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January 22, 2018

VIA EMAIL

Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

RE: *Keatley Surveying Ltd v Teranet Inc*
File No. 37863

We write in response to the application for leave to appeal from the decision of the Court of Appeal for Ontario dated September 28, 2017. The Attorney General of Ontario submits that this is not an appropriate case for granting leave to appeal to this Court. The application for leave to appeal raises no question of law of public or national importance that transcends the parties' interests. Rather, the Court of Appeal and Superior Court correctly identified and applied relevant principles of statutory interpretation.

The applicants allege copyright infringement with respect to plans of survey that are registered or deposited into the provincial land registration system. As noted by the Court of Appeal, surveyors are under "no obligation" to deposit or register plans of survey into the provincial land registry system.¹ The Court of Appeal upheld the Superior Court of Justice's ruling that Ontario holds copyright in plans of survey that are deposited or registered into the province's land registry system pursuant to s. 12 of the *Copyright Act*. Section 12 provides that copyright will belong with the Crown for 50 years when a work is "prepared or published by or under the direction or control" of the Crown. The Court of Appeal and Superior Court noted that the *Copyright Act* analysis therefore turned on the operation of Ontario's land registration system and the applicable provincial legislation (the *Land Titles Act* and *Registry Act*).² The Court of Appeal held that:

Federal legislation, s. 12 of the *Copyright Act*, bestows copyright on the Crown.
Provincial legislation informs the copyright inquiry mandated by s. 12.

¹ *Keatley v Teranet* 2017 ONCA 748 at para 24, Application for Leave to Appeal, Tab B3.

² *Keatley v Teranet* 2017 ONCA 748 at paras 25-26, Application for Leave to Appeal, Tab B3

Specifically, provincial legislation speaks to whether the plans are “published” by the Crown and if so, whether that publication takes place under the “direction or control” of the Crown.³

The applicants argue, contrary to well-established principles of modern statutory interpretation, that s. 12 of the *Copyright Act* should be interpreted without reference to provincial legislation. No authority is cited for this argument, and it is directly contrary to this Court’s frequent reminders that statutes should be interpreted, where possible, in a manner that allows the continued operation of laws enacted by both levels of government.⁴

Finally, the Applicants’ constitutional challenge also fails to raise a question of law of public or national importance, as the issue is not properly before this Court and is in any event without merit. At the Court of Appeal, the applicants challenged the constitutionality of provisions in the *Land Titles Act* and *Registry Act* after stating expressly before the Superior Court that they were not raising any constitutional issue.⁵ The Attorney General of Ontario intervened before the Court of Appeal to defend the constitutionality of the impugned provisions. Consistent with this Court’s pronouncements on cooperative federalism, the Court of Appeal accepted the Attorney General’s position that Ontario holds copyright in the deposited plans of survey in accordance with s. 12 of the *Copyright Act* and therefore no constitutional issue arises. The provincial and federal legislation operate harmoniously.

Ontario respectfully requests that the application for leave to appeal be dismissed.

Yours very truly,



Michael S. Dunn
Counsel

CC: Counsel for the Applicant and Respondent

³ *Keatley v Teranet*, 2017 ONCA 748 at para 54 Application for Leave to Appeal, Tab B3.

⁴ See eg *Bank of Montreal v Marcotte*, 2014 SCC 55 at para 63.

⁵ *Keatley v Teranet*, 2017 ONCA 748 at para 7 Application for Leave to Appeal, Tab B3