



SLANDER OF TITLE

Slander of Title is a tort known at common law as injurious falsehood. Injurious falsehood consists of the publication of false statement, whether oral or in writing, concerning the Plaintiff or his property and calculated to induce others not to deal with him. The falsehood must be communicated to a third person, cannot be presumed and must be affirmatively established by the wronged party. It is an essential element of the cause of action that the falsehood be published with malice, i.e., that the Defendant knew the disparaging statement to be false. Conversely, neither an honest belief in an unfounded claim is actionable, nor is mere carelessness (in contrast to recklessness or conscious indifference to truth).

The duty of a surveyor in preparing a plan for deposit in a Land Registry Office is to depict the facts on that plan. Statements on such a plan of alleged facts pertaining to occupation, possession or title without clear authority of legal basis, or simply based on a cursory view of what "appears to be the situation on the ground", could give rise to a cause of action founded on Slander of Title. It should be remembered that adverse possession is a conclusion of law; such terminology should be avoided.

Section 27(1)(d) of Regulation 298, R.R.O. 1980, requires a reference plan to include "a schedule that related the numbered "PARTS" shown on the plan, to the existing subdivision units and the instrument numbers of the existing registered instruments..." With the exception of plans of subdivision and expropriation plans, nothing in the Land Titles or Registry Acts or regulations thereunder authorized the insertion of comments in a schedule regarding such matters as ownership, purported ownership, quality of ownership, etc. The insertion of comments in a schedule regarding such matters as occupation or other unregistered claims to title are also not authorized. The indication of alleged ownership or occupation in a schedule could be evidence of malice if it appears to be an unfounded comment on quality of title.

The foregoing may appear to be at odds with what has always been the practice of surveyors. However, this need not be if, instead of inserting these unconfirmed comments on the plan the surveyor conveys his findings to his client in his report. Comments respecting occupation or other unregistered claims may be appropriate for reference plans prepared for first application under the L.T.A. and for C.T.A. purposes since these plans are circulated to all interested parties. Objectors would have an opportunity to dispute the accuracy of such statements prior to the deposit of the plan.

It is recommended that:

- 1) reference plans not show any information in schedules which is not based on registered title documents;
- 2) reference plans not show the names of any owners or purported owners;
- 3) surveyors convey to their clients by means of a written report their opinion respecting alleged occupation, ownership, etc.
- 4) reference plans, other than those where no problems have been encountered not be deposited without a signed direction by the surveyor's client, authorizing and instructing him to deposit the plan and having a draft version of the plan attached to the direction;
- 5) where problems respecting boundaries and interests in land exist, surveyors exercise their powers under section 7 of the Surveys Act to determine if residents have information respecting the disputed boundaries and interests in land.