SUPREME COURT OF NOVA SCOTIA
Citation: *RBC v Campbell*, 2026 NSSC 37

Date: 20260202
Docket: Hfx No. 486776
Registry: Halifax

Between:

Royal Bank of Canada

Plaintiff

v.

John Bradley Campbell and Marsha MacDonald

Defendants

Judge:	The Honourable Justice Christa M. Brothers
Heard:	June 11 and August 1, 2025, and December 1, 2025 in Halifax, Nova Scotia
Additional Written Submissions:	July, October and November, 2025
Decision:	February 2, 2026
Counsel:	Joshua Santimaw and Douglas Schipilow, Counsel for the Plaintiff
	Candee McCarthy, Counsel for Jacqueline (Campbell) MacDonald (Affected Property Owner)
	John Bradley Campbell, Self Represented Defendant
	Marsha MacDonald, Self Represented Defendant

By the Court:

Background

[1] The Royal Bank of Canada ("RBC") brings this motion for an order pursuant to s. 92 of the *Land Registration Act*, S.N.S. 2001, c. 6 ("*LRA*"), seeking the recording of a judgment against the defendant, John Campbell, as an interest against a property located at 40 Big Marsh Road, Big Marsh, Nova Scotia, PID No. 50088459 ("the Property").

[2] John Campbell ("Campbell") was married to Jacqueline Campbell (now MacDonald) ("MacDonald"). In 2009, they purchased the Property, which served as their matrimonial home. The deed was registered in the Inverness County Land Registration Office on March 13, 2009.

[3] On April 21, 2015, the Nova Scotia Supreme Court Family Division issued a Divorce decree concerning the former couple. On October 25, 2016, the court issued a Corollary Relief Order ("CRO") directing Campbell to execute a Quit Claim Deed conveying his half interest in the Property to MacDonald:

> 37. Remaining matrimonial property is to be divided as follows:
>
> > The matrimonial home is situated at 40 Big Marsh Road, River Denys, NS. The Respondent shall retain exclusive possession and ownership of the matrimonial home and the Petitioner shall execute a Quit Claim Deed forthwith releasing any and all interest he has to the matrimonial home. The agreed value of the matrimonial home, less disposition costs, is $121,525. The cost of preparing the Quit Claim Deed shall be that of the Respondent.
> >
> > Upon the Respondent's receipt of the equalization payment of $24,820.52 and the lump sum payment of $48,072.31 the Respondent shall be responsible for the mortgage balance against the matrimonial home. The Respondent shall have the Petitioner's name removed off of the mortgage forthwith.
>
> [Emphasis added]

[4] The CRO also addressed child support as follows:

> 24. The Petitioner's income for child support purposes shall be the greater of: the amount of $40,000 or the Petitioner's actual income for a given taxation year. In 2015, the Petitioner's child support payment to the Respondent shall be the amount of $570 per month based on the Petitioner's income of $40,000.

> 25. Until such time as the Petitioner provides to the Respondent the equalization payment of $24,820.52, along with the lump sum payment of $48,072.31, the Petitioner shall continue to pay the mortgage on the matrimonial home. Child support payments from the Petitioner to the Respondent shall commence on the 1st day of the month following the Respondent's receipt of the equalization payment and lump sum payment described herein.

[5] Campbell did not execute the Quit Claim Deed "forthwith", as ordered.

[6] On March 29, 2019, RBC filed its Notice of Action for Debt and Statement of Claim against Campbell and his new partner for unpaid debts owing to RBC. On May 17, 2019, the Supreme Court granted default judgments in favour of RBC. One was issued against Campbell solely, in the amount of $80,198.18. The other was issued against the defendants jointly in the amount of $11,672.59. The judgments were recorded in the Inverness County Land Registration Office on November 16, 2021, and April 27, 2022, as Document Numbers 119640739 and 120492096. The judgments have not lapsed.

[7] On or about August 9, 2023, Campbell finally executed the Quit Claim Deed conveying his half interest in the Property pursuant to the CRO. The Quit Claim Deed was registered in the Inverness County Land Registration Office on September 6, 2023 (the "Deed').

[8] Judgments recorded on the judgment roll are only added to the parcel register on migration or on a revision to the registered ownership of a parcel. If there are judgments outstanding and applicable at the time of a revision to the ownership of parcel, the lawyer responsible for filing the revision document (the deed, court order, etc.) is also responsible to add the judgments to the parcel register at the time of filing the revising document. In this case, when the Deed was registered, the judgments were not recorded against the Property.

[9] In March 2024, RBC became aware that Campbell's interest in the Property was transferred and that the judgments were not recorded on the parcel register. After MacDonald's counsel refused to record the judgments as interests affecting the Property, RBC filed this motion.

[10] Since the motion was filed, the judgment against Campbell and his partner has been satisfied. There remains one judgment against Campbell that RBC seeks to record as an interest affecting the Property.

Positions of the Parties

[11] RBC submits that under the land registration system, conveyances of property interests in land, including those established through matrimonial or family disputes, can only be affected through the parcel register. RBC says the court order directing Campbell to execute the Deed did not convey his interest in the Property to MacDonald. As a result, Campbell remained a registered owner at the time RBC recorded its judgments and they attached, by operation of law, to his interest in the Property. When the Deed was finally registered in 2023, it conveyed Campbell's interest, now encumbered by the judgments, to MacDonald.

[12] The RBC notes that the *LRA* created certainty around property conveyancing by eliminating the need for long and tedious searches of the registry. Property Online is meant to be a complete statement of recorded interests on title. The RBC argues that if MacDonald is successful, this would take away the certainty of the *LRA*. In this case, the judgments were granted in 2021 but not recorded against the Property by RBC until 2023.

[13] Campbell was self-represented. He supported MacDonald's position that the judgment should not be recorded against the Property but filed only an affidavit from an individual who was helping him understand the process.

[14] MacDonald argues that when the court issued the CRO on October 25, 2016, she acquired equitable ownership of the Property. MacDonald argues that judgment liens can only attach to the debtor's actual interest in the Property at the time the lien is registered, and as soon as the court ordered Campbell to execute the Deed, he no longer had a beneficial interest to which the judgments could attach. MacDonald submits that the *LRA* was intended to streamline land registration but not to completely extinguish equitable interests or all common law remedies – rather, it integrates them to the extent they are not inconsistent with the *LRA*'s structure and language. MacDonald further submits that she was entitled to notice of RBC's action against Campbell under s. 9(1) of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275 ("MPA") and that RBC cannot deny her proper notice and then seek to enforce a judgment on her property.

[15] While MacDonald's arguments are proffered to reflect the unfairness of Campbell's post-separation debt attaching to her Property years after he was ordered to convey his interest to her, that unfairness is more apparent than real when one considers the history and purpose of the *LRA* and all of the ways this result could have been avoided but was not, for reasons that remain unclear.

[16] To understand why the RBC is successful in this motion, one needs to understand the *LRA*, the history and the caselaw that has developed.

Legislative Provisions

Land Registration Act

[17] The *LRA* came into force and effect on March 24, 2003. Its purpose is set out in s. 2:

> 2 The purpose of this *Act* is to
>
> (a) provide certainty in ownership of interests in land;
>
> (b) simplify proof of ownership of interests in land;
>
> (c) facilitate the economic and efficient execution of transactions affecting interests in land; and
>
> (d) provide compensation for persons who sustain loss in accordance with this *Act*.

[18] The *LRA* contains a number of important definitions, including:

> 3 (1) In this *Act*,
>
> (b) "court" means the Supreme Court of Nova Scotia;
>
> …
>
> (f) "instrument" means every document by which the title to land is changed or affected in any way;
>
> (g) "interest" means any estate or right in, over or under land recognized under law, a prescribed contract or a prescribed statutory designation …
>
> (h) "law" means the law in force in the Province, including enactments and principles of common law and equity;
>
> …
>
> (r) "record" means to secure priority of enforcement for an interest by means of entries in a register pursuant to this Act;
>
> …
>
> (t) "register" or "parcel register" means the register established pursuant to this Act for a parcel of lands and includes any document incorporated into the register by reference;

> (u) "registered owner" means the person shown in a register as the owner of a registered interest;
>
> …
>
> (w) "registration" means to affect, confer or terminate registered interests by means of entries in a register pursuant to this Act, and includes a revision of a registration;

[19] In *Norbridge Management Ltd. v. Lienaux*, 2013 NSCA 3, at para. 34, the Nova Scotia Court of Appeal noted that the language used in the definition of "interest" at s. 3(g) "would capture equitable interests".

[20] Section 4(3) relieves third parties dealing with the registered owner of an interest from any obligation to make inquiries regarding whether that interest is subject to any unregistered or unrecorded interest:

> 4(3) A person who engages in a transaction with the registered owner of an interest that is subject to an interest that is not registered or recorded at the time of the transaction, other than an overriding interest, in the absence of actual knowledge of the interest that is not registered or recorded
>
> > (a) may assume without inquiry that the transaction is authorized by the owner of any interest that is not registered or recorded;
> >
> > (b) may assume without inquiry that the transaction will not prejudice that interest; and
> >
> > (c) has no duty to ensure the proper application of any assets paid or delivered to the registered owner of the interest that is the subject of the transaction.

[21] Section 20, described as "the heart of the *LRA*" in *Brill v. Nova Scotia (Attorney General)*, 2010 NSCA 69 ("*Brill*"), at para. 72, provides as follows:

> 20 A parcel register is a complete statement of all interests affecting the parcel, as are required to be shown in the qualified lawyer's opinion of title pursuant to Section 37, subject to any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings in accordance with this Act.

[22] Section 28 addresses trusts and requires that they be registered or recorded:

> 28 (1) Where an instrument discloses that a party to an instrument is a trust, or holds an interest in trust, the party's interest shall be registered or recorded in the name of the trustee or trustees only, followed by a notation that the interest is held in trust.

[23] Section 32 deals with the right to file certain documents, including judgments and court orders:

> 32 (1) A person who claims to be entitled to be registered as the owner of any registered parcel or the owner of an estate or interest therein
>
> (a) pursuant to a judgment or order of a court;
>
> (b) pursuant to an enactment of Canada or the Province or an order in council;
>
> (c) through the purchase of the parcel by a person at a judicial sale from someone other than the registered owner;
>
> (d) pursuant to an order, judgment or certificate issued pursuant to the *Land Titles Clarification Act* or the *Quieting Titles Act*;
>
> (e) pursuant to any other instrument or proceeding,
>
> where no other provision of this *Act* provides for the registration of that person as owner of the parcel, interest or estate therein, may file the judgment or appropriate documents evidencing the right to be registered as owner thereof with the registrar who shall register the parcel or record the interest in the case of interests that are not registrable.
>
> (2) A registrar may forward the documents to the Registrar General for an interpretation of whether the documents have the effect contended by the applicant, and that any appeal period has expired.
>
> (3) A registrar or the Registrar General may require the applicant to provide a certificate from a qualified lawyer setting out the legal effect of the documents.
>
> [Emphasis added]

[24] Section 45(1) dictates that "[e]xcept as against the person making the instrument, no instrument, until registered or recorded pursuant to this *Act*, passes any estate or interest in a registered parcel or renders it liable as security for the payment of money."

[25] Section 47 deals with the recording of an interest, including an interest pursuant to the *MPA*:

> 47 (1) An interest in any parcel that is subject to this *Act* may be recorded.
>
> (2) An interest is recorded by recording the document on which the interest is based.
>
> …

> (4A) An interest pursuant to the *Matrimonial Property Act* may be recorded.
>
> …

[26] Section 49 outlines when a recorded interest will be enforced with priority over a prior interest:

> 49 (1) A recorded interest shall be enforced with priority over a prior interest where the subsequent interest was
>
> (a) obtained for value;
>
> (b) obtained without fraud on the part of the owner of the subsequent interest;
>
> (c) obtained at a time when the prior interest was not recorded; and
>
> (d) recorded at a time when the prior interest was not registered or recorded.

[27] Under the heading "Restriction on effect of court order", s. 54 states that an order of a court affecting the title to a parcel registered pursuant to the *LRA* has no effect with respect to anyone other than the parties to the action in which the order was granted until it is registered or recorded:

> 54 An order of a court, including a court of probate, affecting the title to or boundaries of a parcel registered pursuant to this *Act* has no effect with respect to persons not parties to the action in which the order was granted until it is registered or recorded.

[28] Section 65(1) establishes the judgment roll and s. 65(4) states that "[a] judgment recorded in a judgment roll binds and is a charge upon any registered interests of the judgment debtor within the registration district, whether acquired before or after the judgment is recorded, from the date the judgment is recorded until the judgment is removed from the roll."

[29] Section 66 outlines the effect of a judgment:

> 66 (1) A judgment is a charge as effectually and to the same extent as a recorded mortgage upon the interest of the judgment debtor in the amount of the judgment.
>
> (2) A judgment against one joint tenant does not sever the joint tenancy.
>
> (3) A judgment against one owner of an interest does not extend to or bind the interests of the other owners.
>
> (4) A judgment shall be removed from the roll on the earliest of

> (a) cancellation of the recording;
>
> (b) the recording of a certificate of the registrar, prothonotary or clerk of the court that issued the judgment that the judgment was set aside;
>
> (c) expiration of the time for which the judgment was recorded;
>
> (d) the recording of a release of the judgment signed by the plaintiff, the lawyer for the plaintiff or the registrar, clerk or prothonotary of the court that issued the judgment; and
>
> (e) the expiration of five years from the date of the judgment or the date of the recording of the latest renewal of the judgment.
>
> (5) The recording of a judgment may be renewed not more than three times by recording a certificate of renewal signed by the judgment creditor or the lawyer, agent or attorney of the judgment creditor at any time before the judgment is removed from the roll.
>
> (6) A judgment that is removed from the roll ceases to bind or be a charge upon any parcel in the registration district.
>
> (7) The validity of any title acquired by a sale under a judgment is not affected by the removal of the judgment from the roll.
>
> (8) A judgment does not affect a person's interest in any parcel if the person's name is materially different from that of the judgment debtor.
>
> (9) For the purpose of this Section, service shall be by registered mail or as prescribed.

[30] Section 92 of the *LRA* gives the court the authority to order the registrar to take certain actions, including recording an interest and revising a registration:

> 92 (1) Subject to this Act, in any proceeding with respect to a parcel registered pursuant to this Act, the court may order a registrar to
>
> (a) record an interest;
>
> (b) cancel a recording;
>
> (c) revise the priority of recordings;
>
> (d) revise a registration;
>
> (e) take any other action that the court thinks just.
>
> (2) Any order pursuant to subsection (1) shall be recorded in the register of any affected parcel.

[31] All of these sections support the RBC's position in relation to this motion.

Matrimonial Property Act

[32] Given the circumstances involving the Property and the issue of the CRO, it is also necessary to consider the *MPA*. Section 2(g) of the *MPA* defines a "spouse" as follows:

> (g) "spouse" means either of a man and woman who
>
> (i) are married to each other,
>
> (ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity, or
>
> (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,
>
> and for the purposes of an application under this Act includes a widow or widower.

[33] The definition of "matrimonial home" is set out at s. 3(1):

> 3(1) In this Act, "matrimonial home" means the dwelling and real property occupied by a person and that persons [*sic*] spouse as their family residence and in which either or both of them have a property interest other than a leasehold interest.

[34] Under s. 6(1), both spouses have an equal right of possession in the matrimonial home:

> 6 (1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

[35] Section 8 prohibits the encumbrance of any interest in a matrimonial home unless the other spouse consents or the court approves:

> 8(1) Neither spouse shall dispose of or encumber any interest in a matrimonial home unless
>
> (a) the other spouse consents by signing the instrument of disposition or encumbrance, which consent shall not be unreasonably withheld;
>
> (b) the other spouse has released all rights to the matrimonial home by a separation agreement or marriage contract;
>
> (c) the proposed disposition or encumbrance is authorized by court order or an order has been made releasing the property as a matrimonial home; or

> (d) the property is not designated as a matrimonial home and an instrument designating another property as a matrimonial home of the spouses is registered and not cancelled.
>
> **Disposition contrary to subsection (1)**
>
> (2) Where a spouse disposes of or encumbers an interest in a matrimonial home contrary to subsection (1), the transaction may be set aside by the other spouse upon an application to the court unless the person holding the interest or encumbrance acquired it for valuable consideration, in good faith and without notice that the property was a matrimonial home.
>
> …

[36] Section 9(1) dictates that "[w]here a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of this *Act* has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled." Section 9(3) provides that "[w]here a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture."

[37] Section 10(1)(d) of the *MPA* empowers the court to set aside a disposition or encumbrance on terms:

> 10(1) The court may by order, on the application of a spouse or any other person having an interest in property,
>
> > (d) direct the setting aside of any disposition or encumbrance of an interest in a matrimonial home and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

[38] Critically, s. 20(1) provides that an order made under the *MPA* respecting real property may be registered in the registry of deeds. It also addresses the effect of *not* registering such an order:

> 20(1) An order made under this Act respecting real property may be registered in the registry of deeds in the registration district in which the property is located and, where it is not so registered, it does not affect the acquisition of an interest in that real property by a person in good faith without notice of the order.

Law and Analysis

[39] The parties have identified the two most relevant decisions dealing with the priority of a judgment under the *LRA* in the context of a division of matrimonial assets – *Gill v. Hurst*, 2011 NSCA 100 ("*Hurst*"), and *MacIsaac v. Royal Bank of Canada*, 2015 NSCA 12 ("*MacIsaac*").

[40] In *Hurst*, the Nova Scotia Court of Appeal considered whether a judgment took effect as a claim in priority to a subsequently declared interest acquired under the *MPA*. The judgment was in favour of the law firm that acted as solicitors for the husband, Mr. Gill, in the early part of the parties' divorce proceeding. The firm was removed as solicitors for Mr. Gill and then obtained a Small Claims Court judgment against him, which it recorded under the *LRA*. Mr. Gill was a joint tenant with Ms. Hurst in the matrimonial home at the time the judgment was recorded. Ms. Gill was not notified of the Small Claims Court hearing. The matrimonial home was subsequently sold and the proceeds held in trust pending determination of priority to the sale proceeds.

[41] Following a 10-day trial, the trial judge ordered, among other things, that Ms. Hurst receive half the proceeds from the sale of the matrimonial home, together with an equalization payment of $46,328.11, in priority to the judgment of Wickwire Holm. The trial judge endorsed Ms. Hurst's concern that giving effect to the Wickwire Holm judgment would effectively require her to pay for a significant portion of Mr. Gill's legal fees.

[42] Wickwire Holm appealed and argued that the trial judge erred in postponing its judgment to the matrimonial award in favour of Ms. Hurst. Wickwire Holm argued that at the time it recorded its judgment, Mr. Gill was an owner of the matrimonial home as a result of the parties' joint tenancy. Accordingly, it acquired a charge over Mr. Gill's interest in the home.

[43] Writing for the majority, Bryson J.A. began by referring to the court's previous decision in *Brill*, where Fichaud J.A. explained the change from a notice system (the previous *Registry Act*) to a title system (the *LRA*):

> [45] The *LRA* represented a shift in Nova Scotia from a notice system (the previous *Registry Act*) to a title system. In *Nova Scotia (Attorney General) v. Brill*, 2010 NSCA 69, Fichaud J.A. explains the change:
>
> > [162] By s. 20, "a parcel register is a complete statement of all interests affecting the parcel". This is subject to the exceptions expressly noted in

> the *LRA*, such as overriding interests and challenges to the contents of the parcel register that may be resolved by the Registrar General and the Court. By s. 6, the Crown is bound, as is everyone. Section 73(1)(a) states that an actual reservation or exception in an actual initial Crown grant overrides but says nothing about a dispute whether there was an initial Crown grant.
>
> [163] The *LRA* involves the mirror, curtain and insurance principles of land title systems. These mean, respectively, that the register should accurately reflect the title, the register is the only source of title information, and there is indemnity to those who suffer a loss because of a flaw in the land registration system. *Anger & Honsberger*, ¶ 30:40.30. MacIntosh, *Nova Scotia Real Property Practice Manual*, ¶ 16-2.
>
> [164] In *C.P.R.* and *Imperial Oil Ltd. v. Turta*, [1954] S.C.R. 427, at p. 443, Justice Estey for the majority adopted this passage from an earlier decision:
>
> > The cardinal principle of the statute is that the register is everything and that, except in cases of actual fraud in the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against the world.
>
> Justice Estey continued (pp. 443-444):
>
> > The foregoing preamble and quotations, as well as others to similar effect, emphasize that the Torrens system is intended "to give certainty to the title" as it appears in the land titles office.
>
> [165] I agree that the parcel register under Nova Scotia's *LRA* would have *in rem* effect against the world, including the Crown, subject to the exceptions expressly prescribed in the *LRA*. I agree that there is no such exception, expressed in the *LRA*, governing a dispute whether there was an initial Crown grant. I also agree that, by s. 37(9), the standards under the *MTA* or common law, including the common law of marketable title, are among those that may generate the parcel register.

[46] As a result of s. 66 of the *LRA*, the Wickwire Holm judgment represented a valid charge on Mr. Gill's joint interest in the matrimonial home. The question becomes whether the Court can displace that charge or impair its priority.

[44] After reviewing the nature of joint tenancy, Bryson J.A. addressed the relationship between the law of property generally and the laws relating to matrimonial property, more specifically. He noted at para. 51:

> [51] The balancing of property and matrimonial interests was described by the Ontario Law Reform Commission prior to the 1986 enactment of the *Family Law Reform Act* (p. 4-23):
>
> > Third-party creditors should be protected in their dealings with husbands and wives. The Commission's recommendations with regard to the matrimonial property regime are intended solely to protect the spouses, and not to prejudice the position of third parties who may deal with them. The fact that spouses are subject to the matrimonial regime or another should not in any way affect the rights of those who transact business with them. Third parties should be as fully protected when dealing with spouses who are governed by the matrimonial property regime as they are when dealing with husbands and wives who are separate as to property. It is therefore recommended that all legitimate third-party creditors rank ahead of the creditor-spouse. In other words, the spouses will be deferred creditors, so that all third party creditors must be paid before the creditor-spouse. [Quoted from *Klotz*, *supra*]
>
> [Emphasis added]
>
> [52] This sentiment was echoed in the 1992 Ontario Law Reform Commission Report on Family Property Law (at p. 128).

[45] Justice Bryson proceeded to analyze the trial judge's reasons under discrete categories. The first category addressed the nature of Ms. Hurst's interest and when it arose:

> [55] In deciding against the priority of Wickwire Holm's judgment, the trial judge distinguished the Supreme Court's decision *Maroukis v. Maroukis*, [1984] 2 S.C.R. 137. In *Maroukis*, the parties owned the matrimonial home in joint tenancy. In 1978 they separated and the wife applied for division of family assets under the *Family Law Reform Act* of Ontario. In July 1979 the Bank of Nova Scotia obtained judgment against Mr. Maroukis for outstanding unpaid loans. In October, 1979 the trial judge ordered that the matrimonial home be vested in Ms. Maroukis. The judge purported to vest the home in her as of October 1978, which was the date of separation, effectively clearing the property of the judgments recorded against the husband's interest in the home, subsequent to separation.
>
> [56] The Supreme Court held that until a vesting order was made, a spouse merely had a personal right under the *Act* to apply for a division of family assets. The *Act* itself did not grant or create any proprietary rights, (also see *Sager v. Bradley* (1984), 63 N.S.R. (2d) 386 (S.C.A.D.) and *R. v. Surette* (1993), 123 N.S.R. (2d) 153 (N.S.C.A.), at para. 6). A claim for division of matrimonial assets is not an interest in property that can be registered under the *LRA*'s predecessor *Registry Act* (*Church v. Forbes and Church* (1983), 60 N.S.R. (2d)

211; also see: *Blades and Quinlan v. Atwood* (1990), 95 N.S.R. (2d) 348; *Downie v. Fitzgerald et al.* (1984), 65 N.S.R. (2d) 122 (S.C.A.D.)).

> [57] Any judgments against a joint tenant filed prior to a court vesting order attach to the interest of that tenant. In *Malhotra v. Malhotra* (1983), B.C.J. No. 2249 (Q.L.), the British Columbia Court of Appeal makes this clear:
>
> > 14 Section 52(2)(b) of the *Family Relations Act* empowers the Court to order that title to a specified property in the name of one spouse vest in the other spouse. That order has the effect of a conveyance. But conveyance of such title is subject to registered charges under the Land Title Act. In this case the wife could not acquire, by vesting order or otherwise, an interest greater than that which her husband held at the date of the registration of the order. The interest of the husband was subject to the judgments registered against him in the Land Title office. Any interest of the husband vested in the wife must be subject to those judgments. The appeal of Goult, McElmoyle & Wilson must be allowed.
> >
> > [Emphasis added]
>
> [58] It is clear that Ms. Hurst acquired no proprietary interest in Mr. Gill's joint tenant interest until the trial judge so decided on October 10, 2010. Wickwire Holm's judgment was recorded August 5, 2009.
>
> [Emphasis added]

[46] The next category addressed the trial judge's finding that Wickwire Holm, as Mr. Gill's former solicitors, had "notice" of Ms. Hurst's potential claim to an unequal division of the matrimonial home:

> [59] In determining that Ms. Hurst's claim to Mr. Gill's portion of the sale proceeds of the matrimonial home should have priority over the Wickwire Holm judgment, the trial judge also found that Wickwire Holm had "notice" of Ms. Hurst's potential claim to an unequal division of the matrimonial home:
>
> > [76] I find the reasoning adopted in *Barnes* compelling. Although here Mr. Gill and the judgment creditor did not endeavour together to encumber a matrimonial asset to secure legal fees, the end result is the same. I also find that *Maroukis*, *supra*, is distinguishable, as Wickwire Holm was fully aware of the litigation between the parties and the potential that the matrimonial home, or its value, may ultimately be divided unequally between the parties. In the circumstances of this case, I order that the Wickwire Holm judgment shall only attach to Mr. Gill's remaining equitable interest in the matrimonial home, namely, those funds remaining in trust after payment of Ms. Hurst's one-half share and equalization payment.

[60] With respect, the reliance on *Barnes* (2006 ABQB 855) is misplaced. *Barnes* was not a dispute arising from a statutory right to a division of matrimonial assets. Rather, in *Barnes*, the husband claimed that he had actually purchased the vehicle on which security had been granted by Mrs. Barnes and therefore he was the equitable owner. Leaving aside any presumption of advancement, this would make Mrs. Barnes a trustee of the vehicle under a resulting trust for Mr. Barnes. The court quite properly concluded that the extent of Mr. Barnes' equitable (i.e. proprietary) interest in the vehicle was a matter to be determined at trial. Since the law firm knew that Mr. Barnes claimed an interest in the vehicle, the law firm was not a "bona fide creditor" without notice and could not claim a security interest in the property free and clear of the interest of Mr. Barnes – whatever that interest may ultimately have been. *Barnes* can be explained on traditional property principles – the law firm could not acquire a greater security in the vehicle than Mrs. Barnes actually owned. The law firm was not a "bona fide creditor" because it was aware of Mr. Barnes' equitable claim to the motor vehicle, prior to taking judgment. In this case, Ms. Hurst could have no interest until the court granted one. She had no prior existing equitable property interest.

[61] In para. 71 of her decision, quoted in para. 53 above, the trial judge confuses equitable and statutory rules as they apply to property ownership. In effect, she says that the presumption of joint ownership can be changed by a statutory exercise of discretion creating an unequal division of assets.

[62] It is important in this case to distinguish between statutory and equitable discretion. Courts do not have an equitable jurisdiction to rearrange existing property rights in the absence of known property principles (ie., as in a resulting trust arising from the purchase of property by another). In contrast to this equitable jurisdiction, the *MPA* does give courts a statutory jurisdiction to alter property interests to achieve an appropriate balancing of assets and liabilities between the parties.

[63] The difference between statutory and equitable discretion is important for priorities. When a court recognizes an equitable interest in property, it recognizes an existing *right* of which others can have prior notice (as in *Barnes*). Not so with a division of assets under the *MPA*. In that case, no property right arises until the court so orders (see para. 56 above). The presumption of equal ownership in s. 21 of the *MPA* is a presumption of the donor's intention (*Kerr v. Baranow*, 2011 SCC 10, paras. 17, 18, 24) and does not anticipate a potential change of ownership based on an unequal division of assets under the *Act*. Rather, it is a rebuttable presumption relating to the existing property rights of the parties (see discussion of Hallett J. in *Levy v. Levy Estate* (1981), 50 N.S.R. (2d) 14).

[Emphasis added]

[47] The next category dealt with whether Mr. Gill encumbered the matrimonial home, contrary to s. 8 of the *MPA*. The majority held that s. 8 "contemplates some positive act by an owner that grants an interest to a third party" (para. 65). After setting out the provision, Bryson J.A. wrote:

> [66] The prohibition in s. 8 uses the active verbs "dispose" and "encumber", referring to spousal conduct. All other subsections of s. 8 merely describe when that otherwise prohibited spousal conduct is effective to dispose of, or encumber an interest in a matrimonial home. For example, ss. (a) sanctions a disposing or encumbering when the "other spouse" signs the "instrument of disposition or encumbrance". Legal and commercial practice has evolved to accommodate this subsection by the use of spousal releases and affidavits. This language and practice does not capture the acts of a third party who records a judgment under the *LRA*. To imply that third party judgments are caught by s. 8 merely because a creditor knows that a debtor owns a matrimonial home creates two classes of judgment creditors: those enjoying secured priority under s. 66 of the *LRA* and those whose security can be compromised by the court because they knew that their debtor owned a matrimonial home. So, typically, a trades person working on a matrimonial home could lose priority while a credit card company, ignorant of the debtor's matrimonial home, would not. The trial judge's interpretation is unsustainable because:
>
> (a) it does violence to the clear language of s. 8;
>
> (b) it is inconsistent with the jurisprudence interpreting similar sections in other jurisdictions (paras. 67-70 below);
>
> (c) it ignores the policy that favours commercial creditors over spousal creditors (paras. 50 and 51 above); and
>
> (d) it creates different classes of secured creditors.
>
> [67] In this case, Wickwire Holm obtained a charge on the matrimonial home owing to the statutory effect of registering its judgment under the *LRA*. This is not a step or an act taken by Mr. Gill – indeed he aggressively resisted the Small Claims Court proceeding. Rather, Wickwire Holm enjoys its charge as a matter of law. Section 8 of the *MPA* has no application. In *Maroukis*, the Supreme Court also dealt with this argument. Section 42 of the *Family Law Reform Act* prohibited a spouse from disposing or encumbering any interest in the matrimonial home without, amongst other things, the consent of the other spouse. Faced with a similar argument to that advanced by Ms. Hurst here, the Supreme Court said (p. 144):
>
> ...Furthermore, the prohibition in s. 42 is against a disposition or an encumbrance of an interest in a matrimonial home by a spouse. Giving those words their plain meaning in the context in which they are used in s.

> 42, it is my opinion that they cannot be extended to include an execution taken by creditors of one to the parties to the marriage.

[68] To like effect are *Bank of Montreal v. Bray* (1997), 36 O.R. (3d) 99 (C.A.), and *First City Trust Co. v. McDonough* (1993), 15 O.R. (3d) 586 (Ont. Gen. Div.), where Borins J. said:

> 16 ...It is not the indirect results of commercial transactions which s. 21(1) seeks to engage but rather direct transactions relating to the matrimonial home such as the sale or mortgaging by a spouse of his or her interest in the matrimonial home without the consent of the other spouse. ...

First City was followed by Wells J. (as he then was) in *Enterprise Newfoundland and Labrador Corp. v. Kawaja* (1997), 153 Nfld. & P.E.I.R. 230.

[Emphasis added]

[48] Bryson J.A. proceeded to discuss two Ontario decisions which treated a judgment as an encumbrance which offends statutory prohibitions against encumbrances:

> [70] There are at least two recent decisions which treat a judgment as an encumbrance which offends statutory prohibitions against encumbrance, similar to s. 8(1) of the *MPA*. In *Boyd v. Boyd*, [2008] O.J. No. 180 (Q.L.), the solicitor of the husband obtained a judgment and registered it against the matrimonial home. In *Boyd*, the solicitor's lawsuit for fees was not opposed by the husband. At paras. 19 and 21, the trial judge expressed his concerns:
>
> > 19 ...The potential mischief in permitting such encumbrances is obvious. Unscrupulous litigants could agree to an encumbrance by a non arm's length nominee. Inflated accounts for legal services to which the spouse has no access could shield assets from equalization or anticipate fees to provide a "war chest" for litigation to the disadvantage of the untitled spouse in the litigation about the very subject matter of the encumbranced property. The scope of the illegitimate use of this mechanism to defeat spousal claims is curtailed here only by my lack of nefarious imagination.
> >
> > . . .
> >
> > 21 I am not persuaded by the argument that the Applicant's best position on equalization is covered by the remaining proceeds. Even if that be so in this case, which I do not find but accept for the purposes of argument, the principal**[sic]** that a lawyer and client can agree to encumber the matrimonial home, in an amount which they estimate leaves sufficient for equalization, invites disaster even if they estimate in good faith. Regrettably, there is plenty of not so good faith in matrimonial litigation.

> [71] Similarly, in *Walduda v. Bell*, [2004] O.J. No. 3071, the wife's sister loaned her large sums to finance litigation against her husband. The judge found that the wife could not repay these loans and indeed that this was never intended by the wife or her sister, who obtained a registered judgment which was unopposed by the wife. The judge concluded that the judgment was not an arm's length transaction and so constituted an "encumbrance" contrary to the intent of the Ontario equivalent of s. 8 of the *MPA*. The judgment was set aside.
>
> [72] Neither *Boyd* nor *Bell* – assuming that they are correctly decided – can assist Ms. Hurst here because those judgments were either not arm's length (*Bell*) or not resisted *(Boyd* and *Bell*), so could be construed as acts of the spouse encumbering an interest in the matrimonial home. In this case, Mr. Gill actively opposed his solicitor's attempt to obtain judgment. His position cannot be assimilated to that of a supine debtor who colludes with his creditor in obtaining a judgment that subsequently encumbers his property.
>
> [Emphasis added]

[49] Bryson J.A. held that Ms. Hurst could not rely on s. 10(1)(d), either:

> [73] Section 10(1)(d) of the *MPA* empowers the court to set aside a disposition or encumbrance on terms:
>
> > 10 (1) The court may by order, on the application of a spouse or any other person having an interest in property,
> >
> > > (d) direct the setting aside of any disposition or encumbrance of an interest in a matrimonial home and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.
>
> This section has been invoked to set aside a mortgage obtained by one spouse in breach of s. 8(3) of the *MPA*: *Agirman v. Bank of Nova Scotia*, 2003 NSCA 70. Although s. 10(1)(d) captures more than a breach of s. 8 of the *MPA*, it is not a license to rearrange the property interests of third parties, absent a breach of the *Act*, inequitable conduct or other wrongdoing. That would be inconsistent with the policy reasons that give priority to third party creditors over spouse creditors (paras. 50 and 51 above). For reasons set out in para. 63 and following, the Wickwire Holm judgment did not involve inequitable conduct or wrongdoing by the firm or constitute a breach of s. 8 by Mr. Gill. Accordingly, the remedial power of s. 10 is not engaged.
>
> [Emphasis added]

[50] Finally, Bryson J.A. addressed the trial judge's finding that s. 8(1)(c) of the *MPA* required that Ms. Hurst be given notice of Wickwire Holm's Small Claims Court taxation:

[74] The trial judge also found that s. 8(1)(c) of the *MPA* required that Ms. Hurst be given notice of Wickwire Holm's Small Claims Court taxation:

> [75] ...However, Ms. Hurst was unaware of the Small Claims Court proceeding. It is my view that Section 8(1)(c) requires not only the opportunity for both spouses to be permitted to make representations to the Court considering an order of disposition or encumbrance, and secondly, the Court itself must be fully cognizant that it is making an order which is specifically intended to have that result.

[75] While such notice may have been prudent, it is not clear how its absence prejudices the Wickwire Holm judgment. Ms. Hurst had no interest in Wickwire Holm's taxation. Moreover, the taxation and consequent judgment did not, for the reasons already expressed, constitute a disposition or encumbrance within the meaning of 8(1)(c). It was not her bill that was in issue. It was not her existing interest in the matrimonial home that could be affected by the judgment. The Small Claims Court would have no jurisdiction to refuse Wickwire Holm its judgment or to prevent Wickwire Holm from recording it under the *LRA*.

[Emphasis added]

[51] According to Bryson J.A., there were only three bases upon which Ms. Hurst's position could have been vindicated:

> [76] In my view, there are only three bases upon which the position of Ms. Hurst could have been vindicated here: either as a matter of property law; as a matter of matrimonial legislation; or, as a matter of equity. The first does not assist because Ms. Hurst had no property interest until the trial judge made an unequal division of the proceeds of the sale of the matrimonial home. The second does not assist because the *MPA* itself does not permit the retroactive rearrangement of property interests to the detriment of third parties; and the third does not assist because Wickwire Holm had no notice of any proprietary interest of Ms. Hurst prior to registration of its judgment and had otherwise done nothing inequitable (i.e., misuse of confidential information) in obtaining that judgment.
>
> [77] Wickwire Holm raised the potential for commercial mischief if its judgment were set aside. But the trial judge was not concerned about any general ill effect of denying Wickwire Holm its priority:
>
> > [77] With respect to the view expressed by Mr. MacKinnon to the contrary, this determination will not throw the usual course of business transactions into chaos when attempting to enforce legitimate judgments against matrimonial assets. In the vast majority of instances, judgment creditors will be bona fides, with no knowledge of looming matrimonial disputes. Other than in exceptional circumstances, as the Court faced in this instance, the enforcement of judgments will continue in the usual course.

[78] But here is the problem: Of what, precisely, did Wickwire Holm have notice? Certainly, it had no notice of a property interest because none arose until the actual decision was made. At best, the firm had notice of a potential claim (none was actually asserted) to an unequal division of the matrimonial home that may or may not have succeeded. But that cannot be enough which is why, absent a breach of the *MPA* or fraud, parties need take no notice of claimed interests – proprietary or not – that have not been recorded under the *LRA*. And are we to say that "equity" requires that such knowledge binds the conscience of Wickwire Holm? Then why not anyone else who knows – or who disputing spouses choose to tell? Why not other creditors who become – or are made aware – of the claim? Spousal disputes are notorious for acrimony and bad behaviour – freezing a spouse's credit by informing his or her creditors of a matrimonial dispute would simply be another means of exerting undue pressure at the instance of unscrupulous spouses.

[79] If Wickwire Holm loses priority of its judgment because it knew of the possibility of an unequal division of the matrimonial assets, all creditors would face the same risk when told of a matrimonial dispute. They could no longer rely on recorded ownership of property under the *LRA* or otherwise. This could have the unfortunate effect of retarding credit to spouses when, arguably, they most need it. Absent a breach of the *MPA* or misconduct of some kind, there is no principled basis by which to "red-circle" lawyers alone in such a class of creditors.

[80] It may be argued that the effect of upholding the Wickwire Holm judgment is to do indirectly what cannot be done directly, because Mr. Gill could not grant his lawyer a mortgage over his interest in the matrimonial home without Ms. Hurst's consent, as that would contravene s. 8 of the *MPA*. But this consequence does not flow directly from Mr. Gill's conduct, but rather because the *MPA* itself only proscribes a party actively encumbering his or her interest in the matrimonial home. That proscription does not extend to a third party doing so by virtue of the statutory effect of the *LRA*. Again, this is consistent with the legislative policy of balancing property interests generally with those arising out of matrimonial property legislation (see paras. 50 and 51 above).

[81] Similarly, the trial judge's concern that giving priority to the Wickwire Holm judgment results in Ms. Hurst "paying" Mr. Gill's legal fees, focuses on the practical and indirect effect of that priority, rather than on its legal basis. The corollary of this argument is that Wickwire Holm is "paying" Mr. Gill's equalization amount to Ms. Hurst. With respect, Mr. Gill's means or lack thereof cannot determine the priority of judgments which have acquired secured status under the *LRA*, or be a principled basis for impairing that security or priority by the exercise of judicial discretion under s. 10(l)(d) of the *MPA*. So, for example, an unpaid plumber, electrician or other creditor would be entitled to record a judgment and thereby acquire a secured interest in Mr. Gill's joint tenancy under s. 66 of the *LRA*. Lawyers are not excluded from this class of creditors simply by virtue of their profession.

> [82] Nor is it a question of whether the discretion in s. 10(1)(d) of the *MPA* might extend to affect third party creditors, but whether there is an appropriate basis to ignore the priority of a properly obtained judgment in this case. The trial judge's decision to neuter Wickwire Holm's judgment cannot be insulated by invoking her discretion regarding costs. Costs is a matter of entitlement, not collection. Impairing the priority of a judgment to effect a desired result cannot be a proper exercise of discretion because it confuses rights with remedies – and subordinates the former to the latter.
>
> [83] I emphasize that here we are dealing with the priority of a judgment under the *LRA* in the context of a division of matrimonial assets. This is not a case where a judgment for maintenance and support (lump sum or otherwise) enjoys a priority over other judgments as provided for in the *Maintenance Enforcement Act*, S.N.S., 1994-95, c. 6.
>
> [Emphasis added]

[52] In *MacIsaac*, the Byers, as vendors, entered into an agreement of purchase and sale with the Marmuras on March 11, 2009. The purchase price for the property was $310,000, and the closing date was to be June 30, 2009. Prior to the purchase and sale agreement being signed, the Toronto-Dominion Bank ("TD") sued John Byers. It obtained default judgment in the amount of $260,152.88 on December 9, 2008. The judgment was not recorded in the judgment roll until April 9, 2009, almost one month after the purchase and sale agreement was executed, but it was recorded prior to the closing date.

[53] On March 13, 2009, the Royal Bank of Canada ("RBC") sued John Byers, claiming $10,004.74. Mr. Byers did not defend the action and on April 24, 2009, the bank obtained default judgment. The judgment was recorded in the judgment roll on May 1, 2009, almost two months after the purchase and sale agreement was executed, but prior to the closing date.

[54] The appellant, Daniel MacIsaac, was the lawyer retained by both the Byers and Marmuras to represent them on the purchase and sale. On June 30, 2009, the property was conveyed to the Marmuras by warranty deed. Mr. MacIsaac said he checked the Property Online Parcel Register for the subject land, and the registry did not reveal either of the judgments. Prior to closing, he failed to check the Grantor/Grantee Index, which would have included the judgment roll. Scanlan J.A., for the court, explained how this situation could occur:

> 7. Judgments are initially recorded in the judgment roll in each district. The judgment roll is not a part of the parcel register. When a property is conveyed, a "qualified lawyer" as defined in the *LRA* is obliged to search the judgment roll and

> note in the parcel register any judgments that may affect the parcel. This means all judgments affecting the parcel register must be included unless they are released prior to closing. The practise standards of the Nova Scotia Barristers' Society (standard 3.5) mirror this requirement.
>
> [Emphasis added]

[55] Eight and a half months after the closing (March 17, 2010), counsel for TD advised Mr. MacIsaac of the TD judgment. On April 28, 2010, counsel for RBC advised him of the RBC claim for priority. The property was sold without either of the two judgments having been released in whole or in part. The vendors had disappeared with the sale monies.

[56] TD and RBC filed applications requesting an order declaring that the lands at issue be subject to their recorded judgments and that the parcel register be amended to add TD and RBC as judgment holders. The Marmuras argued that the lands as purchased were subject to a common law trust created by the agreement of purchase and sale prior to the judgments being registered. They asked the court not to permit the amendment of the parcel register to add the judgments.

[57] Scanlan J.A. described the issue on appeal as follows:

> [10] The issue in this appeal is whether the common law "relation back theory" applies so that upon signing of the purchase and sale agreement the vendors held the lands in trust for the purchasers. If so, did this mean the vendors did not have an interest in the lands to which the judgments could attach at the time they were entered in the judgment roll and at the time of the closing?

[58] After reviewing several authorities, the court noted:

> [18] Considering the above, I accept that the common law in Nova Scotia prior to the enactment of the *LRA* was such that, in the circumstances of this case, the judgment would not attach to the lands. The vendors would have been holding the lands in trust for the purchasers in accordance to the long recognized "relation-back" theory.

[59] Scanlan J.A. went on to consider whether the *LRA* changed the common law as it relates to the "relation back theory" of equitable trusts:

> [24] The stated purpose of the Act is set out in section 2 as follows:
>
> 2 The purpose of this Act is to
>
> (a) provide certainty in ownership of interest in land;

> (b) simplify proof of ownership of interests in land;
>
> (c) facilitate the economic and efficient execution of transactions affecting interests in land; and
>
> (d) provide compensation for persons who sustain loss in accordance with the Act.

[25] In *Nova Scotia (Attorney General) v. Brill*, 2010 NSCA 69 Justice Fichaud at ¶69 discussed Section 2 of the *LRA* and referenced the legislative debates that occurred on introduction for second reading of the Bill. He quoted the following passage from that debate:

> [69] …This bill would make substantial changes to the process of regulating properties in Nova Scotia, moving from what is essentially a 250 year old paper based system to a modern, electronic format. Most importantly, the new legislation would provide greater certainty about property ownership across Nova Scotia. …
>
> The public interest in this streamlined system, with security of title combined with the cost of maintaining the current system, are reason enough to close the vault doors on the status quo …
>
> Let me recap what our legislation proposes. Firstly, Mr. Speaker, the government would guarantee ownership of all parcels of land registered in the system. … Secondly, the state of title would be certified by lawyers in the private sector, performing the same investigations that they do today. Parcels of land would be registered after one final historic title search and the lawyers' certificates would form the basis of the government guarantee of ownership. Thirdly, the registration of a property in the system would be conclusive as to the ownership of their land.
>
> [Nova Scotia House of Assembly, Hansard, No. 01-4, March 27, 2001, 00. 205-206]

[26] There were many aspects of the common law that were retained when the *LRA* came into effect. The intention to retain is reflected in discussion papers and legislative debates.

[27] In the *Registry 2000, Land Records Reform, "Discussion Paper on Land Registration Act for Nova Scotia"* (Land Records Reform Office, Halifax, January 200), p.ii, it was noted under the heading of "Highlights of the Proposed Land Registry System":

> Evolutionary not revolutionary: The substantive law is virtually unchanged. The system "floats" on existing law. (emphasis in original)

Within the *LRA* "law" is defined to mean:

> 3(1) In this Act

> (h) "law" means the law in force in the Province, including enactments and principles of common law and equity.

[28] The above-noted discussions are clearly reflective of an intention of the legislators to retain at least some of the common law as it relates to real property in Nova Scotia. Although it was intended that some of the substantive law remain unchanged, it was also intended that some be altered, including that involving constructive notice and the effect of a recorded mortgage on title. I am satisfied the position of judgment creditors and the effect of recording a judgment in a judgment roll has also been altered by the *LRA*.

[29] There are several provisions within the *LRA* that limit the effect of unrecorded instruments such as the purchase and sale agreement in this case. I refer to s. 45(1) which provides:

> 45(1) Except as against the person making the instrument, no instrument, until registered or recorded pursuant to this Act, passes any estate or interest in a registered parcel or renders it liable as security for the payment of money.

[30] This section suggests that while an unrecorded purchase and sale contract may be effective as against the vendor, it does not pass title. The "relation back theory" relies upon the notion that upon signing a purchase and sale agreement a trust was created and the vendor is left with no beneficial interest for the judgment to attach to. The creation of that trust required at least transfer of an interest. Section 45(1) of the *LRA* makes it clear that such transfers are only effective as against the person making the instrument.

[31] The system created by the *LRA* is, according to the stated purpose as noted above in s. 2, intended to create certainty in ownership. It is hard to imagine anything that clouds the issue of ownership more than unregistered purchase and sale agreements that may pass a beneficial interest without notice. The *LRA*, on its face, requires transfer of interest in land to be a matter of record as evidenced only by the parcel register. Section 20 of the *LRA* provides:

> 20 A parcel register is a complete statement of all interests affecting the parcel, as are required to be shown in the qualified lawyer's opinion of title pursuant to Section 37, subject to any subsequent qualifications, revisions of registrations, recordings or cancellation of recordings in accordance with this Act.

[32] There is a process of compensation for those who sustain a loss in accordance with the *LRA*. All of this speaks to the intention of the legislators to make the parcel register the only way to transfer any estate or interest in land.

[33] Although *Brill* involved the issue of Crown grants and possessory title Fichaud J.A. pointed out that the heart of the *LRA* is s. 20 [as replaced by S.N.S. 2008, c.19, s.11]. This, says Justice Fichaud, achieves "certainty of ownership".

The parcel register becomes the root of title. The parcel register's status as a complete statement of all interests is predicated on the lawyer's certificate being complete and accurate. The Registrar General will compensate any person who suffers a loss because of an error or omission in the parcel register (s. 85(1)(a)). If that loss is as a result of the lawyer's negligence in certification as to the completeness of the record, then the lawyer is liable to repay the Registrar General if the Registrar General pays compensation within ten years after the lawyer's certificate.

[34] There are also specific provisions in the *LRA* that deal with judgments. I refer to relevant portions of s. 65 and s. 66 of the *LRA* as follows:

> 65(4) A judgment recorded in a judgment roll binds and is a charge upon any registered interest of the judgment debtor within the registration district, whether acquired before or after the judgment is recorded, from the date the judgment is recorded until the judgment is removed from the roll.
>
> 66(1) A judgment is a charge as effectually and to the same extent as a recorded mortgage upon the interest of the judgment debtor in the amount of the judgment.

A combination of s. 37A(1)(d), ss. 5(1), (2), and 4(1) of N.S. Reg. 207/2009 as amended by N.S. Reg. 189/2010 and Form 24, requires a lawyer to search the judgment roll for relevant judgments and seek to have them added to the parcel register at the time of conveyance.

[35] Clearly the judgments in question should have been noted from a search in the judgment roll and incorporated into the parcel register.

[36] Section 66(1) is somewhat similar to the now repealed provisions in the *Registry Act*, s. 20 which provided:

> 20 A judgment, a certificate of which is registered in the manner by this Act provided in the registry of any district, shall, from the date of such registry, bind and be a charge upon any land within the district of any person against whom the judgment was recovered, whether such land was acquired before or after the registering of such certificate, as effectually and to the same extent as a registered mortgage upon such land of the same amount as the amount of such judgment. *(repealed 2001, c. 6,s.123)*

[37] In spite of the similarities between the two sections, I am satisfied s. 66(1) of the *LRA* must be read considering the provisions of other sections of the *LRA*, specifically, ss. 2, 20 and 45 as noted above. When they are considered as a whole I am satisfied they in fact make a substantive change to the common law in terms of the effect of the recording of a judgment against a vendor after they have entered into an unrecorded agreement of purchase and sale. An unrecorded common law trust, such as the appellant says exists in this case, does not pass any interest in the

> vendor's lands. A conveyance of an interest in land in Nova Scotia is now effected through the parcel register as created in accordance with the *LRA*.
>
> …
>
> [39] In the future there will still be issues best resolved by the courts. An example of this was in *Hurst* where Bryson, J.A. considered the issue of whether a judgment took effect as a claim in priority to a subsequently declared interest acquired under the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275**.** The case involved a judgment against one of the divorced parties. There was an issue of priority of interest in the home. That case turned on the issue of the timing of when the spouse acquired her interest pursuant to the provisions of the *Matrimonial Property Act*. …
>
> [40] Under the *LRA* interests in land are only effected through registration or recording in a parcel register. An unrecorded purchase and sale agreement cannot, according to the provisions of the *LRA*, effect a transfer of an interest. In *Hurst* the spouse had an interest that was not ascertainable until a final division was made under the *Matrimonial Property Act* so the judgment at issue had priority over the claim under that *Act*.
>
> [41] Recognition of trusts such as those created pursuant to the "relation back theory" would throw the *LRA* conveyancing system, including the indemnity provisions, into a state of chaos. The *LRA* is a title system as compared to the notice system as created by the *Registry Act*. The title system assures persons acquiring an interest in property that only registered interests will affect title.
>
> [42] The *LRA* relies upon a "qualified lawyer", submitting to the Registrar General a list of all judgments to be added to a parcel registry at the time of a revision (conveyance). That system depends upon the "qualified lawyer" doing a proper search, including a search of the judgment roll to determine whether a judgment may affect a particular parcel. The appellant did not conduct a search of the judgment roll and bring the judgments into the parcel register as he was required to do in accordance with the *LRA* and its Regulations. The lower court was correct in directing the amendment of the parcel register to include the two judgments.
>
> [Emphasis added]

[60] The court rejected the "relation back theory" and noted that recognition of such trusts would throw the *LRA* into chaos. There is no case law provided to me on this motion which would have me conclude that there is some exception in the facts of this case.

[61] Importantly, the court's comments at para 2 of the decision foreshadowed issues which may be caused in the future:

> The operation of the system is dependent and relies upon "qualified lawyers" as defined in s. 3(q) of the *LRA*, accurately documenting various interests which affect land parcels.
>
> [Emphasis Added]

Principles from *Hurst* and *MacIsaac*

[62] *Hurst* and *MacIsaac* establish the following:

- The system created by the *LRA* is intended to create certainty of ownership. It assures persons acquiring an interest in property that only registered interests will affect title.
- The *LRA*, on its face, requires any transfer of interest in land to be a matter of record as evidenced only by the parcel register.
- The legislators' intention was to make the parcel register the only way to transfer any estate or interest in land.
- Absent a breach of the *MPA* or fraud, parties need take no notice of claimed interests – proprietary or not – that have not been recorded under the *LRA*.
- At common law, a judgment did not attach to land if, at the time the judgment was registered, the judgment debtor had already disposed of his or her beneficial interest in the land. In other words, a judgment could only attach to lands in which the judgment debtor had a beneficial interest.
- The *LRA* has altered the common law in relation to the position of judgment creditors and the effect of recording a judgment in a judgment roll.
- Under the land titles system, an unrecorded common law trust does not pass any interest in land.
- When a judgment creditor records its judgment under the *LRA*, it obtains a charge on the judgment debtor's property as a matter of law.
- Section 8 of the *MPA* contemplates a positive act by an owner that grants an interest to a third party. It applies only to direct transactions relating to the matrimonial home, such as the sale or mortgaging by a spouse of his or her interest.

- In the two Ontario trial level decisions where a judgment has been treated as an encumbrance which offends statutory provisions like s. 8, the judgment creditor and the debtor spouse effectively colluded to encumber the matrimonial home.
- The Court of Appeal did not deal with whether the two Ontario decisions were correctly decided, but they appear to be irreconcilable with its own finding that s. 8 "does not capture the acts of a third party who records a judgment under the *LRA*", which follows the Supreme Court of Canada's decision in *Maroukis v. Maroukis*, [1984] 2 S.C.R. 137.
- Section 10(1)(d) of the *MPA* is not a license to rearrange the property interests of third parties, absent a breach of the *Act*, inequitable conduct or other wrongdoing.
- Impairing the priority of a judgment to affect a desired result cannot be a proper exercise of discretion because it confuses rights with remedies – and subordinates the former to the latter.

Applying the case law

Notice

[63] I will deal first with MacDonald's argument that RBC is not entitled to the relief it seeks because it failed to give her notice of the action in which it obtained judgments against Campbell. MacDonald relies on s. 9(1) of the *MPA*. For convenience, s. 9(1) again states:

> **Notice to both spouses**
>
> 9 (1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of this Act has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

[64] MacDonald's position ignores the actual language used in the provision. Section 9(1) applies where a person is *proceeding to realize upon a lien, encumbrance or execution*, *or to exercise a forfeiture* against a property that is a matrimonial home. At the time of its actions against Campbell, RBC had no lien or encumbrance or execution to realize upon. It was not until RBC recorded its

judgments that it obtained a charge on the Property. If RBC intended to ask the Sheriff to execute on the land, MacDonald would be entitled to notice under s. 9(1) that RBC was proceeding to realize upon its encumbrance.

Constructive Trust

[65] MacDonald argues that once the Supreme Court of Nova Scotia issued the CRO, she became the equitable owner of Campbell's interest, which meant that John held no beneficial interest to which RBC's judgments could attach.

[66] MacDonald appears to be correct that at common law, the issuance of the CRO would have created a constructive trust. *Halsbury's Laws of Canada - Trusts* (2024 Reissue) states at HTR-72, in relation to circumstances in which a constructive trust arises:

> Beneficial title may also pass to a constructive beneficiary when an owner of property is ordered by a court to transfer a specific asset to another, as frequently occurs in relation to a matrimonial home. In such circumstances, a constructive trust is impressed upon the asset in question at the time of the order coming into effect.

[67] Likewise, in D. Waters, ed., *Waters' Law of Trusts in Canada*, 5th Ed. (Thomson Carswell: Online), at 11:II(5)(b):

> In other cases, the obligation on the defendant which founds the trust may arise out of a judgment. In *Mountney v. Treharne* [(2002), [2003] Ch. 135 (Eng. C.A.)], a husband was ordered in matrimonial property litigation to transfer his interest in the matrimonial home to his wife. The order did not declare a constructive trust. Before he complied, he became bankrupt. The issue was whether his interest in the home passed to his trustee in bankruptcy for the benefit of his creditors. The Court held that it did not. "Equity treats that as done which ought to be done", and the wife was held to have an Equitable interest in the husband's share of the home, which bound the trustee in bankruptcy, as soon as the order was made. The effect, then, is that an obligation relating to the benefit of specific property, created by a court order which did not purport to declare a constructive trust, had the effect of creating such a trust. Similar is *In re Morris*, [260 F.3d 654 (6th Cir., 2001)] in which the defendant agreed to convey land to the plaintiff in a settlement of litigation; the agreement was incorporated into a judgment, although the judgment did not declare any trust. The defendant, however, became bankrupt before making the conveyance. The Court of Appeals for the Sixth Circuit, which had earlier expressed some hostility to constructive trusts in bankruptcy, held on these facts that a constructive trust arose at the moment that the settlement was made, and was effective in the bankruptcy. An unconditional obligation to convey property has

> always been understood to generate a trust of the asset to be conveyed, and this description clearly applies to an obligation created by a court order.
>
> The tendency of Equity is clearly to make any obligation that relates to the benefit of specific property into a trust. This tendency has always created a tension between the interests of the beneficiary of that obligation, and the interests of other debtors of the creditor. Every constructive trust leaves fewer assets to satisfy their just claims. Their interests must never be ignored, but creditors are not in the position of purchasers for value, and so the tendency to find constructive trusts is unlikely to abate.
>
> [Emphasis added]

[68] However, in my view, MacDonald is incorrect that the existence of this constructive trust prevents RBC's judgments from attaching to the Property. The premise for MacDonald's position is identical to that underlying the "relation back theory", which "relies upon the notion that upon signing a purchase and sale agreement a trust was created and the vendor is left with no beneficial interest for the judgment to attach to" (*MacIsaac*, para. 30). As Scanlan J.A. noted in *MacIsaac*, "[t]he creation of that trust required at least transfer of an interest", and "[s]ection 45(1) of the *LRA* makes it clear that such transfers are only effective as against the person making the instrument" (para. 30).

[69] There is no basis to find that the *LRA* changed the common law in relation to one unrecorded trust instrument (agreement of purchase and sale) and not the other (court order under the *MPA*). Moreover, such a finding would be inconsistent with s. 54 of the *LRA* and s. 20(1) of the *MPA*, both of which specifically contemplate the effect of an unrecorded or unregistered court order and reflect the legislature's intention that these unrecorded instruments will not prejudice the interests of third parties acting in good faith without notice of the order.

[70] In *MacIsaac*, Scanlan J.A. observed that "[i]t is hard to imagine anything that clouds the issue of ownership more than unregistered purchase and sale agreements that may pass a beneficial interest without notice" (para. 31), and that "[r]ecognition of trusts such as those created pursuant to the 'relation back theory' would throw the *LRA* conveyancing system, including the indemnity provisions, into a state of chaos" (para. 41). These statements apply equally to constructive trusts created pursuant to unrecorded or unregistered court orders.

[71] Although this outcome might seem unjust, there were several mechanisms available to MacDonald that would have protected the Property from any judgments

against Campbell being recorded against it in the five years between issuance of the CRO and the recording of RBC's judgments. When Campbell failed to execute the Deed "forthwith", MacDonald could have filed a contempt motion to force him to do so. There were also multiple options available to her under the *LRA*. She could have filed a *lis pendens*. In *Pieroway v. Pieroway*, 1998 ABCA 68, the court found that a certificate of *lis pendens* filed by a spouse under a land registry system gave the spouse's claim to an interest in the matrimonial property priority over a judgment. The separation order did not give such priority without a recorded interest in the registry system. MacDonald could also have recorded the CRO itself or applied under s. 92 for a court order requiring the registrar to revise the Property's registration to reflect the transfer of Campbell's half interest to her.

[72] The only evidence offered by MacDonald as to what steps she took from October 2016 to November 2021 is found in her affidavit:

> 6. Despite the Court's Order, Mr. Campbell did not immediately execute the Quit Claim Deed. I had no control over his delay.
>
> 7. I returned to family court several times to address the execution of the Quit Claim Deed.

[73] These vague statements provide no information as to when MacDonald "returned" to court or what she did there. There were certainly no court documents filed. Her current counsel said she could not explain why nothing was done prior to the judgments being recorded because she was not MacDonald's counsel at the time.

[74] The relief MacDonald seeks from the court now, a refusal to record the judgment, would upend the *LRA* when there were several options available under it that MacDonald could have taken to avoid the current situation. The court has no evidence as to whether MacDonald sought legal advice, but if she did, these options ought to have been discussed with her. Unfortunately, unless or until it is recorded, a CRO is only effective as between the parties to it. As noted in *Singh v. Mangat*, 2016 ABQB 349:

> 123 In the result, the MPA proceedings adjust the ownership interests as between spouses, but not necessarily as between creditors. …

The Support Issue

[75] Counsel for MacDonald raised the point that under the CRO, Campbell was required to continue paying the mortgage on the Property until such time as he provided Jacqueline with the equalization payment of $24,820.52, along with the

lump sum payment of $48,072.31. Child support payments, which would be payable through the office of the Director of Maintenance Enforcement, would not commence until those lump sums were paid. Counsel indicated in her email to the court dated October 22, 2025, that the lump sums were not paid, and that "the mortgage was paid until the date of the transfer to Ms. MacDonald in lieu of ongoing child support and adjusted toward the lump sum support (which was still outstanding)." These facts are not in evidence. There is no affidavit evidence filed on this point. In MacDonald's affidavit, she indicated only that:

> 11. While redacted from the order, I did not retain this property free and clear, it was encumbered by a mortgage which I paid directly and through support since 2015. I also equalized other matrimonial property such that Mr. Campbell had no beneficial interest in this property since our Corollary Relief judgment in 2015.
>
> [Emphasis added]

[76] Even if the court had evidence upon which to find that Campbell made mortgage payments on the Property in lieu of child support, MacDonald's counsel has not articulated a legal or equitable basis upon which this fact would allow the court to ignore the priority of a properly obtained judgment by a third party without notice of the CRO.

[77] In *Hurst*, Bryson J.A. noted:

> [83] I emphasize that here we are dealing with the priority of a judgment under the *LRA* in the context of a division of matrimonial assets. This is not a case where a judgment for maintenance and support (lump sum or otherwise) enjoys a priority over other judgments as provided for in the *Maintenance Enforcement Act*, S.N.S., 1994-95, c. 6.
>
> [Emphasis added]

[78] Like *Hurst*, the present case does not involve a judgment for maintenance and support. Nor is MacDonald seeking to enforce a maintenance order. Section 45(1) of the *Maintenance Enforcement Act*, S.N.S. 1994-95, c. 6, deals with the priority of maintenance orders over other judgments:

> 45 (1) Notwithstanding any enactment, a maintenance order, whether filed with the Director or not, takes priority over any other unsecured judgment debt of the payor regardless of when an enforcement process is issued or served.

[79] In *Farm Credit Corp. v. Campbell*, 1992 CarswellAlta 94, [1992] A.J. No. 1270 (ABKB), MacFadyen J. considered a provision like s. 45 and held that once a judgment is registered pursuant to land title legislation, it is no longer "unsecured".

[80] In any event, the *Maintenance Enforcement Act* has no application to the circumstances here.

Conclusion

[81] There is no question that the factual underpinnings of this case raise sympathies for MacDonald. The CRO required Campbell to sign a quit claim deed which he did not do for 5 years. RBC's judgment was recorded in 2021. No effective attempts were made to ensure the CRO was enforced or to record it under- the *LRA* to avoid this very unfortunate event. I have no choice in the circumstances but to grant the RBC an order pursuant to s. 92 of the *LRA* directing that the remaining judgment RBC has against Campbell be recorded as an interest against the Property.

[82] While it could be argued that allowing RBC's judgment to be recorded effectively rewards Campbell for his failure to follow a court order, this reasoning "focuses on the practical and indirect effect" of giving priority to RBC's judgment, "rather than on its legal basis" (*Hurst*, at para. 81). Moreover, as noted earlier, there were several options available to MacDonald under the *LRA* that would have protected the Property from any judgments against Campbell being recorded against it.

[83] If the parties cannot resolve the issue of costs I will receive written submission within 30 days of the date of this decision.

Brothers, J.