

# **Judicial Interpretation of Torrens Registered Documents**

**Dr Ben France-Hudson, Faculty of Law, University of Otago, Dunedin, New Zealand**

The appropriate approach to the interpretation of Torrens registered documents has been a heated issue in New Zealand. The problem arises because many interests in land (such as easements, covenants and leases) start life as private contracts, but are ultimately recognised as creating property interests in land. Where there are disputes, modern contract law's permissive approach to the admissibility of evidence regarding the background of a transaction can come into conflict with the principles underpinning the Torrens system (in particular its focus on efficiency and ensuring certainty of obligations for people relying on the register).

While Australia has for some time taken a restricted approach to admissibility, the position in New Zealand remains unsettled. Recent Supreme Court discussion has further muddied the waters. In light of predicted increases in both subdivision and higher density living, with consequent increases in the registration of all types of property instruments, this is an issue that deserves to be tackled head on.

This paper will consider the extent to which the principles of the Torrens system, as reflected in the Land Transfer Act 2017, demand a restricted approach to the evidence admissible when interpreting a registered document. It will critically assess the options for developing a principled approach to the interpretation of such instruments, and test the proposition that a useful distinction can be made between easements and covenants on one hand, and mortgages and leases on the other.