

Carolynne R. Maguire



The Powers that Be

Third in a series of three articles dedicated to the field of real property conveyancing, the area of law primarily concerned with the transfer of interests in real estate.

The first two articles in this series invited practitioners and land title agents to forecast the future of conveyancing with a view toward the impending Electronic Filing System (EFS) for the Land Title Office (LTO). Speculation and apprehension exist among members of both groups, due to the absence of a complete picture of the manner in which coming procedures will actually play out in everyday routines. After all, the new mechanics of and responsibilities associated with forms completion, delivery, execution, coordination, filing, examination, registration, and storage are currently known only to a select few.

Seeking clarification from the powers that be, I met with each of three gentlemen involved and influential in the design and delivery of the EFS: Darcy Hammett, Director of Operations and Systems for the Land Title Branch (LTB) of the BC Ministry of Sustainable Resources Management; Ron Usher, Law Society of BC Staff Lawyer and VP/CIO of Juricert Services Inc.; and Wayne Braid, Executive Director of The Society of Notaries Public of BC.

Given his dual role with the Law Society and Juricert, Usher has an abundant knowledge of practice opportunities and trends in the legal field. He empathizes with the general apprehension on the part of practitioners and agents as being both understandable and expected in the absence of complete information. Ultimately, however, he believes these concerns will soon be addressed, and stem mostly from a “workflow problem,” wherein areas of responsibility must yet be clarified, perhaps even re-allocated, but not necessarily deleted.

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Braid’s involvement on the Electronic Filing Committee (EFC), a brain trust of representatives from the conveyancing industry professions and government, has been relatively recent. Given the importance of conveyancing to the practices of many Notaries, however, his appreciation for the impact of the EFS is no less acute. One of the mandates of the EFC has been to maintain as much as possible the integrity of the current conveyancing process in the migration to e-filing. Braid speculates, however, “that

the responsibility of the practitioner attaching his or her digital signature to the document will likely be increased as a new role is created, being neither Applicant nor Certifying Officer.”

This issue of shifting roles and responsibilities among conveyancing industry participants still seems to be a matter for speculation. Usher volunteers that agents should be recognized for their specialized and thorough knowledge of LTO procedure, and that those willing to step up will find a place in the process. Braid similarly comments that the new system may bring increased efficiencies but should not do so at the expense of involvement by the people who add value to the process.

Usher and Braid agree that the current system of conveyancing in BC is already robust, efficient and, in comparison with most other jurisdictions, very economical for the consumer. In the face of LTO staff cutbacks, however, the EFS is inevitable as a means of “outsourcing keystrokes” and shifting government costs to the private sector. The governance of both Law and Notary Societies, therefore, supports the concept while proactively advocating for a continued role for legal professionals.

For years now, both Notaries and lawyers have participated actively with the LTB throughout the EFS design phases. With roll-out slated for Spring

2004, it will be in the upcoming implementation stage that the “workflow problem” referred to earlier by Usher will be addressed. Usher suggests, “Whether or not a satisfactory exchange of benefits is accomplished between government and the private sector under the EFS regime will likely be influenced by the amount and quality of input by the legal profession in these final stages.”

As LTB representative, Hammett elegantly responds to the issues put forward in the two previous articles and those now summarized by Usher and Braid with the patience of someone well-versed therein. The benefits of the EFS to government are clear; Hammett admits that budget reductions and the closure of Land Title Offices has confirmed the need for a means of electronic submission of documents. He emphasizes, however, that the system was designed not to exclude current participants in the conveyancing process, and maintains that use of the system will not be mandatory and thus must succeed on its own merit to users.

One of the main EFS benefits we discussed, in fact one of the major drivers for the project, was that it provides universal access to the LTO. Physical distance from the LTO need no longer factor in turnaround times and costs, effectively levelling the playing field for practitioners throughout the province.

Hammett takes issue with the term “offloading” and carefully reminds me that the mandate of the cooperative efforts of the EFC was and is to ensure that no additional burden should be placed on the legal profession under the EFS. Hammett reiterates that this is a system of *submission* not registration, and that LTB examiners will still evaluate each document before its pending status is upgraded to take full effect. He confirms the value of agents to the process, and suggests that their continued involvement is to the advantage of both practitioner and LTB.

One of the key concepts to understanding the new system seems to be the significance of the digital signature

and the responsibility of the Notary or lawyer who attaches it to a document. Hammett explains that it represents only that the subscriber of that essential signature has possession of an original or copy of the executed document whose facts match exactly those submitted electronically for filing. Once registered, the electronic document becomes “the original.” What the legal professional then does with the executed document, or copy thereof, becomes a practice decision, not a government requirement, as it may never be called upon for examination except for forensic purposes.

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While the system in its initial stages will necessarily be limited in functionality, the EFS offers much potential for future development. At first only the basic LTO forms will be available but their design and number will evolve with use. Since the computer won't mind, the hours for acceptance of filings could be extended. Coordination among the various BC Online service offerings and cooperation with third party software developers will further enhance user experience.

Hammett has learned not to make specific predictions about how the system will eventually be received by practitioners but he is confident that mutual benefit is there for them. He is optimistic that at the very least, practitioners will admit “the EFS will require users to go through the difficult learning curve but the trade-offs are worth it.” Whether by increasing office efficiencies, overcoming time/distance constraints, or establishing greater documentation consistency among practitioners, there are trade-offs to be had.

Perhaps the subtle difference between outsourcing and offloading is the relative degree of mutual benefit experienced by the parties involved. If saving keystrokes is a primary motivation behind this initiative, then the power to shift the benefit balance may, in fact, lie with neither government nor practitioners but with conveyancing software vendors. To avoid duplication by the practitioner of the government's saved keystrokes and create real value to users, their programs must bridge to accommodate the Adobe Acrobat forms required by the EFS and take full advantage of delineated information to become available online. I sense a future article on this.

Spanning the three articles in this series, we have heard from a variety of involved parties and, it would seem, we have much to look forward to: keystrokes will be conserved; responsibilities will shift; business opportunities will be realized; and the conveyancing industry will find new and exciting ways to serve the public.

I was asked about the lifestyle ramifications for industry participants, should the LTO decide to open earlier, later, and/or on weekends for filings, as it is for searches now. I didn't have an answer. Talk about raising the bar—24/7 anyone? ▲

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