



BILL 152

WHAT EVERY LAW CLERK (AND LAWYER) NEEDS TO KNOW

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The purpose of this material is to provide information as to developments in the law. This document does not contain a full analysis of the law, nor does it constitute a legal opinion.



Bill 152—What Every Law Clerk (and Lawyer) Needs To Know

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What happened?

- **What was**
- **What is**
- **What will be**

Two Land Registration Systems

■ Registry Act

- Registration of title

■ Land Titles Act

- Title by registration

- **No indefeasibility under the Registry Act; fraudulent documents are null and void, along with all subsequently registered documents**

Land Titles Act:
2 competing theories of indefeasibility

■ DEFERRED INDEFEASIBILITY - Two step validation process

- First deed / mortgage invalid
- Second deed / mortgage valid, if transferee / lender in second transaction is “innocent”
- Meaning of “innocent”

■ IMMEDIATE INDEFEASIBILITY - One step validation process

- First deed / mortgage valid, if transferee / lender is “innocent”, even if transferor is fraudster

The Perfect Storm

- **Ontario goes high-tech (conversion of land to Land Titles system and automation of titles)**
- **New life for an old amendment**
- **Judicial re-thinking of indefeasibility**

Recent Cases—Round 1

- **Durrani v. Augier (2000)**
- **The Toronto-Dominion Bank v. Jiang (2003)**
- **Both supported theory of deferred indefeasibility**

Recent Cases—Round 2

- **R.A. & J. Family Investment Corporation v. Orzech (Court of Appeal--1999)**
- **Household Realty v. Liu (Court of Appeal--November 2005)**
- **Both supported theory of immediate indefeasibility**

Public's Response—Round 1

- **Fear and panic, especially by existing property owners, following Household Realty decision**
- **Equity theft and title theft were both realistic possibilities**
- **Stampede to book title insurance policies**

Government Response—Round 1:

- **Inaction for nearly a year
(November 2005 to October 2006)**

Public's Response—Round 2

- **Media exposes more examples of real estate fraud in Summer 2006**
- **Top of the list: the Susan Lawrence case**
- **Public outrage escalates**

Government Response—Round 2

- **Bill 152—but it's not retroactive**
- **First Reading: October 19, 2006**
- **Royal Assent: December 20, 2006**

Recent Cases—Round 3

- **Rabi v. Rosu (November 2006)**
 - applies Household Realty decision in unique manner
 - Adds new qualification to “innocent”

- **Lawrence v. Maple Trust Company (Court of Appeal-February 2007)**

- **Province of Ontario acts as Intervenor in Lawrence case (that is Government Response—Round 3)**

- **Lawrence case approves deferred indefeasibility over immediate indefeasibility**

Changes Introduced by Bill 152 (enacted before decision in Lawrence handed down)

- 1. Notices can be sent by LRO when deeds and mortgages are registered (not being done)**
- 2. Suspension and revocation of electronic registration privileges**
 - “Shoot first and ask questions later”
- 3. New definitions - fraudulent instrument and fraudulent person**
- 4. New Land Titles Assurance Fund rules - “Express Service” available to some victims**

Changes Introduced by Bill 152 (cont'd)

- 5. Administrative changes**
- 6. Rectification of parcel register**
- 7. “No dealings” indicator**
- 8. Denial of Land Titles Assurance Fund claims**
 - No subrogation rights to title insurers

Changes Introduced by Bill 152 (cont'd)

9. New inspection powers

10. Reversal of Household Realty decision

- Immediate Indefeasibility is dead
- Long live Deferred Indefeasibility
- Deferred Indefeasibility Plus

Happening Now - More Proposed Changes

- **Lawyers would have exclusive right to register deeds**
- **Authorized “others” could also register mortgages and discharges**
- **Higher insurance premiums for real estate lawyers / changes to compensation fund rules**
- **Two-lawyer rule - with no exceptions??**

Necessary Exceptions - “Identical Party” Transactions

- **Unilaterally sever a joint tenancy**
- **Sever a joint tenancy together**
- **Tenancy in common to joint tenancy**
- **Corporate rollover**
- **Corporate wind-up**
- **Some estate situations**
- **Planning Act severance**

What These Proposed Changes Mean for the Legal Profession



- **Real Estate Bar is at a crossroads**
- **Last, best chance to remain an integral part of real estate conveyancing**
- **There is a cost - but can we afford to say no?**
- **Decisions must be made soon**

Coming Up Next

- **New due diligence rules for buyers, lenders and existing homeowners**
- **New rules governing use of powers of attorney**



IS THIS THE END? OR A NEW BEGINNING?