

**THE LAW OF THE LAND: THE ADVENT OF THE TORRENS SYSTEM IN CANADA,
GREG TAYLOR (TORONTO: UNIVERSITY OF TORONTO PRESS, 2008)**

As a former history student and erstwhile professor of first-year property, *The Law of the Land: The Advent of the Torrens System in Canada*¹ by Greg Taylor offered me an opportunity to engage in academic reading with just a hint of “night table book” indulgence. As the title suggests, the author carefully traces the development of the Torrens registration system in Australia and its subsequent reception within Canada — an undertaking that even those within the legal profession may find as dry as the dust on the land titles records. However laborious the research, the book itself manages to bring history to life; chasing clues from Adelaide to the United Kingdom National Archives to the records of the *Toronto Globe* in an attempt to divine the motives and influences of the Torrens prophets and their opponents. The result is an original and interesting account incorporating law and politics spanning some 150 years of Canadian history.

Taylor begins with a discussion of the nature of the title registration system, outlining the fundamental principles of the system, and highlighting its advantages in comparison to the cumbersome and unreliable common law system. In so doing he lays out the arguments for reform that were repeatedly touted by Torrens advocates as jurisdictions across the country debated the desirability of adopting this new method of governing real property transactions. The chapter serves as an excellent primer (or reminder) and sets up the contextual basis for the historical progression that follows. It is unfortunate however that more attention was not given to the shortcomings of the Torrens system. Of particular relevance to Canadian jurisprudence is the question of the immediate versus deferred indefeasibility of registered interests. Taylor alludes to a recent “rash of cases”² in Canada but gives somewhat inadequate treatment to the possible impact of this issue on the integrity of the Torrens register. This is regrettable since these cases gained notoriety outside the confines of the legal profession, raising questions from the public about the workings of our land conveyancing system.³

Taylor then explores the life of Robert Richard Torrens and his legacy as the intellect behind the Torrens system, including his family history, early career, and introduction into land transaction law via the travails of a friend who lost his property through a flawed title. He firmly refutes recent academic arguments, particularly the claims of Dr. Tony Esposito,⁴ that the Torrens system was derived from the Hamburg system of land registration, which had been brought to Torrens’ attention by Adelaide resident Dr. Ulrich Hubbe. While acknowledging that the contributions of many stalwart supporters of the land registry system have been minimized, Taylor carefully constructs a timeline of the events in South Australia to support the traditional view that Torrens himself was the primary initiator, architect, and

¹ Greg Taylor, *The Law of the Land: The Advent of the Torrens System in Canada* (Toronto: University of Toronto Press, 2008).

² *Ibid.* at 11.

³ See “Mortgage ruling unfair to victims” *The [Saskatoon] StarPhoenix* (30 November 2006) A8; “Saving innocent parties from a bogus mortgage” *The Globe and Mail* (3 November 2006) A24; “Rising real estate fraud makes title insurance essential” *The Vancouver Sun* (25 June 2008) A14.

⁴ See also Murray J. Raff, *German Real Property Law and the Conclusive Land Title Register* (Ph.D. Thesis, University of Melbourne, 1999) [unpublished]; Elizabeth Cooke, *Modern Studies in Property Law* (Oxford: Hart, 2001). See also the author’s follow-up article: Greg Taylor, “Is the Torrens system German?” (2008) 29 *J. Legal Hist.* 253.

champion of the system. In Taylor's opinion, Torrens' "undisputed leadership" and tenacious promotion of the concept of title registration and legislation support the accolades historically awarded to him.

Although South Australia was the first jurisdiction to embrace the Torrens system, other states within Australia did not immediately follow suit. It was the small public/private colony of Victoria that adapted the South Australian model to suit local needs. Taylor outlines the history of land conveyancing on the island and colourfully describes the cast of characters who championed the introduction of the system, as well as its detractors. The author addresses academic literature tracing the extent to which the Torrens' 1858 *Real Property Act*⁵ served as the basis for the *Land Registry Act, 1860*.⁶ He gently rebuts the 2002 Dalhousie Law Review article by Jeremy Finn⁷ that maintained that there is no evidence of a link between the two statutes through a well researched description of the intricate human connections and communications among the British colonies. Woven through the Colonial Office, the chronology offers a fascinating insight into the cross-fertilization that took place among the member societies of the British Empire and explains many of the shared laws we still enjoy.

Following a similar format to his discussion of Victoria, Taylor moves on to examine the arrival of the Torrens system in British Columbia, Ontario, Saskatchewan, Alberta, the Northwest Territories, Manitoba and, in one chapter, the remainder of Eastern Canada. Surprising to this reader is the degree to which the proposal to adopt (or adapt) title registration incited debate among members of the general public in jurisdictions across Canada. The accounts of public meetings, petitionings, and newspaper campaigns relating to the passage and, at times, improper management of the Torrens system (particularly early in Alberta and Manitoba history) made the (professor) reader somewhat envious of the passion that surrounded early land conveyancing.

The Canada Law Amendment Association was of particular importance in the promotion of the Torrens system on the prairies and in Ontario and warrants separate consideration by the author. Spearheaded by a dedicated small number of Torrens converts including Beverley Jones (a conveyancing lawyer), J.H. Mason (a money lender), and George Holmsted (a court official and academic), the Association, established in 1883, worked tirelessly in promoting title registration. Taylor attempts to discern the motives of the group, acknowledging that some among the membership recognized the economic advantages associated with facilitation of borrowing that title registration offered. Nonetheless, he convincingly argues that beyond advocating for a change that would benefit their own activities, the leaders in the Association were seeking to positively change the law to benefit society as a whole. These were individuals with a mission.

Taylor's Australian perspective permits a degree of objectivity in describing the activities of the Association in promoting the Torrens system in western Canada. Motives of the Toronto-based association aside, western Canadian readers may find it notable that central

⁵ *Real Property Act 1858 (S.A.)*.

⁶ *Land Registry Act 1860 (Vic.)*.

⁷ Jeremy Finn, "Australasian Law and Canadian Statutes in the Nineteenth Century: A Study of the Movement of Colonial Legislation Between Jurisdictions" (2002) 25 Dal. L.J. 169.

Canadian financiers and lawyers went to considerable expense and effort to ensure that their model of legislation to control land conveyancing was passed on the prairies. Granted, the system made eminent sense in the Territories where there were few existing titles and where an economical and secure means of conveyancing title helped ensure timely settlement and economic growth. Moreover, there were strong proponents among the early settler population. Nonetheless, the role of Toronto interests in determining the fate of western Canadian institutions strikes a chord oft times repeated in our history.

Ironically, that same Association, although convinced they knew what was best for western Canada, was (for a number of reasons) unable to achieve the same degree of success in their home province of Ontario. Uptake on the system was less than enthusiastic, a phenomenon which Taylor aptly attributes to the fact that “Ontarians were simply temperamentally unsuited to the Torrens system. It was, in short, too good for them.”⁸ A major push to convert titles, almost 100 years after the introduction of title registration, finally ensured that, by 2006, almost 90 percent of the parcels of land in the province were governed by the Torrens system.

Taylor himself notes that the march of the Torrens system in Canada is yet unfinished. Recent technological advances have rejuvenated the system in New Brunswick and Nova Scotia; however, Prince Edward Island and Newfoundland remain outside the Torrens fold and, unfortunately, little explanation is provided as to why this is the case. Nonetheless in the author’s opinion, with the possible exception of Quebec,⁹ it is only a matter of time before this “superior” system is the norm in all provinces. Taylor further suggests that in addition to the geographic growth of the system, advances could also be considered in the area of legislative harmony across Torrens jurisdictions. The latter may be overly ambitious considering the foibles and diversity of the various provinces.

Since its incorporation in 1979, the Osgoode Society for Canadian Legal History has supported the research and publication of over 70 books on the history of Canadian law. The subject matter of these works has included members of the judiciary and practitioners, as well as broadly based topics such as the legal treatment of ethnic minorities, women and the law, aboriginal law, and law and economics. In its brief 168 pages, *The Law of the Land* is a welcome addition to this impressive collection, and appropriately marks the 150th anniversary of the introduction of the Torrens system to South Australia. Perhaps its appeal will not extend far beyond history buffs and members of the profession, but that makes Taylor’s efforts no less worthwhile. The story that unfolds can only result in a deepened respect for those visionaries who vigorously pursued and achieved legal reform of a statute that many of us simply take for granted.

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⁸ Taylor, *supra* note 1 at 106.

⁹ Taylor argues that, although the Torrens system might improve conveyancing in Quebec, (among other reasons) the lack of public demand for the system, historically long chains of title, expense of conversion, and the more solid basis for the existing system within the French law incorporating the use of notaries for land conveyancing, all militate against change: *ibid.* at 156-57.