



Ministry of Consumer
and Commercial
Relations

Registration Division

Real Property
Registration Branch

BULLETIN NO. 98002

Land Titles Act

DATE: December 11, 1998

TO: All Land Registrars

Deletion of Oil and Gas Leases

Oil and gas leases are common in Southwestern Ontario. In the past, the ownership of these lands has typically been recorded under the *Registry Act*.

With the automation of land registry office records, and the conversion of Registry records to Land Titles, the treatment of oil and gas leases has become an issue. As mentioned above, the majority of the Province's oil and gas leases were registered under the *Registry Act*, and will be subject to conversion to Land Titles. This conversion will require property owners to follow the provisions of the *Land Titles Act* when they are required to deal with expired leases.

The existence of oil and gas leases has not been an issue under the *Registry Act*. If, in searching title, a lawyer discovers such a lease, he or she examines the document and the circumstances and forms an opinion as to whether or not it has expired. Expired leases are not removed from an abstract index in the Registry system, and therefore it is only necessary for a lawyer to address the status of a lease in a legal opinion that is provided to the client. Oil and gas companies have not objected to this practice because, in spite of any legal opinion that may have been given, the lease would remain registered on title.

The situation changes, however, with respect to leases that are registered under the *Land Titles Act*. Any document that appears on a Land Titles property record is said to be valid, and cannot be disregarded based on a lawyer's statement to a client. Under the Land Titles system it is necessary to apply to the land registrar, to have an expired lease removed from the record, in order to show that it is no longer relevant to the title.

It should be noted that the *Gas and Oil Leases Act* states that, if a lessee is in default of terms of an oil and gas lease, then the lessor may apply to a judge for an order that declares the lease to be void. This is distinct from the situation, referred to above, in which a lease has expired.

In order to address this issue, the following procedure is to be followed to remove oil and gas leases from a Land Titles property record:

Under the *Land Titles Act*, a lease may only be deleted from a property record if the following information is included with an Application to Amend the Register:

- (i) a release or surrender of lease executed by the lessee;
- (ii) in the case of a lease that has expired, a statement from a solicitor that the lease has been determined (**see below**); or

- (iii) in the case a lease that has been determined by a default under the terms of a lease, a judge's order obtained in accordance with the *Gas and Oil Leases Act*.

In the case of item (ii) above, solicitors should be aware that the expiry of the primary term of such leases is **not** the only determining factor. Oil and gas leases generally run for a stated period of years (the "primary term"). Where oil and gas is discovered, some leases may automatically extend to cover the period in which there is production, even if it exceeds the time stated in the lease as being the primary term. Therefore, a ten year lease may be extended indefinitely if the subject lands yield producing wells.


There may also be other factors which could extend the life of an oil and gas lease. Examples include, but are not limited to:

- if oil or gas is being produced (as above);
- if exploration or development is being performed;
- if the lease contains a provision for oil/gas storage;
- if a pooling, storage or unit operation agreement exists;
- if an Order by the Ontario Energy Board has been made or Application has been made for such an Order; or,
- if an application or Order has been made for compulsory pooling pursuant to Section 8 of the *Oil, Gas, and Salt Resource Act*.

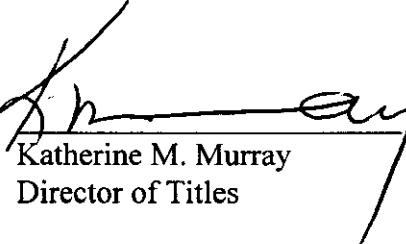
On the other hand if the primary term specified in such a lease has expired, and there is no production, shut in/suspension, exploration or development, agreement, application, order etc., that extends the lease, then it may expire.

Consequently, in order to determine if a lease has in fact expired, it is necessary for solicitors to examine not just the terms of the lease, but also the surrounding circumstances, with respect to all lands described in the lease.

In granting an Application to Amend the Register, land registry office staff are to accept the statement of a solicitor that an oil and gas lease has been determined. In accepting such a statement, we are recognizing the solicitor's responsibility to consider the above factors.



Ian Veitch
Director of Land Registration



Katherine M. Murray
Director of Titles