

# The Land Surveyor and the Land Registration System

By Ken Wilkinson, O.L.S., O.L.I.P.

Until the mid-1990's, the *Registry Act* was the authority for the administration of the title records of most privately owned land in Ontario. As a result of the ongoing automation and conversion project, carried out on behalf of the Government of Ontario by Teranet® Inc., well over 90 percent of this same land is now recorded under the *Land Titles Act*. This administrative conversion of Ontario's real property records was first recommended in the 1971 *'Report on Land Registration'* by the Ontario Law Reform Commission. The Commission found that 'a land titles system is superior to a registry system in almost every material respect in which a comparison can be made at present.'<sup>1</sup> One of the main recommendations of the report was:

'... that an improved land titles system should be the sole system for land registration in Ontario, and should be called the "Land Registration" system.'<sup>2</sup>

## Background

The land titles system is not a new type of land registration, however, it only recently arrived in some parts of the Province. The *Land Titles Act, 1885* received royal assent on March 30, 1885. The Act was entitled '*An Act to Simplify Titles and Facilitate the Transfer of Land*'. Registration under the 1885 *Land Titles Act* was available only in the City of Toronto and the County of York. Gradually, the availability of the Act was extended to land registry offices across the province. The ability to register land under the Act anywhere in Ontario occurred in 2005 following an amendment to O.Reg. 429/99 under the *Land Titles Act (LTA)*.

As with most Torrens type land registry systems, the Ontario land titles system provides a government backed statement of ownership and guarantee of title. Owners and lenders can rely on a land titles record, and it is subject only to the qualifiers listed on the parcel register and those exceptions listed in the legislation. The land registrar controls the information set out on the title record. Changes to the parcel record, including description changes, are made by application to the land registrar.

The original title of the Act – '*Simplify Titles and Facilitate the Transfer of Land*' sets out the primary objective in the administration of land records under the LTA. Although a parcel must have boundaries to exist, the LTA does not guarantee the extent or boundaries of the parcel. In addition, the land titles system was not designed to retain large amounts of information, land survey or otherwise, on the parcel record. For example, reference plans that are no longer part of the current parcel description may be deleted from the parcel record following registration of an application to amend the description or when the parcel is divided using a new reference plan description.

## The Registry System

First established in 1795, the Ontario registry system is a means for secure storage of documents that relate interests to land. The government offers no statement of ownership or guarantee of title. Land registrars have no authority to refuse documents that are in the proper form. As a result, inconsistent documents can occasionally be found in the registry abstract index.

Prior to deposit, the land registrar gives registry reference plans a cursory review to ensure that the plan can be abstracted and confirm that the plan meets certain key requirements of O.Reg. 43/96 under the *Registry Act*. Plan approval and deposit sometimes happened during a single visit to the registry office. Title information on a registry reference plan comes from a search conducted in accordance with Part III of the *Registry Act*, while boundary information comes from various sources, including a search of registry records.

Surveyors are typically very proficient in determining ownership based on information contained in a registry abstract index, as a reference plan often needs to be deposited long before a purchaser's lawyer is on the scene to perform a title search. On occasion, title problems could be repaired through the use of a reference plan and a correcting deed. However, the ability to use this method to correct title deficiencies ends when registry system records are converted to the land titles system.

## Administrative Conversion of the Registry System Records

Although land surveyors were not the primary reason for the move towards the land titles system, they have realized benefits from this process. The process of conversion is described by the Director of Titles, Katherine M. Murray, in *Automated Land Titles Records in Ontario*:

"During the automation process, registry records are administratively converted to land titles. Section 32 of the LTA is the authority for this conversion. When the Registry records are searched during the automation process, they are parcelized on the basis of ownership. Most of the registry records searched are converted to land titles and the land registration system makes a statement of ownership. All active interests that apply to that record are brought forward to the automated parcel register. If the land registration system is unable to convert the record to land titles, the record is usually automated but left in Registry."<sup>3</sup>

One of the successes of this process was that very little of the private land in Ontario needed to be placed in the automated registry system. This means that some very complex

properties were searched, parcelized, mapped, automated and converted to land titles. In most cases, a surveyor no longer needs to perform a time consuming title search to determine a property ownership, and this is especially helpful when dealing with complex properties. In addition, the work on automation means that land registration records and property mapping are now available on-line and with longer hours of accessibility. The result is that surveyors now have the ability to become more productive by spending more time surveying and less time at a land registry office.

The move to a primarily land titles system did bring some changes. Land surveyors are required to prepare their reference plan descriptions in accordance with the land titles parcel description, not their own title search. This is because the parcel description of a land titles parcel forms part of the guaranteed ownership. Land registrars are required to check that the land titles reference plans coming into the system match the existing title record with respect to parcel description geographics and easements, which represents a noticeable change from the previous cursory check performed on registry system plans. Land surveyors are now finding that they occasionally need to discuss their draft reference plan with the land registrar prior to deposit. For many land surveyors, this interaction with the land registrar is a significant change in practice.

### Land Titles Parcel Description and Reference Plan Descriptions

As mentioned previously, the parcel description of a land titles parcel forms part of the guaranteed ownership. Unlike a description found through a 40 year registry search, in the land titles system there is very little leeway to develop a description based on title documents that differs from the guaranteed parcel description. While matching the parcel description is not usually a problem for a parcel described as “Lot 1, Plan 123”, it can sometimes be challenging and occasionally be very difficult to match the description of a complex land titles parcel. The challenges often come from easements, geographic fabric that has changed over time<sup>4</sup>, and the way a land surveyor searches land registration records.

When a land surveyor reviews land registration records, his or her main concern is not chain of title, but rather extent of title. This difference between a lawyer’s search and a land surveyor’s search was described in “*The Survey and the Real Estate Transaction*”:

“The surveyor however, who is searching the same records to determine the extent of title, must not only search for a different type of material (evidence of

old boundaries), but must also continue past the 40-year period, perhaps even another 100 years, until he reaches the original creation of the parcel of land.”<sup>5</sup>

This quote continues to be accurate even though it was written at a time when most of the private land in Ontario was under the *Registry Act*. Surveyors always search land registration records for a different type of material and usually further back in time than a lawyer.<sup>6</sup> There will be situations when a land surveyor needs to look behind a LT parcel in search of boundary evidence. With this look ‘behind the curtain’ comes the temptation to produce a plan using pre-conversion title evidence. Avoid this temptation. Combining pre-conversion boundary evidence with pre-conversion title evidence could produce a plan that cannot be accepted into the land titles system.

Of course, there may be valid reasons why a reference plan cannot match the parcel description of a converted land titles parcel. Should a land surveyor find that they are unable to reconcile their reference plan with the current parcel description, he or she must consult with the land registrar or designated Assistant Examiner of Surveys prior to submitting the plan for pre-approval. Note that staff will require a sound reason for investigating the parcel description. Once the investigation is complete, the land registrar will determine what changes, if any, are required to the description. These requests can take some time to address, so any such request for investigation should be brought to the land registrar as soon as possible to avoid delays in plan deposit or registration.

### Easements

O.Reg. 43/96 requires that reference plans prepared for deposit in the land registration system have Parts that describe the extent of registered easements. This requirement can be problematic when the LT parcel is subject to an easement with a vague description or expiry condition. Some suggestions;

- Review the easement documents referred to in the parcel descriptions. Some utility easement documents may first describe an easement corridor through a parcel, and then go on to create an easement for a right of entry easement over the entire parcel. This kind of ‘blanket’ easement does not require any additional Parts to describe the extent of the easement.
- Consult with the land registrar before submitting a plan for pre-approval if your plan will not reflect an easement contained in the parcel description. Reference plans must match the parcel description at the time of deposit. If the land registrar agrees that the easement does not apply to the parcel, the land registrar will need

## Sites to See

### Project Management Institute

[www.pmi.org/Pages/default.aspx](http://www.pmi.org/Pages/default.aspx)

The Project Management Institute (PMI) is a not-for-profit membership association for the project management profession. Its worldwide advocacy for project management is supported by globally-recognized standards and credentials, an extensive research program, and professional development opportunities.

**Table 1  
Land Titles Parcel Types <sup>7</sup>**

**All are Subject to Section 44 LTA**

<b>LT Absolute</b>	<b>LTCQ</b>	<b>LT Plus</b>
<b>Subject to S. 44 LTA</b>	<b>Subject to S. 44 LTA except:</b> -Paragraph 11 (Planning Act) -Paragraph 14 (Dower) -Succession Duties, Escheats & Forfeitures <b>Additional Qualifiers:</b> -Adverse Possession, Prescription, Registry Act Leases	Application for Absolute Title from LTCQ – Deals with additional qualifiers <b>Subject to S. 44 LTA except:</b> -Paragraph 3 (Adverse Possession) -Paragraph 11 (Planning Act) -Paragraph 14 (Dower) -Succession Duties, Escheats & Forfeitures
<b>Estate/Qualifier:</b> Fee Simple Absolute	<b>Estate/Qualifier:</b> Fee Simple LT Conversion Qualified	<b>Estate/Qualifier:</b> Fee Simple LT Absolute Plus
<b>No Guarantee of Extent – Section 140 LTA</b>		

In automated land titles, clients submit documents to be added to a PIN electronically from their office using the Teraview<sup>®</sup> software. Following receipt, the electronic land registration system automatically assigns a registration number to the document and then abstracts the document on the PIN(s) specified by the client. While this automated abstracting keeps the PIN document pool up to date, it does not automatically change the property description field (thumbnail description) or the ownership of a PIN. As mentioned previously, these types of changes only happen at certification. When all the documents on a PIN are marked by the land registrar with a ‘C’ in the Checked/Certified column, all the information on the PIN is up-to-date. This land titles certification process is important to a land surveyor because, on

to amend the parcel description prior to the deposit of the reference plan.

- There is no automatic deletion of expired land titles easements. The land in the parcel remains subject to the easement until it is deleted. If the easement is limited solely by time or by the earlier of two events, one of which is a date, and it has expired, the land registrar can delete the easement on his or her own accord. If however, the easement is limited by other events, an application to delete the easement, with appropriate supporting evidence, must be registered.

### Automation

Automation of the records happened at the same time as the administrative conversion to land titles. When the property is automated, the parcel register is assigned a unique Property Identifier Number or “PIN” which, pursuant to the Regulations, must be shown on all plans and documents entering the system. For automated records, the land registrar records the plan or document based both on legal description and the PIN, and verifies both at the time of registration or deposit.

The automation of land records brought some changes to the abstracting of land titles parcels that every land surveyor needs to know.

Similar to the paper land titles system, every document received by the automated land registration system is subject to review. In addition, any change to title requested in a document submitted for registration is only an application to the land registrar and will not occur until the document has passed a review and is certified (approved) by the land registrar. On occasion, an uncertified document may be changed or even withdrawn by the client prior to certification. In the automated system, certified documents are indicated on a PIN printout with the letter ‘C’ in the Checked/Certified column.

occasion, reliance on a PIN with uncertified documents could result in the production of plan that cannot be accepted for deposit. Contact the land registrar if you have questions about how uncertified documents may affect your plan of survey.

The land registrar keeps the automated parcel register current. Documents no longer relevant to the current title are usually deleted from the parcel. For example, once a new Transfer document is certified by the land registrar, the parcel ownership will be updated and the previous Transfer document will be deleted from the parcel. This parcel cleanup keeps the number of documents listed in the document pool to a minimum. Teraview<sup>®</sup> users and land registry office clients can request that their printout include deleted instruments by checking the ‘include deleted documents’ option for a parcel register printout. It is recommended that surveyors choose this option.

### Land Titles Parcel Types

Following the automation and conversion project there are now several different types of land titles parcels available in Ontario. The main types are summarized in Table 1. All of the various types of land titles records are governed by the *Land Titles Act* (LTA). There are real differences in the land titles qualifiers assigned to the three types of land titles parcels set out below.

#### LT Absolute

When paper-based existing Land Titles properties are automated, the existing qualifiers, being those stated in subsection 44(1) of the LTA, do not change. Just like the paper record, these older LT Absolute parcels do not have any qualifiers stated on the PIN. The ‘Estate / Qualifier’ shown on the PIN is ‘Fee Simple Absolute’.

#### LTCQ

This is the type of LT parcel created during the adminis-

trative conversion of a property from the registry system. The qualifiers stated on these parcels are as follows:

*“Subject, on first registration under the Land Titles Act, to:*

*Subsection 44(1) of the Land Titles Act, except paragraph 11, paragraph 14, provincial succession duties and escheats or forfeiture to the Crown.*

*The rights of any person who would, but for the Land Titles Act, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention.*

*Any lease to which subsection 70(2) of the Registry Act applies.”*


Despite being called a qualified title, an LTCQ parcel is in some ways superior to an LT absolute parcel. For example, an LTCQ PIN is guaranteed up to the date of conversion against any possible *Planning Act* contravention.

### LT Absolute Plus

A registered owner may at any time apply to upgrade their LTCQ parcel to LT Absolute Plus, although for most owners there is no requirement to do so. This type of parcel has more guarantees than a traditional LT Absolute parcel and is one of the types of land titles parcel that can be used for land development through registration of a plan of subdivision or a condominium. The procedures for an Application for Absolute Plus are available on the ServiceOntario web site: [www.serviceontario.ca/landregistration](http://www.serviceontario.ca/landregistration).

### Conclusion

While there are differences between the registry system

and the land titles system, the move to an automated land titles system has produced a number of benefits for all clients, including land surveyors. The conversion of the records is *making it easier* to do a title search. The introduction of remote searching and property index maps is increasing the productivity of all users. However, one facet of land registration remains completely unchanged; licensed professional land surveyors will continue their more than 200 year long practice of supporting and advancing Ontario's land registration system. 

**Ken Wilkinson** is currently on assignment acting as Examiner of Surveys for the Ministry of Government Services. He can be reached by email at [ken.wilkinson@ontario.ca](mailto:ken.wilkinson@ontario.ca).

### References

<sup>1</sup> *Report on Land Registration Ontario*, The Law Reform Commission (1971) Queen's Printer for Ontario p. 23

<sup>2</sup> *ibid* p. 23

<sup>3</sup> *Automated Land Titles Records in Ontario*, Katherine M. Murray (2004) Six-Minute Real Estate Lawyer, Law Society of Upper Canada, Continuing Legal Education p. 4-3

<sup>4</sup> See *Unravelling Geographic Fabric* by Richard Jordan and Ken Greenburg (2002) The Ontario Land Surveyor p. 20 This article discusses the many ways the geographic fabric can change in both the Registry and Land Titles system.

<sup>5</sup> *The Survey And The Real Estate Transaction* Prepared by: The Association of Ontario Land Surveyors (Revised - September, 1993, May, 1995)

<sup>6</sup> See “*Land Registry Office Title Searching for the Land Surveyor*” (1988) by Izaak deRijcke, published by The Association of Ontario Land Surveyors, for a discussion of the detective work required to find boundary evidence in the Registry and Land Titles system.

<sup>7</sup> *Automated Land Titles Records in Ontario*, Katherine M. Murray (2004) Six-Minute Real Estate Lawyer, Law Society of Upper Canada, Continuing Legal Education p. 4-8

# Calendar of Events

**April 11 to 16, 2010**

**FIG XXIV Congress and Working Week  
and XXXIII General Assembly**

*“Facing the Challenges – Building the Capacity”*

*Sydney, Australia*  
[www.fig2010.com](http://www.fig2010.com)

**April 25 to 29, 2010**

**ACSM 2010 Annual Conference**

*Phoenix, Arizona*  
[www.acsm.net](http://www.acsm.net)

**April 26 to 30, 2010**

**ASPRS 2010 Annual Conference**

*San Diego, California*  
[www.asprs.org](http://www.asprs.org)

**May 6 to 8, 2010**

**National Surveyors' Conference 2010**

*St. John's, Newfoundland*  
[www.acls-aatc.ca](http://www.acls-aatc.ca)

**June 14 to 18, 2010**

**Canadian Geomatics Conference/  
ISPRS Commission I Symposium**

*Calgary, Alberta*  
[www.geoconf.ca](http://www.geoconf.ca)

**June 21 to 23, 2010**

**Canadian Hydrographic Association  
2010 Conference**

*Québec City, Québec*  
[www.chc2010.ca](http://www.chc2010.ca)