

1970

c 396 Quieting Titles Act

Ontario

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CHAPTER 396

The Quieting Titles Act

1. An owner of an estate in fee simple in land or a trustee for the sale of the fee simple is entitled to have his title judicially investigated and the validity thereof ascertained and declared, whether he has the legal estate or not, and whether his title is or is not subject to a charge or encumbrance. R.S.O. 1960, c. 340, s. 1.

Owners, etc., in fee simple may obtain judicial investigation of title

2. Any other person who has an estate or interest in land may apply for the investigation of his title and a declaration of the validity thereof, but it is in the discretion of the judge before whom the proceedings are taken to grant or refuse the application and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the judge in exercising such discretion is subject to appeal. R.S.O. 1960, c. 340, s. 2.

In case of any other estate, investigation to be discretionary with the judge

3. The Attorney General for Canada or the Minister of Justice and Attorney General for Ontario may apply for an investigation of the title of the Crown to any land and a declaration of the validity thereof, and the application may be made by information instead of petition, but in other respects the practice and procedure shall be the same as in ordinary cases. R.S.O. 1960, c. 340, s. 3, *amended*.

Applications to quiet title to Crown lands

4. Every application shall be made to the Supreme Court or a judge thereof and, subject to section 3, shall be by petition in Form 1. R.S.O. 1960, c. 340, s. 4

Form of application and to whom made

5. The application shall be supported by,

How the application must be supported:

(a) the title deeds, if any, and evidences of title in the possession or power of the applicant;

title deeds

(b) certified copies of all registered instruments, or registered memorials of instruments, affecting the land, or of all since the last judicial certificate, if any, under this Act, up to the time of the granting of the certificate of title, except mortgages of which discharges have been registered more than ten years prior to the date of the application and the discharges of such mortgages;

registered instruments

(c) an abstract of the title certified by the registrar of the registry division in which the land lies, unless the abstract is dispensed with in whole or in part;

registrar's certificate

statement of facts

(d) a concise statement of such facts as are necessary to make out the title that do not appear in the produced documents, but no abstract of of produced documents shall be required except on special grounds;

proof of facts

(e) proof of any fact that is required to be proved in order to make out the title, and that is not established by the produced documents, unless the judge dispenses with such proof until a future stage of the investigation;

affidavit and certificate of counsel, etc.

(f) an affidavit or deposition by the person whose title is to be investigated and a certificate of his counsel or solicitor, to the effect mentioned in section 7, unless the judge, for special reason, dispenses therewith;

schedule of particulars produced

(g) a schedule of the particulars produced under this section. R.S.O. 1960, c. 340, s. 5.

What the affidavit or deposition of the applicant must state

6.—(1) The affidavit or deposition of the person whose title is to be investigated shall state that to the best of his knowledge and belief he is the owner of the estate or interest claimed by the petitioner, subject only to the charges and encumbrances set forth in the petition or in a schedule thereto, or that there is no charge or encumbrance affecting the land, that the deeds and evidences of title that he produces, and of which a list is contained in the schedule produced under section 5, are all the title deeds and evidences of title relating to the land in his possession or power, and that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or, if he is aware of such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any except what he sets forth.

As to petitioner's possession and other material facts

(2) The affidavit or deposition shall also set forth whether any one is in possession of the land and under what claim, right or title, and shall state that to the best of the deponent's knowledge, information and belief, the affidavit or deposition and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings that affect the title or a part thereof or give any right as against him.

In certain cases it may be dispensed with or made by another person

(3) The affidavit or deposition may be dispensed with or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by one person, and as to part by another, in the discretion of the judge to whom the application is made, and in such case the affidavit shall be modified accordingly. R.S.O. 1960, c. 340, s. 6.

What the certificate of counsel or solicitor must state

7. The certificate of the counsel or solicitor shall state that he has investigated the title and believes the petitioner to be the owner of the estate that he claims in the land, subject only to any

charge or encumbrance set forth in the petition or in the schedule thereto, or that he so believes, subject to any condition, qualification or exemption set forth in the certificate, and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in sections 5 and 6 and believes the affidavit or deposition to be true. R.S.O. 1960, c. 340, s. 7.

8.—(1) The judge in investigating the title may receive and act upon any evidence that is received by the Supreme Court on a question of title, and any evidence that the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether the evidence is or is not receivable or sufficient in point of strict law or according to the practice of conveyancers, if the evidence satisfies the judge of the truth of the facts intended to be established thereby.

On what evidence, judge may proceed

(2) It is not necessary to produce any evidence that by *The Vendors and Purchasers Act* is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments, unless the judge otherwise directs.

Idem R.S.O. 1970, c. 478

(3) The proof may be by affidavit or certificate or may be given orally or in any other manner or form satisfactory to the judge. R.S.O. 1960, c. 340, s. 8.

Forms of proof

9. Before a certificate of title is granted, satisfactory evidence shall be given by certificate, affidavit or otherwise that all taxes, rates and assessments for which the land is liable have been paid, or that all, except those for the current year, have been paid, and by the production of a certificate from the Minister of Revenue that all claims for succession duty in respect of the land to be included in the certificate have been satisfied. R.S.O. 1960, c. 340, s. 9, *amended*.

Taxes must have been paid except for current year

10. If the judge is not satisfied with the evidence of title produced in the first instance, he shall give a reasonable opportunity to produce further evidence or to remove defects in the evidence produced. R.S.O. 1960, c. 340, s. 10.

Further proof if judge not satisfied

11.—(1) Except as hereinafter provided, before a certificate of title is granted or a conveyance is made under this Act, the judge shall direct to be published in *The Ontario Gazette*, and, if he sees fit, in one or more newspapers, and in such form and for such period as he considers expedient, a notice either of the application having been made, or of the order or decision of the judge thereon, and the notice shall state the time within which adverse claims may be filed, and the certificate or conveyance shall not be signed or executed until after the expiration of at least four weeks from

Judge to order notice to be published

the first publication of the notice or such other period as the judge may appoint.

Notice of application where land is valued at not more than \$3,000

(2) Where the value of the land is proved to the satisfaction of the judge to be not more than \$3,000, he may dispense with the publication of the notice and in lieu thereof may direct that for such period as he thinks fit a printed or typewritten notice of the application, or of the order or decision of the judge thereon, be posted up in one or more conspicuous places on the land and in such other place, if any, as he thinks fit, and the certificate or conveyance shall not be signed or executed until the period limited by the notice for filing adverse claims has expired. R.S.O. 1960, c. 340, s. 11.

Judge may grant certificate without further notice

12. Where the judge is satisfied respecting the title and considers that the certificate of title can safely be granted or the conveyance can safely be executed without any other notice of application than the published or posted notice, he may grant the certificate or direct the execution of the conveyance. R.S.O. 1960, c. 340, s. 12.

Notice to adverse claimant

13. Where it appears that there is a person who may have a claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the judge shall direct such notice as he considers necessary to be mailed to or served on that person, his agent or solicitor. R.S.O. 1960, c. 340, s. 13.

Appointment of guardian *ad litem*

14.—(1) Where it appears that any persons who will become the heirs of a living person or that any person not *in esse* may be interested in opposing the claim of the petitioners, the judge may appoint a guardian *ad litem* to represent them and they are bound by the adjudication.

Costs

(2) The judge may order that the costs of the guardian *ad litem* be paid by the petitioner.

Who may be guardian

(3) Unless the judge otherwise directs, the Official Guardian shall be appointed guardian *ad litem*. R.S.O. 1960, c. 340, s. 14.

Further publication or service of notice

15. Before granting the certificate or directing the execution of the conveyance, the judge may require any further publication to take place or any other notice to be mailed or served that he considers necessary. R.S.O. 1960, c. 340, s. 15.

Adverse claimants to file statements

16.—(1) A person having an adverse claim or a claim not recognized in the petition may at any time before the certificate is granted or the conveyance is executed, file and serve on the petitioner, his solicitor or agent, a statement of his claim in Form 2.

Verification

(2) The claim shall be verified by an affidavit to be filed therewith. R.S.O. 1960, c. 340, s. 16.

17. In case of a contest, the judge may either decide the question of title on the evidence before him, or may refer the question or any matter involved therein to the Court of Appeal, or may direct any mode of investigation that he considers expedient, and may defer granting the certificate or directing the execution of the conveyance. R.S.O. 1960, c. 340, s. 17.

In case of contest, judge may decide or refer the case

18. The judge may at any stage of the proceeding order security for costs to be given by the petitioner or by any person making an adverse claim. R.S.O. 1960, c. 340, s. 18.

Security for costs

19. The judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any party to any proceeding, and may give directions as to the fund out of which any costs shall be paid. R.S.O. 1960, c. 340, s. 19.

Payment of costs

20. The petitioner may by leave of the judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation, either by himself or by an adverse claimant. R.S.O. 1960, c. 340, s. 20.

Withdrawal of application

21. Subject to the rules of court, the judge may refer a petition or any question arising in the course of any proceeding thereon to any referee of titles or other officer of the court, or to counsel named by the judge, who shall proceed as the judge himself should do if the reference had not been made, and has all the powers of the judge except the power to grant the certificate or to direct the execution of the conveyance. R.S.O. 1960, c. 340, s. 21.

Petition may be referred to referee or counsel

22.—(1) Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications unless the petition expressly states the contrary:

Claims of title to be presumed to be made with certain exceptions

1. The reservations, if any, contained in the original grant from the Crown.
2. Any municipal charges, rates or assessments theretofore imposed for local improvements and not yet due and payable.
3. Any title or lien that, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land.
4. Any lease or agreement for a lease for a period yet to run, not exceeding three years, where there is actual occupation under it.
5. Any public highway, right of way, watercourse and right of water, and other easement.
6. Any right of the wife or husband of the petitioner to dower or curtesy.

7. Any claim for succession duty.

But claim may be without exceptions

(2) If the petitioner desires the certificate to declare the title to be free from such exceptions or qualifications, or any of them, the petition shall so state, and the investigation shall proceed accordingly, but this subsection does not apply to the exception or qualification as to a public highway. R.S.O. 1960, c. 340, s. 22.

One certificate or several

23. The judge may give one certificate of title comprising all the land mentioned in the petition or may give separate certificates as to separate parts of the land. R.S.O. 1960, c. 340, s. 23.

Form of certificate

24. The certificate of title shall be in Form 3 and shall be under the seal of the court and signed by a judge and, where the proceedings on the petition are conducted in Toronto, by the Referee of Titles and in other cases by the Inspector of Titles and shall also be signed by the Registrar or an assistant registrar of the Supreme Court, and the certificate and the schedule, if any, thereto or a duplicate or counterpart of it shall be registered in full both in Supreme Court and in the registry office of the registry division where the land lies without any further proof thereof. R.S.O. 1960, c. 340, s. 24.

Registration of certificate

25. A certificate of the registration in the Supreme Court may be endorsed on the certificate of title or on any counterpart or certified copy thereof, thus:

Registered in..... 19..... Book,
Page.....

A.H.,
Registrar of the Supreme Court (or as the case may be)

and a memorandum or certificate so signed is evidence of the registration mentioned therein. R.S.O. 1960, c. 340, s. 25.

Effect of certificate of title

26. The certificate of title, sealed, signed and registered as required by section 24, is conclusive, and the title therein mentioned shall be deemed absolute and indefeasible on and from the date of the certificate as regards the Crown and all persons whomsoever, subject only to any charges or encumbrances, exceptions or qualifications mentioned therein or in the schedule thereto, and is conclusive evidence that every application, notice, publication, proceeding, consent and act that ought to have been made, given and done before the granting of the certificate, has been made, given and done by the proper person. R.S.O. 1960, c. 340, s. 26.

Certified copy of certificate to be evidence

27. After a certificate of title is registered, a copy thereof purporting to be signed and certified as a copy by the Registrar or an assistant registrar of the Supreme Court, or by the registrar of the registry division in which the land lies, is admissible evidence

of the certificate for all purposes without further evidence of such copy, and without accounting for the non-production of the certificate. R.S.O. 1960, c. 340, s. 27.

28. In case of a sale by the Supreme Court, the court may investigate the title with a view to granting an indefeasible title, and in that case a conveyance in Form 4, executed to the purchaser, under the seal of the court and purporting to be under the authority of this Act, has the same effect as a certificate. R.S.O. 1960, c. 340, s. 28.

Conveyance by the court in case of sale

29. Where judgment is given for the specific performance of a contract for the sale of land and it is provided by the contract that the vendor shall give an indefeasible title, the court may make the like investigation, and the conveyance may be according to Form 4. R.S.O. 1960, c. 340, s. 29.

Where an indefeasible title is contracted for

30. Where a person domiciled or claiming land in Ontario desires to establish that he is the legitimate child of his parents, or that the marriage of his father or mother or of his grandfather and grandmother was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir or one of the heirs of a person deceased, or that he is a natural born subject of Her Majesty, he may, if the court thinks fit, have any of such matters judicially investigated and declared. R.S.O. 1960, c. 340, s. 30.

Right to judicial investigation of some fact that may affect a title

31.—(1) The application shall be by petition supported by an affidavit of the petitioner verifying the statements of the petition and stating that his claim is not disputed or questioned by any person, or, if his claim is to his knowledge disputed or questioned, the facts in relation to such dispute or question, and that he is not aware of any dispute or question except what he has set forth, and stating such other facts as may satisfy the court of the propriety of proceeding with the investigation.

Application and affidavit in support

(2) The proceedings upon the petition shall be the same as nearly as may be as in cases under section 1, and the certificate granted on the investigation shall be registered in the same way and may be proved by the like evidence as in the case of a certificate under section 12.

Investigation, proof, etc., in such case

(3) The certificate when registered is conclusive and indefeasible in favour of the person to whom it was granted and all persons claiming by, from, through or under him as regards the Crown and all persons whomsoever and is *prima facie* evidence in favour of all other persons as against the Crown and all persons whomsoever of the truth of the fact therein declared. R.S.O. 1960, c. 340, s. 31.

Effect of certificate

Certificate
obtained by
fraud

32. If in the course of any proceeding any person acting either as principal or agent knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any certificate or conveyance obtained by means of such fraud or falsehood is void except as against a purchaser for valuable consideration without notice. R.S.O. 1960, c. 340, s. 32.

Reinvesti-
gation,
petition for

33.—(1) After a certificate is granted or a conveyance is executed, any person aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, by leave of the court or a judge, have the title or claim reinvestigated on such terms as are considered just.

Registra-
tion

(2) A certificate of the presentation of the petition shall be registered in the proper registry office.

Those
who have
purchased,
etc., in the
meantime
not to be
affected

(3) No proceeding on such petition affects the title of any person who, after the date of the certificate or conveyance under this Act and before the registration of the certificate of the presentation of the petition, has acquired by sale, mortgage or contract, for valuable consideration, any estate or interest in the land described in the certificate or conveyance, or, if the certificate was granted under section 30, in any land or other property the title to which was derived from, through or under the person named in the certificate, in the character that is thereby declared to belong to him.

What order
may be
made

(4) The court or judge may make such order on the petition as he considers just having regard to subsection 3 and of section 32. R.S.O. 1960, c. 340, s. 33.

Appeals

34. An appeal lies from an order or decision of a judge under this Act to the Court of Appeal in the same manner and subject to the same restrictions as in the case of an appeal from a judgment or order of a judge of the High Court in an action. R.S.O. 1960, c. 340, s. 34.

Register to
be kept

35. A separate book shall be kept in the Supreme Court for the registration of certificates and conveyances under this Act, and the certificates and conveyances registered therein shall be numbered in order, and an index to the book shall be kept in such form as the court may direct. R.S.O. 1960, c. 340, s. 35.

Where any
party is a
minor,
mental
defective, etc.

36. Where any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceedings under this Act, is an infant, a mentally

defective person, or a mentally incompetent person, the guardian of the infant, or committee of the estate of the mentally defective person or mentally incompetent person, may make such application, give such consent, do such act, and be party to such proceeding as such person might if free from disability, and shall otherwise represent such person for the purposes of this Act, and if the infant has no guardian, or the mentally defective person or mentally incompetent person no committee of his estate, the court or judge may appoint a person with like power to act for the infant, mentally defective person or mentally incompetent person. R.S.O. 1960, c. 340, s. 36.

37. A married woman shall, for the purposes of this Act, be deemed to be a *feme sole*. R.S.O. 1960, c. 340, s. 37. Married women

38. No objection to a petition shall be allowed upon the ground that the petitioner should first have brought an action, and, if it appears upon the determination of the investigation that the petitioner is entitled to the possession of the land, he may obtain an order against any other party to the proceeding for the delivery of possession thereof. R.S.O. 1960, c. 340, s. 38. Objections to petition

39. Proceedings shall not abate or be suspended by a death or transmission or change of interest, but in any such event the court or a judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise, in relation thereto as seem just. R.S.O. 1960, c. 340, s. 39. Proceedings not abated by certain events

40. No petition, order, affidavit, certificate, registration or other proceeding is invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. R.S.O. 1960, c. 340, s. 40. Proceedings not void for want of form

41.—(1) There shall be an Inspector of Titles who shall supervise the work of the local referees of titles. Inspector of Titles

(2) Such officer of the Supreme Court as is designated for that purpose by the rules of court is the Inspector of Titles. R.S.O. 1960, c. 340, s. 41. to be officer of Supreme Court

42. Every ^{local} master of ^{the Supreme Court} titles is local referee of titles and, where the proceedings under the petition are to be conducted at Toronto, the Inspector of Titles is Referee of Titles. R.S.O. 1960, c. 340, s. 42. Referees of Titles Amended 1972

43. The Inspector of Titles, the Referee of Titles and every local referee of titles in respect of the petition and the proceedings thereunder have the like powers as the Master of the Supreme Court. R.S.O. 1960, c. 340, s. 43. Powers of Inspector and referees

Powers of Referee of Titles

44. The Referee of Titles and every local referee of titles have the same powers as a judge of the Supreme Court within the limits prescribed by the rules. R.S.O. 1960, c. 340, s. 44.

Application of R.S.O. 1970, c. 228

45. Subject to the rules of court and except where otherwise provided, the practice and procedure under *The Judicature Act* and the rules made thereunder apply to proceedings under this Act. R.S.O. 1960, c. 340, s. 45.

Rules Committee may make general rules

46.—(1) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules for referring petitions under this Act to any referee of titles or other officer of the court or to any counsel or other person, and may regulate the fees to be paid on such references.

Rules for practice and procedure

(2) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may also make rules for the purposes of and for regulating the practice or procedure under this Act notwithstanding that the practice or procedure prescribed by this Act may be thereby varied. R.S.O. 1960, c. 340, s. 46.

FORM 1

(Section 4)

PETITION TO QUIET A TITLE

In the Supreme Court of Ontario

In the matter of (the east half of lot No. in the
Concession of the Township of, or as the case may be,
briefly describing the property).

To the Honourable the Judges of the Supreme Court of Ontario.

The Petition of of

SHEWETH:

That your Petitioner is absolute owner in fee simple in possession (or as the case may be) of the following land (describing it):

That there is no charge or other encumbrance affecting your Petitioner's title to the land (except, etc., or that your Petitioner's title is subject only to the charges or encumbrances in the schedule hereto mentioned, and that the only persons having or claiming any charge, encumbrance, estate, right or interest in the land are set forth in the schedule hereto annexed, and that the charge, encumbrance, estate, right or interest belonging to or claimed by each is therein set forth). Your Petitioner therefore prays that his title to the land may be investigated and declared under *The Quieting Titles Act*.

A.B.,

or
C.D., Solicitor for A.B.

R.S.O. 1960, c. 340, Form 1

FORM 2

(Section 16 (1))

ADVERSE CLAIM

In the Supreme Court of Ontario

In the matter of, etc., (as in petition).

G.H., of, etc., claims to be the owner of the land [or as the case may be (stating briefly the nature and the grounds of the claim)].

Dated this day of, 19

G.H.,

or
E.F., Solicitor for G.H.

R.S.O. 1960, c. 340, Form 2.

FORM 3

(Section 24)

CERTIFICATE OF TITLE

In the Supreme Court of Ontario

These are to certify under the authority of *The Quieting Titles Act*, that *A.B.*, of is the legal and beneficial owner in fee simple in possession (or as the case may be) of all, etc. (*here describe the land*) subject to the exceptions and qualifications mentioned in section 22 of the said Act (or as the case may be), and to (*specifying either by reference to a schedule or otherwise any of the charges or encumbrances, exceptions or qualifications to which the title of A.B. is subject*), but free from all other rights, interests, claims and demands whatever.

[Or that (*stating the facts found and declared under section 30 and stating on whose application they are declared*)].

In witness whereof one of the Justices of the Court has hereunto set his hand, and the seal of the Court has been hereunto affixed,

this day of, 19

G.S.H., J.A.B. [L.S.]
Inspector (or Referee) of Titles.

R.S.O. 1960, c. 340, Form 3.

FORM 4

(Section 28)

CONVEYANCE BY THE SUPREME COURT

The Supreme Court of Ontario, under the authority of *The Quieting Titles Act*, doth hereby grant unto *A.B.*, of [*here describe the land sold*] to hold the same unto the said in fee simple (or as the case may be), subject to [*here specify as in the case of a certificate of title*].

In witness whereof one of the Justices of the Court has hereunto set his hand, and the seal of the Supreme Court has been hereunto affixed, this day of, 19

G.S.H., J.A.B. [L.S.]
Registrar.

R.S.O. 1960, c. 340, Form 4.