

BC's Exceptional Registry System

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With Val Wilson

THE SCRIVENER: When did the Torrens system become our standard of registering land titles in BC?

IAN: Sir Robert Torrens introduced the Torrens system in 1858 in Australia; the government of the British colony on Vancouver Island adopted it 3 years later. It was then an absolute fee system, not the current indefeasible fee system we now have, which came along 50 years later.



Ian Smith

CRAIG: Vancouver Island was only the second jurisdiction in the world to adopt the Torrens system.

Sir Robert Torrens introduced the Torrens system in 1858 in Australia; the government of the British colony on Vancouver Island adopted it 3 years later.

THE SCRIVENER: Why was that system chosen in British Columbia?

IAN: It provided some security for people's investment, encouraged investment, and provided some order in terms of the development of the province.

CRAIG: The Gold Rush was happening at the time, which sparked a land boom in the area. The Torrens system had appeal because of the large land mass here. There were a lot of new businesses and there was an influx of people colonizing the area. And very few lawyers.

It was complex and expensive to do the typical abstract of title to research ownership of the land in the conventional way, which would involve a review of virtually all prior transactions affecting ownership of a parcel of land.

Rapid growth and associated land speculation also sparked a wave of fraudulent land transactions. The Torrens system allowed conveyancing work to be done simply, for less expense, and provided increased security of title.

IAN: The four principles reflected in the Torrens system legislation are indefeasibility, registration,

abolition of notice, and the assurance principle—our Assurance Fund.

THE SCRIVENER: How is the Torrens system superior?

CRAIG: It allows confidence that what you see is essentially what you get. You don't need to search behind the title to see who the true owner may be. If title has been issued, the registered owner conclusively owns an indefeasible title, with very limited exceptions. Many jurisdictions don't have title systems.

THE SCRIVENER: Where are "deed" registry systems still being used?

IAN: They still exist in our Maritime provinces, which are currently converting from a deed registry to a title system. Ontario also was a deed registry system; it is now about 90 percent converted to land titles.

The problem with the deed registry system was that each time a property was sold, there had to be a search back 45 years to ensure



Craig Johnston

the current owners shown on the register were, in fact, the real owners. Searches still are conducted in deed registry jurisdictions. Ireland is another example of a deed registry jurisdiction, as is England. Most jurisdictions are now converting to a title system.

CRAIG: With the exception of the United States.

IAN: There is a Torrens system in Hawaii. Did you want to elaborate on the US experience, Craig?

CRAIG: In the United States, early on they introduced title insurance as a means to protect people who acquired an interest in land. Typically a search would be done by a Notary or lawyer in the preparation of an abstract of title and opinion as to whether the vendor had clear title and could convey it to his or her client.

But if they made a mistake, they weren't necessarily responsible for any loss incurred by the purchaser who relied on their opinion. So, title insurance would protect against that risk. When a person acquires an interest in land in the deed registry system—and buys a policy of title insurance—if there is a defect in the title, the insurance may cover you. The deed system combined with title insurance predominates in the United States.

THE SCRIVENER: What are the interests of the LTSA?

CRAIG: We examine and register interests in privately owned land and in publicly owned land where title has been raised in the name of the provincial Crown.

THE SCRIVENER: What do you mean by “raised,” please?

CRAIG: The context is that 92 percent of the land mass in BC is not reflected in the land title system. It is unceded Crown land. The 8 percent where title has been *raised* means the province has issued a Crown grant and we have issued a certificate of indefeasible title to a registered owner.

Those lands fall within what the LTSA deals with on the land title side of things. We also have a Surveyor General division, in relation to the survey of Crown lands.

All the transactions that the Land Title Division processes relate to that 8 percent of the BC land mass—the transferring of ownership, the granting of different charges to land, and the registration of statutory liens and notices on titles.

THE SCRIVENER: Are the locations of First Nation middens noted on titles in the land registry?

CRAIG: No, they are not. In terms of First Nations' interests, for the most part none of that is reflected in the land title system, although the records for some reserves have found their way into the system. Generally, reserve lands are within federal jurisdiction. They're not part of the land title system.

Any system—to keep it vital and current in terms of its users—needs to be updated on a regular basis.

IAN: An archeology division of the BC Ministry of Tourism, Sport and the Arts has records of those types of things.

THE SCRIVENER: What services does the LTSA provide?

IAN: Registration of documents, including survey plans, can be submitted on paper or electronically under the Electronic Filing System: EFS. STC or State of Title Certificates can be requested electronically, although they are sent out by mail. Copies of documents can be obtained electronically.

THE SCRIVENER: EFS has been in place for 4 years. How popular is it?

IAN: Electronically registered documents in 2006 numbered about 215,000. In 2007, we had over 300,000. The electronic filing of documents is now used for 33 percent of land transactions.

CRAIG: The types of documents that can be submitted via the Electronic Filing System are generally Form A transfers, Form B mortgages, Form

C general instruments, and Form 17 applications. We have just started to accept electronic survey plans. Some applications still must come in via paper.

Another service we provide, through BC OnLine, is the Activity Advisory Service where someone can have an email sent to a BC OnLine user account notifying the account holder that there has been activity on a certain title.

THE SCRIVENER: Are you planning to add services to your system in the near future?

CRAIG: The short answer is yes. We always want to improve service to the customer. Right now, the Authority is looking at the way it currently conducts business with a view to new business services that could be introduced in the future. No firm decisions have been made in terms of what those services would be.

IAN: We will continue looking at what fits and what technology can give us. We introduced “technology” in at least three steps in the land title system. We had ALTOS 1 in the mid-'80s—Automated Land Title Office System. ALTOS 2 came in around 1994 and EFS arrived in approximately 2004.

Any system—to keep it vital and current in terms of its users—needs to be updated on a regular basis. We will be looking at what technological advances are available and how technology can assist us in the future. That's particularly important because we're facing a human resources challenge, as are a great number of businesses in the world today.

We see technology as one of the tools to enable us to keep current with customer demands and to move forward into the future.

CRAIG: We will look to other jurisdictions to see what they're doing, to assist us in setting the best path in the future.

IAN: We had the good fortune of attending the meeting of the Canadian Conference of Land Title Officials in Ireland this year. There was an

international land titles conference in Dublin at the same time. It was an excellent conference with about 40 countries represented.

We had presentations from at least 20 jurisdictions indicating where they were in terms of their systems and their technology—including New Zealand. It has a mandatory electronic system with aspects of what they call “automatic registration” attached to it. I see them as among the leaders.

British Columbia, compared with the rest of our provinces and even the rest of the world, is among the top four jurisdictions in terms of our use of technology and the security of our system. EFS is fairly strong by comparison.

Ontario has had some difficulties with regard to fraud. They now know it’s a result of their open system whereby anyone who has provided sufficient identification and applied and indicated the need to use the electronic system can access it.

CRAIG: Here in British Columbia, only Notaries, lawyers, and land surveyors have access to the Electronic Filing System. In that sense, it’s seen as a more secure system.

IAN: That’s a positive aspect of the BC land title system. Another component of our system is that we require execution in front of an officer. Other jurisdictions don’t. When you learn the history of the land title system in other jurisdictions, you quickly see how advanced British Columbia has been and how forward-thinking it is in its embrace of technology.

Jurisdictions larger than British Columbia or of comparable size have been more behind the curve that BC helps set in terms of using technology to create an electronic registry database.

CRAIG: With ALTOS 1, the documents arrived in paper form and were examined in paper form. ALTOS 2 moved us from paper-based examination to image-based

examination—paper documents that came in across the counter were scanned to a database of images. The examiners examine the images, not the paper.

THE SCRIVENER: Suppose a person makes a surreptitious change on a document. What if, by the time the document is copied and appears onscreen, the changes are barely noticeable?

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IAN: That’s a good question. Prior to imaging the documents, they’re examined as to originality. If there is a concern, a note is attached to the scanned materials indicating any concerns the land title clerk operating the scanner has in terms of the originality. The examiner then satisfies him or herself on the originality of signatures.

EFS is attached to ALTOS 2—the electronic filing arm. Previously, we couldn’t remotely file documents electronically from the office of a Notary or a lawyer. We can do that now. EFS introduced digital signatures and allowed documents to

be submitted electronically, but it’s still the ALTOS system. We are using technology to our advantage.

THE SCRIVENER: What is the composition of the LTSA Legislative Task Force and why was it formed?

IAN: It is a mixture of legal practitioners from private practice, the Law Society, government and universities, and others. Constituted in 2006, the Task Force was formed to look at the land title Assurance Fund and land title legislation generally, with a view to making the Assurance Fund fairer and more effective . . . and basically enhancing it to be more current with today’s issues.

The Task Force is just finishing up a final report, which we expect to be completed by the end of March. If the recommendations are accepted by our Board, they will be passed along to the provincial government. If acceptable there, they will form the basis of legislative reform related to the land titles and the Assurance Fund.

A provincial government task force in 2001 looked at the Assurance Fund and several of their recommendations have become law. One is the immediate indefeasibility amendment and another is about contributory negligence.

Back in 2003, the limitation period for bringing an action against the Assurance Fund was amended to extend the time in which a claim could be made. ▲

2006/2007 LEGISLATIVE TASK FORCE MEMBERS

Name	Organization
Ralston Alexander, QC	Cook Roberts
Susan Forbes, QC	Lawyers Insurance Fund, Law Society of BC
Michael Kader	Canadian Banker’s Association
Mary Anne Waldron, QC	University of Victoria, Legal Affairs
Edward Wilson	Lawson Lundell
Craig Johnston	Land Title and Survey Authority of BC
Leslie Hildebrandt	Land Title and Survey Authority of BC
James S. Fowles	Ministry of Attorney General of BC
Ian C. B. Smith	Land Title and Survey Authority of BC