SUPREME COURT OF YUKON

Citation: *AGC v Registrar of Land Titles*, 2026 YKSC 23

Date: 20260402
S.C. No.: 25-AP011
Registry: Whitehorse

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

PETITIONER

AND

THE REGISTRAR OF LAND TITLES

RESPONDENT

AND

DENISE CARMEN FRAS

RESPONDENT

Before Chief Justice S.M. Duncan

Counsel for the Petitioner	Marlaine Anderson-Lindsay
Counsel for the Respondent Registrar of Land Titles	Kim Sova
Appearing on her own behalf	Denise Carmen Fras (by video-conference)

REASONS FOR DECISION

OVERVIEW

[1] This is a cautionary tale about the impacts of unexplained government delay and the failure to ensure the completion of administrative steps to implement a straightforward land exchange agreement between the Federal government and an

individual. What was intended to be a simple and fair transaction to assist the Parks Canada initiative to clean up certificates of title, consolidate lots and determine the highest and best use of heritage properties in Dawson City, Yukon, has unfortunately become a complex, lengthy, costly and frustrating process for all involved.

[2] This is an application by the Attorney General of Canada (AGC) for a court order to require the Registrar of Land Titles (the Registrar) to register copies of transfer of land documents signed in 2004 by Ms. Denise Carmen Fras, that will have the effect of transferring to the Government of Canada (Canada) from Ms. Fras a 22.8 square metre parcel of land in the area of the historic Palace Grand Theatre in Dawson City.

[3] This proposed transfer was one step in an agreement for an exchange of two land parcels of approximately the same size, both in the area of the Palace Grand Theatre, between Ms. Fras and Canada. A 21.6 square metre parcel, originally titled to Canada, was successfully transferred to Ms. Fras for $1, in exchange for Canada receiving the 22.8 square metre parcel at issue in this application from Ms. Fras for $1. This transfer from Canada to Ms. Fras was registered by her in the Yukon Land Titles Office (LTO) on October 7, 2004. The transfer of the property from Ms. Fras to Canada was never registered in the LTO.

[4] The purpose of the land exchange was to allow for a consolidation of lots and a coherence of ownership within property lot lines; as well as to ensure consistency with the survey registered in the LTO in 1992. Ms. Fras sold her lot including the additional 21.6 square metre parcel in 2005, after her title was amended and clarified.

[5] There is no explanation for why the transfer of land documents for the 22.8 square metre parcel signed in 2004 by Ms. Fras, witnessed by her lawyer and sent by

him to a lawyer at the Department of Justice Canada (Justice Canada) were never registered. The original transfer documents cannot be located. The copies were found in the archived Justice Canada file, but the Registrar has refused to register them because they are copies. Therefore the 22.8 square metre parcel is still titled to Ms. Fras, and the plan of Parks Canada to consolidate and clarify the heritage property lots in this area has not yet materialized.

[6] The Registrar took no position on this application, except to contribute to the wording of the draft order to ensure clarity and completeness.

[7] Ms. Fras vehemently opposed the application, expressing her lack of trust in government officials and their motivations, her frustration about this discovery after so many years of assuming the transfer had been completed, and her concern about liability exposure. She has requested financial compensation, the negotiation of a 'new deal' with Canada, and an award of "substantial indemnity" costs to take into account the prejudice she claims to have suffered from this 21-year delay.

[8] For the following reasons, I grant the AGC's application and order that the Registrar register the copies of the transfer of land documents for the 22.8 square metre parcel in Lot 7 (now Lot 9) on title so that the 2004 agreement may be implemented. No costs will be awarded.

[9] I will first set out the issues, and then review the factual background, including the reasons for the refusal to register by the Registrar. I will review the procedure by which this application was brought, and the grounds of the AGC's dissatisfaction with the Registrar's decision. Then I will set out the objections of Ms. Fras. Finally, I will provide my analysis and conclusion.

ISSUES

[10] The following are the issues in this application:

a) Is an application for judicial review the appropriate mechanism to bring this matter before the Court?

b) Should this Court override the Registrar's decision not to register copies of the transfer of land documents on the basis that:

i) the statutory scheme does not explicitly prevent the registration of copies of documents even though there are implicit statutory provisions, and the consistent practice of the LTO is to require originals for registration;

ii) the delay in completing the registration does not preclude the grant of the order sought by the AGC; and

iii) the prejudices of liability exposure and uncertainty claimed by Ms. Fras and the Registrar do not preclude the grant of the order.

c) Costs of this application.

BACKGROUND

[11] In 1989, Parks Canada discovered some encroachments between privately owned real properties and federally owned real properties under the administration of Parks Canada, in the area of the Palace Grand Theatre in Dawson City, Yukon. To begin the process of clarifying and correcting these encroachments, Parks Canada commissioned a re-survey of the lots in Block H, Ladue Estate, Dawson City, Yukon, and an adjacent privately owned piece of property. The survey was completed in 1992 and registered at the LTO.

[12] The survey plan was the first step in facilitating the cancellation of certificates of title within certain lots, (Lots 1, 2, 6, 7 and 8) and the consolidation of those lots into one larger lot (Lot 9) with one certificate of title for Canada. The adjacent private landowner would also have clear title to one large lot (Lot 10) after the cancellation of certificates of title within Lots 7 and 8.

[13] In 2002, Parks Canada learned that the cancellation and consolidation had not yet been done.

[14] Parks Canada then proposed a land exchange with the adjacent private property owner. A 22.8 square metre parcel in Lot 7, owned by Ms. Fras since 1992, would be transferred to Canada for $1, and become part of the proposed consolidated Lot 9 to be titled to Canada. A 21.6 square metre parcel in Lot 6 titled to Canada, over which Ms. Fras encroached, would be transferred to Ms. Fras, and become part of a new consolidated Lot 10, titled to Ms. Fras. A copy of the memorandum of agreement to reflect this land exchange, signed by Ms. Fras on May 21, 2004, but not signed by Canada, was provided to the Court.

[15] The transfer of the 21.6 square metre parcel from Canada to Ms. Fras in Lot 6 was completed, including its registration in the LTO. Ms. Fras then sold the newly consolidated Lot 10 in 2005. Ms. Fras now lives in British Columbia.

[16] The transfer of land document for the 22.8 square metre parcel in Lot 7 from Ms. Fras to Canada was signed by Ms. Fras on May 4, 2004. She also swore an affidavit confirming spousal and Canadian residency status at the time of executing the land transfer document. Ms. Fras was represented in this transaction by an experienced local real estate lawyer who provided an affidavit confirming the execution of the

transfer of land document by Ms. Fras. The lawyer provided the signed transfer document and affidavits during the summer of 2004 to a lawyer at the Yukon Regional Office of Justice Canada, who was responsible for taking the final steps of registering the transfer with the LTO. There was correspondence between the lawyers around the same time about the LTO requirements to finalize the transfer of land in Lot 6 from Canada to Ms. Fras.

[17] Parks Canada discovered in 2023 during discussions with the LTO that the transfer of land documents for the 22.8 square metre parcel in Lot 7 from Ms. Fras to Canada had never been registered with the LTO. Through their attempts to discover what had occurred, along with the efforts of Justice Canada lawyers, they located copies of the transfer documents and the other correspondence between the lawyers from 2004 in the archived Justice Canada file. Those copies were received by the Northern Regional Office of Justice Canada electronically in early 2023.

[18] Also in 2023, a lawyer with Justice Canada requested the Registrar's assistance to complete the implementation of the 2004 agreement. The Registrar reviewed the copies of the transfer of land document and accompanying affidavits. She advised she would accept the transfer documents for registration, despite their age and the old forms that have now been superseded, as long as the originals could be located.

[19] Despite significant efforts by Canada, the originals have not been found in the Justice Canada file, the Parks Canada file, the LTO file, Ms. Fras' lawyer's file, or Ms. Fras' file.

[20] Parks Canada officials wrote multiple times to Ms. Fras between May 19, 2023, and September 11, 2023, including, in response to Ms. Fras' request, the provision of a

hard copy letter dated July 11, 2023, asking her to sign the updated version of the transfer of land document and affidavits. Ms. Fras responded on one occasion, June 14, 2023, to confirm her email address, to provide her mailing address, and to request that all future communications from Parks Canada be sent by regular mail. There was no response by Ms. Fras to Parks Canada's hard copy letter of July 11, 2023. On September 11, 2023, Parks Canada sent one final email to request confirmation from Ms. Fras of her receipt of their letter. She did not respond.

[21] Lawyers from Justice Canada initially contacted Ms. Fras on March 14, 2024, by email, enclosing a letter they had sent to her by registered mail with documents enclosed, and explaining their request that she sign the updated transfer of land document again. Between that date and January 13, 2025, 13 further emails were sent by Justice Canada to Ms. Fras. Ms. Fras responded on two occasions. On April 15, 2024, Ms. Fras advised the lawyer from Justice Canada that she was recovering from surgery, but she would be seeking legal advice on the matter in Whitehorse in a couple of weeks. On July 15, 2024, after a follow up email from the Justice Canada lawyer, she advised that she was still recovering and asked what the financial compensation would be "for all this trouble." No response to this email from Justice Canada was included in the materials submitted to the Court. No further correspondence between Justice Canada and Ms. Fras after that date was provided to the Court.

[22] In an effort to move the matter forward, Justice Canada submitted the copies of the transfer documents signed by Ms. Fras in 2004 to the LTO for registration on May 7, 2025. The deputy registrar refused to accept them, for a number of reasons, one

of which was the failure to file originals of the documents. The other reasons set out in the letter of May 8, 2025, were the existence of clerical errors and the fact that the forms submitted were old and did not conform to current requirements.

[23] Justice Canada then requested the Registrar to review the deputy registrar's decision. The Registrar upheld the deputy registrar's decision by letter dated May 14, 2025, and reiterated that original documents were required for registration. The Registrar added a concern under s. 24(3)(c) of the *Land Titles Act,* SY 2015, c 10 (the *Act*), that the instrument was unfit for registration because of potential liability to the LTO, given Ms. Fras' refusal to cooperate in providing replacement originals. As well as they confirmed the deputy registrar's concern that the forms were not the current prescribed forms.

PROCEDURE UNDER THE ACT AND GROUNDS OF APPLICATION

[24] The copies of the documents submitted by Justice Canada to the deputy registrar for registration of the transfer of the land in Lot 7 owned by Ms. Fras to Canada were returned to Justice Canada unregistered by the deputy registrar. Although the deputy registrar did not refer to any section number in her letter, the substance of the letter and the scope of her duties set out in the *Act* establish that her decision was based on s. 24 of the *Act*. That section provides:

> (1) The registrar or a deputy registrar must examine, in accordance with the regulations, an instrument submitted for registration.
>
> (2) The registrar may only register an instrument if the registrar or the deputy registrar examining the instrument determines that the instrument substantially conforms to

> (a) the requirements of this Act and the regulations; and
>
> (b) any applicable standards established by the registrar in accordance with this Act and the regulations.
>
> (3) The registrar must not register an instrument if the registrar or the deputy registrar examining the instrument determines that the instrument
>
> (a) is incomplete;
>
> (b) does not include an accompanying instrument required by this Act, the regulations or any applicable standards established by the registrar in accordance with this Act and the regulations; or
>
> (c) is, for any other reason, unfit for registration.

[25] Paragraph 25(2)(b) of the *Act* provides that the person requesting the registration, after receiving the reasons for the inability to register and the requirements for registration, may request that the registrar review the deputy registrar's determination. The registrar's determination is deemed to be a determination under s. 24.

[26] In this case, Justice Canada requested by letter dated May 8, 2025, that the Registrar review the deputy registrar's determination pursuant to this section.

[27] Subsection 26(b) of the *Act* provides that if a registrar determines submitted documents cannot be registered, the person submitting them may request that a judge review the registrar's determination in accordance with s. 189 of the *Act*.

[28] Section 189 is entitled "Appeal of registrar's decision". It provides as follows:

> (1) A person who is dissatisfied with an act, omission, refusal, decision or direction of the registrar may

> require the registrar to set out in writing the grounds for it.
>
> (2) If the person is dissatisfied with the grounds given by the registrar, the person may apply to a judge setting out the grounds of the person's dissatisfaction.
>
> (3) The judge who receives an application under subsection (2)
>
> (a) if the registrar has not already been served with the application, must cause that to be done; and
>
> (b) may hear the matter and may make any order the judge considers proper, including an order as to the costs of the parties.

[29] Further detail about the type of order a judge may make is set out in s. 191 of the *Act*:

> (1) In any proceeding respecting land, a transaction or contract relating to land or an instrument affecting land or a note entered on a certificate of title, a judge may, by order, direct a registrar to cancel, correct, substitute, or issue a certificate of title, or to enter a note on a certificate of title, and otherwise to do every act necessary to give effect to the order.
>
> (2) A court-certified copy of the order must be submitted for registration and upon registration the registrar must implement the direction contained in the order.

[30] The AGC brought this application before the Court pursuant to s. 189 of the *Act* based on their dissatisfaction with the Registrar's decision.

[31] The grounds of dissatisfaction with the Registrar's determination set out by the AGC are:

> a) There are no statutory or regulatory requirements to file originals of the documents sought to be registered. Nor are there standards documents

created by the Registrar setting out such a requirement. The existence of a general practice to require originals for registration is not determinative. Acceptance of copies for registration in certain circumstances is not inconsistent with the purposes of the *Act*.

b) The Registrar has discretion under the *Act* in the exercise of their powers and duties, including the ability to register instruments that are in substantial conformity with the requirements of the *Act*, regulations and any applicable standards established by the Registrar (s. 17, s. 24(2), s. 212.1(1)).

c) The potential undefined liability of the LTO due to Ms. Fras' refusal to sign new transfer documents does not make the copies "unfit for registration" under s. 24(3)(c).

OBJECTIONS OF MS FRAS

[32] Ms. Fras made a number of objections to the AGC's application both in writing and orally. Her submissions were comprehensive and articulate, especially considering her self-represented status.

[33] Initially she submitted materials which contained content generated by Artificial Intelligence (AI) – specifically Google Gemini. After she was made aware of the Supreme Court of Yukon's Practice Direction requiring disclosure of use of AI, she did so disclose on the record, and provided a new written outline, in which she advised she had removed the AI generated material. She also produced hard copies of the caselaw, and the statutes referenced in her outline. I have reviewed the legal references and have no concerns about their authenticity.

[34] There was some repetition in Ms. Fras' material. My understanding of her objections is as follows:

a) the Court should defer to the Registrar because their decision to require original documents is consistent with the purpose of the *Act*, and the Court should not be directing the Registrar to register an instrument that fails to satisfy the legislative requirements;

b) factually, Ms. Fras says her encroachment on Lot 6 was created by Canada's 1992 survey, and that she originally owned both parcels in the land exchange: the exchange represented a correction to her pre-existing title;

c) the application should be denied for delay based on equity and the statutory provisions of the *Limitations of Actions Act*, RSY 2002, c 139: the delay has caused prejudice to Ms. Fras and shows bad faith and misconduct by Canada;

d) Canada is not entitled to the remedy they seek without properly compensating Ms. Fras, because they are not coming to court with 'clean hands';

e) further prejudice has occurred to Ms. Fras because of the liability associated with property ownership to which she was unknowingly exposed for 21 years and the inability for her to enjoy the property for that period of time; and

f) the draft order submitted to the Court before the hearing, and the pre-application correspondence between Justice Canada and the Registrar,

where they agreed on the process to resolve the matter, showed this application was “pre-meditated” and pre-determined without considering her position, thereby undermining the court’s independence.

ANALYSIS

Issue a) Is an application for judicial review the appropriate mechanism?

[35] The substance of the application and the supporting materials filed by the AGC are consistent with the requirements in s. 189 of the *Act*. The application does not use language nor refer to legal principles normally considered in a judicial review. However, the AGC characterized this application as an application for judicial review. A judicial review application is not necessary or appropriate in this case.

[36] Section 189 provides for an appeal of a registrar’s decision if a person is dissatisfied with the grounds given by the registrar for an act, omission, refusal, decision or direction. After hearing an application brought under s. 189(2), the judge, under s. 189(3), may make any order the judge considers proper. This broad remedial language allows the judge to substitute their decision in place of the Registrar’s decision.

[37] Similarly, s. 191 of the *Act* provides that in any proceeding respecting land, a transaction or contract relating to land, or an instrument affecting land, or a note entered on a certificate of title, a judge may by order direct a registrar to cancel, correct, substitute or issue a certificate of title, or to enter a note on a certificate of title, and otherwise to do every act necessary to give effect to the order.

[38] A judicial review is generally brought by a person affected by a decision of a government official or administrative tribunal, who must persuade the court that the

decision was unreasonable, incorrect at law, or procedurally unfair. The determination of reasonableness or correctness of a decision, or a failure to comply with procedural fairness requires more than an expression of dissatisfaction with a decision, and instead is grounded in legal principles and legislative authority. A judicial review remedy generally does not permit the court to substitute its decision for that of the government official or administrative tribunal decision-maker – instead, the court is limited to setting the decision aside or quashing it and returning it to the original decision-maker for reconsideration (certiorari), making a declaration, for example, about the parties' legal rights (declaration), ordering a government official or tribunal to do something that they have a duty to do (mandamus), preventing a government official or tribunal from continuing an unlawful process or action (prohibition), or stopping a party from doing something (injunction). In exceptional circumstances, a court may substitute its decision for that of the tribunal, such as where there is only one lawful outcome.

[39] Here, the AGC did not describe their submissions in judicial review language such as the unreasonableness, lack of correctness at law, or procedural unfairness of the Registrar's decision, but instead, following the wording of s. 189 of the *Act*, they set out their grounds for dissatisfaction (described above) with the Registrar's decision to refuse to accept copies of the transfer of land documents. Further, the AGC did not describe the nature of the remedy it seeks through language used in a judicial review but instead requested that this Court order that the Registrar accept the copies of the transfer documents for registration, an action that is not explicitly provided for in the statute or regulations. The AGC is not asking the court to remit the decision to the Registrar. Their request is consistent with the remedy set out in s. 189(3) that gives the

judge the ability to make any order it thinks proper, and the remedy set out in s. 191, that the judge can direct the registrar, by order, to issue a certificate of title. These broad remedial powers are inconsistent with those available in a judicial review application process.

[40] I accept the application in the form in which it has been brought by the AGC, because it includes the necessary substantive information and materials to enable me to decide the matter under ss. 189 and 191. A petition under Rule 10(1) of the Supreme Court of Yukon *Rules of Court* (the *Rules*) for this sort of application is the appropriate procedure. Rule 10 provides a petition under Form 2 shall be filed where an application is authorized to be made to the court. In this case, ss. 189 and 191 of the *Act* authorize an application to be made to the court. The standard of review is not specifically set out in the *Act*, but the remedial provisions allowing the court to make any order it thinks proper establish that standard as non-deferential and in effect a consideration *de novo.*

[41] In this discussion of the appropriate procedure, I will address Ms. Fras' two objections to the process: first, her concern about the submission of the draft order by the AGC to the court before the hearing, with the input of the Registrar, and second, her concern that this application was pre-meditated, the outcome pre-determined, and the independence of the court undermined because of the procedural agreement between the Registrar of the LTO and a representative of the AGC.

[42] At the hearing I explained the submission of a draft order by an applicant is standard good practice to assist the judge in understanding the remedy sought, and to create efficiencies in issuing the order if the judge is in agreement. A draft order does

not usurp the decision-making obligation of the judge. The judge may agree with some, all or none of its provisions.

[43] The correspondence between Justice Canada and the Registrar of the LTO in advance of the court application was confined to a discussion about the process by which the dispute could reach the court. The *Act* is relatively new, and there were no precedents for either Justice Canada or the Registrar to rely upon for guidance in bringing a matter such as this to court. Their discussion did not include submissions on the merits of the case; nor the preferred outcome. There was no collusion between Justice Canada and the Registrar in deciding that the AGC would request the Registrar to review the deputy registrar's decision, and if after review, the AGC was dissatisfied with the Registrar's decision, they would bring an application to court under s. 189 and/or s. 191 of the *Act*. The correspondence was limited to a discussion and ultimate agreement on the appropriate procedure to have the dispute adjudicated.

Issue b) i) Should the Court override the Registrar's decision to refuse to register copies of documents on the basis that the statute does not explicitly prevent the registration of copies, despite the purposes of the *Act*, the implicit statutory requirements, the Registrar's practice to require originals?

[44] It is first useful to review the Registrar's decision and reasons in more detail.

[45] Only one of the Registrar's reasons for refusing to register the copies of the transfer of land documents is the subject of this application: that is, the Registrar's requirement that the documents to be registered be originals. Counsel for the Registrar confirmed at the hearing that if an order directing the Registrar to accept the copies for registration were granted, then the other objections set out in the deputy registrar's letter of May 8, 2025, which are more technical in nature, would be addressed in the order or would disappear as a result of the order. This is consistent with the Registrar's

email of April 4, 2023, in which she advised she would accept the transfer documents even though they were dated, on old forms, and even though there were technical irregularities, as long as the originals could be located.

[46] The Registrar set out the following reasons in their letter of May 14, 2025, for requiring originals of the documents for the purpose of registration:

a) it has long been the practice of the LTO to require original instruments for registration because it serves as an official, indisputable record of who owns the land at issue and provides essential details about the property, thereby ensuring a good chain of title and protection for the proposed landowner;

b) while the Act contains no explicit provision that original documents are required for registration, there are other sections in the Act that implicitly support the requirement for originals to be registered: s. 32(2) provides that if an electronic copy or record is made, the registrar may destroy the original from which the copy or record is made; s. 37(2) provides that the registrar must record a note on an instrument that is cancelled, corrected, or completed, of the original words of the instrument and the date on which the change is made.

[47] The *Act* does not contain an explicit provision requiring original documents only to be registered. It allows for certified copies to be registered in specified circumstances, and it allows for the Registrar to exercise judgment in order to fulfill its purposes. The Registrar's practice to require originals does not have the force of law. Certain circumstances may call for exceptions to the best practice of registering original

documents. As long as the purposes of the *Act* can be fulfilled, the court can require the Registrar to register copies of transfer documents. The following analysis explains this conclusion.

[48] An analysis of what the statute requires the Registrar of the LTO to do starts with the well-known modern principle of statutory interpretation:

> … the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme [and purpose] of the Act and the intention of Parliament. (*Rizzo v Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21)

[49] Statues are understood to be remedial and should be given fair, large, and liberal interpretation that best ensures the attainment of their objectives *(Interpretation Act,* RSY 2002, c 125, s. 10).

[50] The question is whether the Registrar has the ability or authority under the statute to accept copies of documents for registration, or whether the *Act* as a whole, including its purpose and the sections the Registrar says implicitly require the registration of originals, prohibit this.

[51] In this case there are no specific words to interpret, as the *Act* does not contain an explicit requirement that only original documents may be registered. The absence of such a specific provision must be considered in the context of the *Act*, along with its scheme and purpose, and the legislature's intention, to determine what the statute requires.

[52] The AGC and Ms. Fras agree that the scheme and purposes of the *Act* include maintaining the integrity of the land title system, specifically the Torrens system; preventing fraud; and maintaining public confidence in the system of registered title. As

stated by the Yukon Minister of Justice in introducing the Bill that became the *Act* at second reading:

> The major innovation of the Torrens land titles system style ... is that the public is entitled to rely on the accuracy of the state of title as it's registered in the government's land titles office ... and all members of the public can access the information registered on certificates of title for all parcels of land in a land titles office ... [S]ince the government guarantees title, it also assumes liabilities for any errors that occur in the operation of the land titles systems or acts of fraud depriving an owner of title. ("Bill No. 90: Land Titles Act, 2015", 2nd reading, Yukon Legislative Assembly, *Hansard*, 33-1, No 229 (5 November 2015) at 6878 (Hon Brad Cathers))

[53] In the Yukon, similar to the Northwest Territories land titles regime, the Registrar is "bound by the terms of the statute" and is "under a duty to comply strictly with the statutory provisions": *McKinnon v Registrar of the Land Titles Office for the Northwest Territories,* [1995] NWTR 127 (NWT SC) (*McKinnon*) at para. 9. The wording of the Yukon *Act* setting out the registrar's duties and role is similar to that in the NWT *Land Titles Act,* RSNWT 1988, c 8 (Supp) at the date of the *McKinnon* decision. Both statutes contemplate the exercise of judgment by the Registrar in fulfilling their role. Section 24 of the *Act* (see above para. 22) provides that the registrar may register an instrument once it determines that it "substantially conforms" to the requirements of the *Act*, regulations and applicable standards established by the registrar in accordance with the *Act* and regulations (s. 24(2)(a) and (b)). The registrar is also not to register an instrument where it is "incomplete" or "unfit for registration" (s. 24(3)(a) and (c)). These duties all require the exercise of judgment by the Registrar. Similarly, the ability of the Registrar to create notes on title (s. 17) and develop forms (s. 212.1) supports their exercise of judgment. This ability was demonstrated in this case by the Registrar's email

of April 4, 2023, where she exercised discretion to overlook some discrepancies in the transfer documents sought to be registered, (as long as the originals could be produced) because they were in substantial compliance with the legislative requirements.

[54] Justice Vertes in *McKinnon* observed at paras. 10-11:

> In exercising his judgment, the Registrar must have regard to the dictates of the statute. Those dictates may differ depending on the type of document under consideration ... In performing this function, the Registrar is not determining rights as between the parties. The Registrar is simply maintaining the statutory requirements.

[55] Justice Vertes at para. 11 of *McKinnon* then goes on to quote Chief Justice Harvey, in *Sun Life Assurance Co v Widmer* (1916), 9 WWR 961 (Alta SC) at 962:

> Under our Torrens System...title can be transferred from one person to another only by the act of the Registrar and an assurance fund is provided to which recourse may be had in case the Registrar makes a mistake and deprives some one improperly of his land. It is apparent, then, that while a purchaser, or any person subsequently dealing with the land under the old system, must satisfy himself and take the chances of the power of sale having been properly exercised, under the new system he may place implicit reliance on the act of the Registrar which insures his title. It is, therefore, equally apparent that the Registrar is not an automaton, but, on the contrary, has important functions to perform, a mistake in which may render the assurance fund liable.

[56] These observations are consistent with the statement of the Yukon Minister of Justice on November 5, 2015, at second reading of the Bill about the role and scope of authority of the registrar:

> Another new provision in the act gives the registrar the legislated authority to better define the requirements for documents registered in the Land Titles Office. The registrar is also empowered to determine how any documents will be

> examined and to establish operational practices and procedures for the Land Titles Office. These measures ensure that the registrar can properly oversee the operation of the Land Titles Office and make rules necessary to administer the *Land Titles Act, 2015*. ("Bill No. 90: Land Titles Act, 2015", 2nd reading, Yukon Legislative Assembly, *Hansard*, 33-1, No 229 (5 November 2015) at 6880 (Hon Brad Cathers))

[57] The Minister of Justice went on to say that the assurance fund is created to compensate owners deprived of their land as a result of an error by the Land Titles Office, fraud, or the operation of the Torrens system. The government guarantees the accuracy of a certificate of title for a parcel of land.

[58] Although the principles quoted above about the nature of the duties of the Registrar arise from older caselaw from other jurisdictions (Northwest Territories and Alberta), they remain applicable today in the Yukon, because of the existence of the Torrens system in all three jurisdictions, the similar wording of the Yukon and Northwest Territories land titles statutes with respect to the role of the registrar, and the stated purposes of the *Act* by the Minister. In ensuring the objectives of accuracy and certainty of title are achieved, the Registrar is able to exercise judgment in determining what the statute requires, depending on the nature of the documents and the particular factual circumstances. The absence of an explicit statutory requirement that only original documents may be registered supports this exercise of judgment.

[59] The statutory provisions referenced by the Registrar in support of an implicit requirement to accept only originals for registering are insufficient to mandate it. The provisions referenced by the Registrar at best contemplate an implicit practice, but they cannot be interpreted as a legal or statutory requirement.

[60] The Registrar's reliance on the existence of its consistent but unwritten practice to accept originals only for registration as a basis for its refusal in this case is likewise insufficient. The practice does not form part of any applicable standards established by the Registrar in accordance with the *Act* and regulations, contemplated in s. 24(3). Similar to the effect of a policy, an unwritten practice that has no detail of its scope and extent, including whether there are any exceptions and their circumstances; no information about whether it is intended to be binding and enforceable; and which is not authorized by statute, cannot be relied upon as a mandatory legal requirement.

[61] As the AGC noted, the *Act* specifically provides for the registration of certain documents as copies certified by the court or sheriff. Copies of court orders that can be registered include an order allowing transfer of land by one of the joint owners (s. 103(5)); an order for costs on a caveator (s.143); an order confirming a sale of land affected by a registered writ (s. 158(2)); a copy certified by the sheriff of a writ affecting land (s. 156(2)). While court or sheriff certified copies of documents have inherent reliability, and there are practical reasons for not requiring originals as they belong to the court or sheriff's file, this statutory exception shows that originals are not always required.

[62] There is no doubt that in many and perhaps most circumstances the best practice to help achieve the statutory objectives is to ensure the Registrar receives originals of the documents sought to be registered. However, the absence of an explicit statutory requirement, along with the statutory grant to the Registrar of the exercise of judgment means that the Registrar is not prevented by statute from accepting copies for registration, as long as the objectives of the *Act* can be achieved. Is it possible in this

case to achieve the objectives of accuracy and certainty of title, without undermining public confidence in the land titles regime created by the *Act*, including the Torrens system?

[63] In this case, these objectives may be achieved based on all of the evidence before the court, including the basis of the objections of Ms. Fras. The evidence shows that the copies of the documents sought to be registered authentically and accurately reflect the parties' intentions with respect to the title of the Lot 7 parcel at issue. Specifically, as part of the 2004 land exchange agreement between Canada and Ms. Fras, Ms. Fras intended to transfer title to the Lot 7 parcel to Canada. That evidence is as follows:

- The memorandum of agreement dated May 21, 2004, setting out the details of the land exchange, including detailed descriptions of the land parcels, was signed by Ms. Fras. Ms. Fras does not dispute this.
- Although the copy of the memorandum of agreement provided to the court was not signed by Canada, Canada acted to implement the agreement by transferring the parcel of land it owned (Lot 6) to Ms. Fras in 2004. Ms. Fras does not dispute this. Canada is not seeking to register the memorandum of agreement on title.
- Ms. Fras benefitted from the memorandum of agreement and subsequent implementation by Canada of the Lot 6 parcel transfer, as she was able to obtain clear title to a new consolidated lot (Lot 10), including title to the Lot 6 parcel, formerly owned by Canada on which there had been an

encroachment by her. Subsequently she was able to sell the entire consolidated lot. Ms. Fras does not dispute that this occurred.

- Ms. Fras' argument that Canada did not own the Lot 6 parcel she acquired through the land exchange, but in fact that the Lot 6 parcel was always part of the property she purchased in 1992, is not borne out by the evidence. Canada's affidavit evidence, including the certificate of title, and 1992 survey, shows this Lot 6 parcel belonged to Canada, not to Ms. Fras or anyone else. Ms. Fras provided no contrary objective evidence such as an earlier survey or certificate of title to show she had always owned that parcel. She relies only on her affidavit attestation that Canada's 1992 re-survey, after her purchase of the property, created the encroachment. Moreover, Ms. Fras was represented by experienced legal counsel in 2004 at the time she signed the memorandum of agreement and completed the transfer documents, as is clear from the law firm's address in the notice provision in the memorandum of agreement and the lawyer's witnessing of the transfer documents. If Ms. Fras' assertion that the parcel in Lot 6 always belonged to her and not Canada were correct, the reference to a land exchange as described in the agreement would not only be inaccurate, it would also be unfair to Ms. Fras and not a transaction that any competent lawyer would recommend or assist in implementing. In her scenario, Ms. Fras would be transferring her titled parcel in Lot 7 for $1 to Canada and would receive essentially nothing in return. I accept Canada's evidence, as set out in their affidavits, certificate

of title, memorandum of agreement, and survey, that the Lot 6 parcel was titled to them, and they transferred it to Ms. Fras, in exchange for the Lot 7 parcel owned by her. There is no dispute that Ms. Fras was encroaching on the Lot 6 parcel and as a result she may have thought it belonged to her, but the objective evidence shows that it was part of Canada's titled property before the transfer.

- The copy of the transfer of land document of the Lot 7 parcel from Ms. Fras to Canada shows the signature of Ms. Fras on May 4, 2004. She does not dispute this.
- Ms. Fras disputes the accuracy of the survey attached as Schedule A to the signed land transfer document, as her Lot 7 parcel is referenced through a handwritten amendment as "shown in pink" on the survey, and since it is a copy, the colour is not pink but instead highlighted in yellow. That yellow highlight was added by Justice Canada for the purpose of this hearing. I accept that the yellow highlighted portion represents the parcel in Lot 7 intended to be transferred from Ms. Fras to Canada as it matches the description in the certificate of title, the land transfer document and the affidavits.
- Ms. Fras' signature on the transfer document was witnessed by her lawyer, experienced and knowledgeable in real estate matters, and the affidavit of execution signed by the same lawyer and witnessed is also included in the affidavit material before the court. Ms. Fras does not dispute these documents.

- Ms. Fras signed an affidavit on May 4, 2004, witnessed by her lawyer, attesting to her spousal status and Canadian residency. Ms. Fras does not dispute this document.
- The correspondence between Ms. Fras' lawyer and the Justice Canada lawyer in August and September 2004, finalizes details of the registration and other requirements of the LTO for the Lot 6 parcel being transferred to Ms. Fras from Canada. This supports the land exchange as set out in the memorandum of agreement, and its implementation in good faith by Canada.

[64] The evidence shows that the registration of the copies of the transfer documents of Lot 7 from Ms. Fras to Canada is a final necessary step of finalizing the 2004 land exchange agreement that has been partially implemented, to Ms. Fras' benefit. No objective evidence has been provided by Ms. Fras or anyone else to dispute the terms of the 2004 agreement or the intention of the parties. No one has argued that the transfer documents are fraudulent. Ms. Fras was clear in her submissions that part of the prejudice to her of this situation was the discovery that she still owns the Lot 7 parcel, and the potential liability exposure accruing to her as a result, when for 21 years she thought she did not own it. This assumption supports the terms of the 2004 agreement. Similarly, Parks Canada thought they owned the Lot 7 parcel until they learned in February 2023 through discussions with the LTO that it was still titled to Ms. Fras and the transfer documents signed in 2004 had never been registered. In other words, the affected parties were operating under the same assumption – the memorandum of agreement and the transfer documents signed in 2004 by Ms. Fras

had been fully implemented. Registration of the copies of the land transfer documents will ensure the title reflects what the parties have believed was in fact the case since 2004. In the unusual circumstances of this case, this registration will achieve the certainty and accuracy of title originally intended by the parties.

Issue b) ii) Does Canada's delay in registering the documents preclude the remedy it seeks?

[65] Ms. Fras argues that the initial delay from 1989, when the encroachment issues were first discovered, to 2004, the date of the memorandum of agreement, was unacceptable. She states the further delay from 2004 to 2025 was also negligent and inexcusable. Ms. Fras relies on the *Limitation of Actions Act*, RSY 2002, c 139 and on equity, citing prejudice to her of the delay.

[66] The delay does not preclude the remedy sought by the AGC for the following reasons.

[67] The *Limitation of Actions Act* does not apply to this proceeding. The caselaw provided by Ms. Fras relating to actions under the *Limitation of Actions Act* is likewise not applicable. This is not an action, defined in the statute as a "civil proceeding". This is an appeal authorized by statute and brought by way of petition or application to the court. It is not subject to the *Limitation of Actions Act*. There is no limitation period set out in the *Act* for the initiation of an appeal under s. 189 or a remedy under s. 191.

[68] Similarly, the *Act* contains no deadline or expiry date for the registration of documents on title. As long as the Registrar determines that relevant statutory requirements are met, documents created at an earlier time may still be registered.

[69] The initial time period between 1989 and 1992 and up to 2004 complained about by Ms. Fras is not a relevant consideration in this application. This application only addresses the failure to register the documents reflecting the 2004 agreement.

[70] Ms. Fras argued that the delay caused prejudice to her by exposing her to legal liability over the past 21 years, and because the original contract is now 'stale', presumably meaning she should now be entitled to negotiate a new deal. These allegations of prejudice are not sufficient to invalidate legally the remedy sought by the AGC's application and these specific concerns are addressed in the next section of this decision.

[71] While Ms. Fras claims the delay extends to 2025, in fact Canada began to work towards a resolution soon after they were made aware of the omission in 2023. Parks Canada initially wrote to Ms. Fras in early 2023, requesting the original documents or the signing of new originals, and Justice Canada continued the work in 2024 by continuing to correspond with Ms. Fras and the Registrar. Ms. Fras' failure to respond or provide new originals has prolonged the resolution.

[72] The delay was caused by an unexplained oversight by Canada. It has acknowledged its responsibility. There is no evidence of bad faith or misconduct. Canada initiated this Court application only after making other unsuccessful attempts to resolve the issue. This application is to correct an omission by oversight in order to finalize the implementation of the 2004 agreement between the parties. It is not an attempt to create new rights or benefits, or to remove rights or benefits. Ms. Fras' objection that Canada is not coming to court with "clean hands" is not valid.

Issue b) iii) Do the alleged prejudices of liability exposure and uncertainty claimed by Ms. Fras and the Registrar prevent the granting of the order?

[73] The Registrar expressed concern in her May 14, 2025 letter confirming her refusal to register copies about potential liability due to Ms. Fras' refusal to re-sign originals of the transfer documents. At that time, the Registrar did not have Ms. Fras' arguments that she presented to the court orally and in writing. The Registrar could not fairly assess any risk of accepting the copies, as she did not know the reasons for Ms. Fras' objections, nor did she have the full background or details about the circumstances. The court now has the benefit of the affidavit evidence, the background information, and of hearing Ms. Fras' objections directly, and can exercise its judgment accordingly.

[74] Ms. Fras argues that prejudice arises from her unknowing exposure to liability for any occurrence on her property. The genuineness of this objection is questionable. Factually, nothing has occurred on the parcel to render her potentially liable. Even if it had, Ms. Fras would have been in a good position to demand indemnification from Canada. For Canada to deny liability in that circumstance would be inconsistent with the 2004 agreement which should have been implemented but for Canada's oversight, giving them title over and responsibility for the parcel. Further, if Ms. Fras were as concerned about liability exposure as she expresses, she could have limited that exposure in 2023 by signing new originals allowing for the transfer document to be registered. Any prejudice from the exposure she claims will continue as long as she continues to refuse to sign new originals or if the copies are not allowed to be registered.

[75] Ms. Fras argues the time that has passed since 2004 has made the original contract documents ‘stale’ and the changes over time have frustrated the original agreement. She has not articulated any details of those changes. She argues there is too much uncertainty now, without the originals of the documents, about what was actually agreed to. This is one of the reasons why she refused to sign new original documents. As a result of this uncertainty, she says she will only agree to a re-negotiation of the terms of the agreement. To do anything else would continue to prejudice her. In her view this is the only way to resolve the problem.

[76] I have already addressed the concerns Ms. Fras has raised about the terms of the 2004 agreement, through reference to the affidavit evidence and exhibits provided by the AGC. Contrary to Ms. Fras’ argument that the AGC has benefitted from the failure to implement fully the 2004 agreement over the last 21 years, it is Ms. Fras who has benefitted. She had the benefit of receiving title to an additional 21.6 square metre parcel for $1, enabling her to sell a consolidated lot with clean title and no encroachment. She still owns the parcel she was to have transferred in exchange for the parcel that became part of consolidated Lot 10. The failure to register has created some uncertainty, only because the registered documents at the LTO do not reflect the 2004 agreement between the parties. This application is an attempt to complete the final step necessary to effect the agreement, so the title reflects the parties’ agreement. This is consistent with one of the purposes of *Act*: to ensure agreements of parties about land transfers are registered on title, not to prevent agreements from being implemented.

[77] The concern expressed by the Registrar about liability exposure in the face of Ms. Fras' objections does not make the documents "unfit for registration". The prejudice claimed by Ms. Fras of liability exposure and uncertainty is not sufficient to preclude the remedy sought by the AGC.

COSTS

[78] Under the *Rules*, costs are awarded to the successful party, in this case the AGC. The AGC has said they will not seek costs against Ms. Fras. In earlier correspondence, before the application was brought, they offered to reimburse Ms. Fras for any legal expenses she incurred in providing them with new originally signed documents.

[79] Ms. Fras seeks costs be awarded to her on a "substantial indemnity" basis. She has not set out the amount of costs she claims. She was not represented by counsel at any time before or during this proceeding. The basis for her claim for costs is the prejudice she experienced from the exposure and the uncertainty, the expenses she incurred in flying to Whitehorse (the reason for which is not clear), the preparation time for the hearing, the general stress to her created by this situation.

[80] The *Rules* do not provide for substantial indemnity costs. They provide for party and party costs, amounts for which are set out in the tariff at Appendix B. Additional costs may be claimed as increased costs under the tariff if the litigation involved matters of more than ordinary difficulty, or "special costs" under Rule 60(1.1) which may be awarded where the court finds a party's conduct is reprehensible, scandalous or outrageous and the circumstances call for a rebuke. I assume that Ms. Fras is in effect requesting an award of special costs in her favour and I will address that below. I will

not address an award of increased costs, as it would only apply to the successful party who is entitled to costs.

[81] I find this an appropriate case for no costs to be awarded. Canada's conduct in this application, including the steps leading up to it, does not meet the test for special costs set out in Rule 60(1.1). The failure to register the transfer documents was an unfortunate oversight. Once the omission was discovered, Parks Canada and Justice Canada sent multiple emails to Ms. Fras as they attempted to resolve this matter without a court application, but they were sent over more than a two-year period and were numerous in part because Ms. Fras chose not to respond to the requests. The tone of the emails was respectful and the requests were clear. Canada was attempting to find a solution to correct their omission and implement the 2004 agreement without a court application. The positions taken by the Registrar and Ms. Fras left Canada with no option but to bring this application. Although Ms. Fras has suggested that Canada has tampered with the documents and has acted dishonestly, there is nothing in the evidence to substantiate these allegations. There is nothing in the written or oral submissions by the AGC in this application that is reprehensible, scandalous or outrageous.

[82] I can understand the mistrust, stress and frustration initially felt by Ms. Fras in learning of this situation in 2023. I note however, that Ms. Fras does not appear to have sought legal advice from her original lawyer in 2004 or from any lawyer, as she suggested to the Justice Canada lawyer in 2024 she would be doing. If she had done so, this situation may have unfolded differently. She also may have had a legitimate claim for reimbursement for her legal expenses from Canada. Further, Ms. Fras did not

attempt to engage in discussion with Parks Canada or Justice Canada to resolve this matter before the Court hearing, including the possibility of new negotiated terms of the land exchange. Instead, she accused Canada's officials of harassing her, of acting in bad faith, of colluding with the Registrar to bring this matter before the Court and of other inappropriate behaviour. Her position of a new negotiated deal as the only acceptable solution appears opportunistic. In any event, it is not a remedy this Court can provide, and it was not raised with Canada before the application.

[83] For these reasons, there will be no costs awarded.

CONCLUSION

[84] The facts giving rise to this application are unusual and are unlikely to be repeated for a number of reasons, including the introduction of an amendment to the *Act* to ensure that inconsistencies between registered plans of surveys and registered parcel titles are eliminated. The *Act* now requires that all parcels defined by a survey plan be raised to title. If this requirement had existed in 1992, when the re-survey was registered, the situation giving rise to this application would likely not have arisen.

[85] The *Act* does not prohibit the Registrar from accepting copies of documents for registration, despite its practice requiring originals and other implicit references in the *Act*, as long as the statutory purposes of accuracy and certainty of title can be achieved. The statute gives the Registrar the ability to exercise judgment, including among other things, the ability to register documents that are in substantial conformity with the legislative requirements. In the unusual circumstances of this case, the objective evidence is sufficient to support the registration of the copies of the transfer documents, as a final step in completing the implementation of the 2004 agreement between

Canada and Ms. Fras, entered into in good faith by both parties. The objections raised by Ms. Fras are not sufficient to invalidate that agreement and Canada's effort through this application to correct their oversight and finalize the agreement.

[86] The AGC's application is granted.

[87] The Registrar of Land Titles is directed to:

a. Accept for registration copies of the land transfer documents executed by Denise Carmen Fras on May 4, 2004, and a current affidavit of market value executed by a representative of the Government of Canada; and

b. Transfer Parcel #100090291, being Lot 7, Block H, Ladue Estate, Dawson City, YT, which encroaches onto Lot 9 Block H, Ladue Estate, Dawson City, YT, Plan 92-108, from Denise Carmen Fras to His Majesty the King in Right of Canada, in fee simple.

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DUNCAN C.J.