

Court File No. CV-10-414169-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KEATLEY SURVEYING LTD.

Plaintiff

- and -

TERANET INC.

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF DEFENCE

1. The defendant Teranet Inc. ("Teranet") admits the allegations contained in paragraph 17 of the Statement of Claim.

2. Teranet has no knowledge in respect of the allegations contained in paragraphs 2, 9, 10 and 11 of the Statement of Claim.

3. Teranet denies the balance of the allegations contained in the Statement of Claim and puts the Plaintiff to the strict proof thereof. Teranet denies that the Plaintiff is entitled to any of the remedies or relief sought in the Statement of Claim.

THE BUSINESS OF TERANET

4. Teranet is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business in Ontario as a provider of electronic service solutions.

5. Two of Teranet's applications are at issue in these proceedings:
- (a) Teraview®, which provides services on behalf of the Government of Ontario in respect of Ontario's electronic land registration and administration system; Teraview allows users to electronically and remotely search and register property title records in Ontario, and to access a province-wide digital map; and
 - (b) GeoWarehouse®, an on-line search service geared for use by land information professions, such as real estate agents, title searchers/conveyancers, and Ontario land surveyors.

DEPOSIT AND REGISTRATION OF PLANS OF SURVEY

6. A "survey" is the physical act of measuring and establishing information regarding real property, such as boundaries, in the real world or "field". A "plan" or "plan of survey" is an illustration of the field work. Surveyors prepare "plans of survey" that illustrate or represent the work they performed in the field, and in certain instances register or deposit plans in an Ontario land registry office ("LRO").

7. When a plan is created for the purpose of being registered or deposited at an LRO, the Government of Ontario, including by way of legislation and regulation, exercises substantial control and direction over the preparation and publication of the plan. For example:

- (a) statutory provisions under, *inter alia*, the Ontario *Land Titles Act*, *Registry Act*, *Surveyors Act*, *Planning Act*, *Boundaries Act* and Regulations made under those Acts mandate how a plan is to be prepared, and what must be included in a plan for it to be accepted for registration or deposit at an LRO. The provisions direct all aspects of the plan including the format in which it must be submitted, and including detail regarding information which must be captured in the plan.

- 3 -

- (b) The preparation of a plan of survey must meet, with precision, the technical requirements articulated in the *Surveys, Plans and Descriptions of Land Regulation*, O. Reg. 43/96 (the "Surveys Regulation").
- (c) The plan is reviewed at the LRO for compliance with all statutory and regulatory provisions. A plan will not be accepted for deposit or registration if it does not comply with all of the statutory requirements for deposit or registration applicable to the type of plan sought to be filed.
- (d) The LRO maintains an overall discretion with respect to the acceptance of plans of survey for registration or deposit. Upon submission to an LRO, the Land Registrar may require a surveyor to provide evidence regarding the way in which the plan was prepared or seek approval of a plan of survey by the Examiner of Surveys.
- (e) Prior to acceptance of a plan, the Examiner of Surveys has the discretion to attend at the site depicted on the plan of survey to examine it "on the ground". The Examiner of Surveys also has the authority to order a surveyor to correct any error, defect or omission in the plan of survey.

8. All surveyors sign the plans which they submit for deposit or registration, under an express statement acknowledging that the surveyor requires the plan to be deposited or registered under the *Land Titles Act* or the *Registry Act*. In so doing, the surveyor expressly agrees that his or her plan is to be treated in accordance with the provisions of the statute under which it is deposited or registered.

9. If a plan is accepted for deposit or registration, the plan is filed on title and becomes part of the public record. Pursuant to the *Land Titles Act* and the *Registry Act*, copies of all registered and deposited records are available to the public.

10. The processes of preparing and submitting plans for deposit or registration have been in effect for decades and continue to be followed.

NO COPYRIGHT IN REGISTERED OR DEPOSITED PLANS OF SURVEY

11. No plan is accepted for registration by an LRO with any copyright mark, by words or symbols, on the face of the plan.

12. In 1981 the Ministry of Consumer and Commercial Relations of Ontario, now the Ministry of Government Services (the "Ministry") issued a policy statement directing that plans submitted for registration or deposit may not have copyright notifications or claims printed thereon. The policy specifically addressed issues as to whether the copyright in registered and deposited plans was held by the surveyors or firms who prepared them, and stated that they did not, and that LROs were in no way restricted from making copies of plans submitted for registration or deposit.

13. The Ministry's policy was issued to require that, as a matter of law, any plan or survey registered or deposited under the *Land Titles Act* or *Registry Act* is property of the Crown, inclusive of intellectual property rights. Subsequently, the policy was enacted as part of the *Surveys, Plans and Description of Land Regulation* ("Surveys Regulation"), made under the *Land Titles Act* and *Registry Act*. The Surveys Regulation continues to be in force.

- 5 -

14. Since 1981, Ontario land surveyors have at all times agreed to, acted and governed themselves in accordance with the Ministry policy and the Surveys Regulation. Surveyors do not print copyright markings or assert entitlement to copyright when preparing and submitting plans to be deposited or registered.

15. All surveyors are, and at all times have been, aware and have agreed that once registered or deposited, their plans of survey can and will be made available to the public and form part of the public record, that they hold no copyright therein, and that they will receive no compensation for any copies provided. At no time, either under the paper based system or under Ontario's electronic land registry system, have surveyors received or been entitled to receive any fee, royalty or other compensation in respect of copies of registered or deposited plans provided to the public.

16. The Association of Ontario Land Surveyors ("AOLS"), the self-regulating body responsible for the governance and licensing of all Ontario land surveyors, has by way of bulletin and otherwise, expressly acknowledged on behalf of its members that deposited and registered plans are not subject to any copyright entitlement in or by the surveyors who prepared them.

17. The move from a paper-based to an electronic land registration system, as hereinafter described, has not altered and does not alter the fundamental nature of registered plans or surveys. Upon the registration of a plan or survey, it becomes part of Ontario's public information database, to which the public is entitled access and from which the public is entitled to obtain copies upon payment of prescribed fees. At no time have any members of

the proposed class of surveyors, had copyright in registered or deposited plans or surveys, whether under Ontario's paper-based or electronic land registration system.

ONTARIO'S LAND REGISTRATION SYSTEM PRIOR TO AUTOMATION

18. Prior to automation of the land registration system, as described hereinafter, the paper land registration system encompassed approximately 400 million paper documents and 4.5 million manual land parcels (dating back to 1795).

19. All transactions with LROs had to occur by attending at the LRO in person. In order to register or deposit any instrument on title, a person had to attend at one of Ontario's 65 LROs, wait in line, pay the prescribed fee and submit an instrument over-the-counter. Similarly, in order to obtain a copy of any title document, a person needed to attend at a LRO in person, wait in line, request the original document, make a copy, and pay the prescribed fee.

20. LROs also maintained paper versions of provincial maps, referred to as "Block Maps". Each time a new plan of survey was deposited or registered with the Ministry, the survey data in the deposited or registered plan was incorporated into the Block Maps, by having LRO staff re-draw the boundaries onto the Block Maps.

21. It was at all times known, understood, and agreed to by users of the LROs, and surveyors in particular, that registered and deposited plans of survey and survey data were being used to update and maintain the Block Maps.

22. The Block Maps were kept in the LRO servicing the jurisdiction to which the maps related. Any member of the public could attend at the LRO to view the Block Maps, and could obtain a copy for a fee.

23. The process for dealing with real property documents and maintaining the Block Maps, when maintained in paper form at numerous LROs across the province, was cumbersome and inefficient. The inefficiencies in the land registration system were perceived by the Government of Ontario as inhibiting transactions in land, and negatively impacting general economic development.

THE MOVE TO AN ELECTRONIC LAND REGISTRATION SYSTEM

24. In or about 1984, the Government of Ontario began developing the Province of Ontario Land Registration Information System ("POLARIS"). The goal of POLARIS was to automate Ontario's land registration system, and parcelize title records under the land titles system, such that there was a single record for each parcel of land.

25. POLARIS consists of two databases: a title index database containing searchable information from title abstracts, and a database of maps providing survey information, property boundaries and unique Property Identification Numbers ("PINs").

26. Initially, the purpose of POLARIS was to improve efficiencies by automating services at the LROs. POLARIS allowed users to search for information on properties, (previously identified only by geographical descriptions,) via a PIN, assessment roll number, property address, instrument number, or via a mapping database. Searches occurred on electronic terminals located at the LROs.

27. In or around 1987, Ontario land surveyors approached the Ministry and took a lead role in advocating the creation of an electronic land registration system for Ontario. Surveyors participated in a number of meetings with the Ministry and suggested that the POLARIS model allow for remote user access.

28. Accordingly, in or about the fall of 1988 the Ontario Government issued a Request for Expressions of Interest ("RFI"), followed by a Request for Proposal ("RFP") seeking to create an electronic land registration and administration system. The goals of the project were:

- (a) to develop an e-registry system, whereby users could conduct real property registrations and document searches electronically and remotely;
- (b) to develop a province-wide digital parcel map (the "POLARIS Map"); and
- (c) to spearhead a Land Related Information System ("LRIS") industry in Ontario.

29. Following issuance of the RFI, in or about September 1988, the Ministry hosted a briefing to discuss the electronic land registration project and to demonstrate the POLARIS Map. Approximately 72 companies, the majority of which were surveying and mapping firms, attended the briefing.

30. Given the multidisciplinary nature of the project, interested companies formed into two consortiums to bid on the project: Real/Data Ontario Inc. ("RDO") and FimTech.

31. The consortium members of RDO included a large consortium of surveying firms called Landata Information Systems ("Landata") as well as J.D. Barnes Inc. and Marshall Macklin Monaghan Limited, the two largest surveying firms in Ontario. The RDO

consortium represented more than 50% of all licensed Ontario land surveyors in practice at that time.

32. The FimTech consortium also included a number of large surveying firms.

33. Most Ontario land surveyors were involved in the RFI and RFP processes through one or the other of the two consortiums. Accordingly, most Ontario land surveyors had direct knowledge of all facets of the project, in particular that the intent was to create a system where copies of registered or deposited documents, including plans of survey, would be available to the public remotely and electronically, that the Government intended to create a province-wide digital parcel map, and that plans of survey already on deposit at LROs would be utilized in the creation and implementation of the project.

34. At no time throughout the RFI and RFP processes did any surveyors take the position that they retained copyright in registered or deposited plans. Nor did they raise any concern or complaint that provision of plans via an electronic database would result in infringement of copyright in the plans, nor that the contemplated electronic land registration system should take into account compensation to surveyors pursuant to any copyright entitlement.

THE CREATION OF TERANET

35. In May 1991, Teranet was established for the purpose of working with the Ontario Government in the goal of creating, and then operating and maintaining, an electronic land registration and administration system and province-wide digital parcel map.

36. The relationship between Teranet and the Ontario Government was and continues to be governed by the terms of implementation and licensing agreements. Pursuant to the agreements, *inter alia*:

- (a) Teranet provides the public with electronic land registration and search services on behalf of the Ontario Government;
- (b) Teranet accesses the Government data required to provide electronic land registration services pursuant to a licence granted to it by the Government;
- (c) the Ontario Government retains all right, title, and interest, including expressly the intellectual property rights, to the data used in the provision of services by Teranet. The data includes registered and deposited plans of survey; and
- (d) Teranet created an electronic land registration system, and province wide digital property index map, and continues to maintain and operate the system and the map.

37. At all times, and continuing today, the Government of Ontario, in addition to owning the data, retains ultimate responsibility for its accuracy and integrity. The Government also retains authority over all statutory fees for searches and registration. The Government's consent is required to modify any remote-access fees.

IMPLEMENTATION OF ONTARIO'S ELECTRONIC LAND REGISTRATION SYSTEM

(a) Teraview

38. Ontario's electronic land registration system is accessed through Teraview. Teraview is a desktop application that allows for remote search and registration functionality to the property title records of Ontario. It functions as a virtual land-registry office.

39. In July 1995, Teranet introduced the Teraview search. The Teraview search allows users to log onto the Teraview application to remotely search and obtain copies of the real property records of the Ontario Government. Users are charged a fee on a per search basis. Users may print or save the results of the search. There is no separate fee for printing or saving the search results.

40. The areas of Ontario for which the Teraview search was available were rolled out as the data for each area was digitized into the electronic system and the requisite portion of the digital map was completed. In October 2010, Teranet completed the automation of the real property title records of the Ontario Government, relating to a total of approximately 5.8 million land parcels.

41. In January 1999, the Government and Teranet introduced electronic registration which allowed users to register land registration documents remotely and electronically. Plans of survey, however, cannot be registered electronically. Registration and deposit of plans continues to be done over the counter at LROs.

42. Teranet has a database of 195 million instrument images, of which approximately 65 million are available via Teraview. Of those, only approximately 950,000 are plan images, being less than 1.5% of all instrument images available on Teraview.

(b) GeoWarehouse

43. In 2002 Teranet introduced GeoWarehouse, an on-line search service similar to Teraview, but which generates searches specifically for use by land information professionals, such as real estate agents, appraisers and surveyors.

44. GeoWarehouse is limited to searching capabilities. It does not provide any registration services. The service also prepares reports, using land registration data, specific to the type of information useful to land information professionals.

(c) Digital Maps

45. The title automation project resulted in the contemporaneous creation of the POLARIS Map. The POLARIS Map is a mapping database showing property ownership, boundaries, and registered and deposited plans. The POLARIS Map links boundary information with title information.

46. The POLARIS Map is used as a tool for land registration searches through Teraview (by allowing users to search for a particular property by locating it on a map) and is available in paper form as an index at LROs.

47. Between 2002 and 2005, Teranet created a second digital mapping product, the Ontario Parcel Map. In so doing Teranet made use of the available POLARIS Map and augmented it with assessment and Crown property information.

USE OF DEPOSITED/REGISTERED SURVEYS

48. Plans which are deposited or registered in LROs are used by Teranet in two ways:

- (a) Teranet receives a hard copy of registered or deposited plans certified by the LROs, which it scans into a digital format and adds to its databases, so as to make them accessible to the public; and
- (b) the survey data contained in the plan is added to the POLARIS Map.

49. Both of these functions are mandated by legislation. Both of these functions are and have at all times been well-known and agreed-to by surveyors in Ontario.

SURVEYORS' DIRECT KNOWLEDGE OF AND ROLE IN CREATING ONTARIO'S ELECTRONIC LAND REGISTRATION SYSTEM

(a) Surveyors' role in the creation and implementation of Ontario's electronic land registration system and POLARIS Map

50. Surveyors had direct and significant roles in the development of Ontario's electronic land registration and administration system, including:

- (a) LanData surveyors were initially shareholders of Teranet; as such those surveyors had a financial interest in Teranet, and were afforded status as preferred service providers in the POLARIS Map project;
- (b) the AOLS had extensive consultations with the Ontario Government prior to and in respect of creating the electronic land registration system and the regulations for electronic registration; and
- (c) surveyors directly contracted with Teranet to provide the surveying, mapping, and ancillary services necessary to create the POLARIS Map.

51. The POLARIS Map project took 20 years to complete. Surveyors from across the Province participated in the project by providing survey, mapping, and ancillary services to Teranet. In creating the POLARIS Map, surveyors referred to, *inter alia*, survey data contained in registered and deposited plans of survey.

52. Under all of the contracts entered into between Teranet and Ontario land surveyors in respect of the POLARIS Map, the surveyors expressly agree that the data provided by Teranet to the surveyors to carry out the mapping services, which includes registered and deposited plans of survey, and all intellectual property rights in the data, are the property of Teranet or its licensors (the Ministry). In addition, under all of the relevant contracts, the surveyors agree that the digital files created by the surveyors and all rights therein are the property of Teranet.

53. The total cost of the mapping project was approximately \$60 million. Of that, approximately \$40 million was paid to surveyors as fees for the work they conducted on the project.

54. By virtue of their direct involvement and participation, as summarized above, surveyors had direct knowledge of the creation and functionality of the electronic land registration system and the POLARIS Map, and knowledge of the use to which Teranet was putting, and would continue to put, registered and deposited plans of survey, and agreed to such uses.

55. At no time during the creation and implementation of Ontario's electronic land registration system and POLARIS Map did any surveyor or the AOLS raise any concerns that the creation, implementation or functioning of the system or POLARIS Map functioned so as to infringe the copyright of Ontario land surveyors, if any.

(b) Surveyors' knowledge of the creation and implementation of Ontario's electronic land registration system and POLARIS Map

56. At all times, all Ontario land surveyors knew of the method of creation and operation of Ontario's electronic land registration system and, in particular, that Teranet was providing copies of registered and deposited plans to the public. In particular:

- (a) the Ministry made presentations to the AOLS and its members regarding the development of POLARIS, the functionality of the electronic land registration system, and the nature of its relationship with Teranet;
- (b) in the early 1990's there were numerous media reports regarding the then-unique public-private partnership to create an electronic land registration system for Ontario;

- 15 -

- (c) Teranet made presentations at Universities where students were trained and educated in the profession of surveying in order to educate surveying students on developments to Ontario's electronic land registration system;
- (d) academic articles were published discussing the Government's relationship with Teranet and the nature of the electronic land registration system;
- (e) surveyors entered into numerous contractual relationships with Teranet, as hereinbefore described, in which surveyors at all times acknowledged and agreed that copyright in deposited or registered plans or surveys was held by Teranet and/or its licensors, and not by surveyors; and
- (f) Teranet has had and continues to have numerous direct dealings with the AOLS, including contracting for provision of services by Teranet to the AOLS, attending and presenting at the AOLS annual conferences, and engaging in discussions regarding opportunities for partnership in improving Teranet's mapping products (which discussions are on-going).

57. Moreover, surveyors are and at all times have been regular users of Teraview and GeoWarehouse. Most Ontario land surveyors were and continue to be licensed users of Teraview and GeoWarehouse

58. The Teraview and GeoWarehouse Terms and Conditions, to which all users, including land surveyors, agree, specifically provide that the user agrees and acknowledges that:

- (a) Teranet is the owner or licensee of all intellectual property rights in the land information products and materials accessed on Teraview, which materials include deposited and registered plans;
- (b) in no event will Teranet be liable to the user as a result of any product or service provided; and
- (c) users will indemnify Teranet from any improper or unauthorized use of Teraview.

59. By virtue of these direct contacts and contractual relationships, and the breadth of public information and information provided specifically to the surveying community, the Plaintiff and all Ontario land surveyors had direct knowledge of the creation and functionality of the electronic land registration system, including the POLARIS Map, and the use to which Teranet was putting registered and deposited plans of survey, and agreed to such uses.

60. Teranet denies that the Plaintiff and members of the proposed class were at any time unaware of or not cognizant of Teranet's business and its use of copies of registered or deposited plans or surveys, as alleged or implied in paragraphs 5, 7, 30 – 31, and 50 – 51 of the Statement of Claim, or at all.

61. At no time during the creation and implementation of Ontario's electronic land registration system and POLARIS Map, or thereafter, did any surveyor or the AOLS raise any concerns that the system or POLARIS Map was created or functioned in a manner that in any way infringed or infringes the copyright of Ontario land surveyors, if any.

DENIAL OF COPYRIGHT INFRINGEMENT

62. Teranet denies that it at any time infringed or infringes any copyright of the Plaintiff or the proposed class members, if any, or any other right, in Plaintiff's Works or Surveyors' Works (as defined in the Statement of Claim).

63. Surveyors do not have any copyright in registered or deposited plans as by virtue of section 9(1)(e) of the Surveys Regulation, any plan or survey registered or deposited under the *Land Titles Act* or *Registry Act* is the property of the Crown, inclusive of intellectual property rights.

64. Further, plans of survey registered or deposited with LROs are prepared and published under the substantial control and direction of the Crown. Copyright in Plaintiff's Works and Surveyors' Works therefore vests in the Crown, and not surveyors, by virtue of the *Copyright Act*, R.S.C. 1985, c. C-42, s. 12. Teranet is expressly authorized and licensed by the Crown to use the works for the specific purposes and in the manner at issue in this action.

65. Further, or in the alternative, if surveyors retain copyright in Surveyors' Works, which is denied, surveyors at all times consented to all uses of Surveyors' Works made by Teranet by granting and having granted express and implied licences.

66. Further, all Teranet's uses of Surveyors' Works that are alleged to be infringing are a fair dealing for research and private study within the meaning of s. 29 of the *Copyright Act*, R.S.C. 1985, c. C-42;

67. In the alternative, the Plaintiff's Works and Surveyors' Works, or some of them, were created by independent contractors not in the employ of the Plaintiff or of the members of the proposed class. Accordingly, copyright in the Surveyors' Works, if any, is not owned by the Plaintiff or members of the proposed class.

68. Legislation mandates the Government of Ontario to provide the services which Teranet provides under contract. As the uses of Plaintiff's Works and Surveyors' Works which are alleged to be infringing are required by statute, Teranet's actions cannot be an infringement of copyright, if any, of the Plaintiff or any members of the proposed class.

69. In the further alternative, if Teranet has infringed surveyors' copyright in Plaintiff's Works or Surveyors' Works, which is denied:

- 18 -

- (a) the services provided by Teranet have significant public benefit. As such, Teranet has good cause or excuse to deal with Plaintiff's Works and Surveyors' Works as a matter of public interest such uses cannot infringe copyright, and it would be against public policy to permit surveyors to enforce their copyrights, if any;
- (b) surveyors, expressly and by their course of conduct, which includes but is not limited to:
- (i) encouraging the Ministry to enter into the POLARIS project;
 - (ii) participating in the RFI/RFP process;
 - (iii) providing input to the Ministry in respect of the development of the electronic land registration system and the regulations for electronic registration;
 - (iv) directly providing surveying, mapping, and other services to the POLARIS project and to the development, creation, and implementation of the electronic land registration system and the POLARIS Map;
 - (v) not having objected, complained, or raised any issue in respect of their copyright until the issuance of the Statement of Claim; and
 - (vi) continuing to deal with Teranet and in particular using the very applications about which they now complain,

and having followed this course of conduct with full and direct knowledge of the matters now complained of, the Plaintiff and the members of the proposed class mutually agreed that all registered or deposited plans and the intellectual

property rights therein are the property of the Crown, or in the alternative, consented to and agreed to express or implied licences for all of the alleged acts of infringement. Teranet relied on the foregoing and in so doing invested approximately \$600 million in Ontario's electronic land registration system and digital parcel map infrastructure. Surveyors cannot now resile from the position they have taken. They are estopped from pursuing this claim, have acquiesced to the use of their plans of survey, have waived the rights they purport to enforce, and are barred from pursuing this claim based on the equitable doctrine of laches;

- (c) in submitting plans of survey for deposit or registration under a signed statement requiring the plans to be deposited or registered under the *Land Titles Act* or *Registry Act*, surveyors unequivocally and expressly agree to be bound by the provisions of those Acts. The *Land Titles Act* and *Registry Act*, and the Regulations thereto prohibit any plans submitted for registration or deposit to have copyright notifications or markings purporting to limit the ability to make copies, and confirm the obligation for copies of registered and deposited plans to be provided to the public on request. Accordingly, the Plaintiff and members of the proposed class, have transferred their copyright, if any, in the Plaintiff's Works and Surveyors' Works, or in the alternative have abandoned any claim to copyright, or in the alternative have waived any retention of copyright, or the right to enforce copyright, if any, in the Plaintiff's Works and Surveyors' Works.

ACTION IS STATUTE BARRED

70. The Plaintiff and members of the proposed class knew or reasonably ought to have known of the conduct that is alleged in the Statement of Claim as an infringement of copyright by no later than 1995.

71. Accordingly, the herein action is statute barred. Teranet pleads and relies on the *Copyright Act*, R.S.C. 1985, c. C-42, s. 41

DAMAGES AND REMEDIES

72. Teranet denies that the Plaintiff has suffered the damages alleged in the Statement of Claim, or any damages at all, and puts the Plaintiff to the strict proof thereof. Teranet denies that the Plaintiff is entitled to any statutory damages pursuant to the *Copyright Act*. There is no basis in the Statement of Claim, at law, or in equity, for the relief claimed by the Plaintiff.

73. In the alternative, if the Plaintiff has suffered any loss or damage attributable to the conduct of Teranet, which is denied, Teranet states that the Plaintiff has failed to take reasonable steps to mitigate, prevent or avoid that loss or damage.

74. Teranet denies that there is any basis on which the Plaintiff is entitled to injunctive or mandatory relief. Further, the plaintiff is not entitled to equitable relief by reason of all of the facts pleaded herein.

75. Teranet denies that the Plaintiff has any claim or right to any profit realized by Teranet. In particular, the Teranet denies that it has been unjustly enriched.

76. Teranet denies the allegations contained in paragraphs 50-51 of the Statement of Claim and denies that there is any basis for a claim for punitive damages.

STATUTORY PROVISIONS

77. Teranet pleads and relies on the following statutes and regulations:

- (a) *Copyright Act*, R.S.C. 1985, c. C-42;
- (b) *Land Titles Act*, R.S.O. 1990, c. L-5;
- (c) *Registry Act*, R.S.O. 1990, c. R-20;
- (d) *Surveys, Plans and Description of Land Regulation*, O. Reg. 43/96;
- (e) *Boundaries Act*, R.S.O. 1990, c. B.10.
- (f) *Land Registration Reform Act*, R.S.O. 1990, c. L.4;
- (g) *Electronic Registration Act (Ministry of Consumer and Business Services Statutes)*, 1991, S.O. 1991, c. 44; and
- (h) *Electronic Land Registration Services Act, 2010*, S.O. 2010, c. 1, Sch. 6;

78. Teranet respectfully requests that this action be dismissed with costs.

July 29, 2011

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

F. Paul Morrison LSUC#: 17000P
Tel: 416 601-7887
Fax: 416 868-0673

Julie K. Parla LSUC#: 45763L
Tel: 416 601-8190
Fax: 416 868-0673

Jameel Madhany LSUC#: 59247Q
Tel: 416 601-8329
Fax: 416 868-0673

Lawyers for the Defendant

- 22 -

TO: **Registrar**
Ontario Superior Court of Justice
393 University Avenue
Toronto ON M5G 1E6

AND TO: **Gardiner Roberts LLP**
Suite 3100
40 King Street West
Toronto ON M5H 3Y2

William S. O'Hara LSUC#: 027045B
Tel: 416 865-6632
Fax: 416 865-6636

Branch MacMaster LLP
Suite 1410
777 Hornby Street
Vancouver BC V6Z 1S4

Ward Branch / Luciana Basil
Tel: 604 654-2966
Fax: 604 684-3429

Lawyers for the Plaintiff

Court File No: CV-10-414169-00CP

KEATLEY SURVEYING LTD. and TERANET INC.
Plaintiff and Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF DEFENCE

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

F. Paul Morrison LSUC#: 17000P
Tel: 416 601-7887
Fax: 416 868-0673

Julie K. Parla LSUC#: 45763L
Tel: 416 601-8190
Fax: 416 868-0673

Jameel Madhany LSUC#: 59247Q
Tel: 416 601-8329
Fax: 416 868-0673

Lawyers for the Defendant

#10517154