

CBA REAL PROPERTY SECTION MEETING SEPTEMBER 9, 2008

IS MANDATORY E-FILING ON THE HORIZON?

Speaking Notes of Jim Taylor, Q.C.

1. The LTSA has decided that the electronic filing of LTO documents will be made mandatory by 2010/2011.
2. The question this raises is ought electronic filing be made mandatory by this or any other date or ought there remain the option of paper filing.

WHO I AM

3. I act for West Coast Title Search Ltd (“West Coast”) as regards to the LTSA’s decision to remove the choice of paper filing. It is important that you know that. In the 60’s and 70’s, I was a partner in a then medium sized law firm that had a general practice. I came to know Wayne Crookes (who is the President of West Coast) and West Coast has always provided land title and court registry services to the firms of which I have been a member. I was called in 1969 and have practiced in private practice since then (although I was a law professor at UBC for a time and worked in government from 1985-1986) and I have been active in the profession (particularly in CLE).

GENERAL BACKGROUND

4. I am here to discuss the LTSA’s decision to make the Electronic Filing System (“EFS”) of land title documents mandatory and the effect that mandatory EFS will have on the legal profession. I should say that West Coast has, I believe, altruistic interests in connection with this but it also has a powerful self-interest in the effect that mandatory EFS will have on it and the way in which it is presently able to conduct its business which it would prefer to maintain.

5. As you may know, EFS was initially introduced by the LTSA in 2004. It was described, in writing, as an *option* to the traditional paper method of filing at the Land Title Offices (“LTO”). It was represented to members of the Law Society in writing by both the Law Society and CLE that when the LTSA introduced this new system that consumers would have the choice between the two methods. (See Appendix 1 and 2 – blue pages)

6. However, in the LTSA’s Business Plan for 2008/09 to 2010/11 (“Business Plan”), the LTSA advised that EFS will become mandatory by the year 2010/11. This is set out in on page 16 of the Business Plan in the “Performance Measures Chart” where the LTSA states that by the year 2010/11, the use of EFS to file land title documents electronically will increase to 85% “due to *mandatory* EFS.” (See Appendix 3- pink page) Other than this oblique reference the LTSA did not, to the best of my knowledge, expressly disclose this to our profession.

7. With technology on the rise and an increasingly younger computer-savvy generation of professional users, it is likely that, even if the LTSA were committed – it does not appear to be, incidentally – to a level playing field, over time EFS may become the demonstrably preferred method of filing land title documents.

8. I say the LTSA has chosen not to deal with us on a level playing field because the LTSA appears to be working to distort the *apparent* choice in favour of EFS by:

- a. reducing the number of cashiers at the Lower Mainland LTOs (and elsewhere) to service lawyers and land title agents, and others, who attend personally to file land title documents with the LTSA; and
- b. similarly reducing the counter staff.

These actions by the LTSA are, a reasonable person could conclude, directed at discouraging LTO users from continuing to file LTO documents by the traditional paper method and, as a consequence, distorting the trend in favour of EFS.

9. Even so, *after four years* the LTSA data tells us that today only about 36% of filings are done by EFS. (See Appendix 3 - pink page)

EFS AS AN OPTION

10. West Coast and most (perhaps all) property practitioners agree that there are advantages to using EFS as an alternative option to the traditional paper method of filing land title documents.

11. However, I have found it difficult to find, while I have been talking to people about this over some lengthy period of time, people who support making EFS *mandatory and excluding the option of the traditional paper method of filing*.

12. To be clear, I do not suggest that there not be the option of the EFS to file land title documents but do oppose the removal of choice by consumers to use the traditional paper filing method.

IMPACT OF MANDATORY EFS

13. There appear to be disadvantages to making EFS mandatory.

EFFECT ON LEGAL PROFESSION

14. A number of lawyers whose practices range from residential property transactions to commercial property transactions have raised concerns of the effect that mandatory EFS will have on their practices and as a result on their clients. Some of the concerns include:

- a. the added cost of training support staff to deal with an increased work load when they no longer have the benefit of outsourcing some of this work to an agent. For example, pre and post searches, precedents, answering questions and the investigative work needed to ensure a more complicated transaction gets registered;
- b. the loss of flexibility only available with filing land title documents by paper. For example, flexibility is lost when doing concurrent registrations. Under EFS, all documents must be filed by one submitter. This means that one of the law firms party to

the concurrent registration has to give up control of their documents to the law firm that is submitting the documents by EFS. Under the traditional paper method of filing, agents acting for their client law firms meet together to ensure that all documents are correct, that the documents are filed in the correct order and each respective law firm retains control over their own documents through their own agent;

- c. the “need” to use the paper method of filing for complex real property transactions, such as leases, options, covenants where paper method of filing is the method of choice of firms to deal with such transactions. The concern is that many lawyers who use EFS use it only to deal with standardized documents such as transfers and mortgages. They rely on the paper method of filing to deal with complicated and complex transactions because the paper method is a much better way to deal with such transactions. In particular large commercial transactions without a method of face to face closing meetings requires a procedural practice change which, I am told, will almost undoubtedly be more time consuming and expensive;
- d. the reality is that any system entirely dependent upon computers, servers, and other technological systems will, inevitably, fail or crash. We know that this has happened with BC Online in the past. We also know that given the various points at which the problem can occur – the computer on a practitioner’s desk or the assistant’s desk, the law firm’s server, the law firms ISP, the computer terminal at the LTO (whether as a result of failure or operator error), the LTO’s server, the LTO’s ISP, and, indeed, as we were reminded just recently, a power failure that electronically cuts off portions of the community in some cases for as long as more than two days. In these cases, if EFS were the only system available and the traditional paper method of filing was not available, the land title system would be inaccessible for some period of time (sometimes a short period, sometimes a long period). The LTSA has suggested that it can develop a fail proof contingency plan for the unexpected crash or failure of the EFS or BC Online systems. This has not happened yet to date with BC Online. Even *if* one has a huge confidence in the ability of bureaucratic systems to perform without failure, this provides no answer to the many other problems, sketched out above. The reality is that if EFS becomes mandatory, and the option of filing by the traditional paper method disappears, there inevitably will be instances, with minor consequences in some cases and major consequences in others, where real harm is done to consumers (including clients of lawyers) and their legal advisors. (And see Appendix 4- tan page)
- e. a lay person will no longer being able to personally attend at the LTO to file their own discharges of mortgages and transmissions to surviving joint tenant, but rather will be forced to go to a lawyer or notary. As a recent case in point, owing to concerns regarding mortgage fraud published in the local press, there were a large number of individuals who attended the LTO to file applications for a Duplicate Certificate of Title; and
- f. the loss of the value added services and expertise that land title search and registry agents, such as those employed by West Coast, provide to lawyers.

A selection of lawyers comments on issues like these is attached. (See Appendix 5 – green pages)

EFFECT ON TITLE SEARCH COMPANIES THAT PROVIDE ADVISORY SERVICES

15. Over the years, the search and registry agents in the Land Services department at companies such as West Coast have become an important resource for the legal profession. Some of the general services that West Coast routinely provides to its clients include:

- (a) retrieving titles from the BC Online databases;
- (b) performing historical searches of land title records from the current title back to the Crown Grant;
- (c) obtaining imaged documents, microfilm documents and plans; and
- (d) submitting land title documents manually to the LTO or by EFS, among other things.

16. In relation to the services in paragraph 15 West Coast has a particular fee that it charges for the particular service.

17. However, in addition West Coast and certain other title agents offer *without additional charge* a series of value added services to lawyers and others that are advisory or cooperative in nature and in particular they:

- 1) maintain a first class working knowledge and understanding of the *Land Title Act* and the requirements of the LTO's as set out in the Land Title Practice Manual so that they may advise clients as to the at-the-moment required procedures and standards either expressly or by advising lawyers as to the correction of errors regarding material submitted to the agent;
- 2) perform a pre-inspection of land title documents before their submission to the LTO to ensure that the documents conform to the requirements of the *Land Title Act* and the Land Title Practice Manual;
- 3) keeping, by regular written advisories, West Coast's clients, including lawyers and their support staff, updated on changes to the LTOs' practices; and
- 4) efficiently and effectively liaising between West Coast clients and the LTO staff with regards to the many questions or problems that routinely arise.

18. In relation to the services in paragraph 17, West Coast provides these services without any separate fee to their existing filing fees. The provision of these services is supported by the experience West Coast has, largely with the traditional paper method of filing, which incrementally increases day by day, and the revenue generated by services directly related to the traditional paper method of filing.



Land Title Office offers online filing beginning April 1

The documents for e-filing

As of April 1, 2004 the Land Title Office will accept electronic filings from BC lawyers, notaries and land title agents of these key documents in land transfers:

- Form A (Freehold Transfer)
- Form B (Mortgage)
- Form C (Charge)
- Form C (Release)
- Declaration
- Property Transfer Tax Electronic Payment Authorization
- Property Transfer Tax Return

The electronic filing of documents is optional, not mandatory.

Computer system requirements

The Land Title Office form templates are in portable document format (PDF), featuring data fields that can be completed electronically using Adobe Acrobat 6.0. For a test version of the forms, visit the electronic filing system project website at srnwww.gov.bc.ca/landtitle/EFS_web_site/index.htm. The final version of the forms will be available for downloading from the BC Online website (www.bc.online.com) beginning April 1.

Most lawyers will already be familiar with viewing PDF documents on the internet with Adobe Acrobat Reader (free software available for download from the Adobe website). Fewer may have used the full version of the Acrobat software, which allows for the creation and completion of PDF documents, including forms.

BC lawyers and their conveyancing staff will need to use version 6.0 of Adobe Acrobat (standard or professional) to complete the forms. The software is available for purchase from software retailers or can be ordered online from BC Online or Adobe (www.adobe.com/acrofamily/main.html).



The moment of truth — Conveyancer Rosalyn Gutierrez (left) and lawyer Peter DeMeo (centre) of the law firm Mullin DeMeo in Victoria complete the first-ever electronic filing in the Land Title Office by submitting a mortgage online on January 7. Darcy Hammett, Director of Operations and Systems for the Land Title Branch, and Denis Thomas, Technical Architect (right) savour this moment of success in the pilot phase of the e-filing project.

To begin e-filing, law firms should ensure their practices feature the following:

- Windows operating system, 98SE or higher or Mac OS
- Microsoft Internet Explorer 5.01 web browser
- An internet connection (minimum 56K dial-up; high-speed cable or ADSL is recommended)
- a BC OnLine account, with access to land title applications
- Adobe Acrobat 6.0
- a Juricert-authenticated Adobe Acrobat Signing Certificate
- a set of computer folders configured for LTO electronic filing system files
- electronic filing system templates (which can be downloaded to the

firm's computer system via BC Online beginning April 1)

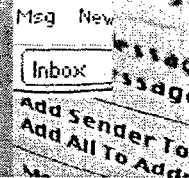
- set-up for electronic funds transfer (for payment of the Property Transfer Tax)

First steps

Register with Juricert to obtain digital certificate

A lawyer who wishes to make electronic filings in the Land Title Office must first register with, and obtain an Adobe Acrobat Signing Certificate from Juricert, a company owned by the Law Society. The Law Society is the certification authority for professionals for the purpose of e-filing under the *Land Title Act*; see page 7 for details on registering with Juricert.

continued on page 6



LTO online filing ... from page 5

Authorize electronic funds transfer for payment of PTT

If a lawyer chooses to make an electronic filing of documents, any Property Transfer Tax payable in the transaction must be paid by electronic funds transfer. Law Society Rule 3-56 was recently revised to allow lawyers to authorize electronic withdrawals of funds from their trust accounts for this purpose.

If a law firm's trust account requires the signature of a non-lawyer financial officer on cheques, both the signatory lawyer and the financial officer must register with Juricert and obtain digital certificates. This is necessary to allow them to digitally sign and file a Property Transfer Tax Electronic Payment Authorization form. This form authorizes the Land Title Branch to draw payments for Property Transfer Tax from designated law firm banking accounts at the time the firm submits documents for e-filing: see page 7 for more on payment of the PTT.

Basic components of a conveyance under e-filing

An underlying principle of the new e-filing system is that it will not mandate fundamental changes to conveyancing practice.

In accordance with practice in BC, it is therefore expected that the purchaser's lawyer, with the assistance of his or her staff, will continue to prepare the transfer package in residential conveyances under e-filing. Rather than creating the Form A Transfer (and other forms) in word processing software, however, the purchaser's lawyer and staff will do so using Adobe Acrobat forms, by filling out pre-determined fields.

Each person within a firm who drafts a land title form for electronic filing, and each lawyer who signs the form as officer, will need access to Adobe Acrobat software.

Assuming conveyancing staff have created a transfer form in Adobe Acrobat, the lawyer will review that form, along with all other documents in the package, with the client. The lawyer's staff will forward the transfer package, with statement of adjustments, to the vendor's lawyer by courier, by fax or by email (as scanned document attachments). The vendor's lawyer will witness execution of a paper copy of the transfer by the vendor and return the document to the purchaser's lawyer by courier, by fax or by email (as a scanned document attachment). In practice, the purchaser's lawyer will need a hard copy of this signed transfer for his or her files. No hard copies will be used in electronic submissions to the Land Title Office.

As is now the case, the purchaser's lawyer must review all documents prior to submission to the LTO. Under e-filing, the lawyer will digitally sign (using his or her digital certificate from Juricert) and lock each document prior to submission, typically the Form A transfer, Form B mortgage and Property Transfer Tax return.

The actual submission of the documents can be carried out by the lawyer's staff or third parties such as registration agents. They will log into BC Online and upload the signed documents for submission. The Land Title Office system is expected to feature built-in checks on the submission, to ensure that the correct form version is used and that documents are not missing and are in the right order.

The Land Title Branch will also check a lawyer's digital certificate to verify the practising status of that lawyer through current Law Society data provided to the Land Title Branch by Juricert.

New practice resources

Land Title Electronic Filing System Reference Manual

The Land Title Branch is releasing mid-March a comprehensive *Land Title Electronic Filing System Reference*

Manual, which provides step-by-step instruction on preparing forms and carrying out electronic filing. The *Manual* will be available at no cost on the Land Titles Branch electronic filing system project site at srmwww.gov.bc.ca/landtitle/EFS_web_site/index.htm.

The *Manual* contains information on the following:

- **Getting started:** system requirements, installing Adobe Acrobat 6.0, obtaining a digital certificate, setting up computer folders for electronic filing, downloading form templates and authorizing PTT electronic payments;
- **Filling out forms:** opening and saving forms, entering data, locking forms, re-using data in forms and altering electronic filing system forms;
- **Using electronic filing:** navigating the electronic filing system, submitting document packages, submitting corrective declarations and managing the submission queue;
- **Digital signatures:** obtaining a digital signature, security issues and applying a digital signature;
- **Electronic funds transfer:** authorizing electronic payments for Property Transfer Tax and filing a PTT return.

Land Title Transfer Forms Guidebook

The Continuing Legal Education Society of BC recently published the *Land Title Transfer Forms Guidebook*, second edition (2004), which includes select statutory provisions on e-filing, section-by-section instruction on completion of each electronic form and annotated commentary.

The *Forms Guidebook* is available for purchase from CLE: visit www.cle.bc.ca or call customer service at 604 893-2121 or toll-free in Canada at 1-800-663-0437. ✧

Appendix 2

This excerpt is taken from CLE practice points publication on Wills and Estates concerning the transmission of assets. Full version of text is available at the website: <http://www.cle.bc.ca/Practice%20Points/WILL/07-transmissiontransfer.pdf>

Title: PROCEDURES FOR THE TRANSMISSION AND TRANSFER OF ASSETS

This article summarizes the legislation, procedures, and documents required to transmit various assets of the deceased into the name of the surviving joint tenant or the personal representative and, if applicable, to transfer the assets to the beneficiaries of the estate. The list of assets is not exhaustive. For tables summarizing the documents needed for transfer or transmission of certain assets, see §10.114 (transmission to the surviving joint tenant), §10.115 (transmission to the personal representative), and §10.116 (transfer to a beneficiary) of the *BC Probate and Estate Administration Practice Manual*.

...

For the practice authorized in land title offices for estate matters, refer to the *Land Title Practice Manual*, 2nd ed., looseleaf (CLE, 1999). The Land Title and Survey Authority has initiated a filing system that enables authorized lawyers and notaries to submit land title documents for registration by electronic means. The system became operational on April 1, 2004, and is optional. Forms that can be submitted electronically include the Form A—Transfer, Form B—Mortgage, Form C—Charge, Form C—Release, Form 17—Charge or Notation, Form 17—Fee Simple, Form 17—Cancel Charge or Notation, and the Property Transfer Tax Return. A good source of information on electronic filing is the *Land Title Transfer Forms Guidebook*, 3rd ed. (CLE, 2005) (the “Green Book”). In addition, a wide variety of information may be accessed through the Land Title and Survey Authority website at www.ltsa.ca, including the *Land Titles Electronic Filing System (EFS) User’s Guide*.



Appendix 3

Taken from the LTSA's Business Plan 2008/09 to 2010/11.

The full business plan is available at:
www.ltsa.ca/data/img/publication/LTSA-Business-Plan-2008.pdf

Practice Standards – We will promote consistent internal business processes throughout the organization so clients may expect common procedures and products in all LTSA offices. With assistance of clients, “practice standards” will be developed for land title document submission and processing practices, and for the provision of information products to clients.

Standards will be monitored to ensure they are being implemented consistently throughout the organization.

Performance Measures

Measures	2008/09	2009/10	2010/11
Client Use of Electronic Filing Tools • EFS Uptake	36%	40% – 45%	85% (due to mandatory EFS)
Customer Satisfaction	Continuously improve customer satisfaction levels (benchmarks to be determined)		



BUSINESS BRIEFS

CANADIAN BANKS

Still eyeing U.S. targets

TORONTO — Canadian banks stay open to the possibility of major forays into the U.S. despite fragile market conditions, executives said over the weekend as it emerged RBC had held talks with Lehman Brothers.

Canada's largest bank undertook the negotiations with the beleaguered Wall Street investment bank during the summer, according to one banker. A second banking executive said the talks showed Canadian institutions had not closed the door on opportunities to make major investments in struggling U.S. operations.

Such rescue ventures backed by cash would likely be welcomed by U.S. regulators, but could draw scrutiny from Ottawa if they are seen as putting the stability of the Canadian banking system at risk.

DIGITAL MUSIC

Zune goes wireless

SEATTLE — Microsoft Corp., the maker of the Zune media player, is introducing features that allow users to download and buy music wirelessly. Customers also can flag songs they hear on Zune's FM radio, and the next time they synchronize the players with their personal computers, the songs will be downloaded.

U.S. MORTGAGE CRISIS

CEO under scrutiny

NEW YORK — Washington Mutual Inc., the largest U.S. savings and loan, ousted Kerry Killinger, 59, as chief executive and has been put under special regulatory supervision, following skyrocketing losses from mortgages.

SWISS ARMY KNIVES

Foreigners don't cut it

GENEVA — The Swiss army will keep getting its Swiss army knives from a Swiss manufacturer, after Victorinox beat foreign rivals to the contract.

The right to supply Swiss army knives was opened to tender in February, a move that stunned many Swiss.

— News Services

Boost for cellphone ads

MYSCREEN MOBILE: Carriers offered incentives to watch display

BY DAVID GEORGE-COSH
CANWEST NEWS SERVICE

TORONTO — The Holy Grail of the wireless world has long been trying to find a way to effectively display advertisements on cellphones without turning off consumers.

Yesterday, a Toronto-based company may have gotten one step closer to solving the problem by offering carriers a way to provide cellphone users incentives, such as free airtime and ringtones, to watch an ad.

MyScreen Mobile Inc. announced it has signed a partnership deal with Omnicom Group Inc., the largest marketing and communications company in the world, to help distribute ads and sales for mobile users.

Although mobile advertising is still in its infancy, the partnership between MyScreen and Omnicom gives the company credibility in deploying the technology worldwide at a time when the cellphone is evolving.

The company's technology works by displaying an ad on your cellphone screen as soon as your call ends. Each time an ad is displayed, the user receives incentives in the form of free airtime minutes, ringtones or coupons.

"The consumer is compensated to see the ad," said MyScreen's



MyScreen Mobile's technology flashes an ad display on a cellphone user's screen at the end of a call. — GETTY IMAGES

executive vice-president and chief financial officer, Raghu Kilambi. "So this is really a partnership between the user and the carrier."

The service currently works on BlackBerrys as well as Nokia and Motorola devices, with an iPhone version in development.

"What makes MyScreen's technology different [from] other attempts at cellphone advertising is that it puts the user firmly in control of what ads shows up on the mobile device," Kilambi said.

Users must opt in to using the service, instead of being forced to watch the ads. It can also be personalized based on a survey dur-

ing the sign-up process.

Indeed, there is ample opportunity for mobile advertising, which to date has been centred on text-messaging. Globally, about \$2.6 billion US was spent on mobile advertising last year and is expected to grow tenfold to \$19.1 billion US by 2012, according to eMarketer.

Technology research firm ABI Research says incentives have drawn favourable consumer response to cellphone ads, with 37 per cent of survey respondents open to incentive-based marketing programs.

But it has been an admittedly

"The consumer is compensated to see the ad, so this is really a partnership between the user and the carrier.

— Raghu Kilambi, MyScreen's executive vice-president and CFO

tough road for marketers to effectively advertise on cellphones. While U.K.-based Blyk recently announced it reached its 12-month target of 100,000 clients six months ahead of schedule, Xeno Mobile, a U.S.-based mobile operator that promised free cellphone service in exchange for streaming TV commercials is rumoured to be close to bankruptcy.

MyScreen received a \$10-million investment for a 10-per-cent stake by Orascom Telecom, which is also the main financial backer of new national entrant Globalive Communication Inc.

The partnership puts MyScreen on the path toward a worldwide launch in 2009 and may spur some activity with its stock. The company currently trades on the over-the-counter index in New York, but its stock has hovered in between \$2 and \$3 US since going public in May 2007.

— Financial Post

Glitch locks U.K. traders out of stocks boom

BY DAISY KU AND DOMINIC LAU
REUTERS

LONDON — The London Stock Exchange suffered its worst systems glitch in eight years yesterday, forcing the world's third largest share market to suspend trading for most of the day and infuriating its users.

The problem occurred as mar-

kets rebounded worldwide following the U.S. government's decision to bail out mortgage companies Fannie Mae and Freddie Mac.

"It's awful. On a day when the eyes of the world are watching all the financial markets, for us not able to trade it's appalling," one trader said.

The Johannesburg Stock

Exchange, which uses the LSE's trading platform Tradelect, also suspended trading. Tradelect was introduced by the LSE in June 2007. A previous systems failure occurred in November that year, but lasted less than one hour.

The exchange would not say whether volume was the issue, and would not give details on what had caused the problem.

The LSE, the world No.-3 exchange by traded volume in the first half of this year, opened for trading as usual at 7 a.m. local time, but connectivity problems left some brokers unable to trade, so it was forced to suspend trading to ensure market players were not disadvantaged.

In an afternoon update it abandoned moves to reconnect.

LETTERS FROM MEMBERS OF THE LAW SOCIETY

1)

CHRISTOPHER J. VAN TWEST, B.A., LL.M.
BARRISTER AND SOLICITOR

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April 21st, 2008

...

We are entirely supportive of the West Coast Title Search Ltd. in their opposition to having a government template and software monopolize land registry services. Our reasons are as follows:

1. Government of BC will claim a copyright and charge a fee for statistics of filings over the internet and any savings or efficiencies will not be passed on to the consumer or user groups by a reduction in property transfer tax or filing fees.

...

Yours truly,


C. Van Twest

2)

From: Richard Underhill [<mailto:wrdu@dwco.com>]
Sent: Thursday, April 24, 2008 7:56 AM
To: Godfrey.Archbold@ltsa.ca
Subject: Electronic filing should remain optional

...

There are many practitioners such as myself who do not concentrate on LTO volume and who rely on Land Title Agents to be kept abreast of the eccentricities of LTO preference in connection with LTO documentation and would like to retain the option of paper filing via our Land Title Agents.

--

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3)

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...

Paper filing works very well and in fact, in very complicated cases (of which there are an increasing number) a built in safety net is provided in that an extra pair of eyes (our Agents) peruse the documents before filing. Our Agents have provided top-rate service and welcome expertise over the years at a fair and reasonable cost. I can not imagine the pitfalls you would encounter if this essential service was removed.

...

RESPECTFULLY SUBMITTED:


LORNE SMILEY.

4)



COPY

Direct line 804-647-4138 email peter@peteroughington.ca

...
As a real estate practitioner for the past 23 years, this proposal raises a number of concerns.

At the outset, let me state that I am a strong proponent of the use of technology in the practice of law. I was one of the first in my law firm to make use of the electronic filing option when it became available, and there are a number of occasions when electronic filing has been an invaluable tool in completing a transaction, such as cases where one or more of the parties is out of town. By moving to *optional* electronic filing, I felt our land title system was on the leading edge of technological advance, and it gave me something I could boast about to colleagues in other provinces of Canada who were not so fortunate.

However, I have serious concerns regarding making electronic filing *mandatory* within the next 2-3 years. I am concerned over the impact this will have on my legal practice, and the additional cost which will be incurred by my clients. I am concerned about practitioners who are not as familiar with new technologies. I am concerned of the effect this will have on the general public, who may no longer be able to present paper documents in person at the Land Title Office counter for registration, and may be forced to seek the services of a lawyer or notary to prepare an electronic filing. Finally, I am concerned over the impact this will have on companies like West Coast Title Search Ltd., who provide an invaluable service to the profession in reviewing and "vetting"

...
documents prior to their submission for registration, and who may no longer be able to provide this service (or, for that matter, remain in business) if electronic filing becomes mandatory.

In my legal practice, I have long since endorsed the electronic filing *option* for standardized documents such as transfers and mortgages. However, for more complex agreements such as leases, options, covenants and the like (which form the majority of my practice) I have continued with the paper filing *option*, typically asking West Coast Title Search Ltd. or another registry agent to review the document before submitting it for registration.

...
Yours very truly,

BOUGHTON LAW CORPORATION
by Peter J. Anderson Law Corporation

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...
Our experience in recent years tells us that the culture of electronic filings, transmissions or payments does attract, stimulate and facilitate fraud, improper practices and poor practices. Electronic filing as an option has its place. To make it mandatory is a serious error in judgment.

We urge you to use your influence to retain paper filing as a choice.

Yours very truly,

STEWART, AULINGER & COMPANY

REINHART J. AULINGER

6)

BURKE & JONES

BARRISTERS & SOLICITORS

...

My clients rely on me to provide legal services at an affordable price. With respect to LTSA filings, I am only able to do that with the assistance of a land title agent such as West Coast Title Search Ltd.

Particularly since the LTSA agents are no longer available to answer questions, I rely on my title search agents to advise me on unusual procedures, to vet documents, and to make sure the transaction takes place on the required date.

...

The other development that concerns me is the reduction in cashiers available to process paper filings. Thousands of people in this province rely everyday on the prompt paper filing of land documents. The exchange of countless millions of dollars is postponed everyday until confirmation of paper filing is received. I cannot imagine how anyone at the LTSA thinks the number of cashiers can be reduced. Time is of the essence of every land transfer I have seen in 25 years of practice. Funds cannot be exchanged until the transfer documents have been processed, and if filing is delayed because the number of cashiers is too few, funds may not be paid on the completion date. Who is going to answer for those consequences? I doubt very much it will be the LTSA.

Exclusive reliance on computers, electricity and telephone lines required for electronic filing, puts the public at an entirely unnecessary risk. It is not in my clients' interests to have only one way of making filings in the LTSA when that way (electronically) can be disrupted at any time by a power outage, internet virus, loss of a phone line, or any type of computer failure. It is also not in my clients' interests to have their choice of lawyers limited to those who are prepared to use electronic filing, just as it is not in my clients' interests to lose the ability to make simple LTSA filings in person, as they can today.

Yours truly,

Per:



Alec C. Burke
ACB/crd

7)

From: David Freeman Lawyer [dofumlawyer@telus.net]
Sent: Friday, August 22, 2008 1:26 PM

...

As a lawyer who works at various law offices around the province and who can file electronically, I am against the proposals to phase in electronic filing only at LTO. This is a mistake and will cause a deterioration in the availability in conveyancing services to the public. Please ensure that you retain optional manual filing.

David A. Freeman
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Phone: 250-752-4249 Fax: 250-752-3611

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KAMBAS GALBRAITH
BARRISTERS & SOLICITORS

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July 21, 2008

...

My solicitor's practice has involved the paper filing of land title documents for over twenty-five years. My clients benefit from my knowledge and understanding of that system. I now also use the electronic filing system when it seems appropriate and while it may become the most common method of filing it should not, in my view, become the only method.

I believe that there now are, and will continue to be for the foreseeable future, many situations in which many solicitors, notaries, and others will be continue to be more proficient in the use of the paper filing system, and will elect to use it to ensure the proper protection of their client's interests.

While larger firms and institutions may be easily able to devote the staff, technical and other resources needed to rapidly develop a comparable level of expertise in electronic filing that is a more challenging undertaking for smaller firms such as mine.

Any filing system is simply a means to an end: the protection of people's legal interests in land. I believe that the party primarily responsible for achieving that end in each case, (i.e. the solicitor or notary retained to do so) ought to be entitled to elect the appropriate means for doing so.

...

Yours truly,

KAMBAS GALBRAITH

Per:


Barry D. Galbraith
BDG/bdg

9)

Mountain law corporation

Lawyers • Notaries

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August 5, 2008

COPY

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As real estate practitioners for over 20 years, we believe the following advantages exist for continuing to allow paper filing:

1. Agents would continue to review documents prior to submission, so that the burden on LTSA staff is lessened as to enquiries for procedures and as to issuances of greater numbers of rejection notices;
2. True "concurrent registration" can still take place with other conveyancers;
3. Avoidance of exclusive reliance on the internet (due to power failures and viruses);
4. Access to the general public would continue to be relatively unrestricted.

We strongly urge you to retain paper filing as a choice.

Thank you.

Yours very truly,

MOUNTAIN LAW CORPORATION

Per:

Peter D. Shrimpton.

10)



**BURNS
FITZPATRICK
ROGERS &
SCHWARTZ LLP**
Barristers and Solicitors

DARRELL E. BURNS
DENNIS K. FITZPATRICK *
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August 7, 2008

...
We (as most of our fellow professionals do) have been E-Filing documents for a number of years. There are a number of circumstances where E-Filing our documents are more convenient and appropriate for our clients.

On the other hand, we understand that the Land Title and Survey Authority has as part of its business plan intention of making E-Filing compulsory for all documents. This would have the unintended consequence of destroying the business of our main resource in dealings with the Land Title Office: West Coast Title Search Ltd. and other similar organizations. We all are familiar with the disastrous consequences of relying on computers to take over all aspects of client service. The proposed plan of the Land Title and Survey Authority would be a disaster.


Currently, we have a symbiotic relationship with Land Title agents. We provide them with business and they provide us with advice on the inside workings and policies concerning Land Title Office and applications for registration. They are very good at their job. Implementing compulsory E-Filing for a majority or all documents would result in a loss of this valuable resource and increased load on the Land Title department staff to answer the inquiries previously answered by these land title agents.

While there may be a short term economic case for the Land Title and Survey Authority to consider compulsory E-Filing for all users, the unintended consequence of this would be to not only destroy the business model of the search and filing agents we find invaluable to our business but also to increase costs to us which will have to be passed on to our clients. Ultimately, any savings would be eaten up by "Help Line" and increased staff costs to answer questions and straighten out applications previously provided at no cost to the Land Title Office. We urge you to inject some common sense to the Land Title and Survey Authority's business plan in order to maintain the balance between electronically filing and paper filing that currently exists. We support our agent West Coast Title Search Ltd. and their endeavours in this respect.

Yours truly,

BURNS, FITZPATRICK, ROGERS & SCHWARTZ LLP

Per:


John E. Rogers


J. Christopher Chan

11)

GUY & COMPANY

Barristers & Solicitors

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DAVID M. GUY, B.A., LL.B.*
e-mail address:
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*Personal Law Corporation

August 13, 2008

...
From our years of experience, it is our firm view that any Business Plan to be adopted by the LTSA ought not to implement the mandatory exclusive use of the EFS. The use of the EFS ought to remain optional. As a member in private practice, we can attest to the need for the service of a title search company as they currently exist. These title search companies provide invaluable assistance not only in terms of day-to-day matters (i.e. filing of documentation in the Land Title Office) but title search agencies also provide invaluable service in other areas; for example:

- (a) As a conduit between private practice and the LTSA whereby private practice receives at the earliest notice of any changes to legislation, practice or procedure which the LTSA has implemented, wishes to implement and wishes comments from the Bar as to the efficacy of the proposed changes and new procedures, etc.
- (b) The professional relationship developed between the title search agency and its personnel vastly improves the ability of this office to communicate with the Land Title Office ("LTO") and to approach the proper LTO personnel with the greatest efficiency and with the least amount of confusion and disturbance to the LTO and its personnel. This results not only in a saving of time but in the obvious better service to the public and lesser aggravation to the LTO and its staff.
- (c) Quite often, we would vet land title matters with the title search agents before approaching the LTO with an application i.e. subdivision of a relatively complicated nature. This saves the LTO and its staff time it would take for the undersigned to have to deal directly with the LTO from the outset and to occupy the LTO with our concerns which may be clarified by the title search agents before the application is submitted.
- (d) While in many instances the use of the EFS certainly saves time and money. There are other times when it is not feasible to simply use the EFS and where a saving of time and money to the public can be effected with the use of experienced and properly trained staff of a title search company.

Making the EFS an optional service results in a more efficient overall use of the land title system and its services. From a practitioner's point of view, we state without reservation that to remove the option of use of the title search companies would on the whole create inefficiency, more cost, and more uncertainty for our clients.

...
Yours truly,
GUY & COMPANY
For David M. Guy
C.M.A./C.S.A.

12)

OWEN C. DOLAN Q.C.
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July 31, 2008

...
In my practice, similar to thousands of others, I have approximately 12 to 16 conveyances a year and mandatory electronic filing would be an inconvenience for me to use.

Incidentally, in my 55 years in practice it has been my experience that, in many situations, systems are created and mandated by bureaucrats who have never practiced law. I trust that the mandatory electronic system in conveyance filing is not one of those creations.

Yours truly,

OWEN C. DOLAN, Q.C.

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15)

RICHARD P. HAMILTON
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July 31, 2008

...

- Not a large volume of conveyancing goes through my office but part of my litigation practice is family law and estate litigation and the need does arise from time to time to use the Land Title Office;
- There is great expense to keep upgrading different systems;
- As a sole practitioner I work with one support staff in the office;
- My accounting and bookkeeping is done offsite and this would increase the accounting administration in my practice;
- Having only one support staff taking time out of what is now a full day of work to take training and keep upgrading systems is an additional unnecessary expense to any sole practitioner or small firm/business;

...

Yours truly,

RICHARD P. HAMILTON LAW CORPORATION

Per:


Richard P. Hamilton

RPH/sg

16)

STASIUK & ROSE - Barristers & Solicitors

ROBERT A. STASIUK
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OUR FILE NO.

August 14, 2008

...

It is our considered opinion that electronic filing should be optional and not mandated as compulsory for those who use the Land Title Office on a day-to-day basis.

Our small firm has been in practise for over 35 years and throughout this period have used and engaged Land Title Agents throughout. We do a considerable volume of Land Titles work. From our perspective, we have relied heavily on the expertise and assistance of our agents, none of which will be readily available should electronic filing become compulsory.

...

Yours truly,

STASIUK & ROSE

Per: **ROBERT A. STASIUK**

17)

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August 13, 2008

...

Our firm (mid sized) uses both paper filing and electronic filing systems and both have a place in the document filing system. I have benefited on many occasions by the expertise in registration matters and extra set of eyes provided by our land title agents in reviewing our paper filings prior to registration, which ensures greater accuracy and fewer rejection notices issued by land title office staff. I am concerned that this service provided by our agents will no longer be available if electronic filing becomes mandatory. In addition, there have been several occasions where we have been unable to electronically file documents in an expeditious manner because BC Online was "down" or very slow. This is frustrating in a busy practice when one is trying to close a real estate transaction. It seems to me these types of computer glitches from time to time are inevitable in any computer based system of registration.

I ask that you act to ensure that paper filing remains available as an option.

Yours truly,



Brenda M. Lightbody
BML/cph

18)



...

I believe that both paper and electronic filing should continue to be an option. Let me just say that my firm regularly uses the EFS system and have found it to be an invaluable tool, however. I have a number of concerns about making it the only option.

As my firm uses this tool regularly we are well aware of the number of firms that either don't have the familiarity to feel comfortable using EFS, or, don't have the resources or manpower to have someone on staff with the expertise to use it. Not every firm specializes in this type of practice on a regular basis. Even though we do have a thriving conveyancing practice we still regularly depend on our agent, West Coast Title Search Ltd, to provide us with information or precedents for the more unusual file work that we see. I can't imagine a firm that doesn't do this regularly operating without the availability of their expertise.

Further this implementation of mandatory EFS would disallow the general public from presenting their documents in person at the Land Title Office, forcing them to seek the services of a lawyer or notary and incurring additional costs when, in some instances, this is really not necessary.

I am a strong proponent for the new technology and the EFS system, but as an option not the rule. By making EFS compulsory it is likely that many of the agents will not be able to survive the change and that would be a grave loss to the industry.

Yours truly,



GREENWAY LEGAL CENTRE

Christopher G. Green

19)

From: Peter Li [mailto:peterliandco@yahoo.com]
Sent: Tuesday, July 29, 2008 2:27 PM
To: Info
Subject: E-filing of Land Title Documents?

...We join the great majority of land title practitioners in opposing this possible change for the following reasons:

1. There are conveyancers and other land title related practitioners who cannot acquire the skill or the facility to do E-filing or otherwise cannot do so in a practical and economically viable way. For example, one of our conveyancers has been practising in this field for more than 20 years. Although she has tried her best, she cannot do E-filing up to now. However, she is competent in handling conveyance matters by the traditional paper filing system. If EFS is mandatory, it will effectively put her and those in similar situations out of work. Currently, there is a critical shortage of conveyancers in the market. Putting some conveyancers out of work would make the situations worse. It would be detrimental not only to the service providers but also to the general public who are receiving the service. They will have less choices and they may have to pay more.
2. In some situations, EFS is not practical. The followings are but some examples:
 - a. When we do a series of transactions, such as modification of mortgages, application for subdivision, transfer, registration of new mortgages and other incidental transactions all in one single series on the date of completion, it would involve various law firms and agents. It is much more practical to have all the documents in paper format ready in the hands of a single agent (or various agents attending to the Land Title Office at the same time) to monitor (making amendments and adjustments where necessary on the spot) the whole series of transactions, where each part is contingent upon the others.
 - b. We understand that there are some law firms or notary public offices that are using their internal agents for the filing of numerous documents at the Land Title Office in one single trip. In such circumstances, E-filing would cost those offices more time and resources than paper filing.
3. There are schedules in some specific mortgage instructions which are received by the law firm in paper format (or are not convertible to that particular law firm's software system) that are too lengthy and time consuming to type. The scanning system may also be unreliable at times. Sometimes the law firm receives the instructions at the last minute and would not have the resources or even the possibility to type the entire schedule into digital format within their system for EFS. Attaching the hard copy to the paper document to be filed is a much more practical way to complete the deal on time.
4. By using professional agents to do the paper filing, we can ask the agents to do pre-searches and to check the accuracy of the documents before filing. It would save the work for all the parties, including the Land Title Office, to deal with rejections afterwards.
5. Ultimately, it is a matter of the right to choose how to file our land title documents. We understand that EFS has its advantages and more and more people are using it to their advantage. The logical conclusion is to allow those people to take advantage of the EFS if it suits their needs or if it can make the work more efficient and more cost saving. However, please let those who, for one reason or another, have to use the paper filing system at least in some occasions.

...

Yours truly,

PETER LI & COMPANY
Per: Peter Si Kun Li