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**Title of Paper**

Remedial Approaches to Proprietary Estoppel — Lessons from England, Australia, Canada, and Singapore

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**Abstract**:

Where B represents to A that B has ceded, or will cede, an interest in B’s land to A, and A relies on B’s representation to A’s detriment, A makes out a successful proprietary estoppel claim against B. From the moment the elements of the claim — representation, reliance, and detriment — are fulfilled, A obtains an ‘equity’ in his or her favour. In satisfaction of that equity, courts have the ability to exercise remedial discretion, both as to the type (viz whether proprietary or personal, including whether to secure a personal remedy by way of a charge) and the extent (the quantum of a money order) of the remedy to be awarded.

There is an ongoing debate as to what remedial approach is most appropriate. The last five years or so have seen significant developments on this front in England, Australia, Canada, and Singapore. In *Sidhu v Van Dyke* [2014] HCA 19, the High Court of Australia confirmed that A is prima facie entitled to expectation relief, a remedial position from which courts will depart (and thus tending towards awarding compensation for reliance loss) only where it provides a disproportionate remedy. In contrast, the Supreme Court of Canada affirmed in *Cowper-Smith v Morgan* [2017] SCC 61 that A is only entitled to the minimum relief necessary to satisfy his or her equity, which suggests that compensation for reliance loss is the starting point, with expectation relief awarded only where compensation produces a disproportionate response. English courts have only recently expressly noted the

two contrasting views, but have not committed to any position (see *Davies v Davies* [2016] EWCA Civ 463 [38], *Moore v Moore* [2018] EWCA Civ 2669 [26]). In contrast, in *Low Heng Leon Andy v Low Kian Beng Lawrence (Administrator of the Estate of Tan Ah Ing, Deceased)* [2018] SGCA 48, the apex court in Singapore adopted a non-committal position: it was said that there was no need to choose between the possible options, since the remedial starting point was a matter of choice for A and not for the law.

The premise of this paper is that the experience of each of these jurisdictions has something important to contribute to the debate, either negatively or positively. To this end, Section 1 describes the state of the law in the four jurisdictions. Section 2 identifies the aim of the doctrine according to those jurisdictions, and notes that they more or less speak with one voice — that proprietary estoppel aims to avoid detriment. Section 3 evaluates, in the light of that aim, what the ideal remedial approach is. An argument will be made that the Singaporean approach is undesirable, for the issue raises a normative choice which can only properly be answered by the law, and not by claimants. And while Canadian and English law might suggest that a strict compensatory approach best gives effect to the doctrine’s aim, the way in which the doctrine is most commonly used in practice would suggest that expectation relief ought to provide a starting point. That is not to say, however, that the Australian approach ought to be adopted, which (arguably) takes expectation relief to provide a *strong* default position. To the contrary, the ideal position is that expectation relief provides a weak starting point. Finally, Section 4 notes some important implications which the proposed analysis has for the future development of the doctrine in these jurisdictions.