to which it was subject in the hands of the debtor): § 34:24.

- *Calgary (City) v. Bell Canada Inc.*, 2020 ABCA 211 (discussing bylaws in relation to telecommunication providers): § 35:7.

### **ProView Developments**

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