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WHY COMPLETE TITLE SEARCHES AND SUPPORTING DOCUMENTS ARE IMPERATIVE

A report created by the
Research Team of the
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E.F. Marshall, Director of Research
Ontario Landowners Association
clpmeeting@brucetelecom.com

Tom Black, President
Ontario Landowners Association
1-613-831-2642

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"This is a fundamental principle, going back at least to Magna Carta,", Lord Parmoor said: "Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown."[1]

EXECUTIVE SUMMARY

There has always been a need to know who owns what. It is the basis of absolute right of property and its roots have been entrenched since man could understand ownership. Throughout the ages Emperors, Conquerors, Kings, Queens, and Statesmen have tried to remove the absolute right of "private property", but there have always been rituals, lists, paper of some sort with some form of mark, be that an "X" or a signature, to support the rights of the people. Physical transfers (livery in seisen), witnessed by the community at large which, eventually, became signatures supporting the transfer of property. That was the norm until the province introduced POLARIS. This could have been an extremely good concept, but somewhere along the line, the original mandate has been removed. This could even include the actual transfer of titles from "paper records" to computer, and the fundamental rights of the people without the oversight needed to ensure all parties are protected, particularly the private property owner and the tax payers of Ontario. This type of legislation is not restricted to Ontario, but has worked its way into a number of other provinces making this a nation wide issue.

Legislation had been introduced to remove the 60-year adverse possession/Crown prerogative limitation. If there isn't documented proof of a period over 60 years possession from the Crown then there is no proof that the estate in land/property was ever separated from the Crown, thus denying property ownership and title. The 40 year title search denies private property ownership and is the removal of an absolute fundamental right[2]. Presently, with the revoking of the Certification of Titles Act, the thought, it would seem, is to

[1] A.G. v. DeKeyer's Royal Hotel, 1920, p. 28
[2] Richard Thomson, Historical Essay of the Magna Charta, for Lord Spencer II, p. 226-228

eliminate any form of title search and security of private property. And what of easements, conditions, reservations, covenants, etc., that need to be shown as still adhering to title of the estate and/or land? What of the property rights of the people, the province, the federal government and the Crown? Crown property, it would seem, is protected in sections of this legislation. It would also appear that provincial property could increase without complete title searches for private property. So what of land belonging to the federal government, native land reserves and the private individual? It would seem there is no protection or security.

Since the creation of POLARIS, there has been one transaction after another, and eventually a Crown owned and operated entity was sold by our government to a private entity, Teranet. (please see TERANET/POLARIS: THE PROBLEMS, THE HISTORY AND THE PRESENT.). There are weaves and waves but in the end, the only group that is suffering is the one group that shouldn't…That is the people of this Province and of Canada.

HISTORY

From the time the first land conveyance was completed there was a need to know who owned what and that the rights of the property owner were protected. Throughout history, man has moved from livery in seisin[3], a ceremony where the entire community came to bear witness to a man placing a handful of dirt into the hand of another, proving that he was allowing the second man the "right to enter" onto and to purchase his estate in land and/or property. Prior to the invasion of England, the Roman's had their census and forms of taxation and during the reign of William the Conqueror there was the creation of the "Doomsday Book", or the great census of the time. Once the list was complete, based on the purported defence of the country, all land was turned over to the King for his protection. Unfortunately, these were measures for the Conqueror to own all of the land and property of the citizenry for his own gain. He *"who owns the land owns the country"*[4] and the people.

As mentioned, estates in land, to name a few means, have been conveyed by livery in seisin, by grant, by deed or by will. The deed process included the document having to be signed, sealed and delivered. This is the process of transferring/granting the patentee/property owner's rights to the present owner of the estate in land and chattels. As history progressed "landowners", needing clear title, made it imperative that complete title searches were performed to ensure that the title being transferred was clear of all liens, easements, conditions, exceptions, encumbrances, mortgages, etc., and to have full knowledge if there were any of the aforementioned registered. This being "full disclosure" of exactly what the estate consisted of, and the rights of the purchaser. It was also a means for the Crown to ensure there would not be "double granting", to ensure that the Crown reservations remained known to all

[3] University of Western Ontario http://instruct.uwo.ca/law/425-002/LAND/Transfer.htm as of January 3, 2012
[4] The Sly Company of People Who Care, Rahul Bhattacharya, p. 108

and that the documents were open confirming the authority of the property owner "*against all the world*"[5]. These documents were and are the only way in which the Crown can alienate Crown Domain[6] to some other entity, creating an entirely separate domain or estate in land and chattels. This is why the Land Titles and Registration are so important.

In 1641, King Edward III signed the "Act for the Limitation of Forests". There were Forest Laws and the protection of the Crown Forests and the boundaries of these forests. During this era, there were accounts of private property owners having to deal with the King's Forest's boundaries being extended. King Edward III, to protect the private property of the people, enacted that the boundaries of the forests must be determined and marked, so as not to infringe or abrogate the "land/property" rights of the people.

> *II. And be it further enacted by the authority aforesaid, that no place or places within this realm of England…,…or regard made within the space of sixty years next before the first year of His Majesty's reign that now is, shall be at any time hereafter judged, deemed, or taken to be forest, or within the bounds or meets of the forest; but the same shall be from henceforth for ever hereafter disafforested, and freed, and exempted from the forest laws…"*[7]

To determine what were the forests of the King and to determine what land had been alienated from the King, the lists had to be confirmed and used. These would be the successive titles of the private property owners and the surveys[8] and/or fence rows that accompanied. These boundaries were in the form of title lists, registration, to know who owned what and how these boundaries had been "pretended"[9] to extend. [Please note the statement of "sixty years", a precursor to the Nullum Tempus Act of 1769 (60-year adverse possession/Crown Prerogative Limitation).]

In 1769 the Nullum Tempus Act was enacted as George III, and his ancestors, were in need of some guidance in the granting of estates. "*Since his time (King James 1st), and especially in the reigns of Charles II and William III., the crown had been more lavish and unscrupulous than at any former period in granting away its lands and estates to favourites"*[10]….for example at that time the Duke of Portland was an *"opponent of the present ministry, who, to punish him, suggested to Sir James Lowther,"*[11] that Sir Lowther, being in favour, petition the King for the Duke's land…, *"and of large property in the North of England, …which hitherto had been held by Portland as belonging to the Honour of Penrith,"*[12] had been transferred to Sir Lowther. Although "*It was not denied that*

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[5] McConaghy v. Denmark, 4 S.C.R. 609, Date: 1880-04-13, at 625-626.
[6] An Act Respecting Gold Mines, 1864, Definitions section 7.
[7] Act for the Limitation of Forests. August 7, 1641. 16 Car. I. cap. 16 Statutes of the Realm, v. 119.
[8] Richard Thomson, Historical Essay of the Magna Charta, for Lord Spencer II.
[9] Ibid.
[10] Charles Duke Yonge, "The Project Gutenberg EBook of The Constitutional History of England From 1760 to 1860, Chapter II, http://www.sakoman.net/pg/html/10807.htm
[11] Ibid
[12] Ibid.

Portland had enjoyed the ownership of these lands for upward of seventy years without dispute;…"[13], the land was still granted to Sir Lowther and taken from the Duke. After this event Parliament, for want of better wording, forced the King to sign the Nullum Tempus Act, limiting the Crown Prerogative to 60 years. In 2004 the Nullum Tempus Act was upheld in MNR v. Holdcroft and in 2010 A.G. of Nova Scotia v. Allan R. Brill. If the 40-year limitation is allowed then what of the common law rights of the people and the Crown? In 2005 Garth C. Gordon, Q.C. did an informative paper on the Nullum Tempus Act and the ramifications of less than a 60 plus year search.

"*Comments About Underlying Crown Interests*
Garth C. Gordon, Q.C.
April 18, 2005
Page 1 Section 4
4. Risks – possible underlying Crown interests in parcels – no certain title against the Crown Prerogative.

a. We must be concerned about underlying Crown interests because they pose a significant risk to titles certified by lawyers. The risk arises from the Crown's prerogative – nullum tempus occurrit negi – its right to recover land without time limit apart from limitations of actions legislation and a few common law restrictions.

Page 3 Section 5
5. Nullum Tempus Occurrit Negi.

a. The Crown prerogative – nullum tempus occurrit negi – and the early English legislative response to it was explained to an Australian jury by Forbes, J, in R v Steele 1834 NSW SupC 111 (18 October 1834), Supreme Court of New South Wales.

"*…By the laws of England, the King, in virtue of his crown, is the possessor of all the unappropriated lands of the kingdom; and all his subjects are presumed to hold their lands, by original grant from the crown. His Majesty by his prerogatives is enabled to dispose of the lands so vested in the Crown. It is part of the law of England, that the prerogatives, can only be exercised in a certain definite and legal manner. His Majesty can only alienate Crown lands by means of record – that is by grant, by letters patent, duly passed under the great seal of the Colony, according to law, and in conformity with his Majesty's instructions to the Governor. It is also a clear case of the same law, that the right of the Crown cannot be taken away, by an adverse possession, under sixty years. The nullum tempus act, as it is called, was expressly passed to limit the remedy for the recovery of lands belonging to the Crown, to sixty years – without the statute, there would have been no limit of time – for it is a maxim of law, that the King cannot be disseized of his possessions; no laches are imputable to him – nullum tempus occurrit negi. Unless therefore the King have been out of possession of the land now claimed, for full*

[13] Ibid

sixty years, there is no defense in point of the mere time of adverse possession, to this action."

In 1771 in the House of Commons Sir Charles James Fox explained how secure a title commencing from the Crown stands.

"But I firmly believe, as far as I am informed, that no man can have a better title to his estate, than the very title which the crown has vested …."[14]

Sir Charles Duke Yonge, in regards to Sir George Savile, stated in *the Constitutional History of England From 1760 to 1860*[15]*,* how that security was obtained.

"Sir George, however, was not discouraged; he renewed his motion in 1769, when it was carried by a large majority, with an additional clause extending its operation to the Colonies of North America; and thus, in respect of its territorial rights, the crown was placed on the same footing as any private individual, and the same length of tenure which enabled a possessor to hold property against another subject henceforth equally enabled him to hold it against the crown…"

There is no greater title than that of a title granted by the Crown. To ensure the security of that title a complete search must be done for the protection of the purchaser and the Crown. As for the Nullum Tempus Act, as noted above, it continues today, in Canada, of a 60-year limitation of the prerogative and 60-year adverse possession[16] from the Crown. If there is only a 40-year chain of title documented, there is a removal of the 60-year limitation/adverse possession from the Crown, removing, not only, the private property owner's rights, but refusing the Crown's claim to any reservations prescribed in the original grant/patent. Rules that apply to the people also apply to the Crown, ergo the Crown must also be restricted by the 40year title.

There has always been a need for lists of estates in land. Take for example the Letters Patent. In his report to the "House" (Lists of Lands Granted by the Crown in the Province of Quebec from 1763 to 31st December 1890), Charles F. Langlois stated:

"In many parts of townships not yet erected into municipalities, there are lands whose owners are difficult to find without applying to the Registrar's Office to find out whether the patent has been issued; this will be avoided by means of this present list and all that will have to be done will be to apply to the registrar of each county for the name of the actual owner, when there have been changes in the ownership since the date of the original grant. Finally, the information given in this list will greatly facilitate searches in the

[14] The Speeches of The Right Honourable Charles James Fox in the House of Commons Vol. I, p. 7-8.
[15] The Constitutional History of England from 1760 to 1860, p. 53
[16] A. G. of Nova Scotia v. Alan R. Brill, date Sept. 9, 2010

registry offices and consequently diminish their cost. This is one of the chief reasons for the present publication."[17]

These lists were for the protection of the property purchaser as well as the Crown. A complete title search was and is still needed today. Considering there were also issues of lands being granted more than once, leaving two grantee/patentees for a single parcel of land. In the Public Lands Act of 1853[18], to ensure accuracy, ensure registration and to ensure that there were few chances of double granting, the Commissioner of Crown Lands had to create lists (registrations) as part of his duty. Again this was for the protection of the property owner as well as the Crown.

Again, in the Public Lands Act of 1860, the same statements were included, in regards to double grants, errors on grants, etc., and the Commissioner's duty was to ensure registration of grants/patents. In 1860 there was also a division of Upper and Lower Canada enacted and in regards to lands granted, etc., Section 3 of the Act Respecting the Line of Division between Upper and Lower Canada was enacted.

"3. In case any land granted by Letters Patent under the Great Seal of the late Province of Upper Canada, or granted by Letters Patent under the Great Seal of this Province as being in Upper Canada, or sold by the Crown as being in Upper Canada and not yet under patent, is found under this Act to be either wholly or partly in Lower Canada, and there be nothing in such Letters Patent to exclude a claim to the compensation hereinafter provided for, it shall be lawful for the Governor in Council to make compensation, either in money or land or in land scrip or certificates to be taken in payment for public lands, to the grantee of his heir or legal representative, for such land or so much thereof as may be lost to him by reason of this Act, unless the same be still in the possession of the Crown, in which case Letters Patent for the same may be issued in his favor."

There should also be concern in regards to the British North America Act, particularly Section 109. If not for complete title searches how are the Provincial administrators to know what is actually included in the "lands, mines, minerals and royalties"? Under Section 109 of the BNA it expresses that "all lands, mines, minerals and royalties belonging to the several provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same." (57)

(57) Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the Constitution Act, 1930, 20-21 Geo. V, c. 26 (U.K.).

[17] C.F. Langlois, Printer to Her most Excellent Majesty, 1891, Remarks, pg. 15.
[18] An Act to amend the Law for the sale and the settlement of the public lands. 1853, VII - XIX

The Constitution Act, 1930 spelled out what the Provinces were entitled to for property. This property that was transferred at the time of Union was the property that the provinces had authority to legislate for. In the 1930 Constitution it stated that under section thirty of the Manitoba Act, 1870, *"it was provided that all ungranted or waste lands in the Province should be vested in the Crown and administered by the Government of Canada for the purposes of the Dominion, subject to the conditions and stipulations contained in the Agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty:*[19] And *"…a transfer would be made by Canada to the Province of the unalienated natural resources within the boundaries of the Province subject to any trust existing in respect thereof and without prejudice to any interest other than that of the Crown in the same…"*[20]

The transfer of the Public Lands had restrictions on the Province expressing what they did and did not have "legislative authority" over. The provinces are to honor each contract, in regards to past patents and they were to administer for future grants/patents, but only at the time of issuance. When the future grants/patents, issued by the province were created, the legislation applied to those grants/patents were to be consistent. It would be the "rules" governing the new issuances, expressed in the reservations, conditions, etc. and these terms were to be upheld.

Transfer of Public Lands Generally

2. The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise. except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interest therein, irrespective of who may be the parties thereto.

3. Any power or right, which. by any such contract, lease or other arrangement, or by any Act of the Parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred, or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province as may be specified by the Legislature thereof from time to time, and until otherwise directed, may be exercised by the Minister of Mines and Natural Resources of the Province.

5. The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled,

[19] British North America Act, 1867 and Constitution of 1930, p. 2

[20] Ibid. p. 3

carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the Dominion Lands Act and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made prior to the coming into force of this agreement. Nothing in this agreement, or in any agreement varying the same as hereinafter provided, shall in any way prejudice or diminish the rights of the Hudson's Bay Company or affect any right to or interest in land acquired or held by the said Company pursuant to the Deed of Surrender from it to the Crown, the Dominion Lands Act or the said Agreement of the 23rd day of December, 1924. [21]

This is protection for the property owner as well as the Crown and Crown agreements. The Province, in regard to the Federal Government, needs complete title searches to determine what are provincial public/Crown lands, mines, minerals and royalties, and what actually are Federal public/Crown lands, mines, minerals and royalties. The removal of the Land Titles and Registration of properties via legislation enacting the 40-year limitation and short sighted searches leave the entire province and in some instances our provincial boundaries in question.[22] The pieces of legislation supporting/enacting a 40-year search, removal of claims, easements and signatures, could be deemed *ultra vires* (beyond the powers) of the Province, considering the obligations expressed in the BNA, the Constitution of 1930, etc.

PRESENT LEGISLATION - PRESENT PROBLEMS

To understand the problems with the present legislation, the Registry Act, Land Titles Act and the Land Registration Reform Act, etc., some background information on events leading to the present legislation, is needed. In 2001, in support of the changes to legislation in the Registry Act and in support of the computerization of the Land Registry, the Honourable Norm Sterling made this presentation to the Standing Committee on Public Accounts. He explains:

[21] British North America Act, 1867 and Constitution of 1930, p. 4
[22] Canada (Ontario Boundary Act), 1889.

"The first and the oldest type of system that we had in Ontario was the land registry system, which essentially was a system inherited in its form, its rules and its law from Britain. That system was developed over an 800-year period, so when we started to set up our land registry offices we adopted a lot of the rules, the rights of easements, the rights of licences, the rights of fee simple, the rights of fee in tail, all those kinds of names that were common in the land registry system from Britain.
The land registry system was basically a system of registration which allowed a great deal of flexibility with what you could do with land. That was sort of the beauty of the system, that you could use land and grant rights and partial rights, leasehold rights, easement rights, in a whole number of ways that therefore allowed a great deal of flexibility for the landowner to share his or her property rights with others.
What happened in around 1986 or 1987 was that the government of the day decided that it would try to take another step in the long history that I've outlined… they started a project totally within government called Polaris. This was contained in the Ministry of Consumer and Commercial Relations, through which the land registry offices have always reported… Teranet, which is still the company with which we are engaged in undertaking this project.[23]

In the Province of Ontario the Registry Act, Part III, Investigation of Titles defines *"title search period" as "means the period of forty years described in subsection 112 (1)."*[24] And in 112 (2) "Deemed Commencement of Chain of Title:"[25] it expresses that had there been no conveyance, other than a mortgage, of the freehold estate, the chain of title commences with the conveyance of that property. It goes on to say in section 112 (3) that some instruments registered prior to the title search period were not effective…

"Instruments registered prior to title search period not effective
(3) A chain of title does not depend upon and is not affected by any instrument registered before the commencement of the title search period except,
(a) an instrument that, under subsection (2), commences the chain of title;
(b) an instrument in respect of a claim for which a valid and subsisting notice of claim was registered during the title search period; and
(c) an instrument in relation to any claim referred to in subsection 113 (5). R.S.O. 1990, c. R.20, s. 112 (3).[26]

Section 112 and its subsections removes the root of title and the property rights of the people, the Crown, the Province and the Federal Government. As previously expressed 40 years is not sufficient for clear title against the Crown; it

[23] Honourable Norm Sterling, Min. of Consumer and Business Services. Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001 - Special Report, Provincial Auditor
[24] Registry Act, Part III.
[25] Ibid.
[26] Registry Act, R.S.O. 1990, Consolidated Period: From June 1, 2011.

also does not protect against claims prior to 40 years. Example: the case of Trenton v. B.W. Powers and Sons, Supreme Court of Canada, 1969.

> *"The appellant contended that the two pieces of property in question had been dedicated to the public use and were public highways, the titles of which were vested in it. The respondent's defence was that there was never any dedication of either piece of property by an individual or corporation who had title to do so.*
> *A subdivision plan of the Village of Trenton (as the municipality was then) prepared for one H on March 15, 1864, and registered on August 9, 1865, showed an unnamed street as a public highway as well as all of Ontario Street even though at that time the disputed area of Ontario Street was completely under water. By virtue of the force of certain statutory enactments the unnamed street and the disputed area of Ontario Street would have become public streets unless H did not own either piece of property at the time the plan was prepared.*
> *Held: The appeal should be dismissed.*
> *The unnamed street had been conveyed to an individual by H in 1850, long before his plan was registered."*[27]

Had it not been for a complete title search, beyond 40 years, and surveys, B. W. Powers and Sons would not have been able to defend their claim against the town of Trenton. And one must, in all respect to all parties, mention Caledonia. Had complete searches been done and ownership of the land by the Six Nations established, this incident may not have happened. Another example of court cases involving Six Nations, the City of Brantford v. Montour:

> *[55] ... For more than 150 years the Six Nations did nothing to indicate to innocent third-party purchasers that there was any problem with title to their lands. Property has been bought and sold over that time period. …Still there was no notice to private landowners, when that action was commenced or after, any problem with their title. …It was not until this case commenced that the Six Nations claimed to have the right to control the activities of private landowners on the basis that the private land within the City of Brantford belongs to the Six Nations.*[28]

There are so many court cases, where a simple title search back to the original Crown Grant would suffice, saving time, money, and effort on behalf of the purchaser, the seller, and government.

Throughout the province, people are purchasing property with easements, covenants, conditions, etc., that had been previously registered against the properties and yet they are not provided with these records. If the property owner decides to do any form of landscaping, for instance, the property owner may do damage to some unknown cable or pipe because he is unaware that it

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[27] Trenton (Town) v. B.W. Powers & Son Ltd., [1969] S.C.R. 584
[28] City of Brantford v. Montour et al, 2010 ONSC 6253 (CanLII)

even exists. He will be liable for the damage to buried lines, pipes, etc., and what of the cost to the property owner during such an incident? The property owner will be financially liable for the costs of repair. Without the complete list of previous easements, the property owner, as well as the community at large, are at risk.

In the Registry Act easements are defined as:

Easements, etc.

26. *(1) In this section,*

"easement" means an easement, right-of-way, right or licence in the nature of an easement, profit à prendre or other incorporeal hereditament, but does not include such an easement arising by operation of law. R.S.O. 1990, c. R.20, s. 26 (1).

In subsection 2 of 26 (Local description required), they remove the onus of the expropriator for payment of easements or even registration of an easement unless there is a *"local description of the affected part … contained in the instrument by which the conveyance is made."*[29] This section removes rights from the grantee expressed under Section 15 of the Conveyancing and Law of Property Act. This also removes application for claim against past expropriations that had not been compensated for. If there isn't a complete title search, with all applicable easements and conditions documented, the purchaser does not know what he is receiving for his "*valuable consideration"*[30]*,* or what obligations he may have.

Section 15 of the Conveyancing and Law of Property Act, RSO 1990, explains everything that is transferred to the purchaser of the property and unless there is an exception, it includes everything that relates to the property, including the rights.

What is included in conveyance

15. *(1) Every conveyance of land, unless an exception is specially made therein, includes all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever to such land belonging or in anywise appertaining, or with such land demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof, and, if the conveyance purports to convey an estate in fee simple, also the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever of the grantor into, out of or upon the same land, and*

[29] Registry Act, RSO 1990
[30] Ibid.

every part and parcel thereof, with their and every of their appurtenances. R.S.O. 1990, c. C.34, s. 15 (1).

Application of section

(2) Except as to conveyances under former Acts relating to short forms of conveyances, this section applies only to conveyances made after the 1st day of July, 1886. R.S.O. 1990, c. C.34, s. 15 (2). [31]

Subsection 2 of 15 makes this section retroactive, but as expressed in 1392290 Ontario Limited v. Corporation of the Town of Ajax, 2007:

[10] As noted, the common-law presumption against applying retroactive legislation does not apply in respect of retrospective legislation unless such legislation interferes with vested rights (see: Gustavson Drilling (1964) Ltd. v. M.N.R., 1975 CanLII 4 (SCC), [1977] 1 S.C.R. 271).[32]

Under the Conveyancing and Law of Property Act, a "conveyance" *"includes an assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property, and "convey" has a meaning corresponding with that of conveyance;*[33] and "land" "*includes messuages, tenements, hereditaments, whether corporeal or incorporeal, and any undivided share in land;*[34]*, "property" includes real and personal property, a debt, a thing in action, and any other right or interest;"*[35]

Without "clear title" and ownership, some legals and government advise that there is "title insurance". Does "title insurance" protect the property owner from claims? Section 112 of the Registry Act refers us to Section 113 of the same and it is for the readers benefit that the entire section has been included to display that the property is not protected.

"Expiry of claims

113. (1) A claim that is still in existence on the last day of the notice period expires at the end of that day unless a notice of claim has been registered. R.S.O. 1990, c. R.20, s. 113 (1).

Notice of claim

(2) A person having a claim or a person acting on that person's behalf, may register a notice of claim with respect to the land affected by the claim,

(a) at any time within the notice period for the claim; or

(b) at any time after the expiration of the notice period but before the registration of any conflicting claim of a purchaser in good faith for valuable consideration of the land. 2006, c. 34, s. 22 (4).

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[31] Conveyancing and Law of Property Act, RSO 1990

[32] 1392290 Ontario Limited v. Corporation of the Town of Ajax, 2007 CanLII 46699 (ON SC)

[33] Conveyancing and Law of Property Act, RSO 1990.

[34] Ibid.

[35] Ibid.

Renewal

(3) A notice of claim may be renewed from time to time by the registration of a notice of claim in accordance with subsection (2). R.S.O. 1990, c. R.20, s. 113 (3).

Effect of notice of claim

(4) Subject to subsection (7), when a notice of claim has been registered, the claim affects the land for the notice period of the notice of claim. R.S.O. 1990, c. R.20, s. 113 (4).

Exceptions

(5) This Part does not apply to,

(a) a claim,

(i) of the Crown reserved by letters patent,

(ii) of the Crown in unpatented land or in land for which letters patent have been issued, but which has reverted to the Crown by forfeiture or cancellation of letters patent, or in land that has otherwise reverted to the Crown,

(iii) of the Crown or a municipality in a public highway or lane,

(iv) of a person to an unregistered right of way, easement or other right that the person is openly enjoying and using;

(b) a claim arising under any Act; or

(c) a claim of a corporation authorized to construct or operate a railway, including a street railway or incline railway, in respect of lands acquired by the corporation after the 1st day of July, 1930, and,

(i)owned or used for the purposes of a right of way for railway lines, or

(ii)abutting such right of way. R.S.O. 1990, c. R.20, s. 113 (5); 2006, c. 34, s. 22 (5).

Freehold estates

(6) Subsection (1) does not apply to a claim to a freehold estate in land or an equity of redemption in land by a person continuously shown by the abstract index for the land as being so entitled for more than forty years as long as the person is so shown. R.S.O. 1990, c. R.20, s. 113 (6).

Claims not validated

(7) The registration of a notice of claim does not validate or extend a claim that is invalid or that has expired other than as a result of subsection (1). R.S.O. 1990, c. R.20, s. 113 (7).”[36]

The inclusion of this section is to show exemptions and the need, again for title searches. For example take section 113 (5) how is one to know if a claim made by the Crown is invalid or if the exemptions for the Crown exist, without documentation? According to 113 (5) the Crown has exemptions to place claims against the private property owner, whereas is would seem that the private individual does not have this option in regards to sections 112 through 113. Also, does this protect anyone that would have a claim? In 2009, there seemed to be problems with Electronic Registration of Liens, so much so that the Law Society of Upper Canada produced a paper on this topic. In that document, the

[36] Registry Act, RSO 1990.

statement “lawyers need not look to, nor request evidence behind registered compliance with law statements and should rely upon the provisions of the Land Titles Act as to the sufficiency of title once certified. “[37] Having read this statement it leads to the Land Titles Act, RSO 1990.

Examiner of surveys
14. (1) *There shall be an examiner of surveys whom the Deputy Minister shall appoint. 2000, c. 26, Sched. B, s. 12 (4).*
Duties
(3) The examiner of surveys shall work under the direction of the Director of Titles and shall perform such duties under this Act, the Boundaries Act, the Certification of Titles Act, the Condominium Act and the Registry Act as are required by the Director of Titles or otherwise required. R.S.O. 1990, c. L.5, s. 14 (3); 1998, c. 18, Sched. E, s. 110 (2); 2000, c. 26, Sched. B, s. 12 (6).

Unfortunately, for all involved, the Certification of Titles Act was revoked in 2009[38], the same year the Upper Canada Law Society presented their paper on Construction Liens and claims. And yet it is also part 71.1 of the Registry Act. Section 71.1 confirms “absolute and indefeasible title” and the certification of title belongs in the registry act to support complete title searches and claims.

“Certificate of title
71.1 A certificate of title that is registered in accordance with the Certification of Titles Act*, as that Act read immediately before subsection 2 (1) of Schedule 17 to the* Good Government Act, 2009 *came into force, is conclusive as of the day, hour and minute stated in the certificate that the title of the person named as owner of the land described in the certificate was absolute and indefeasible as regards the Crown and all persons whomsoever, subject only to the exceptions, limitations, qualifications, reservations, conditions, covenants, restrictions, charges, mortgages, liens and other encumbrances mentioned in the certificate. 2009, c. 33, Sched. 17, s. 12 (5).”*[39]

Does this leave everyone that is relying on the Land Titles Act and the Registry Act without supportive documentation? It would seem it would unless the property owner has preformed, for their own security, their own title searches. If the owner hasn’t there will be no documentation to support a title or any easements etc., pertaining to private property. Does this leave all lawyers in some form of violation? It may, based on the amount of newsletters that the LSUC have sent to their members, in regards to the new registry system and the

[37] Electronic Registration of Liens –Current Problems and “Workarounds”, Brendan D. Bowles, Glaholt LLP, p. 13
[38] Certification of Titles Act, RSO 1990.
[39] Registry Act, RSO 1990.

potential for fraud. Both the Land Titles Act and the Registry Act refer to the Land Registration Reform Act, RSO 1990.

Under the Land Registration Reform Act (LRRA) "document" includes an instrument as defined in section 1 of the *Registry Act*; ("document")[40], then under Section 1 of the Registry Act, the definition of "instrument" is:

> *"instrument" includes every instrument whereby title to land in Ontario may be transferred, disposed of, charged, encumbered or affected in any other way, and, without limiting the generality of the foregoing, includes any instrument mentioned in subsection 18 (6) and a Crown grant of Canada and of Ontario, a deed, conveyance, mortgage, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, release, discharge, agreement for the sale or purchase of land, caution under the* Estates Administration Act *or renewal or withdrawal thereof, municipal by-law, certificate of proceedings in any court, judgment or order of foreclosure and every other certificate of judgment or order of any court affecting any interest in or title to land, and a certificate of payment of taxes granted under the corporate seal of any municipality by the treasurer, a sheriff's and treasurer's deed of land sold by virtue of his or her office, a contract in writing, every order and proceeding in bankruptcy and insolvency, a plan of a survey or subdivision of land, and every notice, caution and other instrument registered in compliance with an Act of Canada or Ontario; ("acte")*[41]
>
> *land" means land, tenements, hereditaments and appurtenances and any estate or interest therein; ("bien-fonds")*[42]*,*
>
> *"transfer" means a conveyance of freehold or leasehold land and includes a deed and a transfer under the Land Titles Act, but does not include a lease or a charge; ("cession")*[43]

> *Transfer: implied covenants*
>
> ***5.*** *(1) A transfer in the prescribed form shall be deemed to include the following covenants and release by the transferor, for the transferor and the transferor's successors, to and with the transferee and persons deriving title under the transferee:*
>
> *Usual covenants and release*
>
> *1. In a transfer of freehold or leasehold land by the beneficial owner for valuable consideration, unless the transfer is expressed to be a quitclaim:*
>
> *i. That the transferor has the right to convey the land to the transferee.*
>
> *ii. That the transferee shall have quiet enjoyment of the land.*
>
> *iii. That the transferor or the transferor's successors and assigns will execute such further assurances of the land and do such other acts, at the transferee's expense, as may be reasonably required.*

[40] Land Registration Reform Act, RSO 1990.
[41] Registry Act, RSO 1990
[42] Land Registration Reform Act, RSO 1990.
[43] Ibid.

iv.That the transferor has not done, omitted or permitted anything whereby the land is or may be encumbered, except as the records of the land registry office disclose.
v.That the transferor releases to the transferee all the transferor's existing claims on the land, except as the transfer provides and the records of the land registry office disclose.
Section 7
Covenant re freehold
2. In a charge of freehold land by the beneficial owner, that the chargor has a good title in fee simple to the land, except as the records of the land registry office disclose.[44]

Please note that the word "heir/heirs" has been removed. To the casual observer this may not mean very much, but in regards to property this is significant.

"*FREEHOLD, such an interest in lands …as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him,…Such persons are called heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor's life, it is called a freehold of inheritance, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: 1. Immobility, that is, the property must be either land, or some interest issuing out of or annexed to land; and, 2, a sufficient legal indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold."*[45]

It begs to question, if there is only a 40-year search, then where will it show any of the covenants, encumbrances, easements, etc., or "good title"? As pointed out, the 40-year search is not sufficient as expressed in "Comments about Underlying Crown Interest, Garth C. Gordon, Q.C., April 18, 2005."

Under the LRRA, Section 21 expresses that:

No writing or signature required
21. Despite section 2 of the Statute of Frauds Act, section 9 of the Conveyancing and Law of Property Act or a provision in any other statute or any rule of law, an electronic document that creates, transfers or otherwise disposes of an estate or interest in land is not required to be in writing or to be signed by the parties and has the same effect for all purposes as a document that is in writing and is signed by the parties. 1994, c. 27, s. 85 (3).[46]

[44] Ibid.
[45] Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, p. 268
[46] Land Registration Reform Act..

According to the LRRA, we are to ignore "Section 2 of the Statute of Frauds Act, Section 9 of Conveyancing and Law of Property Act or a provision in any other statute or any rule of law"[47]

Statute of Frauds

R.S.O. 1990, CHAPTER S.19

How leases or estates of freehold, etc., to be granted or surrendered

2. *Subject to section 9 of the Conveyancing and Law of Property Act, no lease, estate or interest, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning, granting, or surrendering the same, or the party's agent thereunto lawfully authorized by writing or by act or operation of law. R.S.O. 1990, c. S.19, s. 2.*

There is a reason for the Statute of Frauds and that is for the protection of property owners, the real estate industry, the legal profession and the tax payers of the province. In the Toronto Star Saturday January 7, 2012 an article by Tony VanAlphen titled "Mortgage scam probed in Toronto house flips" is reason enough for the support of the Statute of Frauds, considering on page A17 the article expresses:

"A real estate expert, Jerry Udell, reviewed the complex and convoluted deals for the Law Society of Upper Canada in a subsequent disciplinary case. He concluded that all of them pointed to one thing – mortgage fraud. And a lot of it.

Mortgage fraud remains a serious problem in the real estate industry. In the U.S. it undermined the housing market during the bubble years of 2004-2005 and brought it crashing down… In the case of the seven Junction houses, police never laid charges or opened a criminal investigation.

Except for a one-year suspension for professional misconduct against lawyer… by a law society panel recently,…

""We know, based on information from the law society, the potential of more victims in this alleged scheme," Fields noted. "If people think they were criminally defrauded, we strongly suggest they contact us."

In addition to the suspension and an order for $30,000.00 in costs, the law society rapped Hatcher with a reprimand and $2,000.00 in further expenses for failing to co-operate in the investigation of his conduct."[48]

This is merely one case of mortgage fraud. Time and again we hear of innocent property owners being victims of fraud and yet there seems to be a movement away from some form of protection, like the protection one would receive with complete title searches, complete registrations of property

[47] Ibid.

[48] Toronto Star, Tony VanAlphen, "Mortgage scam probed in Toronto house flips", Jan 7, 2012

transactions, signatures, witnesses, etc. Prior to the LRRA there were face to face encounters at Land Registry Offices and an astute Registrar may have picked up on the above transactions a lot sooner, whereas now there are no such checks and balances. Where is the oversight to ensure legislation isn't producing an environment conducive of fraud? Also, if there had been deeds for the transfers, again there would have some form of signal that something may be amiss, after all a deed, to be a complete transfer, must be signed, sealed and delivered to the purchaser upon completion of the transaction.

As noted with the Statute of Frauds, section 2, this section deals with deeds and the need for them. So does section 9 of the Conveyancing and Law of Property Act.

Conveyancing and Law of Property Act

R.S.O. 1990, CHAPTER C.34

Requirement of deed for certain interests

9. *A partition of land, an exchange of land, an assignment of a chattel interest in land, and a surrender in writing of land not being an interest that might by law have been created without writing, are void at law, unless made by deed. R.S.O. 1990, c. C.34, s. 9.*

We now know to transfer property there must be a deed signed, sealed, and delivered. If there is a removal of these actions, there is no transference under common law. Is this legislation placing us on the edge of a housing market crash? Only time will tell, but if the frauds continue we may very well follow in the same predicament as our Southern neighbours.

The LRRA continues to state that only Electronic formats are to be accepted and that no witnesses are needed, no signatures required, no affidavits to be signed. Under the LRRA section 22 it states that "Electronic format prevails" [49] and that the electronic documents/copies are to prevail over "written" documents. The Act proceeds under section 24 stating that even in regards to supporting evidence, including affidavits[50], that there need be nothing in writing. Where is the protection for any property owner? Where does that leave the property owner, in regards to fraud, mistakes in registration, claims or tort action?

Unfortunately, the LRRA has been upheld in the courts, but at what cost? This places government, the legal profession and the confidence in the courts and/or judicial system in jeopardy. The reason there is a Statute of Fraud and that documents are on paper, signed and witnessed is because this is the basis of all contracts. This is to support that contracts cannot be changed without all parties agreement and signatures attached. Paper documents must be the prevalent documents and must be supported in all court action.

From the Upper Canada Law Society paper "Electronic Registration of Liens":

[49] Land Registration Reform Act..
[50] Ibid,..

"Assuming that Petroff is correct in saying that the oath need not be administered at all, it is interesting to consider the provisions providing for cross-examination in the lien context. Section 40 of the CLA provides for the cross-examination of a claim for lien:

40. (1) Any person who has verified a claim for lien that has been preserved is liable to be cross-examined without an order on the claim for lien at any time, irrespective of whether an action has been commenced. The existence of s. 40(1) begs the question: how can you cross-examine someone who has not sworn an affidavit? And, if no affidavit of verification is sworn, a valuable safeguard of title is lost. The reality is that a conflict exists between s. 36(4) of the CLA and the requirements of s.24 of the LRRA. This conflict and resulting uncertainty must be resolved. The affidavit of verification is not a mere formality, it is a fundamental component of the construction lien designed to help prevent abuse of this powerful remedy of pre-judgment execution."[51]

It is curious that instead of recommending that the LRRA be revoked as it would seem to be repugnant to a number of other acts, the Law Society of Upper Canada and the Ontario Bar Association (OBA) recommend amendments to the Construction Lien Act (CLA) and an addition in the LRRA in regards to only the CLA. This is merely one act and one conflict of legislation, without the mention of the Statute of Fraud Act or the Conveyancing and Property Law Act, etc. There could be the perception that the LRRA is, for want of better wording, allowing fraud to be "acceptable". If there aren't signed documents to support titles or witness signatures supporting the transfer of property, and if there are to be no affidavits, fraud is open to anyone that wishes to perpetrate the act.

Fraud: how concerned should we be? There should be great concern about fraud taking place with the dominance of electronic transfer of property, particularly, when it involves the LRRA, the current procedures, and certain statements of what "prevails" in this legislation. The Upper Canada Law Society (UCLS) has a number of documents expressing their concern, in regards to fraud, and yet they still support this legislation. As example of their concern please note the following:

The Law Society of Upper Canada, July 2004. Practice Tips. Recognizing Fraud in Real Estate Transactions.

…The following is a list of some possible indicators of fraud in residential real estate transactions.

- *The client has a copy of his or her Transfer/Deed but does not have any other documents relating to the property (purchase documents or a survey).*
- *The search of title indicates recent transfers of the property at higher prices and the same lawyer acted on each of the transfers;*

[51] Electronic Registration of Liens –Current Problems and "Workarounds", Brendan D. Bowles, Glaholt LLP, p. 20 and 21

- *The agreement of purchase and sale contains no hand written amendments*
- *The purchase price is much higher than the purchase price of recent transfers of the same property*
- *The title indicates a pattern of mortgages being registered and discharged shortly afterwards;*
- *The name of the client in the identification produced by the client does not match the name of the client in other documents in the transaction;*
- *The client instructs the lawyer that is unnecessary to prepare written directions authorizing the payment of funds to third parties;*
- *A new client (facilitator) refers a number of real estate files to the lawyer and the client although not a party to the transaction controls the transaction (e.g. gives instructions to the lawyer, arranges for the parties to the transaction to sign documents etc.) and directs the parties in the transaction;*
- *The Land Transfer Tax affidavit shows the higher consideration. The Transfer/Deed of Land signed by the original vendor containing a lower consideration is manually altered prior to closing to match the consideration set out in the Land Transfer Tax affidavit*

Corporations

- *The original minute books for the company are not available or incomplete;*
- *The minute books contain irregularities such as the lack of the "pink-stamped" articles of incorporation.*[52]

The majority of "warning" signs that a fraud may be in action is supplied by "written" supportive documents. This flies in the face of the LRRA, as none of these types of "red flags" are available through a strictly electronic basis. This also supports the Statute of Frauds Act that without signed documents the transfer cannot happen, ergo the paper documents and the documents that support the signed document must prevail over electronic copies. In 2007 the UCLS released more on real estate fraud.

"The Ontario government is in the process of implementing changes in real estate practice arising from the passage of Bill 152, responding to widespread consumer concern following the Lawrence v. Maple Trust and Household Realty v. Chan cases. The government has been particularly concerned about title fraud and is proposing a range of fraud-prevention and consumer protection measures. The most significant changes for real estate practitioners involve the registration of transfers in the electronic registration system.

- *As lawyers will be required to sign transfers for completeness, only lawyers will be able to register transfers.*

[52] The Law Society of Upper Canada, July 2004, Practice Tips: Recognizing Fraud in Real Estate Transactions.

- *Every registration of a transfer will involve two lawyers, one for the transferor and one for the transferee.*
- *There will be very few exceptions to this two-lawyer requirement. The exceptions are still under consideration, but as a matter of principle will likely only involve transfers where the transferor and the transferee are the same party.*
  As a part of this proposal, the government is seeking an endorsement to the insurance policies of real estate practitioners that would apply in cases of fraud by the lawyer. LAWPRO has agreed to provide this coverage and proposes that the cost of the coverage be kept to a minimum (about $500 per year), by excluding persons in certain categories - this would include,
- *persons who are in bankruptcy*
- *persons who have been convicted or disciplined in connection with real estate fraud, and*
- *those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or an undertaking not to practise real estate.*
  It is contemplated that these changes will be made over the course of this year. More detailed information of these and other changes being contemplated by the government may be found at http://www.lsuc.on.ca/media/realestatelaw_may0907.pdf (pdf).[53]

And again, in December, 2008 the UCLS released a fact sheet titled 'What the Law Soceity is doing to protect the public", on page 2 of this sheet is the "Amendments to the Rules of Professional Conduct and Law Society By-Laws".

- *Client Identification Requirements*
  [By-Law 7.1 Sections 20-25]
  Amendments have been made to By-Law 7.1, effective December 31, 2008, requiring lawyers to identify and verify the identity of clients in accordance with the By-Law.
- *Two Lawyer Rule For Transfers of Title*
  [Rule 2.04.1]
  The Rule, effective, March 31, 2008, prohibits an individual lawyer from acting for both the transferor and the transferee with respect to the transfer of title to real property exdept in certain limited, defined circumstances.
- *Lawyer Assumes Complete Professional Responsibility For Registered Documents*
  [Subrule 5.01(6)]

[53] The Law Society of Upper Canada**,** May 2007 *e*-Bulletin, http://rc.lsuc.on.ca/jsp/eBulletin/eBulletinMay2007.jsp , as of January 3, 2012.

New Rule 5.01(6) which became effective March 31, 2008 provides that a lawyer who electronically signs a document using the e-reg ™ system assumes complete professional responsibility for the document.

- *Reporting on Mortgage Transactions [Subrules 2.02(14) and (15)]*
  These new Rules came into effect in February 2007 and require lawyers who act for a lender, where the loan is secured by a mortgage on real property, to provide a final report on the transaction together with the duplicate registered mortgage to the lender within 60 days of the registration of the mortgage or within such other period as instructed by the lender.
- *Written Disclosure to the Borrower and the Lender on Joint Retainers [Subrule 2.04(6.1)]*
  This rule also came into effect in February 2007 and requires a lawyer who acts for both the borrower and a lender in a mortgage or loan transaction to disclose to both of these clients, in writing, before the advance or release of mortgage or loan funds, all material information that is revelant to the transaction.
- *Cash Transactions [By-Law 9, Section 3-6]*
  By-Law 9 prohibits lawyers from receiving cash from a person in respect of any one client file in an aggregate amount of $7,500.00 or more except in certain limited defined circumstances. This requirement was introduced in 2005 to counter money laundering.

It would seem that the effects of the LRRA are still being felt in 2011.

Bob Driscoll ()

TeraNet Registry office vulnerability shown in Law Society finding : Oklahoma flips(most not condo) *2011/10/08 11:40*

Given the alleged Channel Property Bogus Borrowing By-laws accusations (unproven yet), Directors should take note of the vulnerability of their condo corporations to one aspect in the recent finding of incompetence and professional misconduct against an elderly Hogtown lawyer.
(Most of the properties in the held "Oklahoma mortgage frauds" are apparently NOT condo, but what happens eg about borrowing by-laws - when electronic registration gets into the wrong hands ? All taxpayers and consumers will be paying for these frauds indirectly too.)
Law Society of Upper Canada v. Edward Lawrence Stone, 2011 ONLSHP 159 (CanLII)
http://www.canlii.org/eliisa/highlight.do?text=condominium+corporation+&language=en&searchTitle=Ontario&path=/en/on/onlshp/doc/2011/2011onlshp159/2011onlshp159.html
Accusations include that(the lawyer Stone)"(d)... abandoned control of his personalized, specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg"), and he abandoned control of his personalized e-reg password;
(e) he approved the electronic registration of title documents by a non-

lawyer; "
Further :
[175] In cross-examination, he admitted that the 12 transactions were“Oklahomas” or “flips”. The Lawyer said that had he known that (another lawyer) Steinberg was perpetuating these frauds, he would have stopped doing business with him.
[182] He stated that he was not familiar with the Teranet system ...
[184] He allowed the clerk XXX(Stone's realty conveyancing specialist) to use his Teranet disc. He did not attend the CLE on Teranet program and he was not aware that the clerk should have her own disc and password. "
(...[160] He stated that XXX worked on the real estate files and was very possessive of her files. ...and he states that he has had three dishonest assistants in a row.
[161] The Lawyer stated that XXX reluctantly provided information regarding a file and her office door was locked.")
However rare this is, how safe is your condo's legal title as to bogus by-laws etc?

The administrator has disabled public write access.

Richard Forster ()
Crooks With A Password *2011/10/08 13:48*
Bob - you know this will be a key as the cases unfold.
The lawyer that registered the by-laws has to be a person of interest. That shoe has not dropped, but it will be on record.
The owners or board should be asking that question, I would think.
The banks and the law-makers learned that often its an inside job with outside helpers.
Richard

The administrator has disabled public write access.

Bob Driscoll ()
TeraNet Registry office vulnerability shown in Law Society finding : Oklahoma flips(most not condo) *2011/10/08 15:49*
Anyone with TeraNet Access and account possibly (?) may be able to quickly breach the contemporary digital Registry Office security if conspirators have put together something like what is alleged about bogus borrowing by-laws. I wonder if such originated with a TeraNet account at a lawfirm/conveyancer TOTALLY (?) unrelated to any of the targetted condos or to the victim lenders ?
Before digitization and suspected de-skilling of registry/ Service Ontario staff, conventional Oklahoma frauds would run afoul of honest realtors, appraisers, lawyers, and would get some degree of face to face scrutiny in the Registry office itself. They were thought to have to be "group efforts". Maybe not so with bogus borrowing by-laws if a perpetrator has hands on the corporate seal and is a known PMC ?

The administrator has disabled public write access

Richard Forster ()
Re:TeraNet Registry office vulnerability shown in Law Society finding : Oklahoma flips(most not condo) *2011/10/08 16:11*
We wait for that shoe to drop!
Richard
The administrator has disabled public write access. [54]

And what security is there with a computerized system? Time and time again, there are announcements that sensitive information has been hacked and/or manipulated. Insisting that the computerized documents prevail leaves everyone at risk, including the courts, lawyers, government and the property owners. Below expresses what Gary McKinnon accomplished, on his own and it is still in the courts, according to Wikipedia.

"McKinnon is accused of hacking into 97 United States military and NASA computers over a 13-month period between February 2001 and March 2002, using the name 'Solo'.
The US authorities claim he deleted critical files from operating systems, which shut down the US Army's Military District of Washington network of 2,000 computers for 24 hours, as well as deleting US Navy Weapons logs, rendering a naval base's network of 300 computers inoperable after the September 11th terrorist attacks. McKinnon is also accused of copying data, account files and passwords onto his own computer."[55]

"Effects of Computer Hacking
Computer hacking is a breach of computer security. It can expose sensitive user data and risk user privacy. Hacking activities expose confidential user information like personal details, social security numbers, credit card numbers, bank account data and personal photographs. User information, in the hands of computer hackers, makes it vulnerable to illegitimate use and manipulation.
Hackers may even delete sensitive information on gaining access to it. Deletion or manipulation of sensitive data with intent to achieve personal gain is another effect of computer hacking. A user whose computer has been hacked is at the risk of losing all the data stored on his/her computer. Manipulation of sensitive user data is a grave consequence of hacking."[56]

In support of deeds and The Statute of Frauds, the statute was enacted in 1677. As expressed in Section 2 of the Statute of Frauds "unless it be by deed or note in writing signed by the party so assigning, granting, or surrendering the same, or the party's agent thereunto lawfully authorized by writing or by act or operation of law. R.S.O. 1990, c. S.19, s. 2."[57] unless it is by deed or note in

38. http://ontario.cafcor.org/index.php?option=com_fireboard&Itemid=30&func=view&id=12912&catid=9 as of December 28, 2011.
[55] http://en.wikipedia.org/wiki/Gary_McKinnon as of January 4, 2012
[56] http://www.buzzle.com/articles/what-are-the-effects-of-computer-hacking.html, as of January 4, 2012
[57] Statute of Frauds, RSO 1990

writing signed by the party granting, the entire transfer is not enforceable. To understand the importance of this one must first fully understand what a "deed" is and why signatures and having it sealed and delivered is so important. What is a deed?

> *A deed is an instrument on parchment or paper, comprehending a contract of bargain between party and party, for the matters therein contained. It is called a deed (in Latin, "Factum"), because it is the most solemn and authentic act that a man can possibly perform relating to the disposition of his property; a man, therefore, is always estopped by his own deed; he is not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. The following requisites must be observed in preparation of deeds:--There must be persons able to contract and be contracted with, for the purposes intended by the deed. There must be a thing to be contracted for. The deed must be founded upon a good or valuable consideration;…, money or the like, which is an equivalent for the grant, and, therefore, founded in motives of justice. The deed must be written, or printed, to express the contents…it must be either upon paper or parchment. This is in conformity with the Statute of Frauds (29 Car. II., c.3) which enacts, "that no lease, estate, or interest in lands, tenements, or hereditaments, made by livery or seisin, or by parol only, shall be looked upon as of greater force than a lease or estate at will; nor shall any assignment, grant or surrender of any instrument in any freehold hereditaments be valid, unless in both cases the same be put into writing, and signed by the party granting or his agent, lawfully authorized in writing." A deed must always have the regular stamps, imposed on it by the several statutes for the increase of the public revenue, else it cannot be given in evidence. …: -- 1st, those who are to grant, assign, or otherwise convey any estate or interest in the premises (and of these, the legal estate in fee before the equitable estate; and parties in whom the largest quantity of estate, legal or equitable, vests, to precede whose who are entitled to lesser estates or interest). 2ndly, Parties not having any estate or interest in the premises (as mere consenting parties, whose consent, however, is necessary, convenanters to produce title deeds, or the like). 3rdly, Those who are to take under the deed, and of these, such as take the ownership, before those who are only interested as trustees. And, lastly, persons who neither take nor receive, but are merely inserted to fix them with notice of the deed, as legateers, creditors, trustees, or executors under will. The premises also contain the recitals (if any) of such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the present transaction is founded, also the consideration upon which the deed is made, then follows the certainty of the grantor, grantee, and thing granted… Then follow the terms of stipulation (if any) upon which the grant is made, as in leases, the reddendum, or reservation of rent; another of the terms upon which a grant can be made is a condition, which is a clause of contingency, upon the happening of which, the estate granted may be*

defeated and determined. Then come the covenants or conventions, which are clauses of agreement contained in the deed, whereby either party may stipulate for the truth of certain facts, or may bind himself to give or perform something to the other. A covenant being part of a deed, is subject to the general rules for exposition of deeds, as, 1st, to be always taken most strongly against the covenantor, and most in advantage of the covenantee; 2ndly, to be taken according to the intent of the parties; 3rdly, to be construed, that the thing may be valid rather than perish; 4thly, when no time is limited for its performance, it must be done in a reasonable time. Then comes the conclusion, mentioning the time and execution of the deed, …A deed, however, is good if it have not date, provided the real date of its delivery can be proved. Dates were introduced in the reigns of Edwd. II. and III., and it is always safe to add them. …The deed must, since the 54 Geo. III., c. 168, be signed, sealed and delivered by the parties themselves, or their certain attorneys. A deed takes effect only from its delivery, for if the date of the deed be false or impossible, the delivery ascertains the time of it. A delivery may be either absolute, i.e., to the party or grantee himself, or to a third person, to hold until the grantee perform certain conditions, in which case it is delivered as an escrow, i.e., as a scrowl or writing which is not to take effect as a deed till the conditions be performed, and then it is a deed to all intents and purposes. The last requisite is the attestation or execution of it in the presence of witnesses; this is practised rather for preserving the evidence than for constituting the essence of the deed.

It follows, than, that a deed is void, ab initio, if it want either proper parties –a proper subject – a good or valuable consideration – writing or printing on paper or parchment, duly stamped – sufficient and legal words, properly disposed – reading, if desired, before execution, or signing, sealing or delivery.[58]

"C) Deed??

After coming to the conclusion that the only safe way to transfer property in land in the Province of Ontario is by deed of grant, it might be helpful to know what a deed is. In short, a deed is a thing. This thing is usually a document. The document must express a present intention to transfer property and must have been sealed and delivered.

*A **seal** is a thing affixed to the document that is alleged to be a deed. This thing is affixed with the intention of formalizing some process. So a seal is any substance attached to a document with the intention of formalizing or authenticating the process. Think pledges signed and sealed in blood. Today the intent to formalize is conventionally indicated by affixing a red paper dot, purchasable in large quantities in office supply stores.*

*A person must also prove **delivery** to prove deed. The only fact that will prove delivery is a transfer of possession to a person who is not the agent of the person attempting to transfer the property in land. An interesting case on this point is Re Sammon (1979) 94 D.L.R. (3d) 594 (Ont. C.A.)*

*A **grant** is a series of words written on or contained in a deed.*

[58] Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, pg. 166-167

The Statute of Frauds enacted in England in 1677 provides that certain types of contracts and other transactions must be in writing to be enforceable. By this Statute, in order to transfer property in land, the deed must be signed by the transferor. An unsigned deed is still a deed but transfer of property could not be achieved using an unsigned deed." [59]

Understanding that the aforementioned was a very long explanation, it is imperative that the reader understand the implications of the removal of deeds, signatures, witnesses, affidavits, etc., during the process of property transactions. That is also why Section 2 of the Statute of Frauds and Section 9 of the Conveyancing and Law of Property Act is also imperative, it specifies that unless made by deed, any interest transferred is void unless by deed. Ergo if the LRRA is allowed to stand, as written, there cannot be any legal transfer of property, in regards to estates in land. This will have serious ramifications on the economic stability of the Province, the Nation and it will have horrific implications for property ownership.

There is the notion that the Province can guarantee "title". Take for example the Honourable Norm Sterling, Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001*: "You have the province standing behind the title, so why do you need somebody else ensuring that particular title?"* The Province cannot, "stand behind the title", as it has never had the authority. It wasn't the "Province" that granted/patented or ever owned the land; it was the Crown. I refer you to Sir Charles James Fox's statement from above: *"But I firmly believe, as far as I am informed, that no man can have a better title to his estate, that the very title which the crown has vested…"*[60] Taking into consideration that once the Crown has alienated its title, including the Crown domain, the title is vested in each successive owner, ergo the province and the Crown, once the title has been alienated *"has no right, title or interest in and to the lands described… "*[61]*.* This means that the Crown or the Province has no right, title or interest in and to the estates of the patentees, their heirs and/or assigns. The Province cannot guarantee something it has not and does not own and the Province cannot legally destroy other's documentation.

"Title, a general head, comprising particulars; an appellation of honor; a claim of right. It is the means whereby an owner possesses his property justly. It is the union of three degrees, viz.: actual possession, right of possession, and right of property, which forms a complete title to lands, tenements and hereditaments. There are at least three species of doubtful titles: 1st, where the title is doubtful by reason of some uncertainty in the law itself; 2ndly, where the doubt is as to the application of some settled principle or rule of law; and 3rdly, where a matter of fact upon which a title

[59] University of Western Ontario http://instruct.uwo.ca/law/425-002/LAND/Transfer.htm as of January 3, 2012
[60] The Speeches of The Right Honourable Charles James Fox in the House of Commons Vol. I, p. 7-8.
[61] Ontario (Attorney General) v. Rowntree Beach Assn., 1994, Conclusion, p.123

depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved."[62]

The destruction of documents must stop and full title searches must be performed for the security of the people. Section 7 of the 1982 Charter expresses that a person has the right to "life , liberty and security of person". A title is a right to security of person, ergo it would seem that the destruction of supportive documents and the removal of a "persons title" in and to their estate is a voilation of section 7 of the Charter and a violation of an absolute right under common law. No entity can guarantee another's title.

Since the inception of POLARIS and supporting legislation there have been some major concerns brought to the attention of government, in regards to the electronic land registration system. In July of 1991 Peter Fallis, a lawyer from Grey County, Delton Becker, Reeve of Bentinck Township and former warden of Grey county, Harry Whale, Ontario land surveyor from the town of Hanover, attended committee meetings in regards to the Closure of Land Registry Offices. Even though this committee meeting was to determine any closures of registry offices, the Ministry had executed the removal of the land registry documents a day or so prior to the committee meeting. Art Daniels, assistant deputy minister, spoke on behalf of the Ministry and explained that since 1987 "*The removal of instruments from prior to 1948 is a long-standing issue with the ministry*," and that "*some will be destroyed, a lot of the discharges and such…about which instruments prior to 1948 would be retained, which <u>would be retained only on microfilm</u> and which would be retained in hard copy."* The action of the Ministry was according to the Honourable Bob Runciman "*<u>in contempt of the committee</u>*"[63] Mr. Fallis expresses why, he feels, certain circumstances have arisen.

You have a young minister … She has been in there a couple of months and she has staff in whom she has to have confidence to rely upon. They have been working on the system, and I do not think it is NDP policy, I do not think it is Conservative policy, nor is it Liberal policy; <u>it has been bureaucratic policy that has been focused</u>. …they have taken a green minister and said, "We can save you a million dollars a year." If I were a minister… my reaction would be: Where do I sign?
…, she stood behind her staff and relied on her staff to provide her with accurate information. The same information that has been withheld from Durham and from Arthur and from all the other registries, I suggest<u>, has been withheld by Mr Daniels and Ms Kirsh from that minister.</u>
I would like to go through the facts that have been misrepresented to the minister and, …, in fact, to you."[64]

[62] Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, p. 664
[63] CLOSURE OF LAND REGISTRY OFFICES, Resuming consideration of the designated matter pursuant to standing order 123, relating to the closure of 14 land registry offices. July 30, 1991 1003.
[64] Ibid. at 1040-1050

In 1993, the electronic land registration company was under scrutiny again. The Honourable David Tilson explains his understanding of this system and his opening statement; in regards to the history of the past registration, speaks volumes to what is being taken away from the people.

> ***Mr David Tilson (Dufferin-Peel):*** *For over 150 years in Ontario, these systems have protected our rights in property. … in the 1970s that the Ontario government recommended major reforms to improve the recording service and access to land records and the distribution of land records. Finally, it was proposed by the then Conservative government that there be a program called Polaris, which had the following objectives:*
> *- convert all properties to a land title system*
> *-to eliminate the extensive 40-year search requirement;*
> *-to create a province-wide map index to locate each known property in Ontario;*
> *-to automate the land records system to allow searching by computers*
> *-to increase the use of microfilm to reduce document storage requirements.*
> *The computerization of this system, was favoured by all. All three parties,… Where the difficulty occurred, it was decided by the subsequent Liberal government to enter into a private partnership arrangement and this occurred, …in 1988.* [65]
> *"With Teranet, data on every property and land owner in Ontario is for sale.* [66]

In 1994 there were more concerns about Teranet in the Legislative Assembly.

December 8, 1994 "Supply Act, 1994".

> *Mr. Tilson: …, but the difficulty is that this policy has developed into a project known as Teranet, which has resulted in the remapping of the province of Ontario, a joint venture or partnership with a company called Real/Data, which is a partner with the province of Ontario, and it is called the company of Teranet.*
> *I have asked questions to the Minister of Consumer and Commercial Relations throughout the whole issue of this thing. I think many of us are concerned about our private rights being trampled on,* [67]

A number of elected officials are from the legal profession and it is curious that they would not question such legislation or the need to change something that "For over 150 years in Ontario, these systems have protected our rights in property." [68] They openly admit that prior to POLARIS/Teranet the way of conveying land/property had been functioning for the benefit of the people. For

[65] Official Records, April 29, 1993, Ontario Legislative Assembly. Teranet Information Disclosure Act, 1993. at 1050
[66] Ibid.
[67] Legislative Assembly, Dec. 8, 1994, Mr. Tilson at 2000.
[68] Honourable David Tilson, Legislative Assembly, December. 8, 1994

example, the Honourable Norm Sterling, Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001:

> *"The first and the oldest type of system that we had in Ontario was the land registry system, which essentially was a system inherited in its form, its rules and its law from Britain. That system was developed over an 800-year period, so when we started to set up our land registry offices we adopted a lot of the rules, the rights of easements, the rights of licences, the rights of fee simple, the rights of fee in tail, all those kinds of names that were common in the land registry system from Britain.*
> *The land registry system was basically a system of registration which allowed a great deal of flexibility with what you could do with land. That was sort of the beauty of the system, that you could use land and grant rights and partial rights, leasehold rights, easement rights, in a whole number of ways that therefore allowed a great deal of flexibility for the landowner to share his or her property rights with others."*[69]

Peter Fallis, a lawyer from Grey County expresses, in reference to the electronic land registration system POLARIS/Teranet, that "*This program will take 10 years to implement and has been on the road for 10 years, and its purpose, I submit, is to reinvent the wheel."*[70] Mr. Fallis, being a working lawyer, supported the old registration system and from his statements didn't feel that a new system was necessary. Being from the legal profession one would think Mr. Fallis would know how the system worked. And as Mr. Sterling had not practiced law, since becoming elected[71], he may have forgotten the ramification of these types of changes.

CONCLUSION

As expressed in the opening paragraphs, there has always been a need to know who owns what. The Roman's did it, William the Conqueror did it and throughout history the Crown needed these lists, and so have the people. It enabled people to know of Crown reservations, exceptions, conditions, easements, etc. It supported the Nullum Tempus Act, 1769 (the 60-year adverse possession/limitation of the Crown Prerogative) and the rights of the private property owner. The root of title is the Letters Patent and/or Crown Grants and they are defined as "the writing of the sovereign, sealed with the great seal", open for all to see the property owner's authority, and they are to be upheld as "no man can have a better title to his estate, than the very title which the crown

[69] Honourable Norm Sterling, Min. of Consumer and Business Services. Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001 - Special Report, Provincial Auditor
[70] CLOSURE OF LAND REGISTRY OFFICES, Resuming consideration of the designated matter pursuant to standing order 123, relating to the closure of 14 land registry offices. July 30, 1991
[71] Honourable Norm Sterling, Min. of Consumer and Business Services. Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001 - Special Report, Provincial Auditor

has vested."[72] These documents are the only way in which the Crown can alienate Crown domain to some other entity, creating an entirely separate domain or estate in land and chattels.

Government, in the passing of legislation, has tried to remove "property rights" through the removal of the 60-year limitation, down to a title search period of 40 years. This was not sufficient to remove the Common law rights, the need for full disclosure or the need/desire for a clear title and knowledge of any easements, conditions, covenants that may be running with the land/property and title. After the implementation of POLARIS, it would seem the provincial corporation[73] had a need to implement ownership of all property with the complete elimination of title and title searches. This left the province granting the land registry system to a private publicly traded corporation. Government has also expressed *"You have the Province standing behind the title, so why do you need somebody else ensuring that particular title*"[74]. Again, the Province cannot guarantee something that it has never owned. This leaves the process in a quagmire and it would seem legally unsupported. Knowing that the Province cannot guarantee something that is has never owned, it follows that it doesn't have the right to destroy documents that support other's titles. Title is defined by the following:

> *"Title, a general head, comprising particulars; an appellation of honor; a claim of right. It is the means whereby an owner possesses his property justly. It is the union of three degrees, viz.: actual possession, right of possession, and right of property, which forms a complete title to lands, tenements and hereditaments. There are at least three species of doubtful titles: 1st, where the title is doubtful by reason of some uncertainty in the law itself; 2ndly, where the doubt is as to the application of some settled principle or rule of law; and 3rdly, where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved."*[75]

This begs the question: why not revoke such a problematic piece of legislation as the Land Registration Reform Act? It undermines the "act" of contracting in a number of ways, including the requirement that only lawyers can register property transfers. It abrogates the rights of the conveyor and conveyee, it undermines the confidence of the courts, it is repugnant to a number of pieces of legislation and is in complete conflict with superior acts, including the Constitution. It would seem to allow fraud to be acceptable and has created legislated monopolies[76]. In regards to the 40-year search, this legislation could

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[72] The Speeches of The Right Honourable Charles James Fox in the House of Commons Vol. I, p. 7-8.
[73] "We now come to the provisions respecting the provincial constitutions. They are specific; the others are general. The effect, therefore, was to create each province a body politic—a quasi corporation," Mercer v. Attorney General for Ontario, 5 S.C.R. 538, at [542]
[74] Honourable Norm Sterling, Committee Transcripts: Standing Committee on Public Accounts - February 26, 2001
[75] Dictionary of Jurispurdence, J.J.S. Wharton, Esq., 1847-48, p. 664
[76] Richard Thomson, Historical Essay of the Magna Charta, for Lord Spencer II. "Secondly, the Chapter declares, that none "shall be disseised of his free tenement, his liberties, or his free customs;" meaning that

be construed as merely a stepping-stone to the elimination of all clear titles with no information or support for easements, conditions, covenants, etc., and the LRRA has been enacted to eventually to, according to the Honourable David Tilson, "…convert all properties to a land title system to eliminate the extensive 40-year search requirement."[77] It would also seem that this legislation is the support mechanism for two companies. These corporations being; the Province of Ontario and the Land Registry Company, Teranet.

This report should be read, in conjunction with **"**TERANET/POLARIS: THE PROBLEMS, THE HISTORY AND THE PRESENT.**"**

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the King nor others shall not seize upon any of his possessions, and that a man shall not be put from his livelihood without answer. Against this law it seems even a Royal Patent could not stand; for when Henry VI. granted to the Company of Dyers in London, the privilege of searching for, and seizing upon any cloth dyed with logwood, it was decided that the forfeiture was contrary to the Law, as it cannot grow out of Letters Patent. The word Liberties has several significations; as the Laws of the realm, privileges bestowed by the King, and the natural freedom possessed by the subjects of England, for which cause monopolies in general are against the enactments of the Great Charter."

[77] Legislative Assembly, Official Records April 29, 1993, Teranet Information Disclosure Act, at 1000.

GLOSSARY

"Crown Lands": -Seventhly. The words "Crown Lands," shall be held to mean and include all Crown Lands, Ordnance Lands (transferred to the Province), School Lands, Clergy Lands, or land of the Jesuits' Estates, Crown Domain or Seigniory of Lauzon, which have not been alienated by the Crown; (An Act respecting Gold Mines, 30th June, 1864.)

"Eminent Domain: – So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men to do this without consent of the owner of the land…Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights…"[78]

Fee-Simple: -All lands granted by the Crown in fee simple are granted in free and common socage – freehold tenure. A fee simple may be transferred without license or fine and the new owner hold from the Crown in the same manner as the previous tenant held from the Crown.[79] The largest interest in land known to our law, for it is the entire property therein. It is created by deeds by the word "heirs," without naming what sort of heirs, so that the estate will descend to any heirs, whether male or female, lineal or collateral, generally, absolutely, and simply. In order to convey an estate in fee-simple to a corporation, the word "successors" should be used instead of "heirs".[80]

Freehold and Copyhold tenures were severally derived in this way. From the military tenures, which were parceled out among the martial followers of the chief, and dedicated to arms and ambition, and also from the free socage tenures, have proceeded the freeholds,…while from the villenage tenures, which attached the tenants to the soil, rather by the chain of slavery that by the bond of tenure, the copyholds were derived. The main distinction between these two species of tenure is this:-- Freehold property is held independently while copyhold is held by the will of some superior lord, which will is regulated according to custom.[81]

Freehold: -such an interest in lands of "frank-tenement" as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules. Such persons are called

[78] Blackstone Commentaries, V 2:139-140
[79] Law Studies, http://lawstudies.wikidot.com/laws3112-lecture-3, as of Sept. 12, 2011
[80] The Law Lexicon, or Dictionary of Jurisprudence, 1848: J.J.S. Wharton, Esq. p. 248
[81] Ibid. p. 658

heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor's life, it is called a freehold of inheritance, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: 1. Immobility, that is, the property must be either land, or some interest issuing out of or annexed to land; and, 2. a sufficient legal indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.[82] Freehold tenure is without any incidents or obligations for the benefit of the Crown.[83]

Free-holder: -he possesses a freehold estate.[84]

Letters Patent: -writing of the sovereign, sealed with the Great Seal, whereby a person of company is entitled to do acts or enjoy privileges which could not be done or enjoyed without such authority.[85] They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority thereby given. Peers are created by letters patent, and letters patent of precedence are granted to barristers. Incorporeal chattel of patent right.[86]

Nullum Tempus Act, 1769: -60-year adverse possession from the Crown. …the *Nullum Tempus Act* of 1769 applies to the Crown in right of Canada in Nova Scotia. [87] "In order to claim possessory title in respect of Crown land, a person must prove that the Crown's title to the land was extinguished by adverse possession for a period of 60 years."[88]

"Private Lands":-Eighthly. The words "Private Lands," shall be held to include all lands which have been alienated by the Crown;(An Act respecting Gold Mines. [Assented to 30th June, 1864.)

[82] Ibid. p. 268
[83] Law Studies, http://lawstudies.wikidot.com/laws3112-lecture-3, as of Sept. 12, 2011.
[84] Ibid.
[85] Guide to the Federal Real Property Act, 1922, Sect. 3.2.3
[86] The Law Lexicon, or Dictionary of Jurisprudence, 1848: J.J.S. Wharton, Esq. p. 371
[87] Nickerson v. Canada (Attorney General) (2000), 185 N.S.R. (2d) 36; 575 A.P.R. 36 32 R.P.R. (3d) 141, 2000 Carswell NS 160. The Court found possessory title against the Federal Government respecting a parcel in Sydney Harbour
[88] MNR v. Holdcroft, 2004. at 5.