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Shaping the Future of Conveyancing

The various articles in this issue relating to the new Electronic Filing System at the Land Title Office serve to remind us that, as in life, the only constant in conveyancing is change.

The new system of submitting land title documents for registration is the most significant of such changes since 1990 when the Land Title (Transfer Forms) Regulation prescribed new forms and procedures under the *Land Title Act*.

Those of us who go back that far will recall the fuss over black ink to accommodate OCR technology, the practice shift to meet new officer certification requirements, the various training seminars and endless calls to agents for clarification, and the constant references to our new “bible,” affectionately known as the *Green Book*. Today, most would agree that the new forms and procedures streamlined the process and were generally an improvement. Much ado about nothing—in hindsight.

How is this different from the introduction of the EFS?

There is fuss and confusion over the

significance of digital signatures to accommodate Acrobat Forms technology; practices will shift to meet new electronic submission requirements; seminars and training opportunities abound, while agents are ably stick-handling the differences between manual and electronic procedures at the LTO. Lo and behold, there is even a brand new *Green Book*. Will this be a good thing?

Mr. Edward Wilson, a solicitor at Lawson Lundell in Vancouver and long-time member of the Electronic Filing System Committee, thinks so. He believes generally that the EFS is a positive initiative but that, clearly, some parties will benefit under it more than others.

Unquestionably the primary beneficiary is the EFS sponsor—the provincial government—because EFS is a key factor in allowing the government to meet its staff reduction and budgetary goals. In any event, Wilson points out, technological change such as the EFS is inevitable; it will be up to the legal profession as a whole to create the environment of cooperation necessary for a smooth transition.

He suggests the benefits to the public are also there, if more subtle. Certainly, real estate clients in more remote areas of BC will be on a more level playing field with

those closer to existing Land Title Offices; hopefully the savings created by the LTO’s becoming more cost efficient will somehow translate into lower taxes or government expenditures on matters having greater priority—more hospital beds or the like.

Wilson forecasts the EFS will significantly reduce the constraints of physical document delivery by couriers and agents, though at least initially, this may require more time and expertise of legal support staff.

While mitigated courier costs to clients may be offset by higher support staff costs, LTO agents will likely be involved in the process for some time yet, due to current EFS limitations. Their value as a general knowledge base and for transactions not considered straightforward should not be underestimated. The most ambitious among them are already diversifying their service offerings to adapt to the anticipated changes.

What does the future hold for the legal profession involved in residential

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conveyancing? Apparently, the jury is still out on that question. The final outcome may, in fact, be most strongly influenced by how soon and how effectively its members themselves take responsibility for the standards of professionalism and cooperation inherent to delivering legal services in this field. There are, after all, more significant issues to be resolved than merely adopting the new e-version LTO forms.

The proverbial soapbox is pulled out; Wilson proudly takes his place upon it to espouse greater self-esteem in the conveyancing industry.

“Practitioners in this field must treat the delivery of legal services in conveyancing with the respect it deserves and not as a commodity. To do otherwise is a disservice to our clients for whom this is likely the most important financial investment of their lives. It is necessary to take the time to do it right and charge accordingly. One just has to look at the compensation being paid to Realtors, financial advisors, and others involved in this investment.” Is there room on that box for me?

Wilson has long been concerned that the legal profession undervalues its role in the conveyancing process. After all, every file has the potential for serious and expensive problems and the client is relying on—and paying for—the experience and judgment of the legal professional to see the transaction through. Now, however, this concern extends to the possibility of unwanted ramifications inadvertently created by two different filing systems—manual and EFS—operating in tandem.

Wilson applauds the non-mandatory introduction of the EFS but as with any new system, there will be growing pains. The Land Title Branch is acting promptly to resolve any technical difficulties brought to their attention, but there are still some matters that perhaps would best be addressed in the codes of conduct and professional standards of the legal profession itself. Ultimately, for the system to achieve its fullest potential will require the cooperation of both.

Probably the most significant and controversial of issues to be addressed by

the conveyancing industry under the EFS regime will be the shift in registration availability from 6/5 to 14/6. While manual filing remains open at the LTO Monday through Friday from 9:00 am until 3:00 pm, the EFS is currently available during BC Online hours: Monday through Saturday, 6:00 am until 8:00 pm. That is a 180 percent increase, with far-reaching consequences potentially affecting professional liability, business decisions, and lifestyle choices.

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When the *Lord's Day Act* went by the boards, competitive pressure drove malls to extend their hours but consumers didn't buy more goods; they just spread their purchases over the available time. Overhead went up to cover the extra man-hours and thus, logically, something had to give. In some cases, prices simply went up to cover the increased overhead. In others, many fine independent shops were lost in favour of chains and big-box retailers. And we all know what happened to customer service . . . remember service?

The topic of Saturday closings sets off a lengthy list of reasons from Wilson why this is generally ill advised and should be the exception and not the rule. First is the fact that choice of representation for each party will be reduced to the few firms open on Saturday. Second, most national mortgage lenders only fund on weekdays. Third, banks, agents, couriers, strata agents, insurance firms, and various other support services have limited, if any, availability on Saturday. Fourth, if an issue arises that requires manual filing or LTO support, you're really out of luck. As Wilson puts it, “Just because we can doesn't mean we should.” Isn't that what Jeff Goldblum said in *Jurassic Park*?

On one hand, the extended submission hours will give practitioners and their staff greater flexibility for filing

documents. On the other, very few firms currently maintain staff coverage 14/6; the question arises as to how many sole practitioners would even be able to offer that kind of availability should market forces so dictate. Wilson cautions all practitioners against placing unrealistic and stressful expectations on their staff. He advises weighing very carefully business decisions regarding office hours and fee structure. The soapbox is getting crowded.

Another matter to be addressed is the difference in posting times between the EFS System and the manual paper systems. If an EFS filing is received subsequent to a manual filing but posted sooner, the misleading result could be costly to a practitioner who paid out before the manual submission was posted. It has been suggested that BC OnLine could display on their site the manual turnaround times so that EFS users could time their post-index searches with confidence. If technically possible, that may be one way to address the question of when it is appropriate to pay out. Otherwise practitioners will have to maintain close contact with their land title agents to ensure the agents are conducting their posts at the appropriate time.

Another technical concern relates to section 168.31 which, in summary, states that delivery of a true copy of the executed EFS transfer satisfies the seller's obligation to deliver the instrument in registerable



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form. If the buyer's representative was not set up to file electronically and received a faxed EFS form of the executed transfer before 4.00 pm—the latest time conceivably permitted under the newest version standard form Contract of Purchase and Sale—have the seller and his representative complied with their statutory obligations, even if the buyer's representative cannot file the transfer by 4.00 pm? What would be the additional implications if the transaction were *not* governed by the most recent version of the standard contract?

The provincial government, specifically the Land Title Branch, has done what it set out to do.

The guiding principals of the EFC included a mandate that “the scheme must not materially change current conveyancing practice, including the submission of applications to the Land Title Office by the purchaser's solicitor or Notary” and “the scheme must not increase the cost of doing business with the Land Title Office.” Wilson admits that the members of the EFC did not take a strong stand on the extended hours but, in all fairness, the potential impact of the issue is only just being recognized and absorbed by the profession. Will the extended filing hours increase lawyers' and Notaries' cost of doing business?

With all his “spare” time, Wilson also sits on the BCREA Standard Forms Committee and is a past Chair of the CBA (BC Branch), Vancouver Real Property Section. As such, he encourages the establishment of practice standards meant to facilitate the cooperation among practitioners necessary in such a demanding industry and to avoid the types of situations described above. “With few exceptions, practitioners in the field of conveyancing are cooperative, not adversarial. They work together to get the deal done, which is what their clients want.”

One example of Wilson's efforts to account for the EFS hours is evident in the most recent edition (December 2003) of the

standard Contract of Purchase and Sale used by Realtors, which now requires that the transfer and any mortgage documents must be submitted for registration by 4:00 pm. Prior to the EFS, there had been no need for a time to be set since the LTO closed at 3:00 pm. Wilson expects to address Saturday closings at their next round of discussions. As far as some of the other matters discussed above are concerned, Wilson plans to suggest their inclusion in future CBA meetings.

The provincial government, specifically the Land Title Branch, has done what it set out to do. Those involved are to be commended. They have met the goals of the EFS initiative and will no doubt continue to improve the system with feedback from its users, to enhance its take-up rate within the industry.

Accordingly, it is time for system users—present and future—to take an interest in its ongoing development and, by encouraging their respective governing bodies to become involved in the refinement of the system for the overall benefit of the profession and their clients, to shape the future of conveyancing. OK, so I went out and got a soapbox of my own. ▲

Edward L. Wilson is a partner in the law firm of Lawson Lundell, where he practises real estate and municipal law with a specialty in real estate development. He has been a member of the Electronic Filing System Committee since its inception in 1999. The Canadian Bar Association's representative on the BC Real Estate Association Standard Forms Committee, he was on the Executive of the CBA Real Property Section for 10 years. Mr. Wilson sits on the Editorial Board of CLE's *BC Real Estate Development Practice Manual*; he has presented a number of papers on real estate matters for CLE and other organizations over the past 20 years.

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