

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
NORTH BUXTON COMMUNITY )  
CHURCH and TRUSTEES OF BETHEL ) Steven Pickard & Aleksa Nikolic, for the  
CONGREGATION OF THE BRITISH ) Plaintiffs  
METHODIST EPISCOPAL CHURCH )  
)  
Plaintiffs )  
)  
- and - )  
)  
THE BRITISH METHODIST EPISCOPAL )  
CHURCH )  
)  
Defendant ) Michael Czuma, for the Defendant  
)  
)  
- and - )  
)  
)  
THE DIRECTOR OF TITLES ) Antonin I. Pribetic, for the Non-Party  
)  
Non-Party )  
)  
) **HEARD:** April 1, 2025

**TRANQUILLI J.**

- [1] This case concerns a celebrated historic church established in 1866 by freed slaves who escaped the United States via the Underground Railroad and made their home in the Elgin Settlement of southwestern Ontario. That church is now the subject of a bitter property dispute that arose after its congregation purported to break away from the British Methodist Episcopal Church (“BMEC”).
- [2] At issue on this motion is whether the congregation or the BMEC have claim to the iconic property. Provincial legislation vests the church in the BMEC. However, the provincial land titles system identifies the trustees of the congregation who worshipped at the church in 1866 as the registered owner. The court must resolve this stalemate.

- [3] The BMEC relies on the *British Methodist Episcopal Church Act, 1913*, S.O. 1913, George V, c. 147 (“*BMEC Act, 1913*”), which vests title to the property in the BMEC. The BMEC submits that the deed, the *BMEC Act, 1913* and the system of church governance established through the *BMEC Act, 1913* demonstrates that the BMEC retains control over the church.
- [4] The plaintiffs claim to be the Bethel Congregation and/or the Trustees of Bethel Congregation of the BMEC who first acquired the church property in 1866. The plaintiffs allege that the North Buxton Community Church, which currently uses the church as its place of worship, is a successor in interest to the founding Bethel Congregation.
- [5] The plaintiffs acknowledge the BMEC may have once had a proprietary claim, however, submit the BMEC is now out of time to claim this interest because of the interplay of the *Land Titles Act*, R.S.O. 1990, c. L.5, and the *Real Property Limitations Act*, R.S.O. 1990, c. L. 15. The plaintiffs submit this property dispute crystallized in 2004 such that the BMEC ought to have applied to be registered as owner pursuant to the land titles legislation by no later than 2014 to avoid the ten-year limitation period under the *Real Property Limitations Act*. However, the BMEC did not initiate a proceeding until 2017. The plaintiffs contend the BMEC’s property interest is extinguished, and it is too late to make an application.
- [6] In the meantime, the plaintiffs claim the Bethel Congregation incorporated a new church when the congregation left the BMEC and that the congregation continues to worship with this new church on this Property. They claim the new church, North Buxton Community Church (“North Buxton”), is entitled to be the registered owner because it is the successor to the Bethel Congregation. The plaintiffs submit title conveys to the successor trustees. Thus, it brings this motion for an order conveying title to the Trustees of North Buxton.
- [7] These reasons explain why I dismiss the motion.
- [8] In summary, neither plaintiff establishes a claim for title to this property. The plaintiffs did not refer this court to any evidence or legal basis upon which it can find that they are, in fact, the Trustees who took title to the church property in 1866. The court also has no evidence to determine who or how those Trustees ostensibly conveyed the property interest to North Buxton as a corporate successor to the religious association in 2003. Moreover, the *BMEC Act, 1913* conclusively resolves this issue. It vests title in the church property with the BMEC. This property is held by and for the BMEC. While members of the congregation are at liberty to leave the BMEC, they cannot take the BMEC’s property with them. The BMEC holds an unregistered statutory interest pending the registration of a vesting order. The interest is not subject to the ten-year limitation period under the *Real Property Limitations Act*.

## **Background**

- [9] The record on this motion consists of the plaintiffs’ motion record setting out a brief affidavit in the name of counsel’s paralegal and appends various historical documents regarding the church and property, and an application record from a previous related proceeding as exhibits. Before the court is also a responding record from the BMEC providing an affidavit by the BMEC General Superintendent, the pleadings, historical documentation regarding the church and internal governance, as well as the transcript of the General Superintendent’s cross-examination on his affidavit.
- [10] The church is located at premises now municipally known as 21991 A.D. Shadd Road, North Buxton (the “Property”) and is part of a region recognized for its national significance in Canada’s history. Parks Canada designates the “Buxton Settlement National Historic Site of Canada” as a cultural landscape containing important religious, educational, and cultural institutions associated with the settlement’s founding by Underground Railroad refugees. The heritage site is described as a “living memorial to its founders and to the courage of every Underground Railroad refugee who took their life in their hands and chose Canada as their home.”
- [11] The Property was transferred by deed dated February 21, 1866, to several named individuals collectively described as “the Trustees of Bethel Congregation of the British Methodist Episcopal Church in Canada.” Only a partial, uncertified transcription of the original deed is available to the court; however, there does not appear to be any dispute that the purpose of the transfer was for the trustees to hold the land as a place of worship by members of the BMEC. Indeed, the plaintiffs rely on this conveyance, which was recorded in the land titles system, to ground their ownership claim to the Property.
- [12] The BMEC has carried on its religious work in Ontario since 1856. It first operated as an unincorporated religious organization and, since 1913, as incorporated by statute. As an unincorporated religious organization, the BMEC governed its Ontario churches and membership through its “Doctrine and Discipline”. The Doctrine and Discipline operate in the manner of a constitution and by-laws, and establish rules pertaining to matters including worship, ministry, governance, church property, and discipline. The Doctrine and Discipline generally follow a form of hierarchical governance, with a General Conference comprised of the General Superintendent, officers, ministers, and lay delegates. The General Conference meets every four years and has full power to make rules and regulations for the BMEC. An additional Conference meets annually to review the church’s affairs. Section 2 of the *BMEC Act, 1913*, adopts and continues the Doctrine and Discipline as the governance framework for the church.
- [13] The *BMEC Act, 1913* addresses the corporate church’s rights and obligations in respect of real and personal property within the province. All property held in trust for, or to the use of, the BMEC is vested in the corporation for its use and benefit. Moreover, the Property is identified in the Act and vested in the BMEC for the use of the congregation, upon the trusts and provisions set forth in the Act. Those trusts require the trustees to administer the Property for the benefit of the BMEC.

- [14] In September 1993, the province administratively transferred the 1866 deed from the registry system to the land titles system pursuant to the *Land Titles Act*. Consistent with the deed, the register shows the February 1866 transfer of the Property to the “Trustees of Bethel Congregation of the British Methodist Episcopal Church”.
- [15] Beginning in or about 2000, the congregation advised the BMEC of its intention to withdraw from the church. Reasons for discontent ranged from complaints about the BMEC’s perceived historical contribution to the Property, to disagreement over a personnel issue concerning the pastor. In 2003, the congregation incorporated as a new church under the name North Buxton Community Church and recorded the Property address as its registered office. In 2004, the parties exchanged correspondence regarding their competing claims to title to the Property. The record indicates periodic discussions at various points over the next several years about terms upon which the congregation might return to the BMEC, lease the Property from the BMEC or vacate the Property.
- [16] Ultimately, litigation began in 2017 with an application brought by the BMEC seeking orders recognizing its ownership of the Property and granting it vacant possession. For reasons that did not require determination on this motion, that proceeding was abandoned, ostensibly with a plan to recommence it. In the meantime, the BMEC filed an Application to Change Name on title to the Property under the *Land Titles Act* (the “Application”). This registration purported to change the name of the registered owner from the Trustees to the BMEC as an administrative name change “to correct the name of the registered owner to its correct legal name.”
- [17] The plaintiffs allege the Application was a fraudulent attempt by the BMEC to appropriate the Property and circumvent the applicable limitation period. The instrument remains registered pending disposition of this motion, and the plaintiffs obtained a certificate of pending litigation to preserve their claim. The BMEC denies any wrongdoing. It submits the Application was intended only to give effect to the statutory vesting of title. The plaintiffs therefore also bring a motion adding the Director of Titles to the proceeding pursuant to s. 57(14) of the *Land Titles Act*. I shall address this motion later in these reasons.
- [18] This proceeding commenced by amended statement of claim dated July 31, 2018. The plaintiffs plead that the Bethel Congregation is an unincorporated association that has existed since at least 1866 and has continuously occupied the Property from that time until the present, although under different names from time to time. The claim further pleads that the Bethel Congregation incorporated North Buxton to assume responsibility for the operations, repair and maintenance of the Property.
- [19] The plaintiffs seek declarations that the Trustees are the “true owners” of the Property and that any ownership claim by the BMEC is statute-barred. They also seek an order deleting the Application from title, dissolving the trust and removing the BMEC as trustee, and alternative remedies by way of unjust enrichment and constructive trust. In addition, the plaintiffs claim exemplary, aggravated and punitive damages for the BMEC’s conduct.

[20] The BMEC denies that the plaintiffs have any claim to the Property. The BMEC pleads that the Bethel Congregation lacks standing and does not exist in law apart from its connection to the BMEC.

### Issues

[21] The following questions arise on this motion:

1. Are the plaintiffs the Trustees of Bethel Congregation of the British Methodist Episcopal Church?
2. Is the BMEC's claim statute-barred by the *Real Property Limitations Act*?

[22] I will first address two preliminary issues before proceeding to address these questions.

### Deletion of Application of Change Name

[23] The plaintiffs seek orders deleting the BMEC's Application from the land titles system and adding the Director of Titles ("DOT") as a party for that purpose. The plaintiffs allege the BMEC engaged in improper and fraudulent activity in filing the Application. They claim entitlement to rectification of the register because the Application is a "fraudulent instrument", thereby requiring the DOT to be added to this proceeding pursuant to s. 57(14) of the *Land Titles Act*.

[24] The non-party DOT was most helpful to the court on the return of this motion regarding the procedural issues raised by the Application. The DOT did not take a position on the substantive ownership dispute between the parties. Rather, the DOT emphasized that, for well-recognized policy reasons relating to the integrity and efficacy of the land titles system, there is a narrow interpretation as to what constitutes a "fraudulent instrument" within the *Land Titles Act* and when the DOT will intervene. It follows that there is a threshold question as to whether the DOT should be involved in this proceeding. I am satisfied that any mischief arising from the errant Application can be addressed without adding the DOT as a party.

[25] The DOT is a necessary party only if rectification of the register involves a "fraudulent instrument": *Land Titles Act*, ss. 57(13)(b), (14). In these circumstances, the Application could qualify as a "fraudulent instrument" only if it involved a "fraudulent person" who purported to receive or transfer an estate or interest in land: *Land Titles Act*, ss. 1(a), 57(13)(b). The sole qualifying basis on which the Application arguably involved a "fraudulent person" is the allegation that the BMEC held itself out in the Application to be, but knew it was not, the registered owner: *Land Titles Act*, s. 1(c).

[26] However, these defined terms in the *Land Titles Act* are to be given a narrow interpretation: *Froom v. Lafontaine*, 2023 ONCA 519, 168 O.R. (3d) 102, at para. 37. There is nothing in this record to suggest the BMEC represented itself as the registered owner in the Application. Rather, the historical context of the deed and subsequent vesting provisions effected by the *BMEC Act, 1913* were disclosed. In any event, the DOT

explained, even if I were persuaded the Application involved a “fraudulent person”, it could not have had the effect of conveying an interest to the BMEC within the land titles system. On that basis alone, it cannot otherwise be a “fraudulent instrument” under s. 1(a) of the *Land Titles Act*.

- [27] The BMEC insists it acted in good faith in filing the Application and denies any covert attempt to avoid the limitation period. However, it acknowledges that the proper procedure was to apply for a vesting order under s. 69 of the *Land Titles Act* and/or s. 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The BMEC did not oppose deletion of the Application from the register on this motion.
- [28] The court may not have a complete and candid explanation for the BMEC’s rationale in filing the Application amid an active title dispute. I am also alive to some comments by the BMEC Superintendent in the record that suggest the defendant may have erroneously thought the Application could effect a transfer or change in ownership notwithstanding the ongoing, protracted dispute. However, in these unusual circumstances, I accept that the BMEC reasoned, albeit it in a conclusory manner, that the historical ownership of the Property aligned with the Application because its purpose was to reflect a change in name resulting from the statutory vesting.
- [29] Having found this Application is not a “fraudulent instrument”, I also find that the DOT is not a necessary party to this proceeding pursuant to s. 57(14) of the *Land Titles Act*. Although the DOT has broad statutory authority, it opted not to otherwise intervene in this issue as the matter is already before the court for determination. I am satisfied the Application should be deleted from the register. While it does not constitute a “fraudulent instrument” within the meaning of the *Land Titles Act*, I find the Application was made in error and should not remain on the register. Although the Application does not have the effect of transferring ownership, it resulted from an incorrect process. Orders deleting the Application and dismissing the plaintiffs’ motion to add the DOT will follow at the conclusion of these reasons.

#### Sufficiency of Record

- [30] The plaintiffs seek an order conveying title to the Property to the Trustees of North Buxton. The amended statement of claim seeks a declaration that the Trustees of Bethel Congregation of the BMEC are the “true owners” of the Property. The parties confirmed the court’s impression that the relief sought on this motion is dispositive of the primary issue in this proceeding concerning title to the Property. However, r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, is not cited in the notice of motion and neither party references summary judgment in their written submissions regarding their competing claims. Nevertheless, the parties urged the court to understand their shared interest in resolving the ownership issue on this written record. They agreed there are no material facts in dispute relating to the history of the Property and advised the court the further expense and delay of a trial would be disproportionate to the parties’ means, notwithstanding the inherent importance and meaning of the Property to both parties.

[31] I have carefully reviewed the record relied upon by the parties in this motion. Notwithstanding procedural irregularities, I am satisfied it would not create an injustice to determine the ownership claim on this record. There is certainly conflicting evidence and competing interpretations of events since the breakdown in the parties' relationship. However, there are no material facts in dispute as they relate to the history of the Property. The competing ownership claims can be determined by the historical record and a mixture of trust and contract law principles: *Pankerichan v. Djokic et al.*, 2014 ONCA 709, 123 O.R. (3d) 131, at para. 52. Moreover, a determination of this specific issue should assist the parties in addressing the remaining legal issues in this proceeding and longstanding dispute in a proportionate and efficient way.

### **Analysis**

[32] I now turn to the questions raised by this motion.

#### ***1. Are the plaintiffs the Trustees of Bethel Congregation of the British Methodist Episcopal Church?***

[33] The force of the plaintiffs' claim to title comes from the identification of the Trustees of Bethel Congregation of the BMEC as the registered owner. The land titles system operates to provide the public with security of title and facility of transfer by way of the mirror, curtain and insurance principles: *Froom*, at para. 21.

[34] Pursuant to s. 69(1)(a) of the *Land Titles Act*, where an Ontario Act provides that registered land is "to vest, be vested or become vested in" any person other than the registered owner, the registered owner nevertheless remains deemed the owner for the purposes of the *Act* until an application to register the vested interest is made by or on behalf of the person in whom the land is stated to vest. The Congregation takes this provision one step further to argue that while the BMEC could have applied to become the registered owner pursuant to the vesting provision in the *BMEC Act, 1913*, it is now long out of time pursuant to the *Real Property Limitations Act*.

[35] The plaintiffs' argument is clever but must fail on closer scrutiny. The foundational flaw lies in the assumption that the plaintiffs, as styled in the claim as "Trustees of Bethel Congregation of the British Methodist Episcopal Church", are in fact: (1) the present-day embodiment of the original trustees who acquired the Property in 1866; and (2) the registered owner as shown in the land titles system.

[36] The plaintiffs make the following representations in the pleading: that the Trustees of Bethel Congregation of the BMEC is "an unincorporated association that has existed since at least 1866"; that "the Bethel Congregation has occupied the church continuously from 1866 to present"; and "the Bethel Congregation still exists today and still continues to worship in the church built by the freed ancestors as they have for over 150 years."

[37] However, beyond these conclusory statements, the plaintiffs offered no proof whatsoever on this motion, either by way of evidence or legal principle, to support their claims about their identity. In my view, the evidence demonstrates that the Bethel Congregation did

not have an independent or sustained existence in relation to the Property but for its association with the BMEC.

- [38] I do not question that members of the congregation voted to leave the BMEC in or about 2003, or that some of those members were involved in organizing a new church at the Property. There is an undeniably poignant connection between North Buxton’s members and their courageous ancestors who were part of founding the church and establishing homesteads in the Elgin Settlement, later known as the Buxton Settlement. The challenge, however, is that there is no evidence or legal principle supporting the plaintiffs’ submission that the Bethel Congregation continued to occupy the Property as an organized entity from its purchase in 1866 until its purported withdrawal from the BMEC in the early 2000s, or that this same entity then “incorporated” North Buxton which somehow succeeds to the congregation’s interest in the Property.
- [39] The plaintiffs’ own pleadings confirm the vague history of the Bethel Congregation, circuitously stating: “the Bethel Congregation has occupied the church continuously from 1866 to present, *although it has been known by different names from time to time*” (emphasis added). Indeed, the motion record shows correspondence and meeting minutes from the time the plaintiffs purported to break away from the BMEC variously describes the church operating on the Property at that time in the early 2000s as “E.A. Richardson” or “E.A. Richardson British Methodist Episcopal Church”. There is no mention of the Bethel Congregation.
- [40] The best information in this proceeding suggests the Bethel Congregation was, or is, an unincorporated association and lacked, or lacks, legal capacity to hold or convey property except through its trustees. This is consistent with the fact that the 1866 deed vested title in the Trustees of Bethel Congregation of the BMEC. Yet there is no evidence of the congregation’s constitution, governance or organization as an unincorporated religious organization. For example, there is no explanation or particulars of who those individual trustees of Bethel Congregation are to present day, or at least up until the time the Trustees of Bethel Congregation of the BMEC allegedly authorized the incorporation of the North Buxton Community Church in 2003, as pled in the amended statement of claim, and then instituted this proceeding.
- [41] Further complicating matters are the plaintiffs’ various references to the “Bethel Congregation” in the pleadings and submissions as though the congregation, itself, is an interchangeable entity with the Trustees of Bethel Congregation of the BMEC. This label invites the inference that the Bethel Congregation is a standalone religious association with a separate and distinct identity from the BMEC in relation to the Property. The contemporaneous documentary record, such as the 1866 deed, calls that assumption into question.
- [42] A plain reading of the deed links the Bethel Congregation’s existence to the BMEC and establishes that the trustees took title to the Property for the benefit and under the control of the BMEC. The 1866 deed and trust described therein expressly describes the purchasers as the Trustees of Bethel Congregation *of the British Methodist Episcopal*

*Church* (emphasis added). The importance of this express connection cannot be overstated. It illustrates the plaintiffs' difficulty in identifying and defining the Bethel Congregation's existence as an organization distinct from the BMEC with respect to the Property. From the outset in 1866, the Bethel Congregation's use of the Property was contingent on and subject to the BMEC's governance and control.

- [43] A complete authenticated transcript of the 1866 deed was not available on this record. However, I am satisfied from my own review of the deed, as assisted by the "best efforts" partial transcript, that the conveyance provided the individual trustees "shall be designated and described as Trustees of Bethel Church in connection with the British Methodist Episcopal Church in Canada." The deed imposed an express trust upon the Trustees. Among other terms, the trustees were to hold the Property "for the use of the members of the said British Methodist Episcopal Church in Canada" and to hold divine service and meetings in connections with the business of the church pursuant to the "dictates and discipline of the said church, which from time to time may be adopted and agreed upon by the minister and preachers of the said church at their general conference in Canada."
- [44] I am alive to issues regarding the legibility of the deed when it comes to parsing the terms. However, the plaintiffs have offered no evidence or law in support of their conclusory submission. The language of the deed and the described roles of the parties and activities therein directly refute the plaintiffs' unsupported claim that the Bethel Congregation historically existed as a separate entity controlling the Property. The deed also confirms that the Property was held for the BMEC's use and subject to its direct from the outset in 1866.
- [45] The *Religious Organizations' Lands Act*, R.S.O. 1990, c. R.23, does not assist in bridging the evidentiary and legal gaps in the plaintiffs' theory. Rather, it confirms them. Among other requirements, the plaintiffs must establish that the Bethel Congregation is a "religious organization" as defined under the Act, including that it is charitable under Ontario law and permanently established with respect to continuity of existence and religious beliefs, rituals and practices: *Religious Organizations' Lands Act*, ss. 1. (a), (c). The main advantage of the *Act* for smaller religious societies is the benefit of perpetual succession for trustees. Absent such legislation, these organizations would be treated in law like any other unincorporated association and could hold land only through individual trustees whose appointment, tenure and power would be governed by the more onerous provisions of the *Trustee Act*, R.S.O. 1990, c. T.23: *Pankerichan*, at para. 47. In sum, assistance from this legislation requires the very type of evidence of the permanence and continuity of the congregation's existence that is lacking on this record.
- [46] In any event, the plaintiffs' theory entirely collapses under the weight of the *BMEC Act, 1913*. That statute comprehensively addresses property rights in a manner that undoubtedly leaves the BMEC with control of the Property for its benefit:

- a. All real and personal property belonging to, held in trust for, or to the use of the BMEC “is hereby vested in the said corporation, and shall be used and administered for its benefit: s. 3.
- b. The Property is expressly identified and described as “North Buxton” in Schedule “D” to the Act: s. 3; Schedule “D”.
- c. Because it is listed in Schedule “D”, the Property held by or in trust for the use of any congregation “is hereby vested” in the BMEC, “for the use of the said congregation or congregations circuit station or mission in connection with the said British Methodist Episcopal Church in connection with the BMEC upon the trusts and subject to the provisions set forth in Schedule “B” of the Act: s. 4; Schedules “B” and “D”.
- d. The trusts established through Schedule “B” of the Act require the trustees to hold, use and administer the Property “in trust for the said corporation upon the trusts set forth in the said Schedule”: s. 4; Schedule “B”.
- e. The terms of the trusts in Schedule “B” require every place of worship such as “North Buxton” to be used, maintained and disposed of for the use of the ministry and membership of the BMEC and subject to such further uses as may be authorized and declared by the General Conference and Annual Conference of the BMEC. Trustees of a church shall only permit ministers of the BMEC to preach in and upon the trust premises. If sold, the property is to be disposed of and used in accordance with the provisions of the Discipline. Land may only be sold in accordance with the Discipline and with the consent of the Annual Conference. The terms of the trust further direct the distribution of proceeds, including in the event of abandonment by a congregation: Schedule “B”.
- f. Section 2 of the *BMEC Act, 1913* continues the Doctrine and Discipline of the BMEC adopted by its General Conference and deems that the church shall be governed in accordance with the Discipline. Chapter 5 of the Discipline addresses “Church Property” and sets out the duties of the trustees of every place of worship in the BMEC. It is the duty of the trustees to always act in the interest of the BMEC “for whom they hold the property in trust.” Trustees have a duty to carefully inform themselves of the provisions of the deed, charter and Discipline relating to the church property. Churches are to be used according to the rules, discipline and general usages of the BMEC: s. 2; Doctrine and Discipline of the BMEC, Ch. 5.

[47] Read together, the deed, the *BMEC Act, 1913* and internal church governance provisions lead to the inexorable conclusion that the BMEC retains ultimate control of the Property. Congregants may withdraw from the church, but they cannot take the Property with them. This remains true even where the property is held in trust by the church for the benefit of the congregation. The congregation cannot be severed from the church. An estranged group of congregants cannot be permitted, contrary to the *BMEC Act, 1913* and church governance, to splinter the church and church property at its own will.

- [48] This result and rationale is consistent with the body of case law that has developed in similar property disputes within other religious organizations: *Delicata v. Incorporated Synod of the Diocese of Huron*, 2013 ONCA 540, 117 O.R. (3d) 1, leave to appeal refused, [2014] S.C.C.A. No. 35601; *Bentley v. Anglican Synod of the Diocese of New Westminster*, 2010 BCCA 506, leave to appeal refused, [2011] S.C.C.A. No. 34045; *Pankerichan*; and *United Church of Canada v. Anderson* (1991), 2 O.R. (3d) 304 (S.C.).
- [49] Although trust, contract and statutory interpretation principles establish the BMEC's claim to the Property, an apparent complication arises under s. 69(1) of the *Land Titles Act*, which deems the Trustees of Bethel Congregation of the BMEC to remain the "registered owner" until the BMEC applies to be registered pursuant to its statutory vesting. The plaintiffs argue the BMEC is out of time to do so.
- [50] Having found the plaintiffs are not the Trustees, I query who would have standing by or on behalf of those trustees to challenge an application by the BMEC on that ground. In any event, I shall next explain that the Real Property Limitations Act has not extinguished the BMEC's property interest pursuant to the statutory vesting. An application by the BMEC to be registered as owner of the Property in the land titles system is not out of time.

**2. Is the BMEC's claim statute-barred by the Real Property Limitations Act?**

- [51] The BMEC abandoned a 2017 application that included requests for declaratory relief as to ownership and/or a vesting order. There is no request by the BMEC before the court in this proceeding, either in the pleadings or by way of cross-motion, for a vesting order or similar relief. However, in their amended statement of claim, the plaintiffs plead that any right the BMEC may have had to seek a vesting order has expired by operation of s. 69 of the *Land Titles Act* together with ss. 4 and 15 of the *Real Property Limitations Act*. Pursuant to ss. 4 and 15 of the *Real Property Limitations Act*, an action "to recover any land or rent" must be brought within ten years from when the right to bring the action first accrued, failing which the right to the land is extinguished.
- [52] The plaintiffs submit that the BMEC was on notice of the property dispute by at least 2004, when counsel exchanged correspondence setting out the parties' competing positions. On that basis, the plaintiffs contend the BMEC was three years too late when it commenced its 2017 application for a vesting order. Notwithstanding that the *BMEC Act, 1913* vests the Property in the BMEC, the plaintiffs argue the BMEC's property right is nevertheless extinguished.
- [53] The record before the court on the limitation period was brief. The plaintiffs relied exclusively on the exchange of correspondence in 2004 as the ostensible moment at which the right to bring an action "first accrued". The court was provided with little information about what transpired between approximately 2003, when the dispute arose, and 2017, when the BMEC first commenced litigation. The BMEC's record refers generally to communications between the parties and early agreements to "permit" the plaintiffs to continue to use the Property, followed by renewed communications in 2015 in which the

BMEC articulated a firmer position. It is unclear to the court whether s. 5 of the *Real Property Limitations Act*, which ties accrual of the right to bring an action to dispossession, would apply, or what the evidence would be: *Waterstone Properties Corporation v. Caledon (Town)*, 2017 ONCA 623.

- [54] The BMEC denies that it is out of time. It submits that the limitation period in the *Real Property Limitations Act* applies to circumstances of adverse possession. It emphasizes that the *BMEC Act, 1913* is still in force. The provisions of the are “always speaking” pursuant to the *Legislation Act, 2006*, S.O. 2006, c. 21 Sch. F., s. 4. Therefore, the Property continues to “vest” in the BMEC, such that the right continues the accrue and no limitation period has expired.
- [55] Neither party provided the court with law in support of their positions on the application of the limitation period in these circumstances. In all, the plaintiffs’ theory about the crystallization of the competing property claims would seem to argue the logical conclusion is that their property claim is also statute-barred for the same reasons.
- [56] Contrary to the BMEC’s submission, s. 4 of the *Real Property Limitations Act* is not confined to adverse possession. It is true the similarly worded predecessor section appeared in Part I of the old *Limitations Act* and would have been traditionally applied strictly to adverse possession claims. However, in *McConnell v. Huxtable*, 2014 ONCA 86, 118 O.R. (3d) 561, the Court of Appeal reviewed the fraught history of how the real property limitation period scheme underwent legislative amendment and held that s. 4 should not be interpreted so narrowly. An action to “recover” land means to “obtain any land by judgment of the court”: *McConnell*, at paras. 17, 24-26.
- [57] Even applying this broader interpretation, I conclude that the limitation period does not bar the BMEC from applying to be registered owner of the Property.
- [58] An application for a vesting order is not akin to an action to “recover” land by judgment. While a judgment determines rights and may require enforcement, a vesting order is equitable in origin and allows the court to give direct effect to a change of title: *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355 (C.A.), at paras. 32-33. The BMEC does not seek a judgment to obtain the Property. The BMEC’s substantive entitlement was already settled by the legislature and fixed by statute more than a century ago in s. 4 of the *BMEC Act, 1913*. An application under s. 69 of the *Land Titles Act* and/or s. 100 of the *Courts of Justice Act* is not a judgment to obtain the land, but a procedural mechanism to give effect to that statutory vesting.
- [59] This conclusion is reinforced by s. 44(4) of the *Land Titles Act*, which expressly deems a first application for registration under s. 30 to be “an action for the recovery of land within the meaning of the *Real Property Limitations Act*”. No similar deeming limitation applies to an application to be made registered owner pursuant to a statutory vesting provision under s. 69(1) of the *Land Titles Act*. I note that a first application for registration is not at issue here. In fact, the conveyance was administratively transferred to the land titles system in 1993.

- [60] If the *Real Property Limitations Act* applied as the plaintiffs’ assert, it is difficult to see how the limitation period could extinguish the BMEC’s property interest where the statute continues to vest the Property. As observed by the defendant, the *BMEC Act, 1913* continues in full force and effect and is “always speaking”. As a matter of statutory interpretation, the Property continues to vest in the BMEC in the present tense. On that basis, the right continues to “first accrue” to the BMEC pursuant to s. 4 of the *Real Property Limitations Act*.
- [61] The other difficulty with the plaintiffs’ position is that, at most, the limitation period could only bar a procedural step to seek registration. The *Real Property Limitations Act* could not extinguish the BMEC’s substantive rights in respect of the Property as prescribed in the *BMEC Act, 1913*. The Property remains subject to the BMEC’s use and control pursuant to the *BMEC Act, 1913* and the terms of the trusts established therein.
- [62] The essential purpose of the *Land Titles Act* is to promote security of title and facility of transfer by establishing a register and guaranteeing the title of the registered owner, subject to registered encumbrances and statutory exceptions. It is not intended to displace the law of real property or to shield a registered owner from its own obligations: *Lawrence v. Maple Trust Co. et al*, 2007 ONCA 74, 84 O.R. (3d) 94, at paras. 30, 51; *United Trust v. Dominion Stores et al.*, [1977] 2 S.C.R. 915, 71 D.L.R. (3d) 72. The *Land Titles Act* permits the creation of an unregistered interest: *Kutlesa v. Kotsiou*, 2016 ONSC 3435, at para. 289. Section 68(2) recognizes that a person having a sufficient estate or interest in the land may, subject to the estate and right of the registered owner, create estates, rights, interests and equities in the same manner as the person might do if the land were not registered. The Act also allows for protection of an unregistered estates, rights, interests or equities in land through the registration of notices, cautions, inhibitions or other restrictions as are authorized by the Act or DOT. The registered owner and every person deriving title through the registered owner is deemed to be affected with such notice of an unregistered interest: *Land Titles Act*, ss. 71(1), (2).
- [63] Accordingly, even if the BMEC were out of time to apply to be the registered owner, which I do not find, that conclusion would not advance the plaintiffs’ case for conveyance of title to North Buxton. The limitation period argument fails to assist because the BMEC’s statutory and equitable rights in the Property have not been extinguished. The registered owner holds title to the Property subject to the expansive terms of the vesting provision and the trusts established through the *BMEC Act, 1913*. Those terms do not permit removal of the Property from the BMEC without its consent.
- [64] To that end, it seems presumed that the status as “registered owner” under the *Land Titles Act* means the Trustees of Bethel Congregation of the BMEC have “perfect title”. I am not satisfied that is the case. I recognize that the notion of title registration and overall purpose of the Act is setting up a register and guaranteeing that a person named as the owner has perfect title. However, this is subject to statutory exceptions and does not abrogate common law and equitable principles: *Lawrence*, at para 30; *Froom*, at para. 73.

- [65] The parcel register for the Property shows the “first conversion” of the fee simple as “qualified”. Qualified title arises where on examination it appears that title can be established only for a limited period or subject to reservations: *Land Titles Act*, ss. 37(1), (2). A registered owner with qualified title remains subject to the estates, rights and interests that appear to be excepted and “may” apply for absolute title: *Land Titles Act*, ss. 46(1), (2). The qualified title designation here aligns with the historical reality that the Trustees of Bethel Congregation first expressly took title for the BMEC’s benefit.
- [66] In any event, the limitation issue is effectively moot. I have already concluded that the plaintiffs are not the Trustees of Bethel Congregation of the BMEC. They therefore have no standing to advance their ownership dispute with the BMEC through the *Land Titles Act* registration as the “registered owner”.
- [67] What is before the court is a mere effort to capitalize on the registration of qualified title arising from an administrative conversion of the deed 107 years after the original conveyance, and 80 years after the Property vested in the BMEC by statute, to attempt to effect a substantive change in ownership. It cannot succeed for the foregoing reasons.

### **Conclusion**

- [68] The plaintiffs’ motion for an order to convey the Property to the trustees of North Buxton and to add the DOT as party to this proceeding is dismissed.
- [69] The plaintiffs’ motion to delete the Application from the register is granted.
- [70] During argument, it was suggested that the plaintiffs’ motion could invite the court to make a “boomerang” finding in the BMEC’s favour if the court dismissed the plaintiffs’ motion. The plaintiffs objected to this submission, noting there was no cross-motion before the court. The practical implications of my findings are plain. However, given the plaintiffs’ objections and the unfortunate history surrounding the filing of the Application, I conclude it would be best advised for the defendant to make proper application on such notice as is required regarding the Property, and for the relief as it may see fit. I also note a CPL remains registered and that there is no formal motion before the court for its removal at this time either.
- [71] While this decision disposes of the plaintiffs’ claims as registered owner, the pleadings outline alternative relief by way of an unjust enrichment or constructive trust claims. There is also a punitive damages claim to be addressed.
- [72] The plaintiffs argued that deletion of the Application would leave nothing preventing the Bethel Congregation from transferring the Property to North Buxton. I question the correctness of that position, particularly in light of the nature of the “qualified” title on the register, or who would purport to make that transfer in light of this decision. If it were transferred, it would convey no greater title than the Trustees of Bethel Congregation of the BMEC already have. In any event, in making the order to delete the Application from the register, it is the court’s expectation there will be no steps that could be interpreted as weaponizing the *Land Titles Act* in this dispute. Depending upon when this matter can be

concluded, I would suggest the BMEC recalls the potential options for protecting its unregistered interest through the *Land Titles Act* pending an application to be registered owner or other disposition.

- [73] The parties have provided bills of costs but no substantive submissions. The DOT advised it did not seek costs. I encourage the parties to resolve costs. The bill of costs for the BMEC appears to outline partial indemnity costs of \$30,639.96. If I am reviewing these bills correctly, although the hours of work and numbers of timekeepers differ, the plaintiffs' bill of costs on a partial indemnity basis favourably compares at \$26,451.76.
- [74] If costs cannot be resolved, the BMEC shall deliver its written submissions by April 17, 2026, and the plaintiffs their written submissions by May 1, 2026. There shall be no reply without leave. Written submissions are limited to two pages in length, excluding any offers to settle.
- [75] I am not seized of any further steps as may arise in this proceeding. If the parties are of the view I may be of assistance to the parties in providing direction on next steps and scheduling that could assist in concluding this longstanding matter in a timely way, they may request a case conference through the trial coordinator, pursuant to these reasons and rule 50.13. The conference will be scheduled subject to availability, and I will not be in a position to assume any ongoing case management responsibilities.

Justice K. Tranquilli

**Released:** March 27, 2026

CITATION: North Buxton Community Church v. BMEC, 2026 ONSC 1592

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**NORTH BUXTON COMMUNITY CHURCH and  
TRUSTEES OF BETHEL CONGREGATION OF THE  
BRITISH METHODIST EPISCOPAL CHURCH**

Plaintiffs

– and –

**THE BRITISH METHODIST EPISCOPAL CHURCH**

Defendant

– and –

**THE DIRECTOR OF TITLES**

Non-Party

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**REASONS ON MOTION**

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Justice K. Tranquilli

**Released:** March 27, 2026