TERANET® MANITOBA
A SERVICE PROVIDER FOR THE PROVINCE OF MANITOBA

The Future Registrar
(Not Just) A Machine for Registration

Tyler M. Watt, B.A., J.D., LL.M.
Senior District Registrar

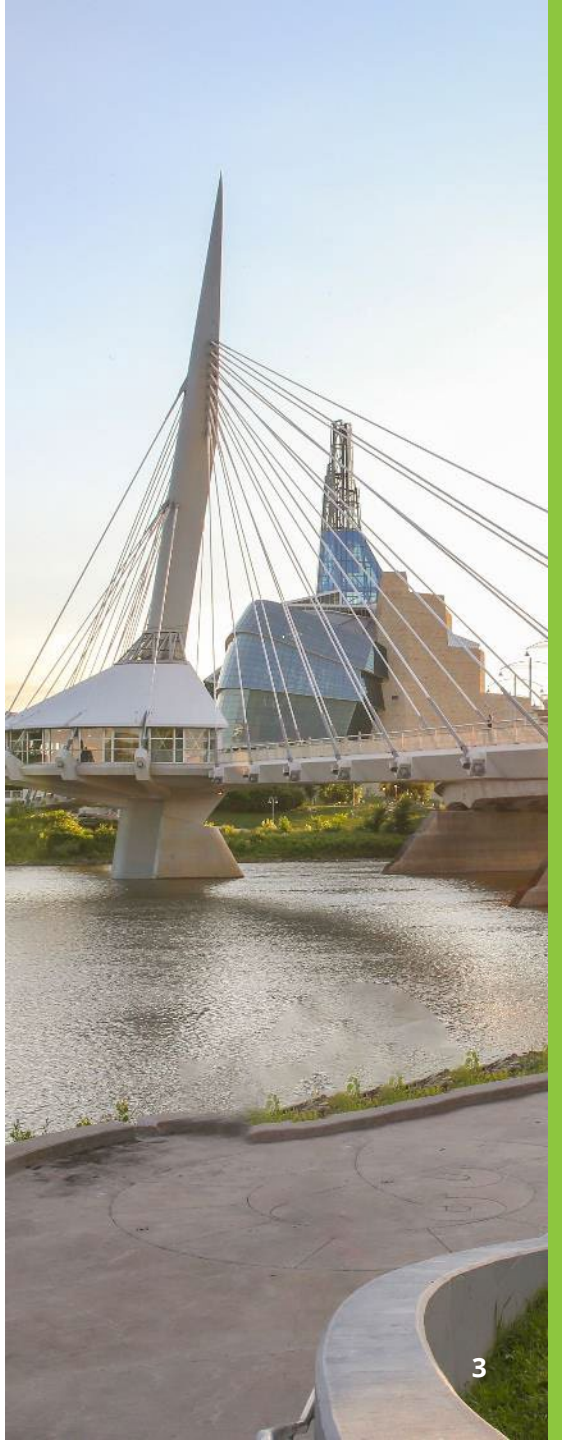
CCLTO/ROTC/Business Registry Leaders Joint Session
October 3, 2024

Agenda

1. Overview & Disclaimers
2. Case Law Review
3. Old Law, New Tech
4. The Future Registrar – Platform Design & Oversight

Overview & Disclaimers

- What this presentation aims to be:
  - (brief) Review of case law commenting on the role of the Registrar
  - Extraction of principles from the case law
  - Discussion of how these principles may inform registry designs which will increasingly utilize AI
- What this presentation does not aim to be:
  - A comprehensive review of the case law
  - A treatise on AI
  - A “how to” guide on automation
- Disclaimers:
  - Registrar, not IT specialist
  - “AI” is being used as an umbrella term to refer to technology deployed in the registry space
  - Torrens case law examined
    - Largely:
      - Old
      - Australian
      - Obiter dicta



Case Law Review

- Case law principles:

(1) The Registrar is not a Robot

(2) The Registrar Can, and Should Consider the Legality of Registrations

(3) The Registrar Should Not Look Beyond Their Office

The Registrar is not a Robot

***Re: Land Registry Act & Shaw* (1915) (BCCA)**

- Attorney attempting to assign Mortgage held by Donor to himself - registration refused
- Lower court– Registrar shouldn't have questioned validity of acts of Attorney
- Appeal Court: Registrar successful
  - MacDonald C.J.A.: - "The judgment below however is founded on the view that it is not for the Registrar to question whether the act of the agent was valid or not.....[the District Registrar] is not to be deemed a mere machine for making registration even though the strict literal construction of the statute in the case before them would appear, if strictly construed, to make him such."
  - Galliher J.A.: -"..the Registrar's duties are not those of a mere automaton…

***Brooks v. Pavlick* (1963) (Supreme Court of Canada)**

- Application to bring land under Torrens system by Brooks, Pavlick objects (boundary dispute)
- Registrar decides in Brooks favour on the basis of admissions made by Pavlick
- Registrar has significant statutory powers in this context, argued at Supreme Court on constitutional grounds
- But, unanimous decision (written by Spence J.) in which the following passage is cited (from *Re: Mutual*) with approval by the Court (obiter dicta):
  - "But it is said that the Master of Titles is a mere administrative officer, that he must register even a document which is in plain violation of the law and leave the person or company registering to take the consequences. I decline to accede to that argument; in view of the very great effect of registering such documents. I think that he may and, where necessary, should pass upon the legality of any document submitted to him."

The Registrar is not a Robot

- The most expansive view:
  - ***Perpetual v. Hosken (Registrar of Titles*) (1912)(Australia)**
    - Isaacs J.: - “Now of course the Registrar is not an automaton; he has a high and responsible public duty to discharge, and he has an obligation to see that the purpose of the Act is neither destroyed nor prejudicially affected. He has the right and duty to preserve his entries and records from confusion, and to prevent the intrusion of anything calculated to obscure or mislead, or even to impede the ordinary and practical working of his department. He also has in certain cases a necessary discretion, though forms are complied with, to act so as not by undue haste or facile compliance with any application to do what appears to him may be a wrong to another person, or bring a claim upon the assurance fund.”

Legality of Registrations

***Ex Parte: Bond* (1880)(Australia)**

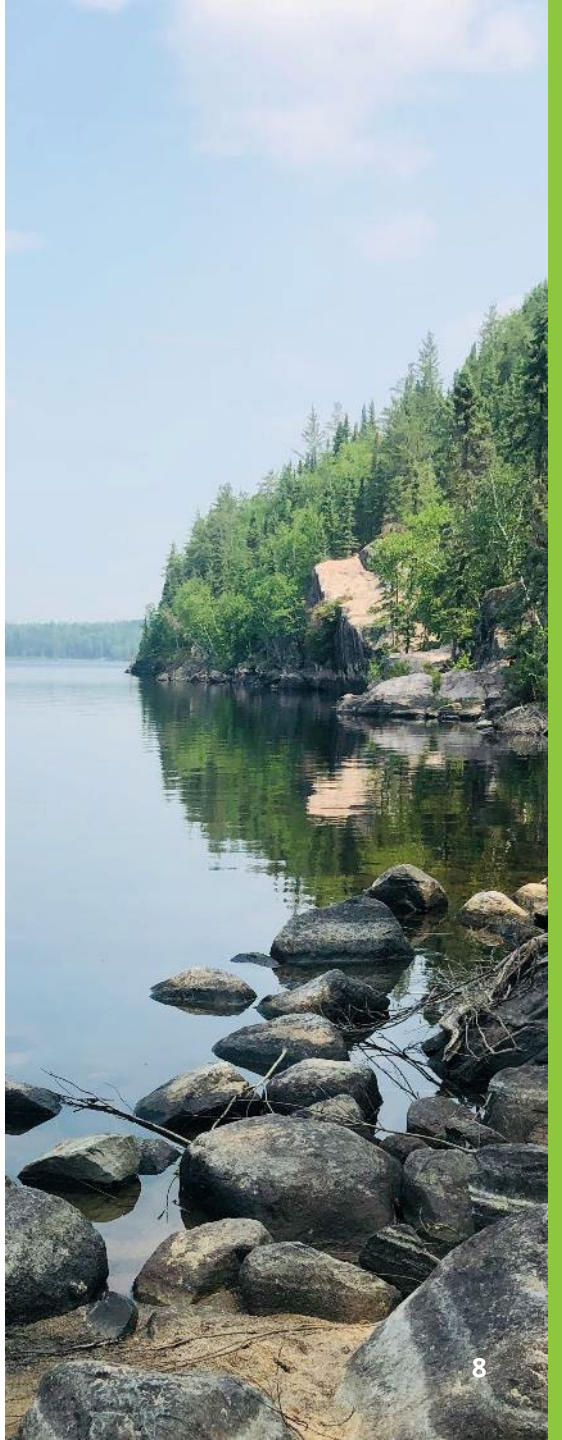
- Godfrey holds Crown lease for 7 years, with clause prohibiting assignment absent Crown consent
- Competing Transfers of Leases are presented from Colonial Bank (1st)(without consent) & Bond (2nd)(with consent)
  - Registrar: processes Colonial Bank Transfer, refuses Bond's
    - Prohibition of assignment clause ultra vires enabling legislation
    - Court upholds Registrar's decision
  - Stawell C.J.: -- "...the responsibility (is) cast upon him (the Registrar) of preventing instruments being registered which in law, as well as fact, ought not to be placed on the register. The intention of the Legislature was obviously to impose this duty on him in the first instance. The Registrar is constituted the authority, subject to an appeal against his decision, to determine the validity of the instrument."
  - Higginbotham J.: -- "It was the duty of the Registrar to exercise a judicial opinion upon the validity of this proviso; being invalid; he could not give effect to it."

***King v. Registrar of Titles (Victoria)* (1915)(Australia)**

- Registrar's decision to refuse 500-year municipal lease for piece of land intended to be used as naval base
  - Municipality lacked authority to grant lease in its enabling legislation
- Registrar's decision upheld by split Court
- Dissent: -- "...the Registrar of Titles may be justified in refusing to register an instrument which is on its face a breach of trust, or is forbidden by positive law..."
- Majority: -- ..the Registrar's duty is confined to seeing that the instrument is in accord with the prescribed practice, and that it is signed by a registered proprietor competent to effect a transaction of the sort disclosed by the instrument. He is not concerned to inquire into the circumstances...In this case the Registrar sees what purports to be a lease for 500 years from a municipal corporation; and there is nothing on the face of the instrument to take it out of the general rule forbidding such leases on the part of the corporation."

Legality of Registrations

- ***Templeton* (1921)(High Court of Australia)**
  - Self-dealing estate trustee proceeding with Court sanction
    - Not all beneficiaries were made parties
  - Registrar refuses registration
    - Order of Court made without jurisdiction
  - Not surprisingly, mandamus granted
    - Registrar appeals to Court of Appeal & wins
  - Knox C.J.: -- "In my opinion where it has come to the knowledge of the Registrar that a dealing lodged for registration is a breach of trust, or that for any other reason the person dealing with the land as registered proprietor is not competent at law or in equity to deal with it in the manner proposed, it is his duty to refuse to register."
  - Higgins J.: -- "I am clearly of the opinion that the Registrar was right in refusing to register these three instruments tendered, inasmuch as on the face of the documents submitted they constituted a breach of trust…"



Legality of Registrations

- A duty to protect the assurance fund…
  - ***Re: Nosalek*** **(1967)(BCSC)**
    - Wilson C.J.S.C.: -- "The duty of the registrar is, inter alia, to protect the assurance fund against any supportable claims which may be made against it"
  - ***Templeton*** **(1921)(Australia)**
    - Higgins J.: -- "The Registrar has no appellate jurisdiction over the Supreme Court; he has to obey the Court. If the Order is wrong, it can be set aside by the Full Court or the High Court or His Majesty in Council, and not otherwise. But if the order authorizing the trustees to carry out such a transaction in breach of trust is beyond the jurisdiction of the Supreme Court, the order is not a protection to the Registrar or to the assurance fund."
  - ***Perpetual*** **(1912)(Australia)**
    - Isaacs J.: -- "He also has in certain cases a necessary discretion, though forms are complied with, to act so as not by undue haste or facile compliance with any application to do what appears to him may be a wrong to another person, or bring a claim upon the assurance fund."

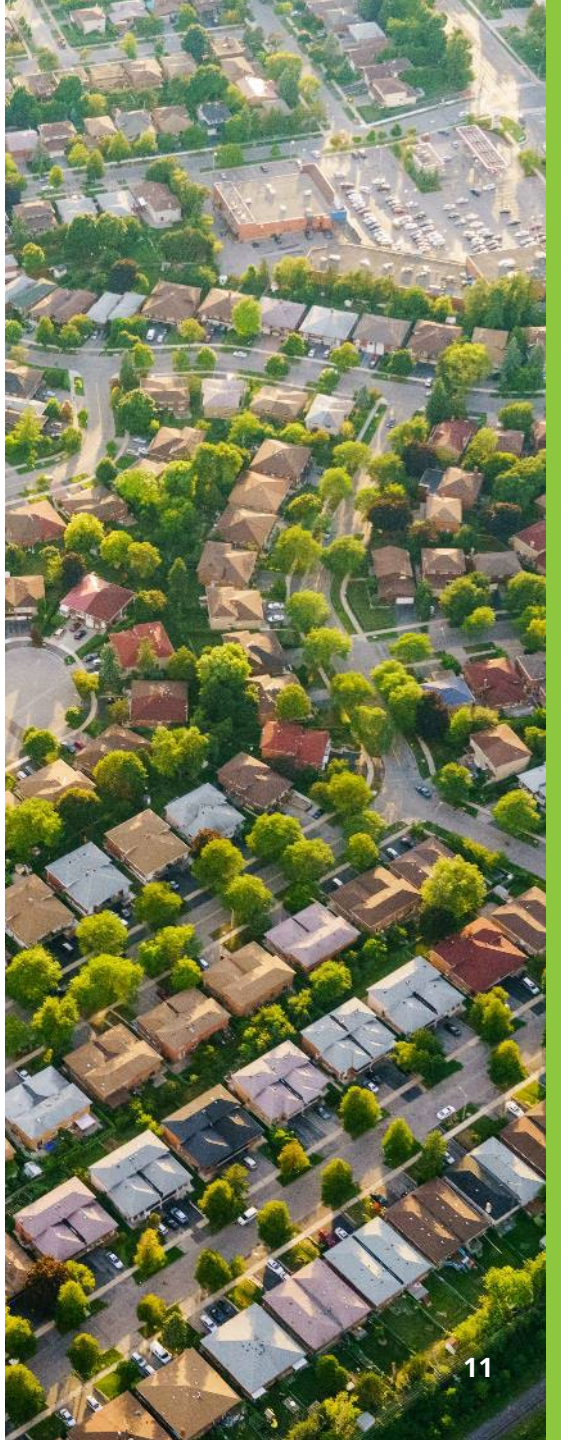
Scope of Inquiry

- ***O'Halloran*** **(1911)(Australia)**
  - Registrar requires evidence of non-payment of debts from Administrator in order to process Transfer
  - Court holds Registrar wrong on understanding of underlying law.
  - Madden C.J.: -- "...the Commissioner (Registrar) has not, in my opinion, any right to exercise a paternal supervision over the administrator, who is entitled to maintain that he is to be assumed to be performing his office legally until some one (sic) interested asserts to the contrary; and that he ought not to be put to the expense, delay, and inconvenience of satisfying the Commissioner (Registrar) negatively of the attitude of the next of kin, when they themselves to not raise the least objection."

- ***International Harvester*** **(1909)(SKCA)**
  - Provision prohibits registration of Mortgage prior to registration of Crown Grant
  - Registrar refuses registration on this basis, and had also made inquiries with Dominion Lands agent to ascertain that no Crown Grant had yet issued
  - Decision upheld by Court of Appeal
  - Prendergast J.: -- "I may say at once that I will deal with this matter on the assumption that this (the fact that the Patent was not on file) is all the information that the registrar was possessed of, as I deem it useless to take notice of certain correspondence which he had with the Dominion lands agent at Humboldt."
  - Lamont J.: -- "I agree with the contention of the counsel for the applicants that under our Act no duty is cast upon the registrar to make inquiries outside of his own office as to whether or not an instrument is a proper one for registration..."

Scope of Inquiry

- ***Heller* (SCC)**
  - Court upholds decision of Registrar not to correct transaction with $1.00 consideration
    - Transfer from H to W which H alleges was only to be registered on death processed on mistaken understanding that duplicate title was produced
  - Martland J.: -- "…the Registrar would not, without receiving additional evidence, be in a position to know, merely by looking at the conveyance itself, whether the rights conferred upon the respondent by the conveyance were for value or not. In my opinion, it is no part of the function of a Registrar, under this section, to adjudicate upon contested rights of parties, for the determination of which it would be necessary for him to hear, receive and weigh evidence. He can only act upon the material which is before him in his own records."
- Proceed with caution…even in cases where Registrar "wins"…
  - ***Templeton***
    - Knox C.J.: -- "I do not suggest…that where the Registrar merely suspects that the dealing may be a breach of trust or otherwise improper, but knows no facts to justify him in concluding that it is so, it is any part of his duty, or that he has any right, to ask for information or make inquiries in order to ascertain the true facts. I wish to limit my opinion with regard to his power to refuse registration to those cases in which the facts within his knowledge appear to him to show that the proposed dealing is improper."
  - ***Re: Shaw***
    - MacDonald C.J.A. : -- "The judgment below however is founded on the view that it is not for the Registrar to try the question whether the act of the agent was valid or not. That view, I think, would be quite right if it were not for the fact that the invalidity of the transfer, or perhaps more correctly the voidability of the transfer, appears on the face of the documents."



Synthesis

- The Registrar:
  - Is NOT an automaton & fulfills more than a purely administrative function
    - *Shaw, Brooks, Templeton, Ex Parte Bond, Perpetual*
  - Can, and should, pass on the legality of documents presented for registration.
    - *Mutual*, *Ex Parte Commonwealth*, *Templeton*
- But, the Registrar should be careful about:
  - Going beyond the 4 corners of their office
    - *O'Halloran*, *International Harvester, Heller*
  - Presuming impropriety
    - *Templeton*, *Shaw*

Underlying Tensions

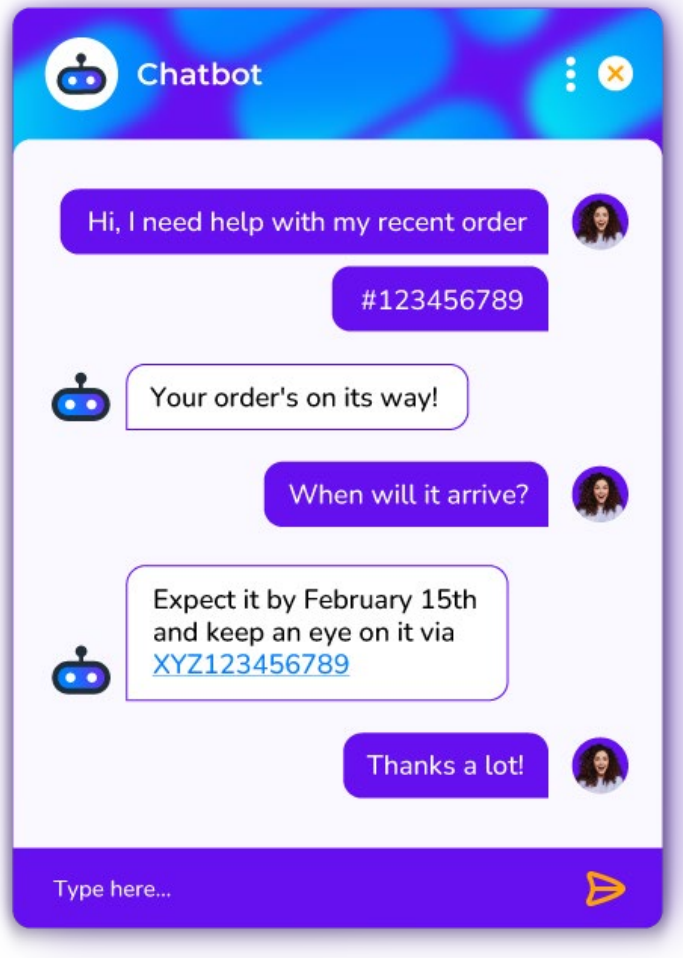
- The Torrens system was designed to respond to the shortcomings of the English common law
  - Registration of title
  - Registration did not cure defects
  - Expensive, time consuming, uncertain
- In its place – title by registration
  - Inexpensive, quick, certain
  - Efficiency and simplicity are prioritized (mirror)
  - Title is sacrosanct (curtain)
  - Those aggrieved have a right to compensation (insurance)
    - Not, necessarily, return of their land
- A Faustian bargain..
  - Registration cures defects
  - Shift of risk (private individuals → Government

Old Law, New Tech

- Moore's Law (observation): transistors in an integrated circuit double every 2 years
- Translation: Computing power increases exponentially
- AI systems beginning to match, or exceed human performance in multiple domains:
  - Reading comprehension
  - Image classification
  - Competition level mathematics
- Graduate-Level Google-Proof Q&A Benchmark
  - 400 multiple-choice questions
  - PhD level scholars:
    - 65% on in-field questions
    - 34% on all else
  - AI
    - 2023 – 30 – 40%
    - 2024 – 60%

Old Law, New Tech

- Some current & potential AI applications
  - Digital ID & entity validation
  - Data entry & validation
  - Business rule enforcement
    - Greek National Cadastre
      - Summarize & conduct business checks
      - Recommend approval or rejection
    - HM Land Registry
      - Deed comparison & flags
  - Fraud detection
  - Customer assistance chatbots
  - Cross registry integration & interaction
    - Validation & updates
  - Intelligent workflows
  - End-to-end processing



Platform Design & Oversight

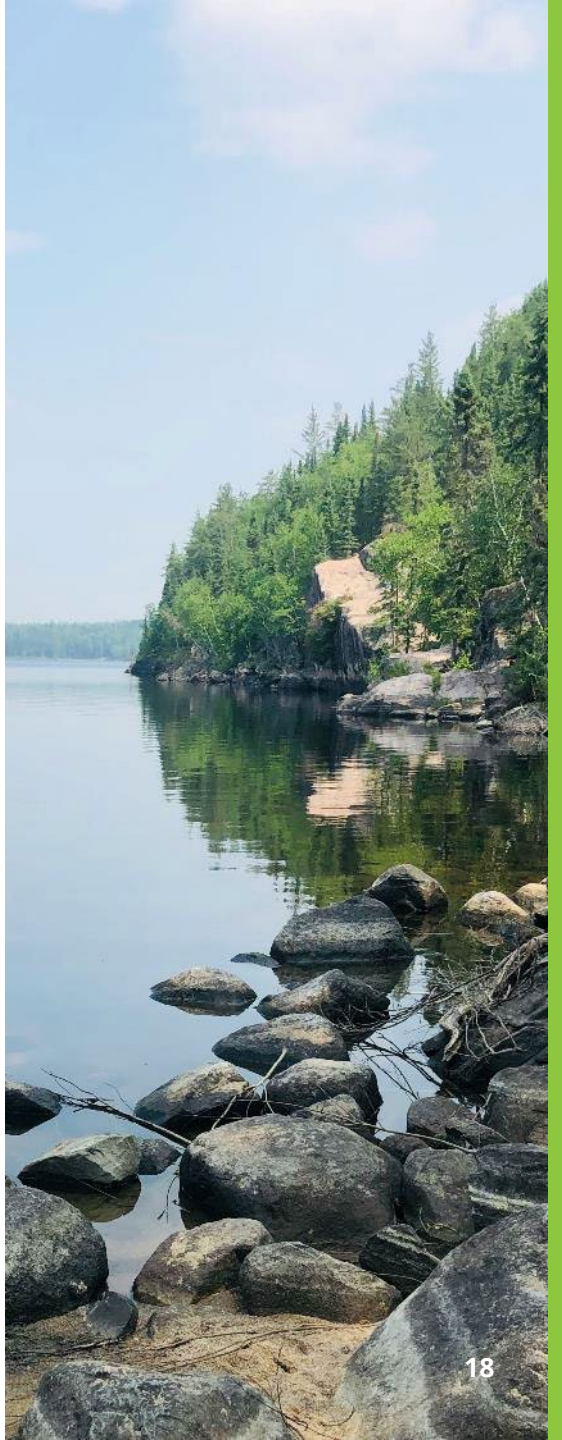
- Registrars delegate authority
  - Traditionally, to staff
  - Increasingly, to IT platforms
- Platform design decisions are critical & must be informed by subject-matter expertise & legal context
  - Caselaw principles, and the competing tensions they represent, should inform design at all stages:
    - Principles:
      - Not an automaton/registrations must comply with the law **vs.** not police, judge, jury & executioner
    - Tensions:
      - Risk, public confidence & pure legal fidelity vs. efficiency & simplicity
- Jurisdiction specific solutions are required:
  - Property & Civil Rights = Provincial
    - Different:
      - Legislative & regulatory regimes
      - Practice directives
      - Stakeholders
      - Risks (& appetite for same)

Platform Design & Oversight

- Some policy (macro) considerations:
  - **System access**
    - Who gets it? For what purposes? (How public, is your public registry?)
  - **Liability**
    - Fund of first resort? Last?
    - What is covered? What isn't? Who is covered? Who isn't?
      - Wilson C.J.S.C.: -- "The duty of the registrar is, inter alia, to protect the assurance fund."
  - **Responsibility**
    - Are representations and/or warranties made upon submission? By whom? To what effect? (Australia → Participation Rules)
    - Are there consequences for bad behaviour? (Australia → Suspension Events & Termination Events)
  - **Content**
    - What information is received? What purpose does it serve? Is less more?
      - Martin C.J.A. : -- "The judgment below however is founded on the view that it is not for the Registrar to try the question whether the act of the agent was valid or not. That view, I think, would be quite right if it were not for the fact that the invalidity of the transfer, or perhaps more correctly the voidability of the transfer, appears on the face of the documents."
  - **Business rule enforcement**
    - Prior to, or after, registration? Impact on priority?

Platform Design & Oversight

- Business rule (micro) considerations:
  - The obvious:
    - Compliance with legislation, regulations & practice directives
    - Internal data validation & logic
      - MacDonald C.J.A.: - "The judgment below however is founded on the view that it is not for the Registrar to question whether the act of the agent was valid or not. That view, I think, would be quite right if it were not for the fact that the invalidity of the transfer, or perhaps more correctly the voidability of the transfer, appears on the face of the documents....an officer in a position corresponding to that of the District Registrar is not to be deemed a mere machine for making registration even though the strict literal construction of the statute in the case before them would appear, if strictly construed, to make him such."
    - Workflow triaging
  - The less obvious:
    - External data validation & logic
      - Lamont J.: -- "I agree with the contention of the counsel for the applicants that under our Act no duty is cast upon the registrar to make inquiries outside of his own office as to whether or not an instrument is a proper one for registration..."
      - Martland J.: -- "In my opinion, it is no part of the function of a Registrar, under this section, to adjudicate upon contested rights of parties, for the determination of which it would be necessary for him to hear, receive and weigh evidence. He can only act upon the material which is before him in his own records."
    - Fraud detection? What does this mean? Is suspicion sufficient?
      - Knox C.J.: -- "I do not suggest nor was it contended that where the Registrar merely suspects that the dealing may be a breach of trust or otherwise improper, but knows no facts to justify him in concluding that it is so, it is any part of his duty, or that he has any right, to ask for information or make inquiries in order to ascertain the true facts. I wish to limit my opinion with regard to his power to refuse registration to those cases in which the facts within his knowledge appear to him to show that the proposed dealing is improper."



Concluding Thoughts

- AI may fundamentally change the tensions inherent in Torrens systems
  - (near) Instantaneous validation & feedback
  - Increased efficiency may no longer require a trade-off for increased risk
  - Carefully crafted statutory & regulatory frameworks will be critical to enable this
  - Platform design & access controls will be essential to alleviate potential mischief
- AI is a tool and should be used responsibly, intelligently, and for the right purposes…
- Prompt: What are the legal requirements for the United Church of Canada to convey land in Manitoba?
  - High level answer:
    - Approval of all, or majority, of Trustees of Congregation
    - Approval of Regional Council
    - Registration

Case Citations

(1) *Re: Land Registry Act & Shaw*, 1915 CarswellBC 155, 55 B.C.R. 116

(2) *Brooks v. Pavlick*, 1963 CanLII 19 (SCC), [1964] SCR 108 (citing *Re Mutual Investments Ltd.*, [1924] 4 D.L.R. 1070, 56 O.L.R. 29)

(3) *Templeton (Registrar of Titles of Victoria) v. The Leviathan Proprietary Limited*, 1921, High Court of Australia

(4) *Ex Parte Bond (1880)*, 6 VLR (L) 458, 2 ALT 94

(5) *The Perpetual Executors and Trustees Association of Australia Ltd. v. Hosken (Registrar of Titles*), 1912, High Court of Australia

(6) *The King v. Registrar of Titles of Victoria (Ex Parte Commonwealth)*, 20 C.L.R. 279, 1915, High Court of Australia

(7) *Re Nosalek*, 1967 CarswellBC 122

(8) *Ex Parte The Equity Trustees and Executors and Agency Co. Ltd. v. O'Halloran*, [1911] VLR 197

(9) *International Harvester Co. v. Ebbing*, 2 Sask. L.R. 167

(10) *Heller v. Registrar, Vancouver Land Registration District*, 1963 CanLII 39 (SCC)