

## Saskatchewan oil and gas land titles case confirms the basic principles: a volunteer cannot take the benefit of a registrar's error

By Nigel Bankes

### Cases Considered:

[Ronald Olney \(Executor of the estate of Kenneth Olney\) v Great-West Life Assurance Company and the Registrar of Land Titles](#), 2011 SKQB 186

This case applies basic Torrens title law to resolve the competing claims of a mineral owner whose title was cancelled by the Registrar's error and the claim of the current registered owner. It would have been a nice problem for a first year property exam except that it is a tad too easy — just a straightforward application of *Canadian Pacific Railway Co. v Turta*, [1954] SCR 427 that any first year property law student should have nailed!

### The facts

In 1947, Great-West as owner of a section of land including the mines and minerals, executed a transfer of land to George Olney reserving the minerals under the SW ¼. By mistake, the Registrar issued a certificate of title for the entire section without any reservation of mines and minerals. The underlying agreement of sale between the parties was not before the Court. Between 1947 and 1968 George Olney divested himself of 75% of his undivided interest in the mines and minerals (presumably in transactions for value). In 1973 the Registrar filed a Registrar's caveat against the title and provided notice of the caveat to certain parties. It was unclear whether notice was provided to Great-West.

Kenneth Olney, who took by succession, transferred the mines and mineral to D & C Olney in 1986 (subject to the Registrar's caveat) who, later that year, transferred the mines and minerals back to Kenneth Olney for \$1,600 (and again the resulting certificate of title was subject to the Registrar's caveat).

In 1999, Ronald Olney as executor of Kenneth Olney's estate requested that the Registrar remove the Registrar's caveat. The Registrar declined to do so without a court order. In 2006 the Registrar wrote to Olney setting out the problem and requesting that Olney surrender the CT for cancellation as to the remaining mines and minerals in the SW ¼. Two years or so later Ronald Olney sought an order from the Court requiring the Registrar to discharge its caveat. Great-West in turn filed an application under ss.107 and 109 of the *Land Titles Act*, SS 2000, c.L-5.1 for a declaration that it was the proper owner of a 25% interest in the mines and minerals.

## The decision

Justice Wilson held that Great-West was entitled to the declaration.

The two sections of the *The Land Titles Act, 2002*, S.S. 2000, c. L-5.1 relied upon by Great-West authorized the applicant and the Court to proceed by way of declaration rather than by way of statement of claim. Since the application was an application for a declaration rather than an action for recovery of land, Great-West's application was not statute barred under s. 18 of the *Limitation of Actions Act*, R.S.S. 1978, c. L-15, s.18. The doctrine of laches could not be applied against Great-West since the mere passage of time is insufficient to trigger laches. In this case Great-West pursued the matter diligently from the time it first became aware of the problem in 2008. The matter could be decided on the basis of the affidavit record. On the basis of that record the Registrar had made an error but since there was no bona fide purchaser of the remaining 25% interest based on the mistake in the certificate of title, Great-West was entitled to a declaration that it was the proper owner.

## Commentary

As I said at the outset, I don't believe this was a difficult case on either legal or ethical grounds. Kenneth and Ronald Olney were volunteers. They could be in no better position than George Olney and on the basis of the transfer document it was clear that the Registrar had made a mistake which the Registrar or the Court could correct against George Olney. None of the subsequent Olney interests were purchasers of the mineral interest on the faith of the register (and prior to the Registrar's caveat appearing on title).

The case might have been more difficult if there had been an argument that the transfer did not reflect the underlying agreement for sale. This might have given rise to a rectification argument as in *Re Pylypow* (1973), 40 DLR (3d) 313 (Alta. CA) — but that does not seem to have been a part of the Olney case and presumably for the very good reason that there was no evidence to support such a claim.

There is also the nice point as to whether a claim to have the register corrected is a claim for recovery of land. But on this I think that Justice Rand in *Turta* is persuasive, i.e. it is not an action for recovery of land and therefore a declaration is all that is required and therefore there is no limitations issue. Justice Wilson might have acknowledged that there was another view expressed by Justice Estey in that case — but that is a minor quibble.