

***An Update has  
Arrived in Your  
Library for:***

**Please circulate this notice to anyone  
in your office who may be interested  
in this publication.**

*Distribution List*

<input type="checkbox"/>

**ANGER & HONSBERGER  
LAW OF REAL PROPERTY**

**Anne Warner La Forest**

**Release No. 21, December 2018**

**What's New in this Update:**

**The following cases are of note:**

- *Hyczkewycz v. Hupe*, [2018] 4 W.W.R. 136 (Man. Q.B.) (determining that the resulting trust and the related presumption can exist in Manitoba despite the certainty of the *Real Property Act*, R.S.M. 1988, c. R30): 11:50.20(b).
- *Kumagai v. Campbell Estate* (2018), 418 D.L.R. (4th) 611 (B.C.C.A.) (the relevant date for the division of property in a family law dispute is the date of hearing; the date of separation would give rise to an unequal division): 15:40.40(d).
- *Cunningham v. Cunningham* (2018), 11 R.F.L. (8th) 257 (N.S.C.A.) (unequal division should only occur where there is convincing evidence of unconscionability; insufficient evidence in this case): 15:40.40(e).
- *Silver Seven Corporate Centre Inc. v. 2871220 Canada Limited* (2017), 90 R.P.R. (5th) 147 (Ont. S.C.J.) and *Icona Hospitality Inc. v. 2748355 Canada Inc.* (2018), 2018 CarswellOnt 12530 (S.C.J.) (restrictive covenants should only be modified when the restriction is spent and so unsuitable as to be of no practical value or, where discharge or modification would have

---

**THOMSON REUTERS CANADA**

**Customer Support**

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

no negative or detrimental impact on land benefitting from restriction such that continued insistence on restriction was vexatious): 16:30.50.

- *Fallon v. Wilson* (2017), 90 R.P.R. (5th) 113 (Ont. S.C.J.) (it is not necessary that the dominant tenement be described in the grant of easement if it can be identified through extrinsic evidence): 17:20.20(b).
- *English v. Perras* (2018), 93 R.P.R. (5th) 39 (Ont. C.A.), *Carpenter v. Doull-MacDonald*, 2017 ONSC 7560, affd 2018 ONCA 52, and *Frohlich v. Ferraro* (2017), 85 R.P.R. (5th) 175 (Ont. C.A.) (cases addressing the issue of permission in the context of easements): 17:20.20(f).
- *Mihaylov v. Long Beach Resident's Association*, 2018 CarswellOnt 3337 (S.C.J.) (manmade landfill does not give rise to accretion): 19:20.80.
- *St. Amand v. Tisi* (2017), 78 R.P.R. (5th) 124 (Ont. S.C.J.), affd 89 R.P.R. (5th) 1 (C.A.) (parties having a different perspective on contents of agreement and thus no consensus *ad idem*): 21:20.20.
- *Shaun Developments Inc. v. Shamsipour*, 2018 CarswellOnt 530 (S.C.J.), affd on other grounds 2018 CarswellOnt 14072 (C.A.) (purchase for redevelopment and resale not sufficient to satisfy the uniqueness test required for specific performance): 23:30.20(b)(i).
- *Cowper-Smith v. Morgan*, [2017] 2 S.C.R. 574 (in which the court addresses in serial the requirements applicable to proprietary estoppel): 28:10.20.
- *Moore v. McIndoe* (2018), 88 R.P.R. (5th) 31 (Alta. Q.B.) (in which the court refused to accept that a licence existed based upon mere acquiescence): 29:60.40.
- *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 CarswellNat 4685 (F.C.A.) (Crown failure to engage, dialogue meaningfully and address the concerns of indigenous peoples in the context of the Trans Mountain pipeline project): 32:40.40(b).
- *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 CarswellNat 5579 (S.C.C.) (the duty to consult does not apply to the process of developing, passing and enacting legislation): 32:40.40(b).
- *58 Cardill Inc. v. Rathcliffe Holdings Limited* (2017), 55 C.B.R. (6th) 230 (Ont. S.C.J.), affd 62 C.B.R. (6th) 173 (Ont. C.A.) (mortgagee not entitled to three-month interest charge that was supplementary to mortgage interest calculated to the date of closing): 33:70.40.
- *Winters v. Hunking*, 2017 CarswellOnt 18379 (C.A.) (final order of foreclosure set aside and converted to a judicial sale; evidence demonstrated that the mortgagor had mental and physical health problems and sale of property would generate a net equity of approximately \$250,000 to \$337,000 after payment of the mortgage in full): 33:90.30.
- *1173928 Ontario Inc. v. 1463096 Ontario Inc.* (2018), 142 O.R. (3d) 1 (C.A.) (while in general the case law supports that the mode of giving notice of the exercise of power of sale must be strictly complied with, a notice of sale should not be invalid because of minor irregularities so long as it allows the mortgagor to assess their position): 33:90.50.
- *Bilin v. Sidhu* (2017), 84 R.P.R. (5th) 22 (B.C.C.A.) (in which the British Columbia Court of Appeal discusses vacating a certificate of pending litigation and the requirement that there be an interest in land: 34:100.