

LAW REFORM COMMISSION



MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT
ON
THE GENERAL REGISTER

September 22, 1980

Report #44

The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

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I. INTRODUCTION

In October 1971, the then Attorney-General, A.H. Mackling, Q.C., requested that the Commission review the problem of lien and judgment registration in the general register of the land titles offices. Although initial research was conducted, unfortunately, due to higher priority projects, this matter had to be deferred. We have recently had the opportunity to review the matter further and are now in a position to issue our final Report.

Currently instruments such as municipal and provincial liens, maintenance and bankruptcy orders and certificates of judgment which contain no reference to a specific parcel of land, yet can form an interest in lands, are registrable in the land titles office. The general register (hereinafter referred to as the "G.R.") is the mechanism which records these instruments in the various land titles offices in Manitoba.

II. HISTORICAL SUMMARY

The existence and composition of the G.R. system can be attributed to its historical development.

Originally under the land registry system brought into force in Manitoba by Acts of 1871¹ and 1873,² all instruments affecting land were maintained in a general "Abstract" book.³

By virtue of an 1878 amendment, it was provided "that any instrument containing no proper description of the land . . . shall not be entered in the Abstract book but will be registered in a register called the General Register".⁴

Included among the intended instruments were certificates of judgment.⁵ Such judgments once registered, by virtue of *An Act respecting the Administration of Justice* of 1875, would "bind and form a lien on all the estate and interest aforesaid in the lands of the judgment debtor in the several counties, in the registry offices of which such certificate is recorded".⁶ This provision was intended to give creditors the ability to protect a priority claim against land.

By "*The Real Property Acts*" of 1885 and 1889 an additional system of land registration was introduced in Manitoba.⁷ Included in the 1889 Act was a provision for the registration of judgments. The Practice Rules established that "the Caveat Book shall be hereafter known as the caveat book and general register and in it shall be entered certificates of judgment and attachments which may be filed in the Land Titles Office".⁸ In addition the option existed to specify a parcel of land with the judgment whereby notation of the interest would be made on the actual certificate of title.⁹

In 1900, with the introduction of the new *Real Property Act*, the caveat book and general register were abolished.¹⁰ However, at that time, the practice of maintaining only one G.R. to cover both systems appears to have been introduced. Since the need to specify land was optional, the practice developed over the years to permit registration in the G.R. without any land being specified.¹¹

III. THE GENERAL REGISTER SYSTEM

Thus the G.R. system as it exists today was developed. The mechanism remains authorized by virtue of section 41(3) of "*The Registry Act*"¹² (see Appendix A).

Judgments, forming statutory liens by virtue of section 3(1) of "*The Judgments Act*"¹³ (see Appendix B) remain the instruments most often registered. However, use of the mechanism has expanded. As previously described, maintenance and bankruptcy orders are now maintained in the G.R.¹⁴ Also, section 72(2) of "*The Municipal Act*"¹⁵ and section 13 of "*The Department of Welfare Act*"¹⁶ provide that statutory liens are created by filing statements of moneys expended on social assistance. The inclusion of all these instruments has expanded the G.R. considerably from its original form.

In practical terms, the actual operation of the G.R. is as follows:

Each certificate of judgment (or other instrument form) when registered is allotted an instrument number and recorded in the day book, as are all other registrations. Following this the certificate, or form, is entered in the judgment book in the G.R. where further particulars are recorded. The name of the debtor is then alphabetically indexed in the file maintained for this purpose.

An independent G.R. search or one carried out along with a title search entails processing the names through this index. Names of parties to land transfers or other conveyances, as well as the names of mortgagors, are also searched through the G.R., prior to registration of the documents.

The search process is conducted by two G.R. clerks working independently. The names of the parties are checked against the index and judgments or liens against persons with similar names are noted on the reverse side of the document being registered.¹⁷

Although the concept and process of the G.R. appear simple, the mechanism does not operate well within the Torrens system of land registration. In fact, it has created difficulties.

IV. THE DEFICIENCIES OF THE GENERAL REGISTER SYSTEM

The problem stems from the fact that maintenance of a G.R. system constitutes an anomaly in a Torrens system of land registration.¹⁸ The goal of the Torrens system is to allow parties dealing with land to acquire safe title, quickly at minimum cost and inconvenience.¹⁹ To facilitate this goal, the theory is that "the register or its equivalent, the certificate of titles . . . is everything".²⁰ In a perfect Torrens formula, all interests in a parcel of land would be recorded on that title. Therefore, examination of such title would be all that was required in a transaction.

In reality, in the course of implementation, this concept has been inundated with exceptions.²¹ In Manitoba, section 57(1)(a) to (m) of *The Real Property Act* details various rights and instruments to which the certificate of title is subject, by implication, without specific title endorsement.²² Section 57(1)(f) includes among these instruments "any order of attachment, judgment or order for the payment of money against the registered owner of the land, registered since the date of the certificate of title . . . ".²³

Since each such exception reduces the speed and efficiency of land registration, "it would be desirable to eliminate as many as possible of the exceptions to indefeasibility".²⁴ This includes the judgment and lien exception.

The more pressing difficulty is that the operation of the G.R. interferes with the Torrens goal of facility of transfer on a practical basis. The G.R. system causes administrative problems for the land titles office, including delays in transactions, and extra costs and inconvenience to parties dealing with land.

As previously described, a "searching" process of the G.R. is conducted prior to any transaction being completed. This is necessary since the documents registered in the G.R. form liens, and with a Torrens system if a transaction is completed without recognizing such an interest, the right will be extinguished so far as that transaction is concerned. Because deprivation of an interest in land gives rise to a claim against the land titles Assurance Fund it is the responsibility of the Registrar (and his clerks) to detect the debtor's involvement through a "search".²⁵ However, the search is difficult because the only guidance provided is a name, and names are inherently poor indices of identification. Many names are very common, and it is often impossible to distinguish between them.²⁶ This difficulty is particularly great in some districts where similar or common names exist.²⁷ The problem is compounded by the fact that full names are not necessarily provided. Sometimes only initials of first names are provided.²⁸

In addition, the land titles officials are currently responsible for tracing a debtor in a transaction even if there are differences in the names involved.²⁹ Therefore names that are similar or subject to language variation are also included during the search procedure. Furthermore, since Gazette-recorded name changes and marriage

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name changes (of which record is received through a title change) are also cross-indexed, these too will be noted in the search. For some names all of this can amount to a considerable number of possibilities.

Quite apart from this cumbersome searching process, the land titles office subsequently conducts a screening process using the City Directory and earlier documents to remove non-applicable names.³⁰

The above-described procedure is therefore a time-consuming and difficult task, causing delays in the completion of real estate transactions. If, after completion of the process there are outstanding G.R. registrations, then these must be dealt with by the party dealing with the land prior to completion of the transaction. Should he be the debtor, he will, of course, have to settle the debt. However, if the party is not the debtor, but has a similar name, he will also be forced to deal with the registration. It will be up to him to establish to the satisfaction of the land titles officials that he is not the debtor. If this problem arises on an initial search, it will entail production of an affidavit for which the party dealing with the land will be responsible. Should a delay occur when documents are presented for registration, there may also be the additional cost of interest.

For those with common names, particularly in some districts of Manitoba, this problem is not just a mere inconvenience or annoyance. Correspondence from one rural legal firm indicates that about 75% of all land transactions completed by them required G.R. affidavits,³¹ some as long as three pages. The problem constitutes a serious

impediment to the Torrens goal of speed and efficiency of land transactions.

Moreover, it is simply an inequitable situation to require an "innocent" party dealing with land to incur expense and inconvenience to establish who he is not!

This burden is even less justifiable when one considers that the protection the G.R. affords to creditors is a tenuous one. The searching process is very unreliable, obviously susceptible to error, and can easily be circumvented. A transferee can transfer land into a different name. Both transferee and transferor could make false affidavits.³² In fact, the amount collected through the system is estimated to be much smaller than the cost and inconvenience of the procedure.³³

In essence the system as it is currently maintained places an unfair onus on parties dealing with land and causes significant and ever-increasing problems to all concerned. In order to find a solution which more favourably balances the competing interests of a creditor and the party dealing with land, the following proposals will be examined from both perspectives. Furthermore the cost and feasibility of each plan will be discussed.

V. THE OPTIONS FOR REFORM

(a) Personal Identifiers

One potential reform, which has been recommended by the Ombudsman of Manitoba³⁴ and by practitioners in other provinces,³⁵ is the possible introduction of personal

identifiers into the G.R. system. Such reform would entail inclusion of an identifier - birthdate being the most reliable³⁶ - with all G.R. registrations. This information could then be checked against data supplied by parties dealing with land, thereby providing a more effective means of distinguishing between parties.

For the land titles office, such a process would speed up the search procedure and considerably reduce the incidences of requiring affidavits in cases of similar names. But, such a reform would still cause inconvenience to parties dealing with land and, in some ways, more so than the system does now, since they would all now be required to produce birthdate evidence and include this with their documents. Such a practice would most likely prove to be an even more offensive task than the current procedure.³⁷ Furthermore, the identifier approach does not eliminate the problem of indefeasibility of title.

For creditors that system is not particularly appealing. It would be difficult for some creditors to obtain birthdate information about a debtor. The system would remain easy for debtors to circumvent and the incidences of fraud would not be reduced. From both perspectives, it appears that the identifier solution would only tend to increase the difficulties. Although the cost of such reforms would not be excessive, the procedures could only be introduced over a considerable interval of time. This is due to the fact that elaborate interim provisions would have to be made for documents already registered in the G.R.³⁸ Also, the addition of personal identifiers would be difficult to introduce and would not eliminate the problems of the G.R. system.

(b) General Registry Certificates

Another option regarding the G.R. which has been raised³⁹ entails making the procedure more simple and standardized so as to eliminate delays in transactions. This proposal would not involve any radical alterations. The current G.R. mechanism would be maintained. The procedure surrounding the system, however, would be varied. The G.R. search certificate would become a binding document. That is, the certificate received on the initial search could be filed with the conveyance documents and any necessary affidavits. This would be sufficient to allow the transaction to be completed, without any further searches.

There is an initial theoretical problem with such a proposal. The difficulty concerns judgments or liens registered after this initial search certificate is obtained. Under a Torrens system priority of registration gives priority of interest. This is provided for by section 64 of "*The Real Property Act*" of Manitoba.⁴⁰ The effect of this provision is that any interest registered after an initial search certificate is issued, but before the registration of the conveyance document should take priority. Therefore elimination of a search immediately prior to registration would not be possible. However, where creditor interests are concerned, there is a modification to this principle that originated in equity and the common law. That is, as set out in the case of *Jellett v. Wilkie*, "an execution creditor can only sell the property of his debtor subject to all such charges, liens and equities as the same was subject to in the hands of his debtor"⁴¹ (emphasis added). Therefore, at common law once an agreement to sell was

entered into and the equitable interest thereby passed to the purchaser,⁴² the creditor could only execute against the remaining interest of the vendor.⁴³

This principle has not been abrogated through the introduction of a Torrens system. Rather it has been statutorily maintained, through section 10(1) of "*The Judgments Act*" and section 72 of "*The Real Property Act*". Section 10(1) provides:

10(1) No judgment for the payment of money whereof a certificate has been registered binds or forms a lien or charge on land in respect of which the person who is the judgment debtor,

- (a) has made a bona fide sale, exchange, conveyance or transfer, or a bona fide agreement for sale or exchange, subsisting at the time of the registration; or
- (b) has given a bona fide option to purchase subsisting at the time of the registration.

Similarly, section 72 provides:

72 Where an instrument is presented for registration and

- (a) a registered certificate of judgment or an order for payment of alimony or maintenance; or
- (b) a lien or charge created by, or arising pursuant to, an Act of the Legislature in favour of Her Majesty in right of Manitoba or in favour of a municipality;

appears to affect the land described therein, but the applicant for registration claims that the certificate, lien, or charge, does not affect the land, or is not equitably entitled to priority over the instrument, notwithstanding its priority of registration, the district registrar may take such evidence under oath or otherwise in the matter as he deems necessary, and may thereupon decide whether the certificate of judgment, lien, or charge, does or does not affect the land, or whether the certificate of judgment, lien, or charge, is or is not entitled to priority over the instrument, and may register the instrument according to that decision.

Therefore, in relation to this "special and limited class of claims"⁴⁶ a modification to the general Torrens principle of priority of registration exists. Insofar as the modification applies, it would be possible to eliminate the search immediately prior to registration if a search certificate were obtained after completion of an agreement to sell. The difficulty that remains, however, is that the extent of the application of these sections is unclear. It cannot be stated with certainty that all interests which may be registered in the G.R. are necessarily covered by these Acts.⁴⁷ Consequently, there is some doubt as to the theoretical viability of this proposed reform.

Introduction of such a procedure would not alleviate the difficulty of the conclusiveness of title, but may reduce somewhat the administrative problems for the land titles office. This is due to the fact that only one search per transaction would need to be completed at a time when a delay in the transaction is not at issue. However, this is a very limited benefit as the difficult processes of the maintenance of the G.R., updating searching and screening would still need to be conducted.

For parties dealing with land, reduced numbers of searches plus absence of delays would mean speedier completion of transactions. However, search and affidavit expenses would still be incurred. Furthermore, since the search certificate could only be a binding document if it was completed after an agreement had been entered into, the land titles office would have to require evidence of the agreement's completion with every registration. This would entail cost and inconvenience to parties dealing with land once again.

For the land titles system, this type of reform only produces a minimal alleviation of the current difficulties.

For creditors this proposed reform would weaken the protection insofar as double checking is eliminated and the absence of it might encourage deception. However, the proposals are beneficial in that some creditor protection is retained and there would be no significant cost or feasibility problems in introducing the system.

On the whole, however, this particular approach to the G.R. problem does not solve the difficulties being encountered.

(c) Registrations Against Specific Land

A different approach to the G.R. problem was recently suggested by the Registrar General of Manitoba. In his report⁴⁸ to the Attorney-General dated January 1979, Mr. Lamont examined the G.R. issue and made the following recommendations:

- (1) That legislation be introduced to require all future registrations to recite specific land against which the interest is to be registered.
- (2) That the legislation provide a reasonable deadline for the entry of existing registrations against specific land. After the deadline any not entered against land shall be vacated.⁴⁹

The effect of such provisions is to shift the onus of identification from the party dealing with land to the creditor. The creditor would have to ascertain and specify the lands of his debtor. This approach has been adopted in British Columbia (see Appendix C). Recent revisions to execution against land procedures, in that province, included this new form of registration replacing the old G.R. system.⁵⁰

For the land titles system such a proposal successfully deals with all current deficiencies. G.R. registration would entail notation of the interest on the certificate of title, similar to other encumbrances. The G.R. mechanism and cumbersome search procedures would be eliminated. Affidavit expense and delay in the transaction would no longer be encountered, and one of the exceptions to conclusiveness of title would be eliminated. The only disadvantage for parties dealing with land is the potential for haphazard or incorrect registrations by creditors. This difficulty has been successfully controlled by the current British Columbia legislation. The enactments there provide that with each registration notice is sent to the owner affected by the instrument. If upon objection by the owner (made on forms included with the notice [see Appendix D]) it is determined that he is not the debtor, the creditor will be required to compensate the owner. This entails a \$25 payment, subject to increases by the court if reasonable steps were not taken prior to registration.⁵¹ All information from British Columbia indicates such an approach is successful in deterring careless registration by creditors.⁵²

With such provisions the approach suggested by the Registrar General of Manitoba is the most comprehensive solution to the current difficulties encountered by the land titles office and the "innocent" party dealing with land. For creditors the institution of such provisions has both benefits and drawbacks. On the positive side, recording of the interest on the actual certificate of title provides the creditor with a much more reliable protection. There is minimal opportunity for error or deception.

However, there are some disadvantages to the proposal which have received much attention. There has been substantial negative reaction from members of the legal profession, who claim the provisions are unduly harsh to creditors.⁵³ The two basic objections appear to be that with the elimination of the G.R. creditors will be unable to identify readily a debtor's property or to bind future acquired interests.

It has been argued that requiring that land be specified is unfair in that creditors do not have sufficient means to ascertain what property a debtor owns. However, this argument is not entirely valid. Creditors have other methods of obtaining such information. For creditors who attain their status through direct transactions, such as loans or social assistance, sufficient particulars of the debtor's identity and property can be obtained at the initial stages. Failure to do so is a risk; a burden which should be borne by the creditor. For those not afforded this opportunity, such as a party in a tort action or family dispute, there are other options. The most important of these are the examination procedures available under Queen's Bench Rule 514⁵⁴ or the provisions of "*The Family Maintenance Act*".⁵⁵ Creditors argue that the above processes are costly and unreliable as compared to the G.R. mechanism.⁵⁶

However, the G.R., as the historical summary indicated, was not designed to carry out this function of identifying the debtor's property and it does not do it easily. While it is not costly to creditors, there are costs incurred by the land titles office and the "innocent" party dealing with land.⁵⁷ Additionally, the process is not that reliable. Those debtors who would lie during an examination process are just as likely to swear false affidavits. Therefore,

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this argument is not sufficient to justify retention of the current G.R. system. However, requiring that land be specified is an inequitable burden to place on creditors without the land titles system providing some assistance. The assistance should be such as can be used by creditors without significant interference with land registration.

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To this effect, a general names or "owners" index, as is currently used in British Columbia,⁵⁸ appears to be the optimal solution (see Appendix E). Such an index would contain a listing of all registered owners or interests in land, with a reference to the particular certificate number involved. The mechanism introduced concurrently with provisions which require land to be specified could be searched by creditors to ascertain a debtor's property.⁵⁹ The only difficulty with such a process is that the creditor is faced with distinguishing between the name of his debtor and similar names. However, this is not an inequitable burden since he will profit from the activity and he has the best access to information. With the institution of this mechanism a creditor is given sufficient opportunity to identify the lands of the debtor. Therefore, the requirement that land be specified would no longer be an unduly harsh provision.

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The second argument against the provision, however, concerns future acquired property. Currently under the G.R. system, a party dealing with land, in order to complete a transaction, must clear the G.R. registrations against his name or else have title endorsed subject to these interests.⁶⁰ By automatically binding these future interests, the G.R. serves a collection function forcing a debtor to deal with them at a future time when he wishes to deal with land.

The ability of a G.R. registration to bind all of a debtor's property, including future acquired interests, could and should be statutorily maintained. However, for the registration to apply the land would have to be specified and the process would not be automatic. It would be difficult, under the current system, for a creditor to receive notice of such acquisitions. However, with the introduction of a names index, the information could be obtained through a periodic check.

The argument raised against this concept, particularly by those involved with social assistance liens, is that this process is excessively difficult for a creditor to follow. The problem with social assistance liens is that an estimated 95% are filed with the knowledge that the particular party owns no land. The majority are intended to bind future acquired interests.⁶¹ For municipal and provincial officials and other creditors in a similar position, periodic checks of the index would be a significant task. However, there will always be enforcement problems with G.R. registrations binding future interests. The difficult task the creditor faces in finding these new assets is a problem inherent in a creditor status. Furthermore, it is not a burden sufficient in scope to justify the retention of the G.R. as presently constituted.

Requiring that land be specified does reduce the protection which creditors currently enjoy. However, it is believed that with the institution of a general names index, the reduced protection is still a reasonable one in the circumstances. Implementing a requirement that these registrations specify land in addition to providing for a general names index constitutes the optimal solution to the registration

difficulties. It is the proposal which best attains a sufficient balance between the interests of the creditor and those of the party dealing with land. We are also aware of the competing interests of creditors' rights and the privacy of owners of land. However, land titles documentation is a matter of public record and the names index merely facilitates ascertaining ownership of land. As such it is not a significant intrusion into privacy.

Introduction of provisions for specifying land poses only one difficulty. That is, as recommended by the Registrar General of Manitoba, allowances would have to be made for those instruments currently registered without land being specified. A reasonable interim period would have to be allowed, during which such instruments would have to be altered to include land descriptions. Those which were not so altered within the time interval would lapse at the conclusion of the period.⁶² Given the registration cost and the expected terms of some liens (social assistance liens - 10 years⁶³) it would be fair to provide some form of refund for liens which have lapsed earlier than anticipated.

The more significant problem pertains to the implementation of a names index in the Manitoba land titles system.

In British Columbia, the names or "owners" index has been maintained since the inception of their land titles system.⁶⁴ However, it had not been consistently up-dated and had lapsed into an unreliable state. With introduction of the new revisions all that was required was an updating of the system into a more accurate state. This task was completed only at "considerable" cost.⁶⁵ In Manitoba, in 1891, provision was made for an owners' index.

However, in 1939⁶⁷ the mechanism was abolished due to the difficulties of maintaining it. To re-introduce the device at this stage would entail an extremely difficult and costly process. It would require all land titles districts in the province to maintain an index of the names of all registered owners. This would involve approximately 500,000 parcels of land. Such a process would entail more than the "considerable" costs incurred in British Columbia.⁶⁸

In addition to the introduction of the mechanism, its operation would prove difficult. Considering the constant turn-over of instruments - about 30,000 - 35,000 certificates of title issued per year in the Winnipeg district alone - the only potential manual system would be an index, similar to the G.R. With such a system, space could be made for alphabetical indexing of new names. However, given the volume of instruments involved, maintenance and searching would prove costly and difficult.⁶⁹

This approach would be advisable if there were no better solution. However, a better approach would be the institution of a computerized names index, particularly if it were created in conjunction with computerization of land registration in general.

With such automation, the names index is a much more feasible concept. The initial indexing of registered owners' names could be completed with the overall system programming. The indexing costs would be simply a part of computerization costs. A computerized index would be easily maintained and searched with minimal time and cost.

Discussions with the Registrar General of Manitoba

indicate that computerization of the land titles system is currently under study.⁷⁰ Given the ever-expanding complexity of land registration, it appears that such a procedure is foreseeable. Considering the likelihood of computerization, introduction of a names register, at this time, would involve an unnecessary duplication of indexing work which would be wasteful as well as costly and difficult.

Therefore, for practical and economic reasons, it is most advisable that introduction of the names index should await the computerization of the land titles system. To avoid an inequitable situation, mandatory specifying of land would have to be similarly delayed. However, due to the solution these provisions achieve, it is strongly recommended that the computerized index be instituted as soon as possible.

VI. INTERIM MEASURES

In the interim, due to the increasing difficulties of the current system, it would be desirable to recommend some partial reforms.

One possible interim measure would be to make the requirements for registration in the G.R. more stringent. Such an approach has been taken in the Province of Saskatchewan where a similar G.R. system is maintained for writs of execution. Section 180(2) of the Saskatchewan *Land Titles Act* provides:

The registrar shall not register any such writ unless the copy transmitted to him sets forth in full the Christian name or names as well as the surname of the debtor or is accompanied by a statutory declaration setting forth such information or declaring that the debtor has only an initial or initials or letters in place of a Christian name.⁷¹

Such a provision, if introduced in Manitoba, would make it a statutory requirement that three full names be included where possible. It would also effectively eliminate the liberal use of initials which is so prevalent in G.R. registrations.

From the land titles office perspective such an approach would reduce the multiplicity of names by providing more discerning factors. For creditors, it cannot be said to be unduly harsh to require them to ascertain at least the full names of particular debtors. Similarly, provision giving the land titles officials the discretion to request more particulars from a creditor about his debtor could be instituted. In the old British Columbia *Land Registry Act*, section 177(2) provided:

The Registrar may require any judgment creditor who has registered a judgment under any Act to produce from time to time such evidence as the Registrar considers necessary for the identification of the judgment debtor.⁷²

(This section was repealed when British Columbia revised its names index system, as mentioned above.)

To be most effective, such a provision, if introduced in Manitoba, should be amended to read:

The Registrar may require any party who registers or has registered any instrument in the General Register under any Act to produce from time to time such evidence of identification as may be reasonably necessary to distinguish the debtor from others of the same name.

The enactment of such a provision would give the Registrar the ability to request more details, either at the time of

registration or later when an identity issue arose. Such a provision would assist the land titles office in making distinctions while not imposing an unreasonable burden on creditors.

However, while both above described provisions are beneficial, their effectiveness is minimal given the current case law on land titles liability. Due to the liability of the Assurance Fund, land titles officials are under a heavy responsibility to check all possible variations of names.⁷³

Therefore, a further amendment should be made which would increase the efficacy of the above provisions. Such a provision was enacted in Saskatchewan in 1978. In that province, section 207 of "*The Land Titles Act*" provides:

The assurance fund shall not under any circumstances be liable for compensation for loss, damage or deprivation:

. . .

- (f) occasioned by the failure of a registrar to endorse a memorandum of an execution filed in his office on the title to any land owned or acquired by an execution debtor under a name which is different in any way from the name by which he is described in a writ of execution unless the lands that are subject to the execution are specifically described therein.⁷⁴

If such a provision were enacted in Manitoba, it would ease the administrative difficulties presently encountered. Insofar as identical names only would need to be checked, the search process would be quicker. This is particularly true if full names are included. Furthermore, there would be a reduction in the number of delays and affidavits required. This has been the experience in Saskatchewan.⁷⁵

The option of specifying land should be introduced. To the extent that this is used, administrative difficulties are further reduced as the names in the G.R. are decreased. This also supports the principle of indefeasibility of title. Such an approach would be a first step to eventually requiring the specifying of land.

Introduction of the above three provisions, although not eliminating the problems for the land titles office and parties dealing with land, would alleviate some of the difficulty. However, from the creditor's perspective such an enactment would limit the protection currently provided. With only identical names being checked, the opportunity for a debtor to avoid the mechanism is increased. Exact and full name identification would be essential as an error in this area would be quite significant. Therefore, to ease the difficulty, provision should be made to allow a creditor to include variations of a name of which he is aware. Nevertheless, making the land titles office liable only if the names are identical cannot be said to be unfair to the creditor, particularly since this is the only information it is given. In any event, the creditor is given the ability to guarantee his protection by specifying against what land the G.R. instrument is to be registered. Although the provisions may limit the creditor's protection, they cannot be said to be unduly harsh. The reduction in the protection that does occur is necessary to achieve an adequate balance of interests.

The overall advantage of introducing the above interim measures is that they can be implemented quickly,

with little expense or inconvenience. No new mechanism or procedure would need to be introduced except the optional provision for specifying land. The Registrar General of Manitoba stated that this would pose no difficulty.⁷⁶ Once enacted, the amendments could be effectively instituted. The only interim measure that would be required would be in relation to existing registrations. The requirement of full names could not fairly be introduced retroactively. However to be effective the land titles office liability would have to be restricted to those cases where there were identical names or registration against specified land. Therefore, with instruments already registered, provision would have to be made allowing an interim period for amendment of names or for specifying land where necessary and possible.

One final interim measure which should be examined is that of providing a service for the execution of affidavits⁷⁷ in the land titles office. This procedure consists of providing affidavit forms which can be completed and sworn in the land titles office, free of charge. With these affidavits the party dealing with the land would prove to the satisfaction of the land titles official that he is not the person against whom the lien or judgment is registered. This would be a beneficial situation. There are some difficulties, however. Land titles officials would have to be given the discretion to accept or refuse the affidavits. This could mean that a party dealing with land could be denied service when attending at the land titles office. However, the discretion could be restricted to apply only where there are reasonable grounds for believing it is a false statement.

The other objection is that the simplicity of the

process would encourage false affidavits.⁷⁸ This is, however, only an assumption. There is no evidence to support the conclusion. In fact, in Saskatchewan such a service has been instituted.⁷⁹

While we understand that few lawyers charge for this affidavit, nevertheless this service might be instituted in the land titles office on an experimental basis to test its effectiveness. We therefore recommend that the above-described provisions be instituted as interim measures to alleviate the difficulties of the G.R. system.

CONCLUSION

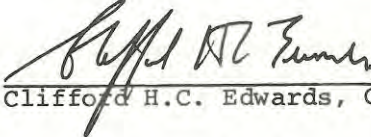
The General Register is a system which poses serious problems for land conveyancing in Manitoba. Therefore it is recommended that:

1. A computerized general names index be introduced in the land titles offices in Manitoba.
2. With the institution of such an index, all future registrations must specify land against which the interest can be registered.
3. The right to bind a debtor's future acquired interests be maintained by providing that a creditor be able to re-register his claim specifying the new parcel of land.
4. In conjunction with the above provisions, it should be required that existing registrations specify land or else be vacated within an allotted time period.

Until such time as the above measures can be instituted, the following interim measures are recommended:

1. All registrations in the General Register be required to specify full names.
2. The Registrar may require any party who registers or has registered any instrument in the General Register under any Act to produce from time to time such evidence of identification as may be reasonably necessary to distinguish the debtor from others of the same name.
3. The land titles Assurance Fund be absolved from liability for losses related to a General Register search unless the names of the parties involved are identical or the instrument involved specifies land.
4. A service for the execution of affidavits might be instituted in the land titles offices in Manitoba.


This is a Report pursuant to section 5(3) of "The Law Reform Commission Act", signed this 22nd day of September 1980.

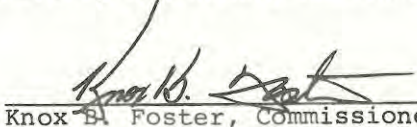

Clifford H.C. Edwards, Chairman


Patricia G. Ritchie, Commissioner


David G. Newman, Commissioner


A. Burton Bass, Commissioner


Beverly-Ann Scott, Commissioner


Knox B. Foster, Commissioner

FOOTNOTES

1. *An Act relating to the Registration of Deeds*, S.M. 1871, 34 Vict. c. 7.
2. *An Act to amend the Act concerning the Registration of Deeds*, S.M. 1873, 36 Vict. c. 18.
3. *An Act to amend the Act concerning the Registration of Deeds*, S.M. 1873, 36 Vict. c. 18, sec. 16.
4. *An Act further to amend the Registration of Titles*, S.M. 1878, Vict. c. 9, sec. 1.
5. *An Act further to amend the Registration of Titles*, S.M. 1878, 41 Vict. c. 9, sec. 1.
6. *An Act respecting the Administration of Justice*, S.M. 1875, 38 Vict. c. 5, sec. 54.
7. "*The Real Property Act*", S.M. 1885, 48 Vict. c. 28.
8. "*The Real Property Act*", S.M. 1889, 52 Vict. 16, Schedule S, Rule 8.
9. Coutlee, L.W., *Registration of Titles to Real Estate in Manitoba and the North-West Territories* (1890) 33.
10. "*The Real Property Act*", S.M. 1900, 63-64 Vict. c. 47.
11. Interview with D. Lamont, Registrar General, Winnipeg Land Titles Office, June 20, 1980.
12. "*The Registry Act*", C.C.S.M. c. R50, sec. 41(3).
13. "*The Judgments Act*", C.C.S.M. c. J10, sec. 3(1).
14. "*The Judgments Act*", C.C.S.M. c. J10, sec. 9, and see Bill 7, "*The Family Law Amendment Act*"; the *Bankruptcy Act*, R.S.C. 1970, c. B-3, sec. 52(3).
15. "*The Municipal Act*", C.C.S.M. c. M225, sec. 721(2) and (3).
16. "*The Department of Welfare Act*", C.C.S.M. c. W110, sec.13.
17. D. Lamont, *Manitoba Land Titles System: Report on the General Register*, January 1979 (unpublished report to the Attorney-General) 3-5; tour of the General Register, Winnipeg Land Titles Office, May 12, 1980.

18. Manitoba Law Reform Commission, *Improved Methods of Enforcing Support Orders Against Real Property*, Report #36, November 19, 1979, 15.
19. V. DiCastri, *Thom's Canadian Torrens System* (2d) (1961) 20-21.
20. *Id.*, at 40.
21. *Id.*, at 41.
22. "The Real Property Act", C.C.S.M. c. R30, sec. 57(1).
23. "The Real Property Act", C.C.S.M. c. R30, sec. 57(1)(f).
24. D. Lamont, "Unregistered Defects of Title", *Pitblado Lectures on Continuing Legal Education: The Law of Land Development* (1967) 11.
25. *Supra* note 19, at 290-291.
26. Tour of the General Register, Winnipeg Land Titles Office, May 12, 1980.
27. Letter from Mr. Kenneth R. Hanssen of Duncan & Company, to the Manitoba Law Reform Commission, June 26, 1980.
28. *Supra* note 26.
29. *Holigrocki (otherwise Holigroski v. Holigrocki (otherwise Holigroski) and District Registrar of Land Titles (Winnipeg)* (1966), 58 W.W.R. 368, (Man. Q.B.).
30. *Supra* note 17.
31. *Supra* note 27.
32. *Supra* note 29; interview with Mr. C. Pappas, D'Arcy & Deacon, June 25, 1980.
33. *Supra* note 11; interview with Mr. C. Pappas, D'Arcy & Deacon, June 25, 1980.
34. Letter from G.W. Maltby, Ombudsman to Mr. F.C. Muldoon, Q.C., Chairman, Manitoba Law Reform Commission, October 14, 1971.
35. Letter from Mr. Ken Payne, Edmonton solicitor to Kim Prost, Research Assistant, Manitoba Law Reform Commission, June 2, 1980.
36. Memo from Mr. P.J. Sinnott, Personal Property Registrar to Mr. F.C. Muldoon, Q.C., Chairman, Manitoba Law Reform Commission, September 12, 1975.

37. *Supra* note 11.
38. *Supra* note 35.
39. *Supra* note 35; letter from Mr. E.J. Guercio on behalf of the Real Property Subsection to Alan A. Adams, President, Manitoba Branch of the Canadian Bar Association, April 15, 1980.
40. "The Real Property Act", C.C.S.M. c. R30, sec. 64.
41. *Jellett v. Wilkie et al*, (1896) 26 S.C.R. 282, at 288, 289.
42. *Supra* note 19 at 416.
43. *Id.*, at 416, 417 wherein it is suggested the creditor could still execute against the remaining interest of the unpaid vendor, whatever that interest might amount to.
44. "The Judgments Act", C.C.S.M. c. J10, sec. 10(1).
45. "The Real Property Act", C.C.S.M. c. R30, sec. 72.
46. *Re Dominion Lumber Winnipeg Ltd. and District Registrar* (1963), 37 D.L.R. (2d) 283, at 286 (Man. C.A.).
47. The wording of the sections is sufficient to cover certificates of judgments, social assistance liens and alimony or maintenance liens. It is not clear, however, that bankruptcy orders are covered. Additionally other interests may arise which are registrable in the G.R. but not covered by the provisions.
48. *Supra* note 17 (report).
49. *Id.*, at 10.
50. "The Execution Act", R.S.B.C. 1960, c. 135 as amended 1978, c. 19.
51. "The Execution Act", R.S.B.C. 1960, c. 135 as amended 1979 c. 19 section 37D(a).
52. Letter from Mr. H.T. Kennedy, Land Title Director, Province of British Columbia to Kim Prost, Research Assistant, Law Reform Commission, May 21, 1980.
53. Report of Civil Litigation Subsection respecting proposed repeal of General Registry System enclosed with letter from R.A. Dewar to the Manitoba Branch of the Canadian Bar Association, May 26, 1980; minutes from meeting of the Family Law Subsection, Canadian Bar Association, at the Winnipeg Law Society offices, April 15, 1980,

telephone conversation with Mrs. U. Goeres, Solicitor,
City of Winnipeg Law Department, June 25, 1980.

54. *The Queen's Bench Rules*, Revised Regulation C280-R1.
55. "*The Family Maintenance Act*", C.C.S.M. c. F20, sec. 6, 8(1)(h).
56. *Supra* note 53.
57. *Supra* note 17 at 7-9 (report).
58. "*The Land Titles Act*", S.B.C. 1978, c. 25, s. 304(1).
59. "*The Land Titles Act*", S.B.C. 1978, c. 25, s. 306(2).
60. *Supra* note 17 at 3-4 (report).
61. The figures used are estimates given by Mrs. U. Goeres, Solicitor, City of Winnipeg Law Department, concerning municipal liens, in a telephone conversation of June 25, 1980.
62. *Supra* note 17, at 10.
63. "*The Real Property Act*", C.C.S.M. c. R30, sec. 72, 73.
64. *Supra* note 52.
65. *Ibid.*
66. "*The Registry Act*", S.M. 1891, 54 Vict. c. 7, sec. 31.
67. *An Act to amend the Registry Act*, S.M. 1939, c. 56 sec. 39.
68. *Supra* note 11.
69. *Ibid.*
70. *Ibid.*
71. "*The Land Titles Act*", R.S.S. 1978, c. L-5, sec. 180(2).
72. "*The Land Registry Act*", R.S.B.C. 1960, c. 208, sec. 177(2) repealed S.B.C. 1978 c. 25 sec. 321.
73. *Supra* note 29.

74. *"The Land Titles Act"*, R.S.S. 1978, c. L-5, sec. 207(f).
75. Letter from Mr. C.W. Truscott, Master of Titles of the Province of Saskatchewan, to Kim Prost, Research Assistant, Manitoba Law Reform Commission, May 14, 1980.
76. *Supra* note 11.
77. This proposal was initially raised by the Manitoba Law Reform Commission in a letter from Francis C. Muldoon to George W. Maltby, May 16, 1974.
78. *Ibid.*
79. *Supra* note 75.

APPENDIX A The Registry Act, C.C.S.M. cR50, sec. 41(3)

General registers.

7(f).
the
sistant,

41(3) Except in cases for which provision is specially made in this Act or any other Act of the Legislature, an instrument containing no proper description of the land shall not be entered in the abstract book; but it shall be registered in a register, called the "General Register"; which shall be kept by the registrar; and in that case the registrar is not responsible, in giving abstracts of title, for such instruments registered in the General Register.

Am. R.S.M., c. 223, s. 41; am.

APPENDIX B The Judgments Act, C.C.S.M. c. J10, sec. 3(1)

Registered judgment a lien on lands.

Law
on

3(1) Immediately upon a judgment for payment of money being entered or recovered in the Court of Queen's Bench, or in a County Court, or in a Surrogate Court, or in the Federal Court of Canada, for a sum exceeding forty dollars, a certificate of the judgment in the form set out in Schedule A, or to the like effect, under the seal of the court and signed by the prothonotary, a deputy clerk of the Crown and pleas, a clerk of a County Court, or a registrar of a Surrogate Court or by the Registrar or a Deputy Registrar of the Federal Court of Canada, as the case may be, may be registered in any land titles office in the province; and, from the time of the registration thereof, the judgment, except as hereinafter mentioned, binds and forms a lien and charge on all lands of the judgment debtor in the land titles district in the land titles office of which the certificate is registered, whether or not the lands are registered under The Real Property Act, the same as though charged in writing by the judgment debtor under his hand and seal.

Am. S.M. 1957, c. 34, s. 1; am.

Am. S.M. 1978, c. 49, s. 58; S.M. 1979, c. 28, s. 17.

APPENDIX C

The Execution Act, R.S.B.C. 1960 c.135 sec.33-38 as amended & 978 c.19

Execution against Lands

Writs of elegit or fi. fa. lands abolished.

33. No writ of elegit or writ of fieri facias de terris shall be issued in this Province.

R.S. 1948, c. 114, s. 33.

Interpretation in ss. 35 to 39.

34. In sections 35 to 59, inclusive, unless the context otherwise requires,

"judgment" means a judgment, decree, or order of the Federal Court of Canada, Court of Appeal, Supreme Court, or any County Court or Provincial Court, or of a Judge of any of those Courts, or claim established under the *Creditors' Relief Act*, by which judgment, decree, order, or claim a sum of money is payable to any person;

"land" or "lands" includes every estate, right, title, and interest therein, and all real property, both legal and equitable, and of what nature and kind soever, and any contingent, executory, or future interest therein, and a possibility coupled with an interest in such land or real property, whether the object of the gift or limitation of such interest be ascertained or not, and also the right of entry, whether immediate or future and whether vested or contingent, into and upon any land, but does not include pre-emption claims.

R.S. 1948, c. 114, s. 34; 1964, c. 18, s. 2; 1975, c. 4, s. 6A; 1975, c. 57, s. 39 (proc. eff. Sept. 15, 1975); [amended, 1978, c. 19, s. 1, to be proclaimed, amendment not included].

Registration of judgment.

35. Immediately upon a judgment being entered or recovered in this Province, the judgment may be registered in any or all of the Land Registry Offices in the Province, and from the time of registering the same the judgment forms a lien and charge on all the lands of the judgment debtor in the several land registration districts in which the judgment is registered, in the same manner as if charged in writing by the judgment debtor under his hand and seal; and after the registering of the judgment the judgment creditor may, if he wishes to do so, forthwith proceed upon the lien and charge thereby created.

R.S. 1948, c. 114, s. 35; [amended, 1978, c. 25, ss. 333, 334, to be proclaimed, amendments not included].

Expiration of lien.

36. (1) Every judgment registered under this Act, at the expiration of two years after the registration or last renewal of registration thereof, ceases to form a lien or charge upon the land of the judgment debtor, or anyone claiming under him, unless before the expiration of said two years the registration of the judgment is renewed.

Renewal of registration.

(2) The registration of a judgment may be renewed at any time before the expiration of two years after the registration or last renewal of registration thereof.

R.S. 1948, c. 114, s. 36; [amended, 1978, c. 19, s. 2, to be proclaimed, amendment not included].

Method of registering and renewing registration of judgments.

37. (1) The registration or renewal of registration of a judgment shall be effected by the delivery to the Registrar of Titles at the Land Registry Office of a certificate of the judgment under the seal of the Court in which the same has been entered or recovered, if the Court has a seal, and signed by the Court or by an officer empowered to grant certificates in respect of proceedings in that Court, accompanied by a copy of the certificate of judgment certified by such Court or officer and an application of the judgment creditor, his solicitor or agent, in accordance with the requirements of the *Land Registry Act*, to register or renew registration of the judgment.

Duty of Registrar.

(2) The Registrar of Titles shall write or stamp on the certificate and on the certified copy the day, hour, and minute of the delivery of the certificate at his office, which shall be deemed the time of the registration or renewal of registration of the judgment, as the case may be, and the Registrar of Titles shall thereupon enter the same in the register of judgments under the provisions of the *Land Registry Act*.

Return of certificate.

(3) Upon such entry being made, the certificate of judgment shall be returned to the person who delivered it, but the certified copy shall be kept in the Land Registry Office.

Reregistration of judgment.

(4) Registration of a judgment under this Act shall include the reregistration of same, which may be effected in the same way that a judgment is registered or the registration of same is renewed.

R.S. 1948, c. 114, s. 37; [amended, 1978, c. 25, ss. 332, 334, to be proclaimed, amendments not included].

37A to 37F. [Enacted, 1978, c. 19, s. 3, to be proclaimed.]

Procedure for enforcing charge.

38. (1) Where a judgment creditor in a proceeding has registered a judgment as aforesaid, and alleges that the judgment debtor is entitled to or has an interest in any land, or that any land is held subject to the lien created by registration of judgment under section 35, a motion may be made to the Supreme Court, or to a Judge thereof in Chambers, by the judgment creditor calling upon the judgment debtor, and upon any trustee or other person having the legal estate in the land in question, to show cause why any land in the land registration district in which the judgment is registered, or the interest therein of the judgment debtor, or a competent part of the land, should not be sold to realize the amount payable under the judgment.

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CHAPTER 19

Execution Amendment Act, 1978

[Assented to June 29, 1978.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

R.S.B.C. 1960
c. 135 s. 34

1. Section 34 of the Execution Act is amended
 - (a) in the definition of "judgment", by adding at the end " , and includes an order made under any other Act that entitles a person to register the order in a land titles office",
 - (b) in the definition of "land", by striking out "but does not include pre-emption claims." and substituting the following:

and includes

 - (i) the respective interests of mortgagor and mortgagee under a valid and subsisting mortgage of land,
 - (ii) the respective interests of vendor and purchaser under a valid and subsisting agreement for the sale and purchase of land,
 - (iii) the interest in land of a joint tenant, whether or not subject to a mortgage, and
 - (iv) the interest in land of a tenant in common, but does not include the rights of a lien claimant under the Mechanics' Lien Act; , and
 - (c) by adding the following definitions:

"non-expiring judgment"
means a judgment to which the application of section 36 is, by any other Act, excluded;

"owner"
means an owner as defined in the Land Titles Act;

"register"
means the register as defined in the Land Titles Act;

"registered owner"
means registered as an owner under the Land Titles Act;

"renewal"
means the renewal of the registration of a judgment in accordance with section 37F.

S. 36

2. Section 36 is amended

(a) in subsection (1) by adding " , except a non-expiring judgment including a renewal of it under subsection (3)," after "Every judgment", and

(b) by repealing subsection (2) and substituting the following:

(2) A non-expiring judgment registered before the Land Titles Act comes into force expires at the end of 2 years after that Act comes into force, unless renewed under subsection (3), and, if so renewed, subsection (1) does not apply to the judgment.

(3) A judgment creditor, in respect of a non-expiring judgment, may, at any time within the 2-year period mentioned in subsection (2), apply to register a renewal of the judgment.

(4) Sections 37B (3) and (4) and 37D apply to an application under subsection (3).

Ss. 37A to 37F

3. The following sections are added after section 37:

Section 37 limited in time

37A. (1) Section 37 does not apply to an application made to register or to renew the registration of a judgment after the date the Land Titles Act comes into force.

(2) After the date referred to in subsection (1) the registration or the renewal of registration of a judgment shall be in accordance with sections 37B and 37F.

Registration of judgments

37B. (1) After the Land Titles Act comes into force, a judgment entered or obtained in the Province may be registered against the title to specified land in any or all of the land titles offices in the manner provided in section 37C.

(2) From the time of its registration the judgment forms a lien and charge on the land of the judgment debtor specified in the application referred to in section 37C in the same manner as if charged in writing by the judgment debtor under his hand and seal,

- (a) to the extent of his beneficial interest in the land,
- (b) where an owner is registered as a personal representative or trustee, to the extent of the interest of a beneficiary who is a judgment debtor, and
- (c) subject to the rights of a purchaser who, prior to the registration of the judgment, has acquired an interest in the land in good faith and for valuable consideration under an instrument not registered at the time of the registration of the judgment.

(3) The time of registration or the renewal of registration of a judgment is the day and hour when the application under section 37C to register the judgment or the renewal of it is received by the registrar.

(4) Where a judgment is registered under this section against a particular interest in land of the judgment debtor, and he subsequently

acquires a further registered estate or interest in the same land, the registration of the judgment, if subsisting on the register, without any further application or other act on the part of the judgment creditor, shall be deemed to be enlarged so as to include the beneficial interest of the judgment debtor in that further registered estate or interest.

(5) After registration under this section, the judgment creditor may proceed forthwith on the lien and charge created by subsection (2).

(6) In this section "purchaser" includes lessee or mortgagee.

(7) A judgment creditor is not a bona fide purchaser for value.

(8) A judgment shall not be registered against unsurveyed Crown land or Crown land the title to which is not registered under the Land Titles Act.

(9) Where a judgment creditor has knowledge that the judgment debtor is the beneficial owner of an estate or interest in land, the title to which he has not registered, the judgment creditor may, on proof satisfactory to the registrar, apply, in the same manner as an application is made to register any other judgment, to register the judgment against the beneficial estate or interest in the land affected.

(10) Registration of a judgment includes the re-registration of it, and re-registration may be effected in the same manner as a judgment is registered or registration of it is renewed.

Application to
register judgment

37C. (1) After the Land Titles Act comes into force, a judgment creditor may apply under that Act to register, against the title to specified land, a judgment or a renewal of the registration of a judgment, in the same manner as a charge is registered by delivering to the registrar a certificate of judgment, or, where permitted by an enactment, a copy of an order, herein included in the words "certificate of judgment".

(2) A certificate of judgment shall

(a) be sealed with the seal of the court in which the judgment was entered or recovered, and

(b) be signed by the registrar of the court.

(3) A judgment entered or obtained in the Provincial Court is sufficient for registration purposes if certified to be a true copy by the clerk or judge of that court.

(4) A photocopy, satisfactory to the registrar, of a certificate of judgment so registered, may be received by the registrar in support of an application under the Land Titles Act to register

(a) the judgment against other specified land, or

(b) a renewal of a judgment,

in the same manner and with the same effect as if the original certificate were produced.

(5) In subsection (1) "judgment creditor" includes, in a proper case, the clerk of the Provincial Court acting on behalf of the judgment creditor.

Notice to owner

37D. (1) The registrar, on completion of a registration under section

37C, shall, by registered mail, send to the owner against whose title the judgment has been registered a notice in the prescribed form; together with a copy of the certificate of judgment.

(2) Except as provided in section 37F (4), subsection (1) does not apply to a renewal of a judgment.

(3) Where no reply is received from the owner as provided in the notice, no further act by the registrar is required in respect of the notice.

(4) Where the owner alleges he is not the judgment debtor referred to in the certificate of judgment, the registrar shall make such further enquiry or investigation as he considers necessary or advisable, and, for that purpose, may

- (a) take evidence under oath or otherwise,
- (b) require the production of records, and
- (c) decide whether or not the owner is, in fact, the judgment debtor and whether the judgment does or does not affect the land described.

(5) Where the registrar is satisfied from the evidence taken under subsection (4) that the owner is not the same person as the judgment debtor the registrar shall make an order accordingly.

(6) The registrar shall forthwith deliver or mail by registered mail to the owner and the judgment creditor a copy of the order.

(7) Where the judgment creditor does not, within 21 days after the order is delivered or mailed, proceed under subsection (8), the registrar shall cancel the registration of the judgment; but where the judgment creditor or his solicitor approves of the order, the registrar may cancel the registration forthwith.

(8) Where the judgment creditor does not approve of the order, he may, within 21 days after the registrar's order is delivered or mailed to him, make an application in the nature of an appeal to the Supreme Court, and section 289 of the Land Titles Act applies in respect of the application.

(9) Where the registrar effects cancellation of the judgment under subsection (7) the judgment creditor shall forthwith pay the owner \$25 as compensation for expenses incurred as a result of the registration of the certificate of judgment.

(10) The compensation payable under subsection (9) constitutes a debt recoverable in the Provincial Court.

(11) In this section "owner" includes a person alleged by the judgment creditor to be a judgment debtor and to have acquired from or through a registered owner, by transfer, transmission, or otherwise, an estate or interest in the land in question.

(12) Where a notice under subsection (1) is mailed to the person referred to in subsection (11) a copy shall also be mailed to the registered owner.

Cancellation of registration of judgment

37E. (1) Notwithstanding that payment has been made under section 37D (9), where the registrar has cancelled the registration of a judgment under section 37D and the owner against whose land the judgment was registered has sustained damage or incurred costs or expenses, by reason of the judgment creditor without reasonable cause having registered the

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judgment, the owner may apply to a court for compensation.

(2) The court may award such sum as it considers just, taking into account the amount paid or to be paid under section 37D (9).

(3) The court may take into consideration evidence that all proper and necessary steps were not taken by the judgment creditor to ensure that the judgment debtor was the same person as the registered owner whose name is similar.

(4) A registered owner may make a claim for compensation under this section against a judgment creditor by reason of his having registered a judgment against a person alleged to be a judgment debtor and to have acquired from or through a registered owner, by transfer, transmission, or otherwise, an estate or interest in the land in question.

Expiration and renewal

37F. (1) Except in the case of a non-expiring judgment, the registration of a judgment before or after this Act comes into force ceases, at the expiration of 2 years after the date of the application for registration or the date of the last application to renew registration, to form a lien and charge on the land affected by the registration unless, before the expiration of the 2 years, application is made to renew the registration of the judgment.

(2) The registration of a judgment may be renewed at any time before the end of 2 years after the registration or last renewal of registration of the judgment.

(3) An application for the renewal of a judgment must comply with the requirements of the Land Titles Act.

(4) On receipt of an application for the renewal of a judgment the registrar shall, where notice in the prescribed form has not been previously sent in respect of the same judgment and the same land, comply with section 37D.

(5) Where a renewal of registration is effected under this section and an endorsement made in the register, and there is a subsisting entry of the judgment in the register of judgments, the entry shall be deemed to be cancelled as to the interest of the judgment debtor in the land described in the register.

(6) Section 37B (4) applies to renewals registered under this section.

Commencement

4. This Act comes into force on a day to be fixed by Proclamation.

APPENDIX D

SCHEDULE B
EXECUTION ACT

FORM E
(Section 37D (1))

NOTICE TO REGISTERED OWNER OF REGISTRATION
OF CERTIFICATE OF JUDGMENT
(To be sent in duplicate)

IN THE MATTER OF (a) Judgment registered under No. _____ in the
_____ Land Title Office; and

(b) _____

(Here set out legal description of land)

To: _____

The above-numbered judgment which was entered in the _____ Court
of _____ on the _____ day of _____, 19____, in an
action in which _____ is judgment creditor and _____
is judgment debtor was registered in the _____ Land Titles Office on the
_____ day of _____, 19____, in respect of the following lands: _____).

in which you hold an interest as owner in fee-simple (or registered owner of _____

(Nature of charge and registration number)

Attached is a copy of the certificate of judgment deposited in support of the registration.

If you allege that you are not the judgment debtor in the above action, the allegation must
be made on the form at the end of this notice and must be received by me within 21 days of
the service on you of this notice. On receipt of such allegation, I shall make such further
inquiry or investigation as I consider necessary or advisable, and, for that purpose, may

- (a) take evidence under oath or otherwise;
- (b) require the production of records; and
- (c) decide whether or not you are the judgment debtor and whether the judgment
does or does not affect the lands described.

Dated at _____, this _____ day of _____, 19____.

(Registrar)

To: Registrar, _____ Land Title Office,
_____ Land Title Office, British Columbia.

I, _____ of _____,
the owner of an interest in the land above mentioned, allege that I am not the above-mentioned
judgment debtor.

I certify that _____

(Here set out evidence in numbered paragraphs that you are not the judgment debtor, showing
in particular any facts distinguishing you from the judgment debtor.)

Dated this _____ day of _____, 19____.

(Signature)

MISCELLANEOUS

Indices

304. (1) The registrar shall keep one or more indices of the names of registered owners of indefeasible titles, absolute fees and charges other than judgments, with a reference opposite each name to the serial number under which the estate or interest of the owner is registered.

(2) Notwithstanding subsection (1), the registrar shall not enter in the indices referred to in subsection (1) a particular class of charge or the names of a person or class of persons designated by the Lieutenant-Governor in Council.

Numerical indices

305. (1) The registrar shall keep indices of all registered lands, arranged under appropriate headings and containing references in numerical order to all sections, district lots and subdivided lands.

(2) Where a district lot or section or parcel is subdivided, the registrar shall keep indices similar to the indices kept under subsection (1).

(3) Every entry in the register shall be posted in the proper index against the land to which it relates.

Searching records

306. (1) The official records of the land titles office are open to inspection and search by the public on such reasonable conditions as the registrar may impose.

(2) A search may be

(a) a general search of the register showing the title of specified land, or

(b) a special search confined to a single instrument, or

(c) a name search to ascertain the lands registered in the name of a person, or

(d) a search of the register of judgments in respect of a person named in the application for search.

(3) An application for a search shall state the nature of the search required and shall be made in person by the applicant or his solicitor or agent.

(4) On a general search the applicant is entitled to search the register of judgments, a pending application and any other record not shown on the register that may affect the title of the land covered by the search.

Registrar to provide certificates

307. (1) The registrar shall, on application, provide

(a) a state of title certificate showing the subsisting title on the register, and judgments, pending applications and any other statutory record affecting the title as of the date of the certificate,

(b) a certificate of the result of a search of the index of registered owners,

(c) a certificate of the result of a search of the register of judgments or other record in respect of a person named in the application for the certificate,

(d) a certified abstract of title,

(e) a certified extract from the register or other record, and

(f) a certified copy of an instrument deposited, filed, kept, lodged, or registered in his office.

(2) The registrar may, on application, furnish a search of title in such other form or manner and on such terms and conditions as may be prescribed by the regulations.