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Raising the Bar

This is the first of a series of articles to be dedicated to the field of real property conveyancing, the area of law primarily concerned with the transfer of interests in real estate.

This is one industry ripe for immense technological change and, with the notable exception of financial institutions and title insurance companies, perhaps not all those practising in this area are ready, willing, and able to embrace it.

To access a cross-section of opinion, an informal faxed questionnaire was developed to elicit facts and perceptions regarding the current and anticipated state of residential real property conveyancing; the questionnaire was circulated among 15 legal firms involved in this area of practice. Ten of those surveyed were kind enough to respond. They included both Notaries and solicitors, ranging from sole practitioners to large Downtown firms hailing from various points around the province.

Some of the initial questions were designed to provide us with an overview of how the day-to-day business of conveyancing is currently being accomplished. Others prompted respondents to imagine the impact on business processes and practitioner responsibilities under the new regime of the much anticipated Electronic Filing System (EFS) of registration in the Land Title Office.

If we can consider this random group to be at all representative of their peers, the thing we most have in common in this industry is how different we are—each of us has his or her own way of getting the job done. It was surprising to discover how many had custom-designed systems, in many cases also software, to reflect their respective cultures. One very positive commonality, however, was that all respondents either have or plan soon to have high-speed Internet connection.

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While we all depend heavily on word processing technology, we are still passionately split as to our preferences between MSWord and WordPerfect. Trust accounting systems range from manual or one-write to fully integrated packages. There appears to be a trend toward the increased use of databases and contact managers but we're not all there yet. Let's not even *talk* about which versions of various software are lurking out there.

This lack of consistency among practitioners has not been of concern until recently. While some prefer the tried and true, others consider being on the cutting-edge an opportunity for

competitive one-upmanship. Based upon the results of the survey, however, it appears that the resulting lack of technological compatibility has become a source of apprehension among respondents otherwise reserving judgment or looking forward to the EFS.

Most of those not reserving judgment did not so much express fear as resentment toward the EFS. Fact or fiction, it is perceived by the majority as the government's offloading of stewardship and document storage responsibility onto practitioners who will pay for that privilege initially in staff training and technology upgrade costs. While, as with most new technology, those who first embrace the EFS may experience some advantage, it is anticipated that in a competitive market, any savings resulting from direct liaison with the registry would be in disbursements appropriately passed on to the client. The bar is raised yet again.

Given the recent LTO closures, few would disagree that, if well designed, the EFS is a logical evolution for the Land Title Registry, and that whether by mandate or competitive forces, it will become the way this business is done. This, combined with the trend toward in-house and title insured mortgage preparation, fundamentally changes the business model for the professional practising in this area of law. Ultimately, therefore, each firm will have to evaluate the manner or even the merit of its continued involvement in this field.

A number of larger firms, having recently closed their residential conveyancing departments, cite diminishing returns vs. increasing risk as a primary factor in their decision to do so.

One of the most pronounced areas of disagreement among respondents when comparing current and future practice methods is the value to the process of the land title agent. While some view this role as little more than a delivery service to become obsolete under the new regime, others strongly advocate the benefit of their expertise in their position as liaison and consider the agent as something of an out-sourced staff member. A future article in this series will address the anticipated role of the agent in more depth, including commentary from the ranks.

With so little information readily available about the true nature of the EFS, most of us in the trenches aren't quite sure what to expect or work toward. Accordingly, some reticence is natural in anticipation of this momentous procedural shift in real property conveyancing. Significant resources have, however, been committed to the successful deployment of the EFS project, so make no mistake—it is the way of the future—the *near* future. Another article in this series will, therefore, invite feedback and input from representatives of the Land Title Branch and EFS development team, to enlighten us further. ▲

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