



ONTARIO

## Land Titles Act

R.S.O. 1990, Chapter L. 5, s. 57(6), as amended

IN THE MATTER OF title to the land registered in the Land Registry Office for the Land Titles Division of Muskoka No. 35 as Parcels 28420, 28421, 24633, 24637, 28130, 30908, 30907, 34431 and 34920 in the names of James William Clayton and Lynore Mary Clayton (Parcel 28420), Ronald Carl Robinson (Parcel 28421), Mary Stewart Flanagan (Parcel 24637), Walter Albert Flanagan (Parcels 24633 and 34431), Darleen Irwin (Parcel 28130), Susan Jean Hollinger (Parcel 30908), Lyle Hollinger and Rosemarie Hollinger (Parcel 30907) and James Peter Sorokan (Parcel 34920) (the "Properties");

AND IN THE MATTER OF an application made by Walter Albert Flanagan for the payment of compensation from the Land Titles Assurance Fund of legal costs and the value of time spent to cause title to the Properties to be amended.

### DECISION

THIS MATTER came before me for hearing at Toronto, Ontario on September 14, 2007. Appearing before me was the unrepresented Applicant, Walter Albert Flanagan.

### FACTS

Mr. Flanagan believed that the Land Registrar made an error in entering a reservation on title to the Properties and that he should be compensated for the time he spent to correct the error and for the legal fees he incurred in connection with this matter. The background facts below were provided by Mr. Flanagan, in testimony at the hearing, and reflect those set out in the affidavit and letter included with his application.

In 1917, an existing dam was blown up and a new dam and power house began operation on the Severn River. This raised the water level elevation on the Properties from 695.0 feet to 698.0 feet. In 1923, the federal Crown purchased 44.0 acres from Hugh George McPhee that included the land above the water elevation of 698.0 feet up to the elevation of 701.0 feet. The Deed included the following reservation:

"Reserving to the Grantor all the timber standing, lying or being in and upon that portion of the said land that has been drowned with the right to remove same." A plan was attached to that Deed that showed the elevations.

This Deed was registered on May 12, 1923 as Instrument No. 7120 and was granted by Hugh George McPhee in favour of His Majesty the King

In 1971, title to the land above the water elevation of 698.0 feet, namely those parts of Parcel 4190 designated as Parts 1, 2, 3, 4 and 5, on BR-950, which became Parcel 24388, was transferred by the federal Crown to Mr. Flanagan's parents. This Deed did not include the above reservation. However, the Land Registry Office recorded the above reservation on the title to his parents' land.

Instrument No. 62287, registered on July 5<sup>th</sup>, 1971, is the Deed given by Her Majesty the Queen in favour of Caroline Jennie Flanagan and Albert Edward Flanagan.

Mr. Flanagan testified that he spent a great deal of time and effort to have the reservation removed from title to the Properties. He ultimately had to register an Application to Amend the Register to remove the reservation.

When Mr. Flanagan submitted the Application to Amend the parcel register, he was asked to sign an indemnity in favour of the Land Titles Assurance Fund for any loss occasioned as a result of removing the reservation from title to the Properties but he refused to sign it. Ultimately, the Registry Office obtained instructions from the Toronto Title and Survey Services Office to permit Mr. Flanagan to register the Application to Amend the Register without signing the indemnity.

Mr. Flanagan believed that since he was asked to indemnify the Assurance Fund, he must be entitled to be compensated from it.

It was Mr. Flanagan's position that the land acquired by his parents from the federal Crown was above the water level elevation of 698.0 feet and that, therefore, they were never drowned and the reservation did not apply to them; that his parents' Deed did not make them subject to the reservation; and that the Land Registry Office erred in putting the reservation on the title register for his parents' property.

#### PREHEARING CONFERENCE

I held a prehearing conference in this matter with Mr. Flanagan on April 30, 2007. At that time, I explained to Mr. Flanagan that, based upon the material submitted, there did not appear to have been an error made by the Land Registrar. In order to put the legal concept of "running with the land", that applies to the reservation once created, into context for a lay person, I used the example of a right of way.

I explained to Mr. Flanagan that if I sold him a property next door to mine and gave him a right of way over my driveway, that right of way would be his; that if I then sold my property to a third party without mentioning the right of way, the third party would be subject to the right of way and it would be reflected on the third party's title register even though nothing was said in the Deed because, once created, the right of way is considered to run with the land; I could not get rid of it by transferring my land without mentioning it. I explained that the reservation in the Deed from the federal Crown to his parents works the same way.

I further explained that, in order for the reservation not to apply to the land acquired by Mr. Flanagan's parents, it should have been dealt with at the time they acquired the land from the federal Crown. Because it was not addressed, the Land Registrar had no choice but to reflect the reservation in his parents' title register. Mr. Flanagan seemed to understand the explanation.

Mr. Flanagan then said that if the Crown made a mistake by not dealing with it when his parents bought the land, that was an error and he should be compensated. It became apparent that Mr. Flanagan saw the "Crown" as having treated him unfairly and as having made errors that cost him a lot of time and money to straighten out. I explained to Mr. Flanagan that the Deed given in favour of his parents was given by the federal Crown so if he had issues with that document, it is the federal Crown that he must deal with; that the Land Titles Assurance Fund is a provincial fund that could not compensate him for any losses he may feel he has suffered as a result of anything done by the federal government.

Subsequent to the prehearing, Mr. Flanagan sent a letter saying that he now believed that two "government participants" were in error in this matter. That his parents Deed, which did not deal with the problem of the reservation, was prepared by a "Crown" lawyer. When that deed got to the Registry Office, the fact that the reservation was in the previous Deed but not this one should have triggered an inquiry.

#### HEARING

At the hearing, Mr. Flanagan repeated the same facts and his position. He did not introduce any new facts or evidence that would change the analysis. I reminded Mr. Flanagan of the discussion we had about the reservation running with the land at the time of the prehearing and said that I thought that he understood why my position was that there was no error by the land registrar. He said he understood but he did not want to hear it. I also explained that the federal government and the provincial government were two different entities and that the Land Titles Assurance Fund could not compensate him

for any losses he may feel he incurred as a result of anything done by the federal government.

I also indicated that, when he registered the Application to Amend the register, he was asked to sign an indemnity to protect the government from someone claiming that they suffered damages as a result of the deletion of the reservation. However, that was a different matter and has nothing to do with a claim to the Land Titles Assurance Fund under Section 57 of the *Land Titles Act*.

I provided Mr. Flanagan with a copy of Subsection 57(1) of the *Land Titles Act* and underlined where it states that a person who is deprived of an interest in land by reason of an error in an entry on the register is entitled to compensation. I explained that my jurisdiction to pay compensation was limited by that section; that in order for me to request that compensation be paid to him, I had to be able to find that an error had been made in an entry on the register, and, for the reasons explained, it was my position that no error had been made by the Land Registrar.

I offered to adjourn the hearing *sine die* to permit Mr. Flanagan to get advice from a lawyer as to whether, on these facts, an error was made that should be compensated by the Land Titles Assurance Fund. I indicated that I cannot give him legal advice. Mr. Flanagan said he did not want to hire a lawyer to deal with this so there was no point in adjourning the hearing.

Mr. Flanagan believed that the Registry Office should have looked at the Deeds that were registered and figured out, based upon the water level elevations shown on the plans attached to them, that the land his parents purchased was above the 698.0 elevation and therefore not drowned and not subject to the reservation.

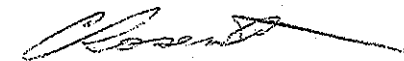
I note that Instrument No. 7120, being the Deed from Mr. McPhee to the federal Crown, conveys Parcel 301, being part of Lot I, Concession 20, in the Township of Wood. It includes a metes and bounds description of that land. Attached to the Deed is a topographical survey. However, the grant in the Deed does not limit it to a conveyance of a only part of the land described; it includes all of the land within that metes and bounds description regardless of the water level elevation. Similarly, Instrument No. 62287, being the Deed given by the federal Crown in favour of Mr. Flanagan's parents, grants part of Lot I, Concession 20, being Parts 1 to 5 on Plan BR-950, a copy of which is attached to the Deed. Again, the entire land described is conveyed without reference to water level elevations. In addition, the reservation in the Deed to the federal Crown does not indicate that it applies only to land below a certain water level elevation and it therefore applies to all the land conveyed.

I explained to Mr. Flanagan at the hearing that the Land Registry Office registers any document brought to them in registrable form, that it is not their responsibility to review documents to see if they raise any issues, that counsel for his parents would have been responsible for reviewing the Deeds and dealing with any legal issues raised by them.

#### FINDING

Based upon the evidence before me, I find that Mr. Flanagan has failed to establish that he was deprived of an interest in land by reason of an error in an entry on the register and therefore he is not entitled to compensation under the provisions of Section 57 of the *Land Titles Act*.

DATED at Toronto, Ontario this 18<sup>th</sup> day of September, 2007.



Carolyn Rosenstein  
Deputy Director of Titles

TO: Mr. Walter Flanagan  
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