

**FINAL REVISIONS:**

**RENOVATING THE FOUNDATION:**

**PROPOSALS FOR A**

**MODEL LAND RECORDING  
AND REGISTRATION ACT**

**FOR THE PROVINCES AND  
TERRITORIES OF CANADA**

**JOINT LAND TITLES COMMITTEE**

**ALBERTA  
BRITISH COLUMBIA  
MANITOBA  
NORTHWEST TERRITORIES  
ONTARIO  
SASKATCHEWAN  
YUKON**

**MARCH 1993**

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## THE JOINT LAND TITLES COMMITTEE

In July 1990, the Joint Land Titles Committee produced the original report entitled *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada*. The report included a draft Model Recording and Registration Act.

The members of the Joint Committee were as follows:

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Professor T.W. Mapp  
Kenneth B. Payne

### British Columbia

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### Ontario

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### Saskatchewan

K.P.R. Hodges  
Ray E. Petrich

### Yukon

John I. Westerberg

This report makes revisions to the Model Land Recording and Registration Act. Charles W. MacIntosh, Q.C. has retired in the meantime. Sidney Horton and Steven A. Horn successively replaced John I. Westerberg. The other members of the Committee participated in the discussions that led to these revisions.

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## PART I — REPORT

### A. PURPOSE OF REVISIONS

In July 1990, the Joint Land Titles Committee completed its report entitled *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act*, which contained a draft Model Act. The report was later distributed by agencies involved in the work of the Joint Committee. The Model Act is the foundation of the Metis Settlements Land Registration Act<sup>1</sup> which established a land recording and registration system in eight Metis settlements in Alberta.

Agencies have engaged in consultation on the report. The consultation has been generally supportive. It has yielded useful comments that suggest that some changes might be made in the Model Act. The Joint Committee has given much consideration to the results of the consultation and to its own further thinking. As a result, it has decided that some revisions would improve the Model Act.

This report records final revisions that the Joint Committee has agreed upon.

### B. FORM OF REPORT

This report is made up of the following:

- (a) Part I, which includes this introductory material and a brief description of the revisions;
- (b) Part II, which consists of a list of the revisions, accompanied by brief explanatory comments;
- (c) Part III, which consists of the revised Model Act.

This revised report does not include the original report or the original annotations to the Model Act. A reader who wants to see the reasons for the adoption of the Model Act or for the adoption of a specific provision should therefore refer to the original report.

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<sup>1</sup> Alta. Reg. 361/91.

## **C. CLASSIFICATION OF REVISIONS**

The revisions made in the Model Act can be classified as (a) revisions made after reviews of significant policies, (b) revisions reflecting minor policy changes, and (c) drafting changes. Part I of this revised report discusses the review of three significant policies at some length. It then lists the revisions reflecting minor policy decisions. Part II lists all three categories of revisions and gives brief reasons for them. Part III is the Model Act as revised. Notes to the revised Model Act show where revisions have been made.

## **D. REVISIONS MADE AFTER REVIEWS OF SIGNIFICANT POLICIES**

### **(1) Effect of an unauthorized cancellation of a recording**

A recording system determines priorities among interests. It does not confer ownership of interests. Suppose that O, the owner of land, grants conflicting interests to A, B and C in that order. Suppose further that B records their interest at a time when neither A nor C has recorded or registered their interest. If B gave value and was not guilty of fraud, B's interest is entitled to priority over A's interest. B's interest is in any event entitled to priority over C's interest. This is in accordance with recording theory. It is in accordance with Alberta and Saskatchewan judicial decisions on the effect of a caveat. It is the effect of section 4.5(2) of the Model Act.

Suppose that B's recording is now cancelled without authority. Even without more, section 4.5(2) still appears to say that B's interest has priority over both A's interest and C's interest. Section 4.7(3) confirms this appearance by saying that "cancellation of the recording of an interest does not affect priority of enforcement rights which accrued under section 4.5 before the cancellation".

Concerns were raised on consultation about this state of the proposed law. These concerns focussed on cases in which recordings will be cancelled in the course of conveyancing. Suppose that B's recording has not been cancelled. Suppose further that O is in the course of granting a further conflicting interest to D, a purchaser or mortgagee, who stipulates that they are to receive a title clear of B's interest. Suppose further that O delivers to D what appears to be a valid request for the cancellation of B's recording, and D arranges to have the recording cancelled on the strength of it and then pays O the purchase or mortgage money, or even pays part of the money to B. Lawyers who were consulted thought that

D, having relied on the unauthorized cancellation and upon the resulting state of the register, should be entitled to priority over B. Otherwise, conveyancing would be inhibited. The facility of transfer that land registration is intended to promote would be interfered with. D, in order to be safe, would have to take steps to ensure that the cancellation of the recording was valid, and quite possibly to ensure that B's interest had been extinguished or that B had agreed to subordinate their interest to D's interest.

The Joint Committee continues to be of the view that as a general rule the cancellation of a recording should not, by itself, deprive the recorded interest of priorities that have been established by the recording system at the time of the cancellation. However, it was persuaded that there should be an exception to protect a person who in good faith changes their position on the strength of the cancellation of a recording that protected a prior interest. It therefore approved the insertion of a new section 4.5.1 that provides that the owner of a subsequent recorded or registered interest obtains priority over the owner of the interest that had been protected by the cancelled recording if

- (a) the subsequent owner believed that the prior recording had been cancelled under a valid request for cancellation,
- (b) the subsequent owner had no knowledge of the facts that made the cancellation unauthorized, and
- (c) the subsequent owner paid value for the benefits purportedly obtained under, or detrimentally altered their position in reliance on, the invalid cancellation.

Sections 4.5(2) and 4.7(3) have been made subject to section 4.5.1.

**(2) Two registers/one derived interest situation**

This topic has to do with a situation in which

- (a) conflicting registrations occur in two different registers, and
- (b) a successor acquires an interest from one of the two registered owners.

For example, suppose that A is registered as owner of land under Register A and B is registered as owner under Register B (though conflict could arise between less-than-fee-simple interests). Suppose further that C acquires an interest from A and registers the interest. We will call the result a "two registers/one derived interest situation".

If A was entitled to have B's registration cancelled, there would not be much doubt that C's registration would prevail over B's. However, if B was entitled to have A's registration cancelled, a difficult problem arises because both B and C have claims to be protected by the Act.

The commentary to section 5.5 of the Model Act said that in a two-registers/one derived interest situation, registrations must be revised in favour of C, the holder of the one derived interest. However, during consultation, it was noted that section 5.5 might not lead to that result. The reason is that section 5.5 as it appears in the original Model Act does not apply in favour of an interest unless the interest is entitled to priority under section 4.5, and section 4.5 might not apply in C's favour because C's interest was not acquired and recorded at a time when B's interest was not recorded.

It was suggested to the Joint Committee that section 5.5 should be amended to ensure that C would have priority. This caused the Joint Committee to reconsider the policy that should apply in such a case and not merely the drafting.

The majority view of the Joint Committee is that the holder of the one derived interest (C in the example) should receive an indefeasible title to that interest in priority to B. This is fundamental to land registration whether or not B's registration has been cancelled. Otherwise, everyone who acquires an interest in land must take into account the possibility that there is a dormant registration in another register that will take priority over the interest now being acquired. The possibility is remote, but its existence is likely, sooner or later, to lead to a loss of confidence in the register. That loss of confidence is likely to lead to checking title backwards in time and thus to the incurring of costs that title registration is intended to avoid. Oil and gas companies have done this for many years.

A strongly held minority view is that the majority's fear that there will be a loss of confidence in the register is unrealistic for the following reasons:

- the possibility of there being a competing dormant registration is remote;
- the risk of there being a competing dormant registration will exist in relation to the two-registers/two derived interests situation;
- the possibility of there being a competing dormant registration exists under current legislation (i.e., prior certificate of title exception) and this has not resulted in a loss of confidence in the register on surface transactions (oil and gas historical searches are influenced by financial limitations on recovery from the Assurance Fund).

The minority view is that there should be a consistent equitable approach to resolving the conflict between two registers and that the rules set out in section 5.8 of the Model Act should apply to the two-registers/one derived interest situation as they will in the two-registers/two derived interests situation. Under that section, the first rule is that those interests will win that are recorded in the same register as the interest under which possession of the property is held. If that rule does not decide the issue, those interests will win that are recorded in the same register as the only interest for which value was given. If that rule does not decide the issue either, the interests derived from the best root of title (i.e., from the one of the original two conflicting interests that was not subject to revision) will win. These rules, in the minority view, will lead to more equitable results than does allowing the successor always to win.

The essential difference between the majority and minority views is as follows:

- (a) the majority think that it is essential that people dealing in land be able to rely on the register to the maximum extent possible;
- (b) the minority do not think that there will be any negative impact on the public's reliance on the register due to this particular set of circumstances and think it better to have a consistent application of rules designed to achieve greater equity.

Under either view, the losers would always receive compensation under the compensation system.

In the result, the thrust of the Model Act has not been changed, but minor drafting changes have been made to section 5.5 to ensure that it gives effect to the majority view.

### **(3) Unauthorized registrations and cancellations of registrations**

Section 5.6 of the Model Act deals with a situation in which a successor becomes registered under an unauthorized registration. Essentially, it applies if that successor believes the registration to be authorized and is unaware of the facts that make it unauthorized, and it provides that presumptively registrations will be revised to restore the deprived or subordinated owner's position and the successor compensated. However, it provides that the court, if it considers it just and equitable to do so, may confirm the successor's position and order compensation for the deprived or subordinated owner.

The principles that apply to an unauthorized registration ought to apply to an unauthorized cancellation. It was doubtful that section 5.6, as drafted, dealt adequately with unauthorized cancellations. The section has therefore been restructured to ensure that it does so. Since the restructuring is significant, we will describe it here.

The revision of the section is along the following lines:

- (1) One of the conditions necessary to trigger the original section 5.6 is that the unauthorized registration was "requested by the registered owner" who believed that the registration was authorized by a valid transaction. But the cancellation of a registration, while it enlarges the estate into which the cancelled interest merges, does not create a new registered owner. In order to deal with the cancellation situation, it was necessary to substitute a different condition, that is, that the unauthorized registration or cancellation "benefits a registered owner" who believes that the registration was authorized by a valid transaction.
- (2) However, this substitution creates a new difficulty: without more, the substituted provision would confer a bonanza upon the registered owners of subsequent interests who were merely passive and had nothing to do with the cancellation of registration that triggers the section. Therefore, it is necessary to restrict the class of

registered owners who can claim under the section to those who paid value or otherwise detrimentally relied on the unauthorized registration.

- (3) Including cancellations of registrations in section 5.6 gives rise to a further potential problem. It could happen that after the unauthorized cancellation the registered owner of an interest that had been subsequent to the interest whose registration was wrongfully cancelled conferred an interest on a second successor who recorded or registered while the cancelled interest did not appear on the register. Cancelling the second successor's interest would be a derogation from indefeasibility that cannot be justified. Therefore section 5.6 must be made subject to section 5.5 so that the second successor will be protected.
- (4) It follows that, if there is a second successor, the court will be prevented by section 5.5 from restoring the deprived or subordinated owner's priority over the interest acquired by the second successor. Therefore, section 5.6 should allow the court, if it restores the deprived or subordinated owner, to order compensation to that owner for the subordination of their interest to that of the second successor.

#### **E. REVISIONS REFLECTING MINOR POLICY DECISIONS**

The minor policy decisions, and the sections of the revised Model Act in which they appear are as follows:

- |                         |  |
|-------------------------|--|
| Section 2.2(6)          | Delete the requirement that a Registrar General or Registrar must be a barrister and solicitor of three years standing.  |
| Section 3.1(4)          | Delete restrictions on the use of a consolidated interest register.  |
| Section 3.2(1)(d) & (e) | Delete the requirement that a parcel register for a dominant tenement, or an interest register for a servitude, include the identifier of the parcel register for the servient tenement. |

- Section 3.2(2)(c) Delete the requirement that an interest register for a servitude must contain the name of the registered owner of the interest.
- Section 4.6(1) Confer priority of a recorded security interest for subsequent advances only if the security interest is for or up to a specific principal sum.
- Section 4.9
- (1) Make the lapsing procedure inapplicable to interests recorded under other statutes.
  - (2) Make the lapsing procedure applicable to recordings of restrictive covenants, but require service of the lapsing notice not only on the claimant under the recording but also on the fee simple owner of every dominant tenement.
  - (3) Allow a person who wants to serve a lapsing notice to get directions for service from the court.
  - (4) Relieve a person from liability for procuring the lapsing of a recording by registered service at the registered address (a) if the supervising court gave directions for service in that way, or (b) if the person who suffers loss actually received the lapsing notice within the specified period.
- Section 5.4(3) Change "disputed question of fact or law" to "doubtful question of fact or law" to make it clear that the Registrar may refuse to register in a doubtful case without an actual dispute having arisen.

Section 5.4(5)  
(formerly section  
5.7(2))

(1) Change "knowledge" to "information", because it is more appropriate and to conform to section 5.4(3).

(2) Insert the threshold concept of reasonable belief.

(3) Make the subsection permissive instead of mandatory.

(4) Delete the words that would restrict the Registrar's power to cases in which the Registrar is not authorized to revise a registration because of a disputed question of law so as to ensure that, whenever the Registrar has grounds for thinking that an error has occurred, they can record the possible interest and thus hold the ring while the parties establish their rights.

Section 8.1

Allow a person who objects to an action of the Registrar to require the Registrar to set forth in writing the reasons therefor.

**PART II**  
**REVISIONS TO**  
**MODEL LAND RECORDING AND REGISTRATION ACT**

Approved by Joint Committee  
on February 28, 1992

**Change**

**COMMENTARY**

**Section 1.1(d)(iii)**

Delete "transmission".

Drafting change. "Transmission" is a defined term. It is inappropriate here and is not needed.

**Section 1.1(e.1)**

Add the following definition

"interest register" includes a consolidated interest register;

Drafting change. It is appropriate to include a consolidated interest register wherever the term "interest register" is used".

**Section 1.1(l)**

Change to read: "registration" includes revision of registrations and means . . .

Drafting change. To make it clear that provisions that apply to registration apply to revisions of registrations.

**Section 1.1(x)(iii)**

Delete the word "transmission".

Drafting change. "Transmission" is a defined term. It is inappropriate here and is not needed.

**Section 2.2(6)**

Delete s. 2.2(6).

Minor policy change. S. 2.2(6) provided that Registrars and the Registrar General must be qualified lawyers. Different jurisdictions have different views, and this is not a point on which uniformity is important. See the note following s. 2.2.

**Section 2.2**

Put the following note after s. 2.2:

*NOTE: A jurisdiction may wish to include a provision dealing with the qualifications of Registrars and the Registrar General.*

See the comment under s. 2.2(6).

## Change

## COMMENTARY

### Section 2.3(d)(ii)

Delete "with respect to".

Drafting change. The words "with respect to" were duplicated.

### Section 2.6

Add the following s. 2.6:

#### Section 2.6 - Recording and registration options

2.6 Under this Act, an interest may be submitted

- (a) for recording only, or
- (b) for recording and registration.

Drafting change. To make it clear to users that all interests will be recorded and that some will also be registered.

### Section 3.1(4)

Terminate the subsection at the word "Act" and drop (a) and (b).

Minor policy change. S. 3.1(4) provided for consolidated interest registers only if the interests are owned by one owner and if the interests are related in purpose or the same in law. The change will allow greater flexibility, e.g., it will permit the use of a consolidated interest register in the case of a building scheme involving reciprocal restrictive covenants or easements, or in the case of a mineral lease with associated surface interests.

### Section 3.2(1)(d)

Change s. 3.2(1)(d) to read as follows:

- (d) (i) the identifier for any document of transfer, transmission, postponement or termination registering an interest in the parcel and, except for a servitude with a dominant tenement, the name of the registered owner of the interest, or

Minor policy change. The underlined words have been added. If there are several dominant tenements, as in the case of a building scheme with reciprocal restrictive covenants or easements, it will be impractical to show the registered owners of the dominant tenements and the information is not necessary.

## Change

## COMMENTARY

### Section 3.2(1)(e)

Substitute the following:

- (e) when there is a registered servitude the benefit of which is annexed to the parcel, either
  - (i) the identifier for the document creating the servitude, or
  - (ii) if an interest register has been established for the servitude, the identifier for that register, and

Very minor policy change. It is enough that the register for the dominant tenement give the identifier of the document creating a servitude or the identifier of the interest register for the servitude if there is one. The Model Act required the identifier for the parcel register for the servient tenement, but there may be many servient tenements and their identifiers may change frequently. The information not being required, the requirement has been dropped. There has also been a drafting change.

### Section 3.2(2)(c)

Change s. 3.2(2)(c) to read as follows:

- (c) the identifier for any document of transfer or transmission registering the interest for which the register is established and except for a servitude with a dominant tenement, the name of the registered owner of the interest,

Very minor policy change. The underlined words have been added. The comment on the revision of s. 3.2(1)(d) applies.

### Section 4.2(1)(b)

Substitute "the interest" for "it".

Drafting change. The referent of "it" was not clear.

### Section 4.3(2)

Insert ", as recorded," so that s. 4.3(2) will read "... is entered, as recorded, in the appropriate register ...".

Drafting change. The purpose of s. 4.3(2) is to say when recording has occurred. The revision makes it clear that the entry of the identifier must show that it is there to record the interest.

### Section 4.4(2)

Substitute "the identifiers referred to in subsection (1)(b) are" for "the identifier assigned to the document submitted for recording is" in s. 4.4(2).

Drafting change to correct clerical error. If an initial register is adopted, the identifier for the principal register for the parcel involved should be included in the entry in the initial register for identification purposes.

### Section 4.5(2)

Change "section" to "sections" and insert "4.5.1 and" to the first line of s. 4.5(2).

Drafting change. Consequential upon the adoption of s. 4.5.1, which is an exception to s. 4.5(2).

## Change

## COMMENTARY

### Section 4.5(3)(b)

Substitute the following:

- (3) (b) the recording provisions of subsection (2) apply to conflicting interests of successors to the owner of the recorded interest.

Drafting change. If O, the owner of a recorded interest, grants an interest to A and a conflicting interest to B, s. 4.5(3)(b) is intended to make the recording provisions applicable as between A's and B's interests. S. 4.5(3)(b) of the Model Act did not make this clear.

### Section 4.5(5)(b) & (c)

Change to read as follows:

- (b) if a subsequent interest will not be enforced with priority for an owner because the requirements of subsection (2)(b) were not satisfied, an interest of a successor to the owner of the subsequent interest shall be enforced with priority over a prior interest when the requirements of subsection (2)(b) are first satisfied, and
- (c) once a subsequent interest is entitled to priority of enforcement, it remains so when acquired by a successor.

Drafting change. The intention of s. 4.5(5)(b) was and remains that a successor who takes a recorded interest for value and without fraud obtains priority although the original holder was prevented from doing so by s. 4.5(2)(b). The revision clarifies this intention.

### Section 4.5.1

Add new s. 4.5.1 as follows:

#### **Section 4.5.1 - Reliance on invalid cancellation of prior recording**

4.5.1 (1) This section is applicable when

- (a) the recording of a prior interest was cancelled under an invalid request for cancellation,
- (b) a subsequent registered interest would not be enforced with priority over the prior interest because the requirements of section 4.5(2)(b)(iii) and (iv) were not satisfied, and
- (c) the owner of the subsequent registered interest

Significant policy change.

Under s. 4.5(2) and s. 4.7(3) of the Model Act, the cancellation of a recording would not affect the priority of the recorded interest over subsequent interests that were acquired or recorded while the recording of the prior interest was in effect (assuming that the recorded interest had not been extinguished).

S. 4.5.1 creates an exception in favour of a holder of a subsequent interest who pays money or otherwise detrimentally changes their position in reliance on a cancellation that is apparently authorized but is in fact unauthorized. In those circumstances, the

## Change

- (i) believed that the recording of the prior interest was cancelled under a valid request for cancellation,
  - (ii) had no knowledge of the facts which made the cancellation of the recording of the prior interest unauthorized, and
  - (iii) paid value for the benefits purportedly obtained under, or detrimentally altered his position in reliance on, the invalid cancellation.
- (2) When this section applies,
- (a) the subsequent registered interest shall be enforced with priority over the prior interest, and
  - (b) the owner of the prior interest who sustains loss under this section shall be compensated in accordance with Part 7.

### Section 4.6(1)

Change s. 4.6(1) to read:

- (1) Under section 4.5, the priority of a recorded security interest for or up to a specific principal sum extends to all subsequent obligations which are secured by the security interest, including obligations for principal sums subsequently advanced, and increased interest, as determined in accordance with the terms of the document which conferred the security interest.

### Section 4.7(1)(b)

Insert at the beginning of s. 4.7(1)(b) the words "if the interest is not registered,".

## COMMENTARY

subsequent interest obtains priority over the prior interest.

The purpose of the change is to enable a subsequent purchaser or mortgagee (though the provision goes somewhat further than that) to assure themselves of priority by obtaining cancellation of a prior recording and thus to promote facility of transfer. In the absence of s. 4.5.1 a purchaser would not be able to rely, without investigation, on documents delivered to them in the course of conveyancing.

If s. 4.5.1 confers priority on the holder of a subsequent interest because of an unauthorized cancellation of a recording of a prior interest, the owner of the prior interest will be entitled to compensation under the compensation system.

Minor policy change.

The words "for or up to a specific principal sum" have been inserted. The effect is that the recording or registration of a security interest will not give the interest priority for advances made after the recording or registration of an intervening interest unless the document conferring the security interest states a maximum principal sum. S. 4.6 in the Model Act gave priority without a statement of a principal sum.

Drafting change. It was the intention of the Model Act that the recording of an interest could not be cancelled while the interest remained registered, but that was not clearly stated.

## Change

## COMMENTARY

### Section 4.7(1)(d)

Delete s. 4.7(1)(d).

Drafting change. S. 4.7(1)(d) provided that a recording must be cancelled in accordance with an order of the supervising court. As a drafting matter, it is better to deal with the powers of the court in s. 8.1, which confers power to order the cancellation of a recording.

### Section 4.7(3)

Insert at the beginning of s. 4.7(3) the words "Subject to section 4.5.1".

Significant policy change. This change is consequential upon the adoption of s. 4.5.1 and completes the implementation of the significant policy change made by that section.

### Section 4.9(1)

Substitute the following for s. 4.9(1):

4.9(1) Except for

- (a) a recorded interest which is registered,
- (b) a Registrar's recording under section 5.4(5), and
- (c) a recording pursuant to another statute,

a recording shall be cancelled after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court on the recorded interest has been served

- (d) on the claimant under the recording, and
- (e) if the recorded interest is under a servitude, on the registered owner of every fee simple estate in any land identified in the document by means of which the interest was recorded as land to which the benefit of the servitude is annexed,

either

- (f) as process is usually served,

Drafting changes have been made in s. 4.9(1) which do not affect substance and need not be mentioned.

Minor policy changes. S. 4.9(1) and (4) have also been revised to implement some minor policy changes:

- (1) The lapsing procedure has been made inapplicable to interests recorded under other statutes by the addition of s. 4.9(1)(c). Because of the variety of such interests and because many of them are for the public benefit, it seems better to leave recordings of such interests to be removed upon application.
- (2) The lapsing procedure has been made applicable to recordings of restrictive covenants by the deletion of the previous s. 4.9(1)(c). However, s. 4.9(1)(e) now requires that in the case of all servitudes with dominant tenements, the lapsing notice must be served not only on the claimant under the recording but also on the fee simple owner of every dominant tenement.
- (3) S. 4.9(1)(h) allows a person to get directions for service of a lapsing notice from the supervising court.

## Change

## COMMENTARY

- (g) through registered mail, in the prescribed form, to the address for service of notices with respect to the recording, or
- (h) in accordance with directions given by the Court upon application, which may be made *ex parte*,

unless before the cancellation the claimant takes proceedings in court by originating notice or otherwise to substantiate the recorded interest and a certificate of *lis pendens* in the prescribed form has been recorded.

### Section 4.9(4)

- (4) A person who
  - (a) procures the cancellation of a recording under this section, and
  - (b) has served notice under subsection (1)(g)

is liable for any loss sustained because of the cancellation unless

- (c) the claimant received the notice within the period mentioned in subsection (1) or the period mentioned in subsection (2), whichever is shorter,
  - (d) the Court directed under subsection (1)(h) that the notice be served under subsection (1)(g), or
  - (e) the Court finds that the method of service was reasonable under the circumstances.
- (4) S. 4.9(4)(c) and s. 4.9(4)(d) relieve a person from liability for procuring the lapsing of a recording by registered service at the registered address in two cases: (a) if the supervising court gave directions for service in that way, and (b) if the person who suffers loss actually received the lapsing notice within the specified period.

## Change

## COMMENTARY

### Sections 5.1(a) & 5.1(b)

Change s. 5.1(a) & s. 5.1(b) to read as follows:

- (a) a fee simple estate;
- (b) a life estate;

Drafting change. S. 5.1(a) in the Model Act read "a fee simple estate, whether possessory or under a future interest", etc., and s. 5.1(b) was drafted in a similar way. The intention was to make it clear that all kinds of fee simple estates and life estates were included. It was noted, however, that the inclusion of the elaborations in s. 5.1(a) and (b) and not in other items in s. 5.1 might mean that other items should be read restrictively. Since "fee simple estate" and "life estate" include all fee simple estates and life estates, the words of elaboration do not appear to be necessary and have been deleted.

### Section 5.2(1.1)

Insert a new s. 5.2(1.1) after s. 5.2(1):

- (1.1) An interest is registered when the identifier assigned to the document submitted for registration is entered, as registered, in the appropriate register in accordance with section 3.2.

Drafting change. The intention of the Model Act was that registration is complete once the identifier is entered in the register with an indication that the interest is registered. This subsection merely states that intention.

### Section 5.2(2)

Delete the words "for the purposes of this Part" at the end of s. 5.2(2).

Drafting change. S. 5.2(2) said that a fatally defective registration is void "for the purposes of this Part". This might suggest that there are purposes for which it is not void. That is not the intention, and the restrictive words have therefore been deleted.

### Section 5.3(5)

Add the words ", but not for the purposes of sections 4.5.1 and 5.6." to the end of s. 5.3(5).

Drafting change. It is intended that a registered owner will be protected both as to ownership and priority whether or not they have given value for the registered interest. In order to carry out that intention, s. 5.3(5) says that a registered interest has been obtained for value for the purposes of s. 4.5 so that the absence of value will not deprive a registered interest of priority. However, s. 4.5.1 and s. 5.6 confer specific protections on recorded and registered owners that depend on detrimental reliance in fact, so that it would not be appropriate to extend what amounts to a conclusive presumption of value to circumstances that fall within those sections.

## Change

### Section 5.4

Substitute the following for s. 5.4:

#### 5.4

- (1) Subject to sections 5.5, 5.6 and 5.8, registrations shall be revised as required
  - (a) by a transaction which binds the registered owner,
  - (b) when a revision of registrations was not authorized by a valid transaction or was based on a transaction which has been rectified or cancelled under law, and
  - (c) for the recognition of an interest entitled to priority of enforcement.
- (2) The right of a person to have a registration revised is a statutory interest which
  - (a) may be recorded under section 4.1,
  - (b) is subject to the enforcement priority provisions of section 4.5, and
  - (c) entitles the person to the benefits of the registered interest which he is entitled to obtain.
- (3) A Registrar may refuse to revise a registration if he has information which he reasonably believes indicates that, because of a doubtful question of fact or law, the revision might result in a registration not in accordance with law.
- (4) Subsection (3) applies notwithstanding that a document submitted for registration appears to comply with regulations under section 2.3.

## COMMENTARY

S. 5.4(1) - s. 5.4(4). Drafting changes.

S. 5.4 has been substantially revised. Most of the changes are drafting changes, but there are minor policy changes reflected in what is now s. 5.4(5).

S. 5.7 has been incorporated into s. 5.4. This has been done with a view to improving the organization of the Model Act.

In the result:

- (1) S. 5.4(1) has been revised for drafting reasons. The new wording covers the substance of the previous s. 5.4(1), with the exception of the previous s. 5.4(1)(g), which provided that recordings must be revised in accordance with an order of the supervising court. This reference has been deleted because it is inappropriate here and is covered by the court's powers under s. 8.1.
- (2) S. 5.4(2) is a revised version of s. 5.7(1) of the Model Act.
- (3) S. 5.4(3) & s. 5.4(4) are substituted for s. 5.4(3) of the Model Act. This is drafting only.
- (4) "Doubtful" has been substituted for "disputed" in s. 5.4(3) to make it clear that the Registrar may decline to register in a doubtful case without an actual dispute having arisen.
- (5) S. 5.4(5) is a revised version of s. 5.7(2) of the Model Act. The following changes have been made:
  - (a) "information" has been substituted for "knowledge" in order to conform to s. 5.4(3) and because it is more appropriate.
  - (b) the notion of reasonable belief has been injected.

## Change

- (5) If a Registrar obtains information which he reasonably believes indicates that a statutory interest may exist under subsection (2), the Registrar may record the possible interest.
- (6) The cancellation of the registration of an interest divests the interest and cancels its recording.

## COMMENTARY

(c) the Registrar is permitted rather than required to record a possible statutory interest.

(d) the subsection is no longer restricted to cases in which the Registrar is not authorized to revise a registration because of a disputed question of fact or law.

(6) S. 5.4(6) is the previous s. 5.4(2).

## Section 5.5

Substitute the following for s. 5.5(1) & (2):

5.5

- (1) This section is subject to section 5.8 and is applicable when
  - (a) a registration is or was subject to revision,
  - (b) an interest has been obtained by an owner as a successor from the owner under the registration subject to revision, and
  - (c) that interest is, with respect to the register which included the registration subject to revision, entitled to priority of enforcement under section 4.5 over an interest of a person entitled to have registrations revised.
- (2) When this section applies
  - (a) registrations shall be revised, in any registers, as required for the enforcement of the interest of the successor, and
  - (b) registrations shall not be revised to the prejudice of the interest of the successor on the grounds that the interest was obtained from an owner under a registration subject to revision.

Drafting changes. Drafting changes have been made in s. 5.5(1) and (2) that make it clear that, if registrations in two registers conflict with each other, an interest acquired from one of them for value and without fraud and recorded will take priority over the conflicting interest in the other register. See discussion at pages 3 to 6. Other drafting changes have also been made to ensure that s. 5.5 reflects the policy of the Model Act.

## Change

## COMMENTARY

### Section 5.6(1)

Substitute the following for s. 5.6(1):

- (1) This section is subject to section 5.5 and is applicable when a revision of registrations
  - (a) was not authorized by a valid transaction,
  - (b) benefits a registered owner
    - (i) who believed that the revision was authorized by a valid transaction,
    - (ii) who had no knowledge of the facts which made the transaction invalid, and
    - (iii) who paid value for the benefits purportedly obtained under, or detrimentally changed his position in reliance on, the invalid transaction, and
  - (c) has prejudiced a former or subsisting registered owner.

Significant policy decision. S. 5.6 has been significantly redrafted. The primary purpose of the redrafting is to make it apply to a cancellation of a registration as well as to the registration of an interest. The reason is that cancellation has the effect of enlarging someone else's interest, so that an unauthorized cancellation of a registration should be dealt with on the same principles as an unauthorized registration. The section now applies to "a revision of registrations" so as to include cancellations.

Under s. 5.6 of the Model Act, the section would not apply unless the unauthorized registration "was requested by the registered owner", i.e., the owner who became registered under the unauthorized registration. This is not appropriate for a case of an unauthorized cancellation of a registration. First, the cancellation does not create a new registered owner. Second, it may be that an owner other than the registered owner whose estate is enlarged is the one who should be protected by the section. An example is a registered mortgagee who has procured the discharge of a prior mortgage. Therefore, the new s. 5.6 will apply when an unauthorized registration benefits a registered owner who satisfies certain conditions. Two of those conditions remain the same as under the Model Act s. 5.6:

### Section 5.6(2)

Change the period after "compensation" at the end of s. 5.6(2)(b) to a comma.

### Section 5.6(3)

Substitute for s. 5.6(3)(a) and (b):

- (a) subject to subsections (4) and (5), the prejudiced person has a right to have registrations revised, to the extent not prohibited by section 5.5, as required to nullify the effects of the unauthorized revision, and
- (b) a registered owner, and the prejudiced person if a revision under this subsection cannot fully nullify the effects of the unauthorized revision, shall be compensated in accordance with Part 7 for the loss sustained because of the revisions.

- (1) the benefited registered owner must have believed that the unauthorized registration or cancellation was authorized by a valid transaction;
- (2) the benefited registered owner must have had no knowledge of the facts that made the transaction invalid.

But there is no reason to confer the benefit of the section upon a registered owner who had no part in the transaction that resulted in an unauthorized cancellation of registration and merely received a windfall under the cancellation; there is no reason why registrations should not be revised against such an owner. It is therefore necessary to introduce a further condition:

## Change

### Section 5.6(4)

Change "registration" to "revision" in s. 5.6(4)(a) and (b).

### Section 5.6(5)

Delete "either of" in s. 5.6(5)(a).

Change s. 5.6(5)(d) to "the willingness of any of the parties to receive compensation".

### Section 5.7

Delete.

### Section 5.8(3)(b)

Delete.

### Section 5.8(4), Rule 1

Change "registered" to "enforced".

### Section 6.1

Change the opening words to read as follows:

Notwithstanding sections 4.5 and 5.3, the following interests, whether or not recorded or registered, and no other interests, shall be enforced . . .

## COMMENTARY

- (3) the benefited registered owner must also have paid value or otherwise detrimentally altered their position in reliance on the unauthorized cancellation.

The revised s. 5.6 therefore applies when a benefited registered owner satisfies these three conditions. One of the two owners will have their ownership or priority confirmed. The other will receive compensation under the compensation system.

Including unauthorized cancellations, however, injects one more complexity into the situation. Suppose that, after the cancellation of a registration and before the cancelled owner gets back on the register, a registered owner whose interest had been subsequent to the cancelled registration grants an interest to a third party who records or registers. That third party should be protected against the cancelled owner because the third party acquired their interest against a register that was clear of the cancelled interest. For this reason, the opening words of s. 5.6 make the section subject to s. 5.5, which protects the new third party registration or recording.

Drafting change. The whole of s. 5.7 has been incorporated into the new s. 5.4. See the comment on s. 5.4.

Drafting change. Analysis of this provision showed that it was unnecessary.

Drafting change. "Registered" was used in error for "enforced".

Drafting change. The words are rearranged for clarity.

## Change

## COMMENTARY

### Section 7.1(2)

Delete s. 7.1(2).

S. 7.1(1) becomes the whole of the section.

Significant policy change. Revision consequent upon the adoption of s. 4.5.1.

S. 7.1(2) provided for compensation for loss of priority in certain circumstances. S. 4.5.1 now provides that under those circumstances priority will not be lost. There is therefore no remaining office for s. 7.1(2) to perform.

### Section 8.1

Change to read as follows (to give effect to the requirement of Registrar's reasons):

8.1 A person who objects to

- (a) a recording or the cancellation of a recording,
- (b) a revision of registrations, or
- (c) any decision of a Registrar with respect to any action he is required or authorized to take under this Act,

may

- (d) require the Registrar to set forth in writing the reasons therefor, and
- (e) apply to the Court for an order requiring the Registrar to take any action he is required or authorized to take under this Act, and on the application the Court may so order and make any further order it thinks proper.

Minor policy change.

The only change, except for reorganization to accommodate it, is the addition of s. 8.1(d) under which the Registrar can be required to give written reasons for an act or decision.

### Section 8.3(a)

Change to read:

- (a) record an interest, cancel a recording, or revise the priority of recordings, or

Drafting clarification. It was the intention of the Model Act that the supervising court should be able to order that a recording be restored in priority to another recording in a proper case. The change makes it clear that the court has this power.

**PART III**  
**REVISED**  
**MODEL LAND RECORDING AND REGISTRATION ACT**

With Revisions Approved by  
Joint Committee

**Notes:**

1. Part III sets out the Model Land Recording and Registration Act with revisions approved by the Joint Committee.
2. Where a provision has been revised, a note below it sets out or describes the revision. If there is no note below a provision, it is reproduced unchanged from the Model Act.
3. This revision adheres to the original numbering of the Model Act. A new section 4.5.1 is added. Section 5.7 has been deleted.

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**PART 1**  
**INTERPRETATION, APPLICATION AND PURPOSES**

**[Section 1.1 — Definitions]**

**1.1 In this Act,**

- (a) "Court" means the [superior court of unlimited trial jurisdiction of the enacting jurisdiction];
- (b) "cancellation" means the administrative process which, under this Act, eliminates the prospective effects of recording and registration by means of entries in a register;
- (c) "claimant" means either
  - (i) the person who records an interest, or
  - (ii) if there has been a registered assignment of the right to have a recording cancelled, the registered assignee of the right.
- (d) "document" means a writing, a plan, a map, or any information in a form which can be converted into a writing, a plan, or a map by a machine or a device, and includes information
  - (i) on microfilm,
  - (ii) in electronic, mechanical or magnetic storage, or
  - (iii) in electronic data signals;

*Revision: The Model Act read: "in electronic data transmission signals".*

- (e) "interest" means any estate or right in, over or under land recognized under law;
- (e.1) "interest register" includes a consolidated interest register;

*Revision: this definition has been added.*

- (f) "law" means the law in force in [enacting jurisdiction] and includes
  - (i) legislative enactments,
  - (ii) common law and equity, and
  - (iii) regulations;
- (g) "lien" means an interest created by operation of law which secures the payment or other performance of an obligation;
- (h) "person", "claimant" and "owner" include any agent who is empowered to act for the person, claimant or owner;
- (i) "postponement" means either

- (i) the process of subordinating the enforcement of one interest to another, or
- (ii) the document effecting a postponement;
- (j) "recording" means the administrative process which, under this Act, secures priority of enforcement for an interest by means of entries in a register;
- (k) "register" means the register established under this Act
  - (i) for a parcel of land, or
  - (ii) for a registered interest
 and includes any document incorporated into a register by reference;
- (l) "registration" includes revision of registrations and means the administrative process which, under this Act, affects, confers, confirms or terminates interests by means of entries in a register;

*Revision: the words "includes revision of registrations and" have been inserted.*

- (m) "security interest" means a consensual interest which secures the payment or other performance of an obligation;
- (n) "servitude" means an interest affecting the use or enjoyment of land created by covenant, condition, easement or implication, and includes a utility interest, but does not include a lien or a security interest;
- (o) "successor" means a person who acquires an interest, or an interest derived from that interest, directly or through intermediate transactions, from a prior owner;
- (p) "tax lien" means a lien against an interest of a taxpayer for the amount of unpaid taxes, fees, assessments, rates and other charges;
- (q) "termination" means either
  - (i) the process of releasing or discharging an interest, or
  - (ii) the document effecting a termination;
- (r) "this Act" includes any regulations made under this Act;
- (s) "transaction" means an event or a dealing affecting an interest, whether by means of a contract, transfer, transmission, postponement or termination, or by any other means;
- (t) "transfer" means either
  - (i) the process of creating or assigning an interest, or
  - (ii) the document effecting a transfer,
 other than by will or by operation of law;
- (u) "transmission" means the process of creating or passing an interest by operation of law, and includes the passing of an interest

- (i) under a limitations act, or
- (ii) to a personal representative;
- (v) "utility interest" means [here insert definition used in enacting jurisdiction];
- (w) "value" means any consideration sufficient to support a simple contract, and includes
  - (i) a commitment to give credit or for the extension of time for payment under credit previously given,
  - (ii) the acceptance of a security interest for, or in total or partial satisfaction of, an existing claim, or
  - (iii) consideration previously given for an existing contract;
- (x) "writing" includes printing, typewriting, or any other intentional reduction of language into legible form, or to a form which can be converted into legible form by a machine or a device, such as language
  - (i) on microfilm,
  - (ii) in electronic, mechanical or magnetic storage, or
  - (iii) in electronic data signals;

*Revision: the Model Act read: "in electronic data transmission signals".*

**[Section 1.2 — Fraud]**

1.2

- (1) In this Act the meaning of fraud is subject to the provisions of this section.
- (2) The equitable doctrine variously known as "notice" and "constructive notice" is abolished for the purpose of determining if conduct is fraudulent under this Act.
- (3) A person who engages in a transaction with an owner who holds an interest subject to an interest which is neither recorded nor registered,
  - (a) is not affected by actual knowledge of the interest which is neither recorded nor registered,
  - (b) may assume without inquiry that the transaction
    - (i) is authorized by the owner of the interest which is neither recorded nor registered, and
    - (ii) will not prejudice that interest, and
  - (c) has no duty to assure the proper application of any assets paid or delivered to the owner.
- (4) The person referred to in subsection (3) obtains the interest acquired under the transaction through his fraud if he had actual knowledge that the transaction

- (a) was not authorized by the owner of the interest which was neither recorded nor registered, and
- (b) will prejudice that interest.

**[Section 1.3 — Application to Crown]**

1.3

- (1) The Crown in right of [enacting jurisdiction] is bound by this Act.
- (2) This Act applies to any interest vested in the Crown in any other right which is within the legislative competence of the Legislature, and to any interest which has been subjected to this Act by the Crown.

**[Section 1.4 — General application]**

1.4

This Act applies to

- (a) every parcel of land, and every interest therein, for which a certificate of title has been issued under a predecessor Act, and
- (b) every parcel of land, and every interest therein, for which a register is established under this Act.

**[Section 1.5 — Purposes]**

1.5

- (1) The purposes of this Act are
  - (a) to provide certainty for ownership of interests in land and to simplify proof of ownership,
  - (b) to facilitate the economic and efficient execution of transactions with respect to interests in land, and
  - (c) to provide compensation for persons who sustain loss through entries in registers which are not authorized by this Act.
- (2) In order to carry out the purposes mentioned in subsection (1)(a) and (b), the Act provides for
  - (a) the establishment of registers for
    - (i) parcels of land, and,
    - (ii) where convenient, for registered interests,
  - (b) establishing the relative priority of enforcement of interests in land through recording, and
  - (c) establishing the ownership of interests in land by registration.

- (3) In order to carry out the purpose mentioned in subsection 1(1)(c), the Act provides for compensation under Part 7.

**PART 2  
GENERAL**

**[Section 2.1 — Registration districts and offices]**

**2.1**

- (1) The Lieutenant Governor in Council
- (a) shall establish one or more land registration districts in the Province,
  - (b) may establish new land registration districts, and
  - (c) may change the boundaries of established land registration districts,
- as may be required to achieve the purposes of this Act.
- (2) The Lieutenant Governor in Council
- (a) shall establish a land registration office in each land registration district, and
  - (b) shall provide each office with supplies and equipment as may be required to achieve the purposes of this Act.

**[Section 2.2 — Public officers and employees]**

**2.2**

- (1) The [minister charged with the administration of the Act] shall appoint a public officer called the "Registrar General".
- (2) The Registrar General shall,
- (a) direct and supervise the operation of the land registration offices,
  - (b) direct and supervise all persons employed in the land registration offices in the performance of duties and the exercise of powers prescribed under this Act, and
  - (c) inspect the records of the land registration offices.
- (3) The Registrar General may perform the duties and exercise the powers of a Registrar.
- (4) For each land registration office, a Registrar, one or more Deputy Registrars, and any other employees required for the operation of the office, may be appointed in accordance with the [act governing the public service in the enacting jurisdiction].
- (5) For each land registration office, the Registrar shall perform the duties and exercise the powers prescribed by this Act, but a duty performed or a power exercised by a [list of officials so authorized] is deemed to be performed or exercised by the Registrar.
- (6) *deleted.*

- (7) The Registrar General, the Registrars and all other employees of land registration offices shall be attached to the [department of the minister charged with the administration of the Act] and subject to the direction and supervision of the [minister charged with the administration of the Act].
- (8) Neither a public officer, nor any employee acting for him or appointed to act in his office, shall be liable for any acts or omissions, done or not done, in good faith.

*NOTE: A jurisdiction may wish to include a provision dealing with the qualifications of Registrars and the Registrar General.*

*Revision: S. 2.2(6), which required Registrars and the Registrar General to be lawyers of 3 years' standing has been deleted and the note after s. 2.2(8) has been substituted.*

### [Section 2.3 — Regulations]

2.3 The Lieutenant Governor in Council may make any regulations required to achieve the purposes of this Act, including regulations

- (a) requiring the payment of a fee, prescribing the amount of the fee and permitting a payment to be made under credit arrangements, with respect to any action a Registrar is required or authorized to take by this Act;
- (b) prescribing requirements, [notwithstanding the Interpretation Act],
  - (i) as to administrative forms and the form of documents or classes of documents submitted for recording or registration to facilitate their efficient processing in a land registration office,

*Revision: reference to "administrative forms" added.*

- (ii) as to the form and content of documents submitted for registration to facilitate comprehension of their legal effect, and
  - (iii) for verifying the authenticity of documents submitted to obtain the revision of registrations or cancellation of recordings;
- (c) prescribing requirements with respect to addresses of persons and notices a Registrar is required to give under this Act;
- (d) prescribing requirements with respect to
  - (i) the establishment of a register for a parcel of land which was not previously subject to this Act, and,
  - (ii) subject to Part 3, the establishment, cancellation and form of parcel and interest registers.;

*Revision: s. 2.3(d)(ii) read "subject to Part 3, with respect to the establishment . . ."*

- (e) prescribing requirements as to legal descriptions of parcels and as to the preparation, form, approval and use of plans of survey;
- (f) prescribing a maximum amount or amounts payable for compensation under Part 7; and

- (g) for the use of the International System of Units as defined in the Weights and Measures Act (Canada) in any register or document incorporated therein.

**[Section 2.4 — Records and copies]**

2.4

- (1) Registers and any other documents required to be prepared or kept under this Act shall be maintained in writing.
- (2) Any person who has paid the prescribed fee shall be furnished with a copy, or a certified copy, in legible written form, of any register or document incorporated therein.
- (3) The certification with respect to a certified copy of a register or of a document incorporated therein shall be signed by a Registrar.
- (4) A certified copy referred to in subsection (3) is admissible in evidence in any civil, criminal or administrative proceeding to the same extent as the original would have been admissible, and is conclusive proof of the facts certified without proof of the signature or official capacity of the person who appears to have signed the certification.

**[Section 2.5 — Alteration of documents]**

2.5 A Registrar may alter any document submitted under this Act

- (a) before the document is recorded or registered, and
- (b) with the written consent of the parties who, in the opinion of the Registrar, will be affected by the alteration.

**[Section 2.6 — Recording and registration options]**

2.6 Under this Act, an interest may be submitted

- (a) for recording only, or
- (b) for recording and registration.

*Revision: this section is new. It is for signposting.*

**PART 3  
REGISTERS**

**[Section 3.1 — Establishment of registers]**

3.1

- (1) A Registrar shall establish parcel registers for all land within each land registration district which is subject to this Act.
- (2) Subject to the [statute regulating the subdivision of land], a parcel may include any geographic area or substance therein which can be owned in fee simple absolute, whether on, over or under the surface of land, which the Registrar deems convenient at any time for the purposes of this Act.

- (3) A Registrar may, when convenient at any time for the purposes of this Act, establish an interest register for any registered interest.
- (4) One consolidated interest register may be established for two or more interests, when convenient at any time for the purposes of this Act.

*Revision: restrictions on the use of consolidated interest registers have been deleted.*

- (5) The Registrar shall assign an identifier to each register.

*NOTE: A jurisdiction which is required to register grants from the Crown of less than fee simple estates may wish to revise section 3.1(1) and section 3.1(2) accordingly.*

### **[Section 3.2 — Content of registers]**

#### **3.2**

- (1) A parcel register shall contain

- (a) the identifier for the register,
- (b) a legal description of the parcel,
- (c) the name of the registered owner of the fee simple absolute in the parcel,
- (d) either
  - (i) the identifier for any document of transfer, transmission, postponement or termination registering an interest in the parcel and, except for a servitude with a dominant tenement, the name of the registered owner of the interest, or

*Revision: the words "except for a servitude with a dominant tenement," have been added.*

- (ii) if an interest register has been established for any registered interest in the parcel, the identifier for that register,
- (e) when there is a registered servitude the benefit of which is annexed to the parcel, either
  - (i) the identifier for the document creating the servitude, or
  - (ii) if an interest register has been established for the servitude, the identifier for that register, and

*Revision: the provision has been redrafted. Essentially s. 3.1(e)(i) has been added.*

- (f) the identifier for any document recording an interest in the parcel which has not been registered.

- (2) An interest register shall contain

- (a) the identifier for the register,
- (b) the identifier for the register for any parcel subject to the interest for which the register is established,

- (c) the identifier for any document of transfer or transmission registering the interest for which the register is established and, except for a servitude with a dominant tenement, the name of the registered owner of the interest,

*Revision: the words "except for a servitude with a dominant tenement," have been added.*

- (d) either
    - (i) the identifier for any document of transfer, transmission, postponement or termination registering an interest against the interest for which the register is established and the name of the registered owner of the interest, or
    - (ii) if an interest register has been established for any registered interest derived from the interest, the identifier for that register, and
  - (e) the identifier for any document recording an interest in the interest for which the register is established, which has not been registered.
- (3) An identifier shall be assigned to each document referred to in this section, and the entry of the identifier for a document in a register in accordance with this section incorporates that document into the register by reference.
  - (4) An entry in a register forms part of the register whether or not it was made under proper authority.

#### **PART 4 RECORDING**

##### **[Section 4.1 — Recordable interests]**

- 4.1 Any interest may be recorded if it is in land which is subject to this Act, and any recording which is not authorized under this section is void.

##### **[Section 4.2 — Recording requirements]**

- 4.2
  - (1) An interest may be recorded by means of a document in prescribed form which
    - (a) incorporates the document on which the interest is based or a copy thereof, or
    - (b) summarizes the transaction on which the interest is based.

*Revision: the words "the interest" have been substituted for "it" in s. 4.2(1)(b).*

- (2) An interest may be recorded notwithstanding the failure of the transaction on which it is based to comply with formalities.
- (3) An interest may be recorded by any person, whether or not the person is an owner of all or any share of the interest, including, but not limited to, a person who is a successor from a prior owner of the interest to be recorded.
- (4) A Registrar shall record a document submitted for recording if

- (a) the interest is qualified for recording under section 4.1, and
- (b) the document complies with any regulations made under section 2.3.

**[Section 4.3 — Time of recording]**

4.3

- (1) A Registrar shall record documents, insofar as practicable,
  - (a) promptly after their submission for recording, and
  - (b) in the order in which they were submitted for recording.
- (2) An interest is recorded when the identifier assigned to the document submitted for recording is entered, as recorded, in the appropriate register in accordance with section 3.2.

*Revision: the words "as recorded," have been added.*

**[Section 4.4 — Recording in initial register]**

4.4.

- (1) A Registrar may adopt a system using
  - (a) the identifiers assigned to documents submitted for recording to establish the order in which they were submitted, and
  - (b) an initial register in which to record the identifiers assigned to documents submitted for recording and the identifiers for the registers in which the documents are to be recorded or registered in accordance with section 3.2.
- (2) If a system as set forth in subsection (1) is adopted, for the purposes of this Act, an interest is recorded when the identifiers referred to in subsection (1)(b) are entered in the initial register.

*Revision: the words "the identifiers referred to in subsection (1)(b) are" have been substituted for "the identifier assigned to the document submitted for recording is" in s. 4.4(2).*

- (3) When the identifier for any document submitted for recording has been entered in the appropriate register in accordance with section 3.2 or section 5.2, the entry for that document in the initial register may be cancelled.

*NOTE: Section 4.4 is optional. It is intended to provide for interim recording in an initial register while administrative procedures leading to entry in a parcel or interest register are carried out.*

**[Section 4.5 — Priority of interests]**

4.5

- (1) Subject to subsection (2),
  - (a) an interest is effective from the time of the transaction upon which it is based according to law, and
  - (b) interests shall be enforced with priority relative to each other according to law.

- (2) Subject to sections 4.5.1 and 6.1,
- (a) a prior interest which was recorded at the time that a subsequent conflicting interest was either
    - (i) obtained, or
    - (ii) recordedshall be enforced with priority over the subsequent interest, and
  - (b) a prior interest is not effective against a subsequent conflicting interest which was
    - (i) obtained for value,
    - (ii) obtained without fraud of the owner of the subsequent interest,
    - (iii) obtained at a time when the prior interest was not recorded, and
    - (iv) recorded at a time when the prior interest was not recorded, andthe subsequent interest shall be enforced with priority over the prior interest.

*Revision: the reference to s. 4.5.1 has been inserted.*

- (3) Under subsection (2)
- (a) the recording of an interest entitles a successor to the owner of the recorded interest to have his interest enforced with the same priority, without further recording, as the recorded interest, but
  - (b) the recording provisions of subsection (2) apply to conflicting interests of successors to the owner of the recorded interest.

*Revision: the wording of s. 4.5(3)(b) has been clarified.*

- (4) Under subsection (2)(a), the recording of a prior interest by means of a document summarizing the transaction on which it is based is effective only as to those rights expressly described in the recorded document, and only to the extent of the description of each right.
- (5) Under subsection (2)(b)
- (a) what would have been a subsequently obtained interest, but for a conflicting prior interest, becomes a fully effective interest when the prior interest becomes ineffective to the extent of the conflict, and
  - (b) if a subsequent interest will not be enforced with priority for an owner because the requirements of subsection (2)(b) were not satisfied, an interest of a successor to the owner of the subsequent interest shall be enforced with priority over a prior interest when the requirements of subsection (2)(b) are first satisfied, and

*Revision: the wording of s. 4.5(5)(b) has been clarified.*

- (c) once a subsequent interest is entitled to priority of enforcement, it remains so when acquired by a successor.

*Revision: the wording of s. 4.5(5)(c) has been clarified.*

**[Section 4.5.1 — Reliance on invalid cancellation of prior recording]**

4.5.1 (1) This section is applicable when

- (a) the recording of a prior interest was cancelled under an invalid request for cancellation,
- (b) a subsequent registered interest would not be enforced with priority over the prior interest because the requirements of section 4.5(2)(b)(iii) and (iv) were not satisfied, and
- (c) the owner of the subsequent registered interest
  - (i) believed that the recording of the prior interest was cancelled under a valid request for cancellation,
  - (ii) had no knowledge of the facts which made the cancellation of the recording of the prior interest unauthorized, and
  - (iii) paid value for the benefits purportedly obtained under, or detrimentally altered his position in reliance on, the invalid cancellation.

(2) When this section applies,

- (a) the subsequent registered interest shall be enforced with priority over the prior interest, and
- (b) the owner of the prior interest who sustains loss under this section shall be compensated in accordance with Part 7.

*Revision: S. 4.5.1 has been added.*

**[Section 4.6 — Future obligations]**

4.6

- (1) Under section 4.5, the priority of a recorded security interest for or up to a specific principal sum extends to all subsequent obligations which are secured by the security interest, including obligations for principal sums subsequently advanced, and increased interest, as determined in accordance with the terms of the document which conferred the security interest.

*Revision: the words "for or up to a specific principal sum" and the words "which conferred the security interest" have been added.*

- (2) If the secured person refuses to make further advances, or if the obligor has and exercises a right not to receive further advances, the secured person shall, at the request of the obligor, provide a termination of the security interest except insofar as it is security for
- (a) obligations already incurred, and
  - (b) further advances made by the secured person under the terms of the document in order to maintain his security for obligations already incurred.

**[Section 4.7 — Cancellation of recording]**

**4.7**

- (1) The recording of an interest shall be cancelled
- (a) when the interest is not qualified for recording under section 4.1,
  - (b) if the interest is not registered, in accordance with a request for cancellation by the claimant complying with any regulations made under section 2.3, and

*Revision: the words "if the interest is not registered," have been added.*

- (c) in accordance with section 5.4(2), when the registration of the interest has been cancelled.
- (d) *deleted.*

*Revision: S. 4.7(1)(d) read as follows: "in accordance with an order of the Court under Part 8."*

- (2) Subject to section 5.4(2), cancellation of the recording of an interest does not terminate the interest.
- (3) Subject to section 4.5.1, cancellation of the recording of an interest does not affect priority of enforcement rights which accrued under section 4.5 before the cancellation.

*Revision: the words "Subject to section 4.5.1" have been added.*

**[Section 4.8 — Cancellation of recording by assignee]**

**4.8**

- (1) The right to have the recording of an interest cancelled, or the enforcement of a recorded interest postponed, may be assigned by the claimant of the recorded interest by a document complying with any regulations made under section 2.3, and the assigned right shall be treated as a registrable interest under Part 5.
- (2) Until an assignment under subsection (1) is registered, the claimant under the recording retains the right to have the recording cancelled, or the enforcement of a recorded interest postponed.

**[Section 4.9 — Cancellation of recording on notice]**

**4.9(1) Except for**

- (a) a recorded interest which is registered,
- (b) a Registrar's recording under section 5.4(5), and
- (c) a recording pursuant to another statute,

a recording shall be cancelled after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court on the recorded interest has been served

- (d) on the claimant under the recording, and

- (e) if the recorded interest is under a servitude, on the registered owner of every fee simple estate in any land identified in the document by means of which the interest was recorded as land to which the benefit of the servitude is annexed,

either

- (f) as process is usually served,
- (g) through registered mail, in the prescribed form, to the address for service of notices with respect to the recording, or
- (h) in accordance with directions given by the Court upon application, which may be made *ex parte*,

unless before the cancellation the claimant takes proceedings in court by originating notice or otherwise to substantiate the recorded interest and a certificate of *lis pendens* in the prescribed form has been recorded.

*Revisions: the following revisions have been made: (1) s. 4.9(1)(c) has been added; (2) a recorded interest under a restrictive covenant has been deleted from the list of recordings that may not be cancelled under notice; (3) s. 4.9(1)(e) has been added; (4) s. 4.9(1)(h) has been added.*

- (2) Notwithstanding subsection (1), the Court may on an *ex parte* application shorten the period of 60 days to a period it specifies in the order, and a copy of the order shall be served or mailed with the notice.

- (3) It shall be proved to the satisfaction of the Registrar

- (a) that the notice was served as required by subsection (1), and
- (b) that the person who caused the notice to be served has a recorded or registered interest in the land against which the recording to be cancelled was recorded.

- (4) A person who

- (a) procures the cancellation of a recording under this section, and
- (b) has served notice under subsection (1)(g)

is liable for any loss sustained because of the cancellation unless

- (c) the claimant received the notice within the period mentioned in subsection (1) or the period mentioned in subsection (2), whichever is shorter,
- (d) the Court directed under subsection (1)(h) that the notice be served under subsection (1)(g), or
- (e) the Court finds that the method of service was reasonable under the circumstances.

*Revision: S. 4.9(4)(c) and (d) have been added.*

**[Section 4.10 — Improper recording]**

4.10 If a recording

- (a) was void because the interest was not qualified for recording under section 4.1, or
- (b) was not cancelled at the request of the claimant under the recording
  - (i) after the interest ceased to exist under law, and
  - (ii) after written demand for cancellation by a person adversely affected by the recording,

the claimant under the recording is liable to any person who sustains loss because of the initial recording or its continuance unless

- (c) the Court finds that the initial recording or its continuance was reasonable under the circumstances, or
- (d) the recording was made by a Registrar under section 5.4(5).

**PART 5  
REGISTRATION**

**[Section 5.1 — Registrable interests]**

5.1

(1) The following interests may be registered:

- (a) a fee simple estate;
- (b) a life estate;

*Revision: the lists of kinds of fee simple and life estates that are included have been deleted.*

- (c) a leasehold;
- (d) a servitude;
- (e) a profit a prendre;
- (f) a security interest;
- (g) the interest under a postponement agreement;
- (h) *an option to acquire a registrable interest;*
- (i) *the interest of a purchaser under an agreement to purchase land.*

*NOTE: Items (h) and (i) are optional.*

- (2) If another Act requires or authorizes the registration of an interest, and the interest is not qualified for registration under subsection (1), the interest shall be recorded.

**[Section 5.2 — Registration]**

5.2

- (1) A Registrar shall register an interest upon request if
  - (a) the interest is qualified for registration under section 5.1,
  - (b) the person to be registered as owner has legal capacity to own the interest, and
  - (c) the interest is based on a valid transaction.
- (1.1) An interest is registered when the identifier assigned to the document submitted for registration is entered, as registered, in the appropriate register in accordance with section 3.2.

*Revision: S. 5.2(1.1) has been added.*

- (2) Any registration which is not authorized under subsection (1)(a) or (b) is void.

*Revision: the words "for the purposes of this Part" have been deleted from the end of s. 5.2(2).*

- (3) If a registration is void under subsection (2) because not authorized under subsection (1)(b), the Crown in right of [enacting jurisdiction] is the legal owner of the interest under the purported registration, in trust for whomever the law determines the interest should be held.

**[Section 5.3 — Effect of registration]**

5.3

- (1) Notwithstanding section 5.2(1)(c), so long as a registration remains uncanceled, the registered owner is the owner of the registered interest as defined in the register and within the parcel described in the register,
  - (a) if the interest is qualified for registration under section 5.1,
  - (b) if the registered owner has legal capacity to own the interest, and
  - (c) to the extent that the interest is recognized under law.
- (2) For the purposes of subsection (1)(c), a security interest is recognized under law only to the extent of the actual obligation of the obligor under law.
- (3) A registered interest shall be enforced with priority in accordance with section 4.5.
- (4) An interest which was not previously recorded is recorded for the purposes of section 4.5 at the time of
  - (a) its registration, or
  - (b) its purported registration if its registration is void under section 5.2.
- (5) A registered interest has been obtained for value for the purposes of section 4.5, but not for the purposes of sections 4.5.1 and 5.6.

*Revision: the words "but not for the purposes of sections 4.5.1 and 5.6" have been added.*

- (6) A registered interest is, at the time of registration, subject to
  - (a) a transaction which binds the registered owner,
  - (b) a conflicting interest in accordance with section 4.5, and
  - (c) an interest under section 6.1.

**[Section 5.4 — Revision of registrations]**

**5.4**

- (1) Subject to sections 5.5, 5.6 and 5.8, registrations shall be revised as required
  - (a) by a transaction which binds the registered owner,
  - (b) when a revision of registrations was not authorized by a valid transaction or was based on a transaction which has been rectified or cancelled under law, and
  - (c) for the recognition of an interest entitled to priority of enforcement.
- (2) The right of a person to have a registration revised is a statutory interest which
  - (a) may be recorded under section 4.1,
  - (b) is subject to the enforcement priority provisions of section 4.5, and
  - (c) entitles the person to the benefits of the registered interest which he is entitled to obtain.
- (3) A Registrar may refuse to revise a registration if he has information which he reasonably believes indicates that, because of a doubtful question of fact or law, the revision might result in a registration not in accordance with law.
- (4) Subsection (3) applies notwithstanding that a document submitted for registration appears to comply with regulations under section 2.3.
- (5) If a Registrar obtains information which he reasonably believes indicates that a statutory interest may exist under subsection (2), the Registrar may record the possible interest.
- (6) The cancellation of the registration of an interest divests the interest and cancels its recording.

*Revisions: (1) s. 5.4(1) has been revised for drafting purposes; (2) s. 5.7 of the Model Act has been merged with s. 5.4. S. 5.7(1) has become s. 5.4(2) and s. 5.7(2) has become s. 5.4(5); (3) what was s. 5.4(3) has been broken up into s. 5.4(3) and (4); (4) s. 5.7(3) provided that under the circumstances therein described the Registrar shall record a possible statutory interest. This has been changed in the new s. 5.4(5) to say that the Registrar may record. Drafting changes have been made in s. 5.4(3) and (5).*

**[Section 5.5 — Reliance on improper registration]**

**5.5**

- (1) This section is subject to section 5.8 and is applicable when
  - (a) a registration is or was subject to revision,

- (b) an interest has been obtained by an owner as a successor from the owner under the registration subject to revision, and
- (c) that interest is, with respect to the register which included the registration subject to revision, entitled to priority of enforcement under section 4.5 over an interest of a person entitled to have registrations revised.

*Revisions: (1) the words "is subject to section 5.8 and" have been added to s. 5.5(1); (2) s. 5.5(1)(c) has been revised to read as follows: "that interest is, with respect to the register which included the registration subject to revision, entitled to priority of enforcement under s. 4.5 over an interest of a person entitled to have registrations revised."*

- (2) When this section applies
  - (a) registrations shall be revised, in any registers, as required for the enforcement of the interest of the successor, and
  - (b) registrations shall not be revised to the prejudice of the interest of the successor on the grounds that the interest was obtained from an owner under a registration subject to revision.

*Revision: S. 5.5(2) has been redrafted and ensures that revisions can be made in more than one register.*

- (3) A registered owner who sustains loss under this section shall be compensated in accordance with Part 7.

**[Section 5.6 — Reliance on invalid transaction]**

5.6

- (1) This section is subject to section 5.5 and is applicable when a revision of registrations
  - (a) was not authorized by a valid transaction,
  - (b) benefits a registered owner
    - (i) who believed that the revision was authorized by a valid transaction,
    - (ii) who had no knowledge of the facts which made the transaction invalid, and
    - (iii) who paid value for the benefits purportedly obtained under, or detrimentally changed his position in reliance on, the invalid transaction, and
  - (c) has prejudiced a former or subsisting registered owner.

*Revisions: (1) the words "when a revision of registrations" has been substituted for "when a registration"; (2) "benefits a registered owner" has been substituted for words requiring a request by the registered owner in s. 5.6(1)(b); (3) s. 5.6(1)(b)(iii) has been added.*

- (2) When this section applies, either the registered owner or the prejudiced person may apply to the Court under Part 8 for
  - (a) a declaration of the rights of the parties, and
  - (b) orders for revision of registrations and for compensation,

and shall name the Registrar General as a party to the proceeding.

*Revision: the period after "compensation" at the end of s. 5.6(2)(b) has been changed to a comma.*

- (3) In an action under subsection (2), the Court shall determine the rights of the parties in accordance with the following principles:
- (a) subject to subsections (4) and (5), the prejudiced person has a right to have registrations revised, to the extent not prohibited by section 5.5, as required to nullify the effects of the unauthorized revision, and
  - (b) a registered owner, and the prejudiced person if a revision under this subsection cannot fully nullify the effects of the unauthorized revision, shall be compensated in accordance with Part 7 for the loss sustained because of the revisions.

*Revision: S. 5.6(3)(a) and (b) have been revised to recognize that registrations cannot be revised under s. 5.6 if s. 5.5 says they cannot be revised, and to provide for partial compensation where only a partial restoration takes place.*

- (4) The Court may, if it is just and equitable, do both (but not one only) of the following:
- (a) confirm the unauthorized revision, and
  - (b) direct that the prejudiced person be compensated in accordance with Part 7 for the loss sustained because of the confirmation of the unauthorized revision.

*Revision: "revision" has been substituted for "registration" in s. 5.6(4)(a) and (b).*

- (5) In deciding whether it is just and equitable to exercise its powers under subsection (4), the Court shall consider the following circumstances:
- (a) the nature of the ownership and the use of the property by the parties,
  - (b) the circumstances of the invalid transaction,
  - (c) the special characteristics of the property and their appeal to the parties,
  - (d) the willingness of any of the parties to receive compensation,
  - (e) the ease with which the amount of compensation for a loss may be determined, and
  - (f) any other circumstances which, in the opinion of the Court, may make it just and equitable for the Court to exercise or refuse to exercise its powers under subsection (4).

*Revisions: (1) s. 5.6(5)(a) said that the court should consider the use of the property "by either of the parties"; (2) s. 5.6(5)(d) referred to the willingness of "one or both of the parties" to receive compensation.*

- (6) If the Registrar General is satisfied that this section applies,
- (a) he may enter into an agreement with either the registered owner or the prejudiced person providing for payment of compensation and reasonable expenses of bringing the claim, and
  - (b) the agreement is deemed to be an agreement under section 7.5(2).

- (7) Section 7.7 applies to an agreement entered into under subsection (6) and to an order for compensation made under this section.

**[Section 5.7 — deleted]**

*Revision: the contents of s. 5.7, with some changes, have been merged into s. 5.4.*

**[Section 5.8 — Conflicting registrations]**

5.8

- (1) In this section,
- (a) "root registered interests" means the interests registered in different registers, whether parcel or interest registers, which resulted in the initial conflict between the interests registered in different registers, and
  - (b) "derived interests" means interests, whether or not recorded or registered, which are derived from a root registered interest.
- (2) This section is applicable to determine the priority of enforcement of derived interests from one root registered interest relative to derived interests from another root registered interest.
- (3) This section is not applicable to determine the priority of enforcement of conflicting
- (a) root registered interests, and
  - (b) interests derived from only one root registered interest.

*Revision: S. 5.8(3)(b) of the Model Act, which made the section subject to other provisions of the Act, has been deleted.*

- (4) When this section is applicable, all of the derived interests from one root registered interest shall be enforced with priority over the conflicting derived interests from another root registered interest in accordance with the first of the following sequence of rules which establishes the derived interests to be enforced with priority:

Rule 1.

If there is actual possession of land under an interest conferring a right to possession, whether a root enforced interest or a derived interest from it, the derived interests from that root enforced interest shall be enforced with priority.

*Revision: "enforced" has been substituted for "registered".*

Rule 2.

If there is an interest obtained for value derived from one root registered interest, and no such interest derived from another root registered interest, the derived interests which include the interest obtained for value shall be enforced with priority.

Rule 3.

The derived interests from the root registered interest which was not subject to revision under section 5.4 when the initial conflict between interests registered in different registers occurred shall be enforced with priority.

- (5) Any owner who sustains loss because the derived interests from another root registered interest are enforced with priority under this section shall be compensated in accordance with Part 7.

**PART 6  
INTERESTS OVERRIDING REGISTER**

**[Section 6.1 — Interests overriding register]**

- 6.1 Notwithstanding sections 4.5 and 5.3, the following interests, whether or not recorded or registered, and no other interests, shall be enforced with priority relative to all other interests according to law:

*Revision: a drafting change has been made.*

- (a) except when the interest has been expressly registered under this Act, an interest of the Crown in right of [enacting jurisdiction] reserved in or excepted from the original grant of the fee simple absolute from the Crown either expressly or pursuant to an Act;
- (b) a tax lien in favour of a municipality;

*NOTE: An enacting jurisdiction may wish to include as overriding interests other tax liens which are of general application and knowledge and which it would not be efficient to record in the registers.*

- (c) a leasehold for a term of 3 years or less if
- (i) there is actual possession of the land under the lease, and
  - (ii) that possession could be discovered through reasonable investigation;
- (d) a utility interest in land which was previously vested in either the Crown or a municipality if, immediately prior to the transfer or transmission from the Crown or the municipality,
- (i) the land was not included in a register established under this Act, and
  - (ii) the land was subject to the utility interest;

*NOTE: Paragraph (d) is optional.*

- (e) an interest created under an Act which expressly refers to this Act and expressly provides that the interest is enforceable with priority otherwise than as provided in this Act.

**PART 7  
COMPENSATION**

**[Section 7.1 — Grounds for compensation]**

- 7.1 Except as provided in section 7.4, a person who sustains loss through
- (a) a revision of registrations, a recording, or a cancellation of a recording, which is not authorized by this Act, or
  - (b) an omission to revise registrations, or to make or cancel a recording, as required by this Act,
- is entitled to be compensated for the loss sustained.

*Revision: S. 7.1(2) has been deleted because the addition of s. 4.5.1 makes it unnecessary as there will be no compensable loss under the circumstances described in s. 7.1(2).*

**[Section 7.2 — Amount of compensation]**

- 7.2 The compensation shall be,
- (a) if a person is deprived of an interest, the value of the interest, or
  - (b) if the priority of an interest of a person is subordinated, the reduction in value of the interest,
- determined as of
- (c) the date on which the person submits a claim for compensation to the Registrar General, or
  - (d) the date on which the person commences an action for compensation,
- whichever is earlier.

**[Section 7.3 — Limitation of time]**

- 7.3 The person ceases to be entitled to compensation unless, before the expiration of two years after he knows or ought to know of the loss sustained or within such further time as is agreed to by the Registrar General, he either
- (a) enters into an agreement with the Registrar General providing for the payment of compensation, or
  - (b) commences an action for compensation in the Court.

**[Section 7.4 — When compensation not payable]**

- 7.4 A person is not entitled to compensation if the loss was sustained because the person, with actual knowledge of an interest which could be recorded under section 5.7(1), failed to record the interest promptly.

**[Section 7.5 — Agreement for compensation]**

7.5

- (1) A person who claims to be entitled to compensation may submit a claim to the Registrar General.
- (2) If the Registrar General is satisfied that the person is entitled to compensation, he should enter into an agreement with the person providing for payment to the person of
  - (a) compensation, and
  - (b) reasonable expenses of bringing the claim.

*NOTE: Each jurisdiction should provide for the payment of interest as if an agreement were a judgment of the Court in accordance with the jurisdiction's prejudgment interest legislation from the date on which the claim is made or action commenced. A jurisdiction which allows prejudgment interest at a real interest rate on general damages should allow interest at that rate from the date of actual or imputed discovery of the loss to the date at which interest at a full rate starts to run.*

- (3) When an agreement is entered into under subsection (2),
  - (a) the Registrar General must certify to the Provincial Treasurer that the person is entitled to compensation, expenses and interest as set forth in the agreement,
  - (b) the person ceases to be entitled to compensation under this Part, and
  - (c) the person is entitled to receive the compensation, expenses and interest provided for in the agreement.

**[Section 7.6 — Judgment for compensation]**

7.6

- (1) A person who claims to be entitled to compensation may commence an action in the Court naming the Registrar General as defendant.
- (2) The Court may give judgment
  - (a) declaring that the person is entitled to compensation, and
  - (b) determining the amount of compensation and costs.

*NOTE: Each jurisdiction should provide for the payment of prejudgment interest in accordance with the jurisdiction's prejudgment interest legislation from the date on which the claim is made or action commenced. A jurisdiction which allows prejudgment interest at a real interest rate on general damages should allow interest at that rate from the date of actual or imputed discovery of the loss to the date at which full prejudgment interest starts to run.*

**[Section 7.7 — Payment of compensation]**

7.7

- Upon receipt of
- (a) a certificate of the Registrar General under section 7.5(3), or

(b) a judgment of the Court under section 7.6(2) or section 5.6,

the [minister responsible for financial administration] shall, subject to any regulations under section 2.3(f), pay to the person the amounts of compensation, expenses, costs and interest provided for therein.

*NOTE: an enacting jurisdiction may need to adjust this subsection to fit its financial administration legislation or regulations.*

**[Section 7.8 — Liability of wrongdoer]**

7.8

- (1) In subsection (2), "wrongful act" does not include an act or omission which is merely careless or negligent.
- (2) If the loss for which compensation is payable under section 7.5 or section 7.6 was caused in whole or in part by a wrongful act, the person who committed the wrongful act, other than a Registrar or an employee of the land registration office, is liable to the Government for the amount of the compensation or for such portion thereof as the Court finds to be just and equitable, having regard to the extent of the person's responsibility for the loss.
- (3) The liability of the person may be enforced by
  - (a) the Registrar General in an action brought against the Registrar General for compensation under section 7.6, or
  - (b) the [minister responsible for financial administration] in an action brought against the person.

**PART 8  
POWERS OF COURT**

**[Section 8.1 — Application by aggrieved person]**

8.1 A person who objects to

- (a) a recording or the cancellation of a recording,
- (b) a revision of registrations, or
- (c) any decision of a Registrar with respect to any action he is required or authorized to take under this Act,

may

- (d) require the Registrar to set forth in writing the reasons therefor, and
- (e) apply to the Court for an order requiring the Registrar to take any action he is required or authorized to take under this Act, and on the application the Court may so order and make any further order it thinks proper.

*Revision: s. 8.1(d) has been added.*

**[Section 8.2 — Application by Registrar General]**

8.2 The Registrar General may apply to the Court for directions in respect of any matter concerning his or a Registrar's duties under this Act, and on the application the Court may give any directions and make any further orders it thinks proper.

**[Section 8.3 — General jurisdiction of Court]**

8.3 In any proceeding with respect to an interest, the Court may direct a Registrar to

- (a) record an interest, cancel a recording, or revise the priority of recordings, or
- (b) revise registrations.

*Revision: the words "or revise the priority of recordings" have been added.*

**[Section 8.4 — Method of application]**

8.4 An application to the Court under this Act may be made in a summary manner in accordance with the Rules of Court by originating notice, petition or otherwise as the rules provide, and subject to any order respecting notice to interested parties, or any further order the Court thinks proper.