SCC File No. 36301

IN THE SUPREME COURT OF CANADA
(on appeal from the Court of Appeal and Court of Queen's Bench of Alberta)

BETWEEN:

HERITAGE CAPITAL CORPORATION

Appellant
(Appellant)

THE EQUITABLE TRUST COMPANY, THE LOUGHEED BLOCK INC., NEIL JOHN RICHARDSON, HUGH DARYL RICHARDSON, HERITAGE PROPERTY CORPORATION, 604 1st STREET S.W. INC. and KRAYZEL CORP.

Respondents
(Respondents)

FACTUM OF THE RESPONDENT
604 1st STREET S.W. INC.

pursuant to Rule 42 of the Rules of the Supreme Court of Canada (SOR/2002-156)

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I. OVERVIEW AND STATEMENT OF FACTS

A. Overview of the Respondent's Position

1. The Respondent, 604 1st Street S.W. Inc. ("**604**"), is the owner of the Lougheed Block, a designated Municipal Historical Resource in accordance with the Alberta *Historical Resources Act* ("***HRA***").[1] 604 purchased the building by way of Judicial Sale.

2. The prior owner, the Lougheed Block Inc. ("**LBI**"), and the City of Calgary ("**City**") entered into a voluntary agreement titled "Lougheed Building Rehabilitation Incentive Agreement" ("**Incentive Agreement**"). The Incentive Agreement required rehabilitation work that would restore the North and West facades, the lobby and second floor hallway to their original 1912 appearance as closely as possible; required the Owner to use best efforts to ensure that performance space was maintained in that portion of the building known as the Grand Theatre; provided for mandatory arbitration in some instances; and included terms with respect to amounts payable in satisfaction of any right to compensation that the owner had pursuant to the *HRA*.[2]

3. In accordance with the *HRA,* the City was entitled to provide for mandatory compensation by any means as long as it had the agreement of the owner.[3] Here the parties agreed to a series of payments to be made annually over 15 years, provided that the owner of the building had paid all taxes and levies owed to the City at the time each payment was due and that the building's use was restricted until the City had made all payments.[4] There is no evidence as to why the parties agreed to this series of payments as opposed to other methods of payment.

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[1] *Historical Resources Act*, RSA 2000, c H-9 **[Appellant's Factum, Part VII, Tab B]**.
[2] Affidavit of Neil John Richardson, sworn August 25, 2010, Exhibit B, Incentive Agreement at preamble para 4 and clauses 2.1, 3.1, 6.1, 8.4, 8.5 **[*Richardson Affidavit*] [AR Part III vol I Tab 7, pgs 139-146]**; *Historical Resources Act, supra* note 1 at s 28(1) **[Appellant's Factum, Part VII, Tab B]**.
[3] *Historical Resources Act, supra* note 1 at s 28(4) **[Appellant's Factum, Part VII, Tab B]**.
[4] *Richardson Affidavit, supra* note 2 at Exhibit B, Incentive Agreement, clauses 5.2, 5.3 and 8.4 **[AR Part III vol I Tab 7, pgs 143-144 and 146]**.

4. LBI and the City expressly agreed that the Incentive Agreement shall be registered on the title of the lands pursuant to and in accordance with section 29 of the *HRA*.[5] The effect of this decision by the parties was that they agreed that the conditions and covenants in the Incentive Agreement would run with the land.

5. Contrary to the Appellant's arguments, the common law rule that positive covenants do not run with the land is not at issue in this appeal or jeopardized by the decision of the Majority of the Alberta Court of Appeal. As recognized by the Majority, the *HRA* creates "statutory, *sui generis* covenants" not recognized by the common law.[6] Even the Appellant appears to agree that the *HRA* creates a class of positive covenants in favour of certain parties. The principal question in this appeal is whether or not the City's payment obligation ran with the land in accordance with the *HRA*. There is no threat to the common law.

6. There is no error arising from *Sattva*.[7] As acknowledged in *Sattva*, decisions are reviewable on a correctness standard where there is an extricable question of law and in other circumstances. The interpretation of s. 29 and related sections of the *HRA* is an inextricable question of law. The Incentive Agreement specifically makes reference to the *HRA* and to s. 29: it cannot be properly interpreted without a correct interpretation of the statute.

7. The Majority is correct in its conclusion that the right to payments from the City was sold in the Judicial Sale as there was no basis to sever the payment covenant from the rest of the covenants in the Incentive Agreement. As a covenant that ran with the land it was transferred with the transfer of the lands.

8. The issue of priority of any security interest that may exist is not properly before this Court and it was not properly before the Chambers Judge. In any event, as an interest in land, the payment covenant was governed by the law of property, not the *Personal Property Security Act* ("***PPSA***").

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[5] *Ibid.* at clause 8.3 **[AR Part III vol I Tab 7, pg 146]**.
[6] Memorandum of Judgment of the Court of Appeal of Alberta, 2014 ABCA 427 at para 8 per Slatter J.A. for the Majority **[*Court of Appeal Reasons*] [AR Part I Tab 5]**.
[7] *Creston Moly Corp v Sattva Capital Corp*, 2014 SCC 53, [2014] 2 SCR 633 **[*Sattva*] [Appellant's Authorities Tab 11]**.

9. In the absence of any evidence, the Appellant argues that the Majority decision will make it harder to rehabilitate and preserve historical resources. There is no evidence and no basis for the Appellant's public policy argument. There is no evidence as to why the parties chose to have all of the conditions and covenants in a single agreement the entirety of which was required to be registered under the *HRA*. It is not apparent why payment over time would negatively affect historical resources.

B. Respondent's Position with respect to the Appellant's Statement of Facts

10. The Respondent takes no issue with the Appellant's Statement of Facts except as follows:

(a) There is no evidence that LBI waived its statutory right to compensation as alleged in paragraph 12 of the Appellant's factum. The opposite is true. The preamble to the Incentive Agreement states that:

> The City wishes to pay the Owner money in satisfaction of any right to compensation that the Owner may have pursuant to Section 28 of the [*HRA*] as well as for Building Rehabilitation Work. The Owner agrees to accept such money as compensation in full for any monies that may be owing under Section 28 of the [*HRA*] as well as for Building Rehabilitation Work.[8]

The only waiver of rights is with respect to claims for additional or alternative compensation from the City.[9] No lower court found the owner had waived any right.

(b) Paragraph 16 of the Appellant's factum misconstrues clause 8.3 of the Incentive Agreement. The clause does not say that the Incentive Agreement would be registered on title "so that conditions in favour of the City could run with the land." The clause is silent as to the reason the parties agreed to registration.

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[8] *Richardson Affidavit, supra* note 2, Exhibit B, Incentive Agreement at preamble para 4 **[AR Part III vol I Tab 7, pg 139]**.
[9] *Ibid.* at clause 2.1.

II. QUESTIONS IN ISSUE

11. The Respondent takes no issue with the Appellant's questions as outlined at paragraph 36 of the Appellant's factum except that the Respondent submits that question of priority of registration under the *PPSA* and the effect of any such registration is not an issue properly before this Court.

III. STATEMENT OF ARGUMENT

A. Standard of Review

12. The Appellant argues that the decision of the Master in Chambers was entitled to deference by the Court of Appeal. This statement is incorrect for two reasons. The first is that the decision of the Master was not on appeal before the Court of Appeal.[10] The second, because the standard of review on appeal from a Master to a Judge is correctness on all issues.[11] The Chambers Judge acknowledged this in his reasons.[12] There is no basis on which to conclude that the Alberta Court of Appeal owed any deference to the findings and conclusions of the Master.

13. This Court should reject the Appellant's argument that the interpretation of the Incentive Agreement, Judicial Sale Agreement, assignments and Equitable Security Agreement are all questions of mixed fact and law entitled to deference and reviewable on a standard of palpable and overriding error. In making this statement on the basis of paragraph 50 of *Sattva*, the Appellant overlooks the following circumstances, identified in *Sattva*, where appellate intervention is warranted on a correctness standard: ensuring the consistency of the law;[13] where there is a dispute over a general proposition that qualifies as a principle of law as opposed to a particular set of circumstances;[14] where legal obligations arising from a contract are not limited to the interest of the particular parties;[15] and extricable questions of law: namely, application of an incorrect principle, failure to consider the required element of a legal test or failure to consider a relevant factor.[16]

14. The Respondent submits that *Sattva*, properly interpreted, does not draw a curtain so that the Court of Appeal must defer to any and all interpretations of the contract made by a lower court in this case.

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[10] Civil Notice of Appeal, **[AR Part II Tab 9, pg 35]**.
[11] *Geophysical Service Inc v Husky Oil Ltd*, 2013 ABCA 99 at para 16, 544 AR 1 **[Respondent's Authorities Tab 2]**.
[12] Reasons for Decision of the Honourable Mr. Justice P.R. Jeffrey, 2013 ABQB 209, at para 32 **[*Judge's Reasons*] [AR Part I Tab 3, page 27]**.
[13] *Sattva, supra* note 7 at para 51 **[Appellant's Authorities Tab 11]**.
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.* at para 53.

15. Here, there is an inextricable question of law as the parties made a specific agreement "pursuant to and in accordance with the *HRA*."[17] The correct interpretation of the *HRA*, and s. 29 in particular, gives meaning to specific clauses of the Incentive Agreement, including paragraph 4 of the preamble, clause 2.1, section 5 and clause 8.3.

16. Further, this is the unusual circumstance where legal obligations arising from the contract are not limited to the interests of the initial parties. Subsequent owners have an interest in the correct interpretation of the Incentive Agreement. Even the Appellant must acknowledge that certain of the covenants are binding on a successor in title – a stranger to the agreement. The agreement was made in contemplation of the public interest in the protection and preservation of historical resources: this public interest must be protected by a correct interpretation of the agreement.

B. The Parties to the Incentive Agreement intended the right to payments to run with the land

1. The Majority correctly followed and applied *Sattva*

17. The Appellant is incorrect when it argues that the "key issue" in this case is the interpretation of the Incentive Agreement. The overriding issue is the correct interpretation of the *HRA*, upon which the contract interpretation depended. Because the Chamber Judge's interpretation of s. 29 was incorrect, that Court did not, and could not, come to a reasonable interpretation of the Incentive Agreement. It was therefore open to the Majority to set the interpretation aside and to interpret the Incentive Agreement.

18. Interpretation must consider the surrounding circumstances.[18] In the context of a historical resource designation, these parties specifically agreed that the Incentive Agreement would be registered on title "pursuant to and in accordance with Section 29."[19] Parties are

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[17] *Richardson Affidavit, supra* note 2, Exhibit B, Incentive Agreement at clause 8.3 **[AR Part III vol I Tab 7, pg 146]**.
[18] *Sattva, supra* note 7 at para 57 **[Appellant's Authorities Tab 11]**.
[19] *Richardson Affidavit, supra* note 2, Exhibit B, Incentive Agreement at clause 8.3 **[AR Part III vol I Tab 7, pg 146]**.

presumed to intend the legal consequences of their words. Courts should not displace a clear intention by looking for a "fair result."[20]

19. The Alberta Court of Appeal recognized that correct interpretation of s. 29 was the ultimate issue.[21] The Respondent submits that this was an extricable question of law and that if the Chambers Judge came to the incorrect answer it was open to the Court of Appeal to interpret the Incentive Agreement in accordance with the correctness standard. Accordingly, *Sattva* was properly applied.

20. The Majority also applied the correctness standard to interpretation of the purchase agreement on the basis that the legal status of the Incentive Agreement as running with the land was "critical" to interpretation of that agreement.[22] Again, it was open to the Court of Appeal to interpret the Incentive Agreement in accordance with the correctness standard.

21. The Appellant is incorrect when it states that the Incentive Agreement binds only a limited set of parties. The agreement contemplates that covenants will run with the land and bind successors in title, who were not parties to the agreement. Of more significance, the legal obligations in the Incentive Agreement are in respect of preservation of a historical resource. As recognized in *Sattva*, legal obligations ***in most cases*** are limited to the interest of the particular parties;[23] here the Incentive Agreement is in contemplation of a public interest in the preservation of historic resources. For this reason alone it was open to the Court of Appeal to interpret the Incentive Agreement on a correctness standard.

2. The Incentive Agreement requires the City to make payments to the registered owner of the lands

a) Section 29 of the *Historical Resources Act*

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[20] *Eli Lilly & Co v Novopharm Ltd*, [1998] 2 SCR 129 at para 56, 161 DLR (4th) 1 **[Respondent's Authorities Tab 1]**.
[21] *Court of Appeal Reasons, supra* note 6 at para 13 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.
[22] *Ibid.* at para 16.
[23] *Sattva, supra* note 7 at para 52 **[Appellant's Authorities Tab 11]**.

22. The Majority was correct when it stated that the *HRA* creates a *sui generis* type of historical resource covenant as an exception to the common law.[24]

23. Although the Appellant states the principle that "the words of an act are to be read in their entire context and in their grammatical and ordinary sense,"[25] the Appellant argues the interpretation of s. 29 without considering the full context of the Act.

24. The *HRA* is a statute with respect to the development, preservation, study and interpretation, and promotion of appreciation of Alberta's historic resources.[26] The Act permits a "historic or natural site, structure or object" and the land it is on to be designated as a "historical resource" if it has paleontological, archaeological, prehistoric, historic, cultural, natural, scientific or esthetic interest.[27]

25. Pursuant to s. 19 and s. 20, the *HRA* provides for the registration of differing types of instruments on certificates of title. As part of the scheme of the *HRA*, the Minister responsible has the power to designate a historical resource.[28] The Minister may register such an order on the certificate of title and the owner, and all other persons, are "subject to the order." The Minister has unilateral power in this respect to restrict the rights of persons to destroy, alter, disturb or repair any historic resource.[29]

26. The *HRA* under s. 26 to s. 29 creates a second mechanism for designation. Section 26 of the *HRA* permits a municipality, by bylaw, to designate a historic resource and the land on which it is situated as a "Municipal Historic Resource." This part of the statutory scheme is similar to that governing the Minister as it allows for unilateral registration of an order against the certificate of title.[30]

27. However, the municipality is required to compensate a person, where an order under s. 26 "decreases the economic value of a building, structure or land...." The *HRA* specifically

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[24] *Court of Appeal Reasons, supra* note 6 at para 15 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.
[25] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, [2002] 2 SCR 559 **[Appellant's Authorities Tab 5]**.
[26] *Historical Resources Act, supra* note 1 at s 2 **[Respondent's Factum, Part VII, Tab A]**.
[27] *Ibid.* at s 26 **[Appellant's Factum, Part VII, Tab B]**.
[28] *Ibid.* at s 19 and s 20 **[Respondent's Factum, Part VII, Tab A]**.
[29] *Ibid.* at ss, 19(3), (4) and (5); ss. 20(7), (8) and (9) **[Respondent's Factum, Part VII, Tab A]**.
[30] *Ibid.* at s 26 **[Appellant's Factum, Part VII, Tab B]**.

contemplates an agreement between the parties as to the compensation payable. If the parties cannot agree, there is a mechanism to impose compensation.[31]

28. It is significant that the *HRA* at s. 28(4) allows the municipality, with the agreement of the owner, to provide the required compensation by grant, tax relief or ***any other means***.[32] The Act contemplates flexible arrangements agreed to between the parties.

29. Section 29(1) of the *HRA* permits a condition or covenant, relating to the preservation or restoration of any land or building, entered into by the owner of the land and the Minister or delegates (including a municipality) to be registered on the title.[33] This provision contemplates agreements between the owner and the municipality in addition to the municipality's unilateral power to make a designating bylaw.

30. In this context it is obvious that the Minister, the council of the municipality in which the land is located, the Foundation (defined under the Act) or an approved historical organization[34] who makes an agreement with the owner would not own land that would benefit from an agreement. The ordinary requirement of a dominant tenement would have no application under the scheme established by the *HRA*.

31. The parties are free to agree to any means to provide compensation required under the *HRA*. There is no restriction in s. 29 of the *HRA* with respect to what conditions and covenants the owner and municipality might enter into with respect to preservation or restoration of land or a building or compensation or any other matter. Once these agreements are reached, registration in accordance with the *HRA* is permissive.

32. The Majority recognized the need for flexibility in the context of the overall legislation, correctly stating that "...the legislation is intended to be remedial in nature, and an interpretation that preserves flexibility is to be preferred".[35] This recognizes that there is an exceptionally wide variety of sites or features on them that could be designated, including commercial and non-commercial sites.

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[31] *Ibid.* at s 28 **[Appellant's Factum, Part VII, Tab B]**.
[32] *Ibid.* at s 28 **[Appellant's Factum, Part VII, Tab B]**.
[33] *Ibid.* at s 29 **[Appellant's Factum, Part VII, Tab B]**.
[34] *Ibid.* at s 29 **[Appellant's Factum, Part VII, Tab B]**.
[35] *Court of Appeal Reasons, supra* note 6 at para 13 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.

33. Section 29(2) provides that when a condition or covenant is presented to the Registrar of Land Titles, the Registrar shall endorse a memorandum on the certificate of title. The *HRA* does not restrict registration in favour of one party or the other. The plain meaning of the section allows either the owner or the municipality to present the condition or covenant for registration. Clearly, the legislature intended either party the right to register conditions or covenants.

34. In this context, the Majority was correct when it interpreted the words "[a] condition or covenant registered under subsection (2) runs with the land" in s. 29(3) to mean that those conditions or covenants run with the land. This is the plain meaning of the phrase.

35. The Majority properly concluded that the correct interpretation is not to be found by focussing on the category of persons following those plain words.[36] The language following the statement is not redundant. The words that follow in s. 29(3) merely clarify that the municipal parties may enforce the covenants, ***notwithstanding*** that the municipal party ***does not have an interest in any land*** that would be accommodated or benefited by the condition or covenant.[37] That is, the words confirm the Legislature's intention that the municipality or other enumerated party need not establish or define a dominant tenement.

36. The interpretation urged by the Appellant would require the Court to read into the section a restriction that does not appear in the preceding sections of the *HRA* and preceding subsections of s. 29, i.e., that only covenants in favour of the municipality run with the land. This interpretation is in clear and irreconcilable conflict with the plain meaning that that "a condition or covenant registered....runs with the land....".

37. The Appellant offers no reasonable basis for its interpretation, apart from references to *Amberwood*[38] and BC legislation that have no application in the circumstances, as discussed below.

38. Notably, the application of s. 29 as an exception to the common law is very narrow. Unless and until 1) the parties agree to conditions and covenants for the preservation or restoration

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[36] *Ibid.* at para 11.
[37] *Historical Resources Act, supra* note 1 at s 29 **[Appellant's Factum, Part VII, Tab B]**.
[38] *Amberwood Investments Ltd v Durham Condominium Corp No 123* (2002), 58 OR (3d) 481 50 RPR (3d) 1 (Ont CA **[*Amberwood*] [Appellant's Authorities Tab 4]**.

of any land or building; and 2) one of the parties registers those conditions and covenants, they do not run with the land.

39. Given the broad scope of the property and lands that can be designated, a broad interpretation is indicated. If all conditions and covenants run with the land, the municipality is in a position to make agreements to accommodate the owner of the affected land. The parties can come to any agreement as to how and for how long compensation will be provided. This preserves the flexibility between the parties contemplated in s. 28(4).[39] There is no requirement that compensation be by way of payment of money. A municipality could agree to tax relief, maintenance of the lands or surrounding lands, maintenance of the "site, structure or object" in exchange for access to the lands (the land owner could be relieved of certain obligations in relation to the statutory designation). Depending on the site, the municipality might agree to pay an annual amount to access the site and provide for access to the public. The possibilities, limited only by any restriction on municipal powers, are otherwise unlimited.

40. The legislature cannot have intended that a municipality would have the flexibility to agree to compensation by any means, and that it could otherwise enter into covenants and conditions, but that positive and negative covenants given by a municipality could never run with the land for the benefit of the owner and future owners. There is no rationale for this one-sided interpretation.

41. As *Amberwood* makes clear, absent the type of statutory reform found in the *HRA*, the parties cannot agree that positive covenants run with the land (this is what the *Amberwood* decision stands for). The impossibility of this is confirmed by s. 48(5) of the *Land Titles Act* (***"LTA"***) which provides that entry of a covenant onto the title does not have the effect of making it run with the land if it would not otherwise do so.[40]

42. Recognizing the limitations in the common law, the legislature enacted s. 29 in broad terms and specifically allowed all the registered covenants to run with the land, notwithstanding

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[39] *Historical Resources Act, supra* note 1 at s 28 **[Appellant's Factum, Part VII, Tab B]**.
[40] *Land Titles Act,* RSA 2000, c L-4 **[Respondent's Factum, Part VII, Tab B]**.

s.48(5) of the *LTA*.[41] The Majority understood that including this exception to the *LTA* was important for the proper construction of the statute.[42]

43. The Appellant's statement that the Majority decision conflicts with the decision in *Amberwood*[43] is incorrect. The Court in *Amberwood* made it clear that no statutory exception applied in that case.[44] In *Amberwood* the parties entered into a commercial agreement and a successor to one side of the bargain sought a ruling under common law that a positive covenant did not run with the land.

44. The majority in *Amberwood* noted that the Ontario legislature had not adopted a comprehensive scheme to deal with the rule that positive covenants affecting the land do not run with the land and further mentioned statutory exceptions in Ontario. The Court made specific mention of exceptions in the *Ontario Planning Act* and gave a brief summary with respect to those provisions and also made comments about provisions in the *Condominium Act*.

45. As for the *Ontario Heritage Act*, the Court gave no interpretation or commentary whatsoever. That Act is one of 11 different statutes the Court listed as "various examples of other specific statutory exceptions to the rule...". Although the list refers to s. 22 and s. 37 of the *Ontario Heritage Act* there is no further discussion of that Act.

46. Of note, the Appellant makes no reference to the wording of the *Ontario Heritage Act*, choosing instead to quote sections from the *Ontario Planning Act*.[45]

47. The Appellant argues that legislation in British Columbia is relevant to interpretation of the Alberta *HRA*.[46] The Appellant overlooks the obvious difference in the way the acts are drafted. The BC Act provides a clear example of how a legislature drafted the statute so as to restrict the operation of the section. The registration of certain covenants is governed by s. 219 of the *Land Titles Act* (BC) which provides in s. 219(1) that a) a covenant "in favour

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[41] *Historical Resources Act, supra* note 1 at s 29(7) **[Appellant's Factum, Part VII, Tab B]**.
[42] *Court of Appeal Reasons, supra* note 6 at para 9 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.
[43] Appellant's Factum at para 100.
[44] *Amberwood, supra* note 37 at para 52 **[Appellant's Authorities, Tab 4]**.
[45] Appellant's Factum at para 100.
[46] *Ibid.* at para 101.

of the...municipality"; b) "as covenantee" may be registered against the title; and c) is enforceable against the covenantor and successors in title. What is clear from s. 219(1) is that the type of covenant that may be registered is very narrow if it is to be enforceable.

48. In contrast, s. 29(1) of the Alberta *HRA* allows registration of conditions or covenants relating to preservation of any land or building entered into between the owner and municipality.

49. The decision of the Chambers Judge was incorrect and the arguments of the Appellant must fail. Here the legislature communicated its intention with irresistible clarity: *a condition or covenant registered under subsection (2) runs with the land.*

b) Use of the word "Owner"

50. The Appellant argues that, notwithstanding the fact that the parties agreed to registration under the *HRA*, the words of the agreement demonstrate no intention that the payment covenant would run with the land in favour of successors in title. The Appellant relies on the Chambers Judge's interpretation of clause 5.3 and his conclusion that "Owner" in that clause was a reference to LBI.

51. This interpretation does not withstand scrutiny. Courts are not obliged to confer a meaning defined by the drafter if doing so gives an absurd result.[47]

52. The overall scheme of the Incentive Agreement is significant. It is clear that the drafter was careful to make a distinction between LBI and future Owners.

53. If "Owner" is only LBI, section 5 of the Incentive Agreement cannot be reasonably applied and the result would be absurd. Clause 5.2 provides:

> 5.2. Once all of the Rehabilitation Work has been completed...the City agrees to commence paying the Owner...The City shall pay the Owner fourteen yearly installments...one installment per year and on the fifteenth year [a specified sum]...and will pay each Yearly Installment

[47] *City Inn (Jersey) Limited v Ten Trinity Square Limited,* [2008] EWCA Civ 156 at para 8, 2008 WL 576822 **[Appellant's Authorities Tab 6]**.

> within sixty (60) days of its receipt of the Owner's yearly tax payment.[48]

54. If Owner only means LBI (as the Chambers Judge found in relation to clause 5.3) then the meaning of the foregoing makes no sense: once LBI no longer had any yearly tax obligation the City's obligation to pay LBI was extinguished. It is unreasonable to give the word Owner one meaning in the first two references in clause 5.2 and a different meaning the third time it is used. The parties cannot have intended the absurd result that the City's payment obligation would cease if the building was sold.

55. In considering the meaning of Owner in clause 5.3, the Chambers Judge makes no reference to use of the term in clause 5.2 or the fact that the drafter introduces a qualification to the word Owner in clause 5.3 , namely, "The Owner, The Lougheed Block Inc.". Had the Chambers Judge considered the foregoing, the only reasonable conclusion he could have reached was that in section 5 of the Incentive Agreement, the unqualified term Owner includes a future owner.

56. The drafter clearly intended a difference when using the qualified word Owner and the unqualified word. If the Chambers Judge is correct, clause 5.3 was drafted to read as follows:

> [The Lougheed Block Inc.], The Lougheed Block Inc., agrees that it shall have paid all taxes and levies owed by it to the City prior to receiving all or a portion of, the Yearly Installments referenced in this Agreement. If, at any time, [The Lougheed Block Inc.], the Lougheed Block Inc., and any future owner, has not paid such taxes and levies when they become due, the City may, but is not obligated to, set off the amount owed by [The Lougheed Block Inc.], the Lougheed Block Inc., or any future owner against any amounts owed, or that may be owing in the future, to the Owner by the City pursuant to this Agreement...

57. The redundancy is obvious. The only reasonable interpretation is that the drafter intended to indicate when "Owner" specifically meant LBI and when it was intended to refer to LBI ***or*** a successor in title as owner. This qualified use of the word Owner is not found

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[48] *Richardson Affidavit, supra* note 2, Exhibit B, Incentive Agreement at clause 5.2 **[AR Part III vol I Tab 7, pgs 143-144]**.

anywhere else in the Incentive Agreement. Reading Owner when unqualified as meaning either LBI or a future owner makes sense in the overall context of section 5, as follows:

(a) Clause 5.1 – the overall payment amount is the maximum the City is liable to pay LBI or a successor in title. This affirms the limit payable with respect to the historical designation (including for future losses) regardless of whether or not ownership changes.

(b) Clause 5.2 – once the required work is complete, the City will commence paying LBI or a successor in title in installments with 60 days of receipt of LBI's or a successor in title's yearly tax payment.

(c) Clause 5.3 - the City may offset the amount owed or owing to LBI or a successor in title (depending on who has the tax burden). This explains why the drafter introduced the qualified reference to Owner and the reference to future owners. The drafter stops using the qualified term in the final reference to Owner, because the agreement is referring to amounts owed, or that may be owing in the future to LBI or a successor in title. If the drafter had intended the last reference to Owner to be a reference only to LBI, the drafter would have continued with the qualified reference. The drafter is presumed to use different words to have different meaning.

With respect to clause 5.3, the Chambers Judge appears to base his reasoning on the fact that there is no mention made of payments being made to the future owner. This error arises from a failure to consider clause 5.2 and to correctly interpret s. 29 of the *HRA*. If the covenant runs with the land, the payment will always be made to the future owner as successor in title.

(d) Clause 5.4 – here there is a return to the qualified use of Owner. This makes sense as the commencement of payments is conditional on LBI being the registered owner of the lands at the time of passage of the Designating Bylaw and the completion of the work.

58. The foregoing is the only reasonable interpretation of these clauses when considered in the context of the parties' agreement that the entire agreement, including the covenants in

section 5, would be registered to run with the land. The original owner, could at some point be a party other than "The Owner, The Lougheed Block Inc." if the lands were transferred.

59. The Chambers Judge offers no explanation as to why the City is entitled to offset payment to LBI if a subsequent owner does not pay all the taxes and levies due on the building. As noted by Slatter, JA, the provision "would make no sense if the cash flow from the agreement did not follow title."[49]

60. Moreover, the specific restrictive covenant in clause 8.4 was tied to the duration of the payment stream. If the compensation was only in respect of a single point in time, the inclusion of this tied obligation makes no sense. This conclusion is also unreasonable in the face of Clause 2.1 of the Incentive Agreement. The parties clearly expressed the intention that the incentive payment under the Incentive Agreement "shall be full compensation from the City for any decrease in value...***either now or in the future***, as a result of the Designating Bylaw." [emphasis added][50]

3. 604 is the successor to LBI within the meaning of the Incentive Agreement

61. The decision of the Chambers Judge makes no reference to clause 8.8 of the Incentive Agreement which provides that everything in the agreement "shall inure to the benefit of and be binding upon the parties hereto, their...successors... ."[51] Nor does the Chambers Judge refer to or endorse the analysis of the Master in this respect. The Appellant argues that the Majority erred by "overriding" an interpretation of the Master notwithstanding that no deference was owed to such interpretation.

62. The Appellant argues that successor must always mean a corporate successor.

63. In response, the meaning of clause 8.8 must be determined in the context of the entire Incentive Agreement. It cannot be interpreted in isolation as the Appellant urges. The term

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[49] *Court of Appeal Reasons, supra* note 6 at para 28 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.
[50] *Richardson Affidavit, supra* note 2, Exhibit B, Incentive Agreement at clause 2.1 **[AR Part III vol I Tab 7, pg 139]**.
[51] *Ibid.* at clause 8.8 **[AR Part III vol I Tab 7, pg 146]**.

is used in an agreement where the covenants run with the land and where the parties reinforced the statutory effect by specifically agreeing that they would run with the land.

64. The Majority considered clause 8.8 in conjunction with the interpretation of the larger agreement and in the context of s. 29 of the *HRA* and reasonably concluded that, in this context, 604 was a successor within the meaning of the Incentive Agreement.

65. *National Trust Co v Mead,*[52] relied on here by the Appellant is distinguishable. The conclusion that the term "successors" was restricted to corporate successors was made by considering "the wording of the agreement, in conjunction with [the relevant legislation]." The decision does not stand for the proposition that "successor" must always mean corporate successor. The relevant legislation in *Mead* did not give rise to conditions and covenants that ran with the land.

66. The decision in *Wentworth (County) v. Hamilton Radial Electric Railway* is likewise distinguishable. The principal finding of the Court was that the annual payments in question "are not charged upon and do not issue out of any land." [53] Unlike the present circumstance, that Court was not interpreting a contract that ran with the land by operation of statute and by the agreement of the parties.

67. The Majority's analysis in this respect is correct, having regard to the wording of the Incentive Agreement in conjunction with the *HRA*.

4. The benefits and the burdens under the Incentive Agreement

68. The conclusion by the Majority that it makes no sense to sever the obligations under the Incentive Agreement from the benefits is part of the Court's analysis in interpreting the agreement.[54] The issue is nowhere discussed in the decision of the Chambers Judge.

69. The Appellant makes reference to what might happen if an agreement contemplated a lump sum. No such agreement is at issue in this appeal.

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[52] *National Trust Co v Mead*, [1990] 2 SCR 410 at 423, 71 DLR (4th) 488 **[Appellant's Authorities Tab 17]**.
[53] *County of Wentworth v Hamilton Radial Electric R Co* (1916), 54 SCR 178, 33 DLR 429 at p 195 **[Appellant's Authorities Tab 10]**.
[54] *Court of Appeal Reasons, supra* note 6 at para 12 and 24 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.

70. The Appellant argues that if the Majority is correct, "nobody" would ever accept payments over a period of time and that this "would make it impossible" for the City to spread tax payments over numerous tax years.[55] These hypothetical statements overlook the fact that it was the parties that agreed here that: 1) the entire Incentive Agreement would be registered (clause 8.3); 2) that the conditions and covenants would run with the land (clause 8.3); and 3) that the benefit of the payments would run concurrently with the burden of the restricted use of the building (clause 8.4).

71. The parties had every opportunity to sever the benefits from the burdens or to include an exception in clause 8.3 for the payment obligation. They did not do so. A separate payment agreement could have been drafted and not registered on the title. The Incentive Agreement could have provided that the payment covenant did not run with the land, notwithstanding s. 29 of the *HRA* and notwithstanding clause 8.3.

5. Conclusion

72. At all times, the interpretation of the Incentive Agreement was dependant on the correct interpretation of the *HRA*, in particular s. 29. The Court of Appeal was entitled to review the decision of the Chambers Judge on this point on a correctness standard. The Respondent submits that the Majority was correct in its interpretation of s. 29.

73. In considering whether or not the City's payment obligation would run with the land it was necessary to interpret the contract in light of the correct interpretation of the *HRA*. This was an inextricable question of law, largely because the parties specifically contemplated s. 29 in the agreement and agreed to mandatory registration in accordance with that section. The effect on subsequent owners and the public interest also call for review on the correctness standard.

74. The only reasonable interpretation of the Incentive Agreement, and the correct interpretation, is that the parties intended the City's payment obligation to run with the lands.

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[55] Appellant's Factum at para 67.

C. The Judicial Sale included the right to payments under the Incentive Agreement

75. The Appellant relies heavily on the decision of the Master in respect of this issue. The Majority cannot be said to have "overlooked" a finding of fact by the Master as suggested by the Appellant. The Master's decision was not under appeal and no deference was owed. *Sattva* has no application with respect to the decision of the Master.

76. The order confirming sale provides that the Registrar of Land Titles "shall issue a new Certificate of Title to the mortgaged lands, subject...to the following registrations." The registration of the Incentive Agreement in accordance with s. 29 of the *HRA* was one of the enumerated registrations. The Purchaser also took "its interest in the mortgaged lands in as-is condition."[56]

77. The Majority correctly concludes that the principal issue as to what was sold in the Judicial Sale turns on the correct interpretation of the rights under the Incentive Agreement that run with the land. There is no question that the interest in land transferred to 604 included the registered Incentive Agreement.

78. The Majority recognizes that it was necessary for the Chambers Judge to be correct in interpretation of the effect of s. 29 of the *HRA* in order to arrive at a proper interpretation of the judicial purchase agreement. The Majority also recognizes that the interpretation affects multiple parties which requires an objective assessment. [57]

79. The failure to correctly analyse s. 29 resulted in the Chambers Judge engaging in an inquiry as to whether or not a payment covenant was specifically referred to in the sale agreement. The Majority takes the correct approach and asks whether or not the purchase agreement can be construed so as to exclude the payment covenant registered to run with the land. It cannot.

80. The Judicial Sale was in all respects a sale of land notwithstanding that the Master in the sale proceedings (not the Master whose decision was appealed to the Chambers Judge)

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[56] *Richardson Affidavit*, Exhibit K, Order Confirming Sale, dated July 6, 2010, at para10 and 11 **[AR Part III vol II Tab 7, page 3]**.

[57] *Court of Appeal Reasons, supra* note 6 at para 30 per Slatter J.A. for the Majority **[AR Part I Tab 5]**; *Sattva, supra* note 7 at para 52 **[Appellant's Authorities Tab 11]**.

stated that the Court was selling a building. The building was not sold separately from the land and all of the interests that ran with the lands. The Court had jurisdiction to sell the lands and the interests in those lands. The payment covenant under the Incentive Agreement was registered on the title and part of the interest in the mortgaged lands being sold by the Court.

81. The Majority properly concluded that there was nothing in the sale agreement or the Incentive Agreement (discussed above) that severed the interest in the payments from the City such they did not run with the land. This conclusion is supported by the fact that the entire Incentive Agreement was attached by caveat to the title of the "mortgaged lands" which were sold. The interest in the mortgaged lands was purchased on an "as is" basis which included a "general conveyance of assets", as well as conveyance of all "assignable contracts."

82. The Majority correctly concluded that the benefits and the burdens of the Incentive Agreement passed with the sale. As a result there was no need to consider whether or not the assignment of September 1, 2010 was effective.

D. The *Historical Resources Act* creates *sui generis* historical covenants that run with the land

83. In response to the Appellant's arguments in this respect, the Respondent relies on the arguments with respect to the correct interpretation of the *HRA* discussed above.

84. The Appellant asserts that the interpretation of the Majority will create mischief. The Respondent submits that there can be no "immense consequence" from the interpretation of the Majority. The decision of the Majority did not change the common law: the Alberta legislature changed it, albeit in a very narrow way. This type of legislative reform is precisely what the Majority called for in *Amberwood.*

85. It is significant that there can be no accident as to which conditions and covenants in favour of an owner will run with the land. No municipality will be bound unless and until it agrees to a condition or covenant and that is registered. Where is the mischief in allowing the municipality to make such an agreement? Presumably the legislature gave some

consideration to the fact that a condition or covenant might not be in the public interest and so the *HRA* permits the Minister to discharge or modify a condition or covenant.[58]

E. There is no issue with respect to the priority of any security interest

86. As noted by O'Brien, JA the issue of whether or not 604 was entitled to a declaration that it was entitled to payment pursuant to the Equitable Assignment was not before the Chambers Judge and therefore not properly part of the Appeal proceedings. There was no application by the Appellant with respect to its entitlement to the incentive payments prior to the appeal.[59]

87. In 2006, LBI borrowed money from Equitable. As part of the collateral it gave an assignment of the right to the City's payment obligations under the Incentive Agreement. The Court of Appeal held that the assignment was registered in the Personal Property Registry (**"PPR"**) by way of a general security agreement. Registration was admitted by LBI in the foreclosure proceedings.

88. In 2007 the Appellant lent additional monies to LBI. LBI also assigned the benefits under the Incentive Agreement to the Appellant at that time. This was not registered in the PPR until after title to the Lougheed Block lands was transferred to 604 by means of the order confirming sale.

89. In anticipation of the closing and transfer of lands, LBI took the position that 604 was not entitled to the benefit of the City's payment obligation. In the context of this dispute, Equitable assigned interest in its assignment to 604 for consideration of $1.00 following the sale although that assignment was dated September 1, 2010. This was clearly an effort to protect against the position that LBI took with respect to the right to payment under the Incentive Agreement.

90. The Appellant argues that it is entitled to the benefit of the City's payment obligations on the grounds that it has the only perfected security interest.

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[58] *Historical Resources Act, supra* note 1 at s 29 **[Appellant's Factum, Part VII, Tab B]**.
[59] *Court of Appeal Reasons, supra* note 6 at para 90 per O'Brien J.A. for the Dissent **[AR Part I Tab 5]**; *Judge's Reasons, supra* note 12 at para 69 **[AR Part I Tab 3]**.

91. The Majority correctly held that the City's obligation to pay arose from a covenant that runs with the land. It is from this perspective that one must consider the Appellant's claim that its pre-sale assignment given by LBI prior to the sale was perfected by registration after the sale of the lands to 604.

92. As the Majority correctly points out, 604 obtained its interest in the City's payments as the purchaser of the lands. When the Registrar issued a new certificate of title to the lands that was subject to the *HRA* registration, the covenant that ran with the land was an interest in land that passed with the title. The Majority correctly held that this interest in land was not subject to the *PPSA* on the basis of certain exemptions under s. 4 of that Act.[60]

93. As noted by the Majority, this interest falls within the meaning of s. 4(f) of the *PPSA* as an interest in land. The Appellant notes that this section applies to interests registerable under land law. The registration in this case falls under such law: the *HRA* provides that the Registrar of Land titles shall register the interest and that it runs with the land.

94. Subsection 4(g) of the *PPSA* also applies as the right to payment was not a mere contractual promise but it arose from a covenant running with the land.

95. If the right to the payment was not an interest in land, the *PPSA* priority is a question that must be determined on the basis of a proceeding that is intended to address that issue. As pointed out by the Appellant, this question may depend on the outcome of a companion appeal before this Court. With respect, this Court is in no position to decide an issue that was never part of the record leading up to the decision of the Chambers Judge that was the subject of the present appeal.

F. Conclusion

96. The overriding consideration in this matter is the correct interpretation of the *HRA*, and in particular s. 29.

97. The Majority correctly interpreted the *HRA*, including s. 29, with the effect that the City's payment obligation under the Incentive Agreement was a covenant that ran with the land.

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[60] *Court of Appeal Reasons, supra* note 6 at para 36 per Slatter J.A. for the Majority **[AR Part I Tab 5]**.

98. The proper interpretation of s. 29 was critical to interpretation of the Incentive Agreement. This creates an inextricable legal issue requiring the Incentive Agreement to be interpreted on a correctness standard. In any event, because the Chambers Judge did not properly interpret s. 29 he was not in a position to give a reasonable interpretation of that agreement.

IV. COSTS

99. The Respondent 604 1st Street S.W. Inc. requests its costs of this Appeal, including the costs for the Application for Leave to Appeal, and its costs in the courts below.

V. ORDER SOUGHT

100. The Respondent asks the Court to dismiss the appeal and to award costs before this Court and the courts below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of January, 2016.

Gowling Lafleur Henderson LLP

Per: _____
Derrick S. Pagenkopf and
Peter Morrison
Counsel for the Respondent
604 1st Street S.W. Inc.

VI. TABLE OF AUTHORITIES

VII. LEGISLATION AT ISSUE

A. *Historical Resources Act*, RSA 2000, c. H-9, attached

B. *Land Titles Act*, RSA 2000, c L-4, s. 48(5), attached

Province of Alberta

HISTORICAL RESOURCES ACT

Revised Statutes of Alberta 2000
Chapter H-9

Current as of June 12, 2013

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classes of works of nature designated by the regulations as palaeontological resources;

(i) "Provincial Historic Resource" means an historic resource that is designated under section 20(1) as a Provincial Historic Resource;

(j) "Registered Historic Resource" means an historic resource that is designated under section 19(1) as a Registered Historic Resource.

RSA 1980 cH-8 s1;1992 c16 s2

Part 1
Historical Resources Generally

Duty re historic resources

2 The Minister is responsible for

(a) the co-ordination of the orderly development,

(b) the preservation,

(c) the study and interpretation, and

(d) the promotion of appreciation

of Alberta's historic resources.

RSA 1980 cH-8 s2

Staff

3 In accordance with the *Public Service Act*, there may be appointed the employees necessary for the administration of this Act.

RSA 1980 cH-8 s3;1991 c17 s2;1997 c12 s2

Experts and advisors

4(1) The Minister may from time to time engage the services of experts or persons having special technical or other knowledge to advise the Minister or to inquire into and report to the Minister on matters under this Act.

(2) A person whose services are engaged under this section may be paid the remuneration and expenses that the Minister may prescribe.

RSA 1980 cH-8 s4

(a) prescribing standards and guidelines for the approval of names and changes of names by the Foundation;

(b) prescribing the duties of the Foundation with respect to nomenclature;

(c) governing and requiring consultation by the Foundation with any department, municipality, person or body of persons concerning the naming of, or the changing of the name of, any place or other geographical feature.

RSA 1980 cH-8 s14;1992 c16 s4

Designation as Registered Historic Resource

19(1) The Minister, after giving the owner 60 days' notice of the Minister's intention to do so, may by order designate any historic resource the preservation of which the Minister considers to be in the public interest, together with any land in or on which it is located and adjacent land that may be specified in the order, as a Registered Historic Resource.

(2) The Minister shall

(a) serve a copy of the order on the owner of the historic resource and the owner of any land that will be subject to the order,

(b) publish a notice of the designation, including a description of the historic resource, in The Alberta Gazette, and

(c) if the order relates to or includes any land, cause a certified copy of the order to be registered in the appropriate land titles office.

(3) On the registration of a certified copy of the order in the appropriate land titles office, the Registrar of Land Titles shall endorse a memorandum of the registration on the certificate of title to any land affected by the order.

(4) An order under subsection (1) is effective

(a) as against the owner of the historic resource and the owner of any land that is subject to the order, when the owner is served with a copy of the order or when the notice under subsection (2)(b) is published in The Alberta Gazette, whichever occurs first, and

(b) as against all other persons, when the notice under subsection (2)(b) is published in The Alberta Gazette.

(5) Notwithstanding any other Act, no person shall

(a) destroy, disturb, alter, restore or repair any historic resource or land that has been designated under this section, or

(b) remove an historic object from an historic resource that has been designated under this section

until the expiration of 90 days from the date that notice of the person's proposed action is served on the Minister, unless the Minister sooner consents to the proposed action.

(6) On the service of a notice of intention under subsection (1), subsection (5) applies to the historic resource and land as if an order under subsection (1) had been made and was effective under subsection (4), until the time the Minister makes the order or revokes the notice of intention or until the expiry of 120 days from the receipt of the notice.

(7) Notwithstanding subsection (6), a person who has been served with a notice of intention under subsection (1) may apply to the Court of Queen's Bench for an order shortening the period of 120 days mentioned in subsection (6).

(8) If the Minister rescinds an order made under subsection (1), the Minister shall

(a) serve a copy of the rescinding order on the owner of the historic resource and the owner of any land that is subject to the order,

(b) publish a notice of the rescinding order in The Alberta Gazette, and

(c) if the order under subsection (1) was registered against the certificate of title to any land, cause a certified copy of the rescinding order to be registered in the appropriate land titles office.

(9) On the registration of a certified copy of a rescinding order in the appropriate land titles office, the Registrar of Land Titles shall endorse a memorandum on the certificate of title to any land concerned cancelling the registration of the order under subsection (1).

RSA 2000 cH-9 s19;2009 c53 s81

Designation as Provincial Historic Resource

20(1) The Minister may by order designate any historic resource the preservation of which the Minister considers to be in the public interest, together with any land in or on which it is located and

adjacent land that may be specified in the order, as a Provincial Historic Resource.

(2) The Minister shall

(a) serve notice of the Minister's intention to make an order under subsection (1) on the owner of the historic resource and on the owner of any land that will be subject to the order, and

(b) publish notice of the Minister's intention to make an order under subsection (1) in The Alberta Gazette

at least 60 days prior to the date on which the Minister proposes to make the designation.

(3) A notice under subsection (2) shall contain a description of the historic resource that the Minister proposes to designate and shall state the reasons for the proposed designation.

(4) Any interested person may, within 30 days after the publication of the notice in The Alberta Gazette, advise the Foundation that the person wishes to make representations concerning the proposed designation.

(5) At the conclusion of the 30-day period, the Foundation shall notify all persons who have advised the Foundation of their intention to make representations of a date fixed by the Foundation for the hearing of the representations, which must be not fewer than 15 days prior to the date on which the Minister proposes to make the designation, and the Foundation may, after hearing the representations, make recommendations to the Minister as to the proposed designation.

(6) If no representations are made or if the Foundation after hearing any representations recommends that the Minister proceed with the proposed designation, the Minister may proceed to make the order under subsection (1) and as soon as possible after making the order the Minister shall

(a) serve a copy of the order on the owner of the historic resource and on the owner of any land that is subject to the order,

(b) publish a notice of the designation, including a description of the historic resource and any land that is subject to the order, in The Alberta Gazette, and

(c) if the order relates to or includes any land, cause a certified copy of the order to be registered in the appropriate land titles office.

(7) On the registration of a certified copy of an order in the appropriate land titles office, the Registrar of Land Titles shall endorse a memorandum on the certificate of title to any land affected by the order.

(8) An order under subsection (1) is effective

(a) as against the owner of the historic resource and the owner of any land that is subject to the order, when the owner is served with a copy of the order or when the notice under subsection (6)(b) is published in The Alberta Gazette, whichever occurs first, and

(b) as against all other persons, when the notice under subsection (6)(b) is published in The Alberta Gazette.

(9) Notwithstanding any other Act, no person shall

(a) destroy, disturb, alter, restore or repair any historic resource or land that has been designated under this section, or

(b) remove an historic object from an historic resource that has been designated under this section

without the written approval of the Minister.

(10) The Minister, in the Minister's absolute discretion, may refuse to grant an approval under subsection (9) or may make the approval subject to any conditions the Minister considers appropriate.

(11) The owner of an historic resource that is subject to an order under subsection (1) shall, at least 30 days before any sale or other disposition of the historic resource, serve notice of the proposed sale or other disposition on the Minister.

(12) When a person inherits an historic resource that is subject to an order under subsection (1), that person shall notify the Minister of the inheritance within 15 days after the historic resource is transferred to the person.

(13) On service of a notice of intention under subsection (2), subsections (8) to (12) apply to the historic resource and land as if an order under subsection (1) had been made and was effective under subsection (8), until the time the Minister makes the order or revokes the notice of intention or until the expiry of 120 days from service of the notice.

(14) Notwithstanding subsection (13), a person who has been served with a notice of intention under subsection (2) may apply to

the Court of Queen's Bench for an order shortening the period of 120 days mentioned in subsection (13).

(15) If the Minister rescinds an order made under subsection (1), the Minister shall

(a) serve a copy of the rescinding order on the owner of the historic resource and the owner of any land that is subject to the order,

(b) publish a notice of the rescinding order in The Alberta Gazette, and

(c) if the order under subsection (1) was registered against the certificate of title to any land, cause a certified copy of the rescinding order to be registered in the appropriate land titles office.

(16) On the registration of a certified copy of a rescinding order in the appropriate land titles office, the Registrar of Land Titles shall endorse a memorandum on the certificate of title to any land concerned cancelling the registration of the order under subsection (1).

RSA 2000 cH-9 s20;2009 c53 s81

Service of notice

21 A notice, order or other document under section 19 or 20 may be served by personal service or registered mail or in any other manner as the Court of Queen's Bench may direct.

RSA 1980 cH-8 s17

Crown owned historic resource

22 If the historic resource that is the subject of an order under section 20(1) is an historic resource that is owned by the Crown or wholly situated on Crown land,

(a) section 20(2), (4), (5), (6)(a), (11) to (14) and (15)(a) do not apply with respect to that historic resource,

(b) at least 60 days prior to the date of making an order under section 20(1), the Minister shall give notice of the Minister's intention to make the order to the Minister of the Crown who has the administration of the land or historic resource,

(c) no sale or other disposition of property that is the subject of an order under section 20(1) may be made without giving the Minister at least 60 days' notice, and

Province of Alberta

LAND TITLES ACT

Revised Statutes of Alberta 2000
Chapter L-4

Current as of March 30, 2015

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Registration of trusts

47 No memorandum or entry shall be made, on a certificate of title, of any notice of trusts, whether expressed, implied or constructive, but the Registrar shall treat any instrument containing any such notice as if there were no trust, and the trustee or trustees named in the instrument are deemed to be the absolute and beneficial owners of the land for the purposes of this Act.

RSA 1980 cL-5 s51;1999 c10 s11

Registration of restrictive covenant

48(1) There may be registered as annexed to any land that is being or has been registered, for the benefit of any other land that is being or has been registered, a condition or covenant that the land, or any specified portion of the land, is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

(2) When any such condition or covenant is presented for registration, the Registrar shall enter a memorandum of it on the proper certificate or certificates of title.

(3) Notwithstanding subsection (2), before a memorandum of a condition or covenant may be entered on a certificate of title under subsection (2), certificates of title must exist for all the parcels of land affected by the condition or covenant, including the parcel of land that comprises the servient tenement and the parcel of land that comprises the dominant tenement.

(4) The first owner, and every transferee, and every other person deriving title from the first owner or through tax sale proceedings, is deemed to be affected with notice of the condition or covenant, and to be bound by it if it is of such nature as to run with the land, but any such condition or covenant may be modified or discharged by order of the court, on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant or that the condition or covenant conflicts with the provisions of a land use bylaw or statutory plan under Part 17 of the *Municipal Government Act*, and the modification or discharge is in the public interest.

(5) The entry on the register of a condition or covenant as running with or annexed to land does not make it run with the land, if the covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

(6) No such condition or covenant is deemed to be an encumbrance within the meaning of this Act.

RSA 1980 cL-5 s52;1988 c27 s25;1994 cM-26.1 s642(35); 1995 c24 s100;1999 c10 s12

Unit operation

49(1) In this section, "unit operation" means an operation where, pursuant to an agreement, interests in a mineral are merged, pooled, consolidated or integrated as a single unit, without regard to the boundaries of the separate parcels, for the purposes of

(a) the development or production of the mineral within, on or under the parcels, or any specified stratum or strata or portion thereof within the parcels, or

(b) the implementing of a program for the conservation of the mineral, or the co-ordinated management of interests in the mineral.

(2) If a person enters into an agreement for a unit operation, that person may file a copy of that agreement with the Registrar.

(3) When an agreement is filed with the Registrar under subsection (2), the Registrar shall endorse a memorandum of that agreement on the certificates of title of all the land specified in the agreement as being subject to the unit operation.

(4) Where there is filed with the Registrar

(a) a discharge in respect of an agreement for a unit operation that

(i) is executed by the person who is the unit operator, and

(ii) specifies the land to which the discharge applies,

and

(b) an affidavit of the unit operator stating

(i) that the unit operator is the unit operator for the agreement,

(ii) that the unit operator has the authority pursuant to the agreement or a collateral agreement to discharge the agreement in respect of the land specified in the discharge, and