

# **Modernizing the Land Titles System in Yukon**

## **What We Heard Report**

**Yukon Department of Justice  
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## What We Heard Report

The ultimate object of modernization of the land titles system, as identified in the Discussion Paper, *Modernizing the Land Titles System in Yukon*, is to increase the level of service provided to the public by the Land Titles Office, and more specifically, to:

- see documents and plans registered within five days of their submission to the Land Titles Office;
- provide for online filing of documents and plans by registered professionals;
- allow for online access to documents and plans registered in the Land Titles Office;
- maintain the high standard of review presently provided by the Land Titles Office; and
- allow staff to focus on providing greater customer support rather than on routine secretarial tasks.

The present land titles system in Yukon cannot support the volume and complexity of real estate transactions in a timely manner and as a result the Land Titles Office provides an inadequate level of service to the public and stakeholders. The lack of ability to provide the expected level of service acts as a barrier to real property and economic development. The *Land Titles Act* was enacted in 1898 and the *Condominium Act* in 1968; neither piece of legislation has had any substantial amendments since enactment. The Government of Yukon's Land Information Management System (LIMS), the computer system that supports the Yukon's land titles regime, is neither efficient nor effective in respect of recording and accessing land titles interests. The business processes which the Land Titles Office developed over the decades to respond to client needs in a relatively quiet real estate environment are inadequate in a busy real estate market and create further delays and uncertainty.

In order to speed up the registration time for land transactions in Yukon and provide online access to titles and interests registered against them, it is essential that the *Land Titles Act* and the *Condominium Act*, the supporting computer system and the business processes dictated by the legislation and system all be modernized. Changing only one aspect of the land titles system would reduce registration time, but not to the extent that it would fall within the 24 to 96 hours that is the norm in other land titles jurisdictions. Modernized legislation is necessary to allow for the efficiencies that an appropriate computer system would provide. Modern legislation and a new computer system are necessary to facilitate more effective and time saving business processes. The Department of Justice has undertaken a major project to modernize the land titles system in Yukon and the *Condominium Act* with the ultimate objective of enhancing the level of service provided to the public by the Land Titles Office, thereby facilitating real property development and economic development in Yukon.

The modernization project is anticipated to proceed in three phases: Scoping, Development, and Implementation, and will conclude in December, 2015. The initial phase, Scoping, includes the establishment of a governance structure for the project, a

legislation and policy scan, academic research, production of discussion papers and consultation with targeted stakeholders. It will conclude in December 2012 with the provision of recommendations to the Minister of Justice on the appropriate manner in which a modern land titles system in Yukon should be developed.

The targeted consultation aspect of the scoping phase of modernization took place between September 13 and November 30, 2012 and involved discussion on issues related to all aspects of land titles modernization and a new *Condominium Act*. Those groups with whom we consulted and the dates of the consultation meetings are set out in Appendix A of this paper. This paper is a record of what we heard during that targeted consultation in respect of the modernization of the land titles system in Yukon. A separate “What We Heard” paper is being published in respect of modernization of the *Condominium Act*.

## CONTEXT

Modernization of the land titles system is a large and complex task which will be demanding upon both financial and human resources. It has a direct impact upon economic development in Yukon and stakeholders feel very strongly about it. Over the last decade all the western provinces have modernized their land titles systems. Yukon has the opportunity to learn from other jurisdictions and plan its modernization in such a manner that it proceeds efficiently, effectively and as economically as possible.

The department began the modernization project with a focused scoping exercise which took advantage of up to date information and allowed all interests to be canvassed and prioritized. A decision was made to solicit stakeholder input on all aspects of the land titles system rather than consulting on specific issues such as legislation or the supporting computer system. Stakeholders were able to discuss their interests in the broader context of land titles. This was important because every aspect of the land titles system is inter-related.

As part of the consultation, we asked stakeholders questions relating to:

1. The appropriate system for recording land interests,
2. The business processes used by the Land Titles Office,
3. The attributes that they want to see in a computer system that supports the Land Titles Office and the priority that they would give to those attributes,
4. Potential governance models and fee/financial structures, and
5. The legislation necessary to modernize the land titles system in Yukon.

This is what we heard in response to our questions.

### **1. What We Heard About the Appropriate System for Recording Land Interests in Yukon**

Yukon’s land title system is a Torrens system. The Torrens system is used in the three northern territories, Canada’s western provinces, and several other jurisdictions

internationally. Some Canadian jurisdictions that formerly used a registry system, in which the land titles office is a repository and title must be searched and verified each time a transaction takes place, are transitioning to a Torrens system (i.e. Ontario and New Brunswick).

The Torrens system is generally considered the best method of providing certainty with regard to fee simple land ownership. Under the Torrens system, government guarantees the accuracy of a registered title to land and the interests registered against it. Government is traditionally the keeper of all documents registered against titles, and government indemnifies any person who suffers a loss because of an error on the title.

Stakeholders universally endorsed retaining the Torrens system as the foundation of Yukon's land titles system. Stakeholders repeatedly stated that, in carrying out their businesses, they depend upon the information on a title being accurate, and did not want a system which would require them to go behind a title and research its accuracy themselves. The presence of an Assurance Fund, which is an essential element of a Torrens system, gave them comfort as to the legal certainty around title that they considered to be essential to a reliable system.

The majority of stakeholders felt that all documents registered in the Land Titles Office should be examined with caveats being identified as a possible exception.

## **2. What We Heard About the Business Processes in the Land Titles Office.**

The Land Titles Office business processes are the activities that it employs to carry out its business objectives. The Registrar and staff of the Land Titles Office examine documents relating to ownership of or interests in land to ensure their compliance with the *Land Titles Act* and the *Condominium Act*, and will register only those in compliance. Survey plans are also examined for compliance with the *Land Titles Act* and the *Condominium Act*, and are also registered in the Land Titles Office. The Land Titles Office retains custody of all original titles, registered documents and plans of survey.

The numbers of documents submitted to the Land Titles Office has been rising steadily. In 2009-10 6801 documents were examined and registered. That number rose to 7184 in 2010-11, and to 7546 in 2011-12. At the same time, the value and complexity of land transactions has risen as Yukon has enjoyed a prosperous, growing economy. As a result, the time to process and register documents has risen to as long as four to five weeks. The practices of the Registrar and staff to carry out their responsibilities are a product of the legislation or of the supporting computer program, LIMS. At times, the processes used reflect an attempt to work around the obstacles which the legislation or LIMS create.

The ultimate object of modernization of the land titles system is to improve the service provided to the public by the Land Titles Office, specifically in respect to the amount of time it takes to register interests in land and the ability to access information in respect

of titled land. We asked land titles stakeholders to provide input on this goal and what aspects of changes to land titles processes they would support as contributing to improving services.

#### **a. Review of Documents Submitted for Registration**

It was generally acknowledged by stakeholders that documents and plans submitted to the Land Titles Office for registration are well scrutinized. Some stakeholders said that aspects of the documents submitted are sometimes over-scrutinized, and that the staff of the Land Titles Office sometimes exceeded their jurisdiction under the *Land Titles Act*. They told us that if the details under scrutiny did not affect the nature of the transaction, an error should not be grounds for a rejection of a document. Some said that the Land Titles Office staff should review only certain, clearly identified aspects of the title. Some stakeholders suggest that greater responsibility for ensuring the accuracy of documents submitted could be transferred onto those submitting, especially if they are a professional.

We heard some stakeholders say that they found it particularly frustrating when Land Titles Office staff took inconsistent approaches to the same questions; that is, when similar submissions were treated differently. They told us that a consistent approach from the Land Titles Office is very important. The fact that not all errors in a document are identified at the first examination was also a concern because professionals would prefer to make all corrections at once, particularly when a correction necessitated going back to a client to re-execute a document. Stakeholder requested that the scope of scrutiny and the exercise of discretion be standardized so that they can rely on a consistent approach.

Stakeholders appreciated cooperation and working together to fix minor errors quickly, while they acknowledged that major errors do need to be re-submitted. Stakeholders agreed that a harmonious working relationship with the Land Title Office staff as well as consistency in the review standards is ideal.

The Land Titles Office told us that under the current Act they are obligated to check all details of submitted documents because of what they see as the Registrar of Land Title's ultimate responsibility. They advised that there was a very high rate of errors in the documents submitted to them. Often over 50 percent of documents submitted in a day have errors, which results in a high rate of rejection. Staff said that in the past they "held the hands of professionals" by finding errors in their documents, and that this practice created a culture of reliance upon Land Titles Office staff to find errors rather than ensuring accuracy before documents left the professional's office. Staff agreed that consistency of approach was desirable but pointed out that they are so busy that sometimes it is not possible to provide that consistency when the pressure to make a decision quickly is so strong.

Land Titles staff agreed with professional stakeholders that documents that contain errors should not lose their priority if they can be corrected, but suggested that

additional fees should be charged for each time an error is identified and corrections have to be made. This increased fee would reflect the time and effort that the error costs the Land Titles Office and it would also act as a disincentive for allowing documents that contain errors to go to the Land Titles –Office as s

Some staff thought that they gave a great deal of assistance to clients but that, while it was appropriate for them to identify problems, it is up to the professional to figure out how to fix it. Some acknowledged that clients often want them to simply fix mistakes but that, nevertheless, it would be good to be able to work more closely with clients. A designated person to work with clients might be one way to address the issue.

Lawyers told us that it is a problem for them that real estate practitioners cannot speak directly to Department of Justice solicitors who are advising the Land Titles staff when there are disputes over interpretation of the legislation.

### **b. Speed**

Timeliness is an issue for stakeholders. For example, the City of Whitehorse advised that when it processes parcels of land to prepare for land lotteries, it usually has only three months to ready the titles. When they have a tight timeline, slow turn-around time in the Land Titles Office can affect them negatively.

A large developer explained that their priorities are primarily speed and consistency. The costs are huge for the developer if a project is delayed. If they must deal with delays, some kind of consistent understanding would help. Condominium issues and land titles issues overlap and create huge problems for them. The same developer said that unless the present land titles system was fixed, his company would not pursue another large scale project in Yukon. Developers agreed that the Government of Yukon seems to be working towards the goal of decreasing delays, and they appreciated that.

Lawyers advised that the present delayed time period for registration caused problems for them in respect of their professional obligation to report to a client on a transaction in a timely manner. Financial institutions, in particular, are used to the faster registration periods in other jurisdictions and are not sympathetic to a lawyer's inability to report until they have received evidence of final registration from the Land Titles Office. Some lenders have told lawyers that they are considering laying complaints of professional negligence to the Law Society of Yukon's disciplinary committee unless they receive confirmation of registration more speedily.

All stakeholders agreed that the Land Titles Office turn-around time for registrations should be consistent. However some professionals said that it should not be excessively fast. That is, one day is too fast because small inaccuracies cannot be caught, whereas three to five days works well for their business practices. The current practice of the Land Titles Office is to provide "provisional" registration numbers within 24 hours of registration after an initial review of the document. Provisional numbers facilitate certain transactions that take place before the final

registration occurs, sometimes several weeks after the document is submitted. Lawyers told us that they would like to see the practice of providing a provisional number maintained, even if the time period for registration was greatly decreased. Staff said that it was their practice to work with the lawyer to correct any errors discovered subsequent to the issuance of the provisional number, so that the provisional number can eventually become the actual registration number, and priority of interest is maintained.

Land Titles staff felt a lot of pressure to work as quickly as possible and were frustrated that some users of the system seem to underestimate the skill required in their positions. They pointed out that they have little back up and that it takes years to train a Land Titles examiner. If staff are absent, there is an inevitable back up of work and increase in the time necessary to register documents. They told us that the computer system and their work computers were “slow as molasses” and contribute to delay. In addition, the fact that their work is the last step in raising a title creates additional pressure upon them. While the previous steps might all have been late, and while delay might have been caused by professionals, financial institutions or other government offices earlier in the process, they took the brunt of the blame for holding up a project and causing stress and expense for the client. They recognized that if they were able to register documents within a consistent time frame, clients would be able to see that they were not to blame for time overruns.

### **c. Harmonizing with other Departments and Governments**

#### **i. Natural Resources Canada, Surveyor General Branch**

There were frequent discussions with our stakeholders concerning the ability to achieve greater harmony between the business processes of the Land Titles Office and those of Natural Resources Canada, Surveyor General Branch. The Registrar of Land Titles in Yukon is responsible for ensuring that plans submitted to her office are in compliance with the provisions of the *Land Titles Act* and the *Land Titles Plan Regulations* while the Surveyor General’s Branch has the responsibility under the *Canada Lands Survey Act* to examine and approve legal surveys and descriptive plans in Yukon. Plans which are submitted to the Land Titles Office must first have been reviewed by the Surveyor General’s Branch, although the two branches are reviewing the plans for different attributes.

In Yukon, responsibility for the land titles system rests with the Government of Yukon and responsibility for legal surveys remains with the Government of Canada. Provincial governments have responsibility for both. In British Columbia, as part of the land titles modernization, the land titles and survey systems that had previously been housed in different government departments were brought together in a non-profit society, the “Land Titles and Survey Authority” (LTSA). The Land Titles Division of the LTSA examines document and survey plan applications relating to the registration of title and interests against title. The LTSA’s Surveyor General Division maintains all the physical records of surveys of Crown lands and all the Crown grants issued. Both the Land Titles Division and the Surveyor General Division are led by statutory decision makers: the



Director of Land Titles, together with the Registrars of Land Titles, and the Surveyor General, respectively.

In Saskatchewan, similarly, both the Provincial Land Survey System and the Land Titles Registry are housed together in the Information Services Corporation (ISC), a Crown Corporation that includes other government registries. In these two provinces, officials advise that they found the consolidation of the land titles and survey functions and the harmonization of their business processes had saved time and resources. However, in neither case had it resulted in only a single review of a submitted plan.

Representatives of the Surveyor General Branch of Natural Resources Canada in Yukon told us that there is a duplication in the examination of surveys by their office and the Land Titles Office. They asked for an opportunity to clarify the business processes of the two offices as part of the modernization project. This request was echoed by some members of the Association of Canada Lands Surveyors and of the Law Society of Yukon. Developers also expressed an interest in an expedited process between the Land Titles Office and the Surveyor General's Branch.

The Surveyor General Branch told us that their office is moving to digital plans and removing signatures from all plans, which will impact their processes. Eventually the Surveyor General Branch envisions going to a map-based system in which users have the ability to click on an online map to reveal information in its database for that location. Most requests are now online. Their long-term vision includes the ability to link up with other land information systems.

While acknowledging the challenges of different governments working together, the Surveyor General Branch in Yukon would like to see integration of the Surveyor General's business processes with those of the Land Titles Office to the extent feasible to improve efficiencies and eliminate duplication. Those representatives suggested that the roles and responsibilities of the Surveyor General Branch and the Land Titles Office be clarified and documented, in order to manage expectations between the two offices. A protocol as to which office performed which functions might be agreed upon.

The Surveyor General Branch does not support the idea of devolving the Surveyor General responsibilities to the Government of Yukon at this time because it would involve a complex transfer of the jurisdiction from one government to the other. They suggest that there is a broad spectrum of options available that would assist the two offices to work more closely together. They were pleased that the discussion paper includes an intention to review and analyze the relationship between the land titles system and the survey system in Yukon.

However, some members of the Association of Canada Lands Surveyors are interested in the potential devolution of the Surveyor General's Branch to Yukon, given concerns that cutbacks to the Surveyor General Branch in Yukon may leave that office with insufficient resources to assist the Land Titles Office while continuing to do its existing work. Surveyors were concerned that the review functions of the Surveyor General

Branch and the continued development and maintenance of the cadastral fabric are being moved out of Yukon to Southern locations. The members of the Association agreed that devolution of the Surveyor General Branch should not be a pre-requisite to modernization of land titles, but that coordination of the two offices should improve. They suggested that having a surveyor in the LTO might be an option to consider. Another model was also discussed: in Nunavut a Surveyor General Branch employee works half time in the Land Titles Office.

The Surveyor General Branch proposed that clarifying roles is preferable to adding a surveyor position within the Land Titles Office. From their perspective, it is preferable to identify what the problem is, what needs to be done, and what competencies are needed in order to address it.

## ii. Other Government Branches

Some land titles staff agreed that that it might make sense for the office to be located in the same building as other land related departments in order to save clients time. They acknowledged that it would compromise the Registrar to combine the Land Titles Office with any branch in respect of whose applications the Registrar has statutory decision making authority. However, physically locating the offices more closely might benefit the public who often have to visit all land related offices to deal with a single matter.

### d. Models of Governance and Fee Structure

The Yukon Land Titles Office is presently a branch of the Department of Justice. Its annual budget allocation is determined by government and administered through the Department of Justice. The revenue realized in the Land Titles Office through the fees charged for transactions goes to government general revenue and does not impact the branch's budget. Land Titles Office staff are government employees and the responsibility for the branch ultimately resides with the Minister of Justice.

Some Canadian jurisdictions use other governance models for delivery of land titles services. In British Columbia, the Land Titles and Survey Authority (LTSA) is an independent corporation created by the *Land Title and Survey Authority Act* in 2004. It consists of a board of directors appointed under that Act from the nominees provided by named stakeholder entities. It may not be operated for profit.

The LTSA has an operating agreement with the Government of British Columbia and under that agreement, the LTSA authority agrees to operate the land title and survey systems in a manner which meets identified service standards. For example, the average processing time for *Land Title Act* instruments may not exceed six business days, and the average processing time for *Land Act* surveys may not exceed 21 business days. The agreement establishes fees for land title and survey services and the percentage of LTSA revenue to be remitted to government. The LTSA is responsible for its own debts.

Although government made an original investment in the LTSA that was repaid, upgrades to the system and other capital purchases are now financed solely out of its revenue. It publishes its annual and quarterly reports and its business plans on its website.

In Saskatchewan, land titles services are provided by a crown corporation, the Information Services Corporation (ISC) that is responsible for registry services including survey plans, corporations, vital statistics and personal property. The board of ISC is appointed directly by the Government of Saskatchewan. While the ISC is self-funding, government is responsible for its debts. ISC also publishes its annual and quarterly financial reports on its website. Its mandate specifically includes the potential to make a profit but an operating agreement with the province ensures certain services will be provided to the public and that identified service standards will be met.

The Government of Saskatchewan has recently announced its intention to privatize ISC.

The issue of governance is linked to that of fees. In Saskatchewan and British Columbia, the bodies providing land titles services must act in accordance with their operating agreements, but they set their own fee levels, retain excess revenue after remitting the amounts required under the operating agreement to government, and use that income to fund their services.

An independent agency that does not depend upon a government budget allocation must have a volume of business that will generate sufficient fees to pay for the office's expenses. Jurisdictions that have undertaken modernization of their land titles systems within the last decade have also raised their fees to pay for the modernization. As an example, after modernization, Saskatchewan moved to charging a \$10 flat fee for title searches performed online by customers, generating \$60 million for 6 million searches.

Yukon's fees are extremely low. For example, the fee for a certified copy of a Certificate of Title is \$3 and a photocopy of a Certificate of Title is \$1 per page. A photocopy of an instrument is \$2 to pull it, and \$1 per page. A writ search on one name on title is \$1.50 and for additional names on title, \$.75.

The LTSA in British Columbia, the ISC in Saskatchewan and Service Alberta, the government department through which land titles services are offered in Alberta, all raised their fees in the context of modernization. All three jurisdictions encountered next to no complaints about the fee increase as it was coupled with an increase in the level of service. Stakeholders of Service Alberta told land titles staff that they are willing to accept a further increase in fees if government would commit to apply the resulting increase in revenue to improving the level of service at the Land Titles Office. That level of service had dropped since the initial modernization.

We asked land titles stakeholders to provide information about the impact fee increases would have on their businesses, and whether their clients would accept fee increases.

All of the stakeholders said they would accept higher fees and would not expect resistance from their client under two conditions:

- they received improved services such as electronic filing and searches; and
- the new fees are in line with the norm in other jurisdictions; for example, \$10 for an online title search, but not \$60.

Overwhelmingly, stakeholders understood the connection between higher fees and better, faster service. Stakeholders recognised that the land titles system is the infrastructure for economic development. All professional stakeholders told us that electronic searches would be great for their business and many were aware that, in other jurisdictions, income used to maintain and regularly upgrade the land titles system comes from search fees. The appropriate governance model for a jurisdiction's land titles services depends to a great extent upon the revenue that the services can generate.

Yukon is a small jurisdiction with fewer land transactions than in larger provinces; it is yet to be determined whether it can generate from fees the revenue needed for an independent body such as an authority like B.C.'s. Nevertheless, stakeholders are interested in options for arrangements that would see the fees earned by the Land Titles Office retained by the Land Titles Office and used to continuously improve services.

Private sector stakeholders told us that they don't care if the Land Titles Office in Yukon is a government body, a stand-alone authority, a crown corporation or any other governance model, as long as the service it delivers is timely, accurate, efficient and reliable. Many stakeholders said that it is up to government to determine the governance model that best suits the needs of Yukon.

Some land titles staff opposed the idea of privatizing land titles services if it meant their jobs would no longer be part of Yukon's public service. Their concerns included job security, the ability to remain in and move within the public service, and the security of their accumulated pension benefits. They were also concerned about who would make decisions in respect of salaries if the Land Titles Office was not within government. One staff person thought that an authority model such as B.C.'s or a Crown Corporation as in Saskatchewan could work as long as pay and pension issues were addressed and as long as the same union conditions continued to apply, as they do in B.C. and Saskatchewan.

All staff agreed that it would be appropriate for the Land Titles Office to retain its revenue and use it for maintaining and improving the land titles system in Yukon. The idea of an independent operating agency that remains within government was an option that staff identified as acceptable.

The Surveyor General Branch wants to see a structure that allows the federal and territorial authorities to couple their efforts and work even closer together, in order to make their business processes more compatible and more efficient. One issue is that Canada is downsizing the Surveyor General Branch with resulting concerns from

professionals that the Yukon Land Titles Office may be losing access to Surveyor General Branch input and consultation.

### **3. What we heard about the supporting computer platform of the Land Titles Office.**

#### **a. Online Searches**

All stakeholders told us that the ability to search online for both information on title and the actual documents registered against title would help them enormously. It would save them time and money. They could search from their desks, rather than coming to the Land Titles Office to carry out searches. The fact that they can not access the Land Titles Office vault and must wait to have land titles staff bring documents to them makes having to search manually even more time-consuming. Some lawyers and surveyors told us that the creation of a searchable online database which includes access to documents should be the highest priority in modernization, even though it would not contribute to reducing the registration time period. All stakeholders said they were willing to pay more for searches if they could be done online and include the ability to access documents.

The City of Whitehorse told us that their staff would love the ability to search online and download a PDF document to keep on file. Consistent document access would improve their services. The City is willing to pay for the service of electronic access. Other users told us that the ability to do online title searches is critical and should be part of the modernization process.

Most stakeholders said that the public information in the Land Titles Office should be searchable by the public, but some said that it should be limited by willingness to pay. It was suggested that the Land Titles Office could have a public computer so that the public could do online searches for legal descriptions of land. The City of Whitehorse and other agencies have clients coming to them who have only have the street address but need the legal description for the property. Having a terminal for the public to use would make it easier for people to access the information they need.

#### **b. Online Filing and Registration**

Online filing refers to the submission of documents by electronic means, and is often accomplished by using smart forms that require all fields to be filled out and can check the accuracy of basic information (such as spelling, addresses, consistency of names, etc.) before the form can be submitted. Other information on the form will be examined by staff of the Land Titles Office for compliance with applicable legislation and policy. Electronic registration involves an automated review in which the computer system can check that the documents submitted are accurate and in accordance with the *Land Titles Act*. Complications that the system can not resolve are directed to an examiner to review.

Many stakeholders want the possibility of online filing. The City of Whitehorse told us that online filing would be nice, but is not a huge priority now; possibly it will become more pressing in the future as their need to register documents efficiently increases.

Yukon Electric is interested in online filing, and in using an account for this service. Frequent users should be able to file documents online while others should always be able to register by paper. Maintaining accuracy throughout the online filing process is important since the accuracy of Land Titles Office records is paramount; limiting online filing to certain professions or stakeholders might help to keep errors low. They preferred that review and registration would continue to be done by qualified staff to maintain the high degree of accuracy in the system.

The Surveyor General Branch requested to be part of planning in respect of online filing or review because they want to ensure that an online process is compatible with their own electronic planning and submission project. They are on a two year timeline to move to online submission of survey plans. They raised the possibility that it may be necessary to examine only what is critical in order to maintain the accuracy and integrity of the land titles system, which is their practice for survey submissions. The electronic system might check only routine things that currently staff must spend time examining. The Surveyor General Branch said that this initiative is a great opportunity to work together and be an example for the rest of the country.

Some lawyers said that electronic filing is not necessary and that it is important to use paper copy submission only in order to avoid lawyers outside of Yukon taking business away from local firms. Their concern is that members of the Law Society who practice outside of Yukon will be able to conduct real estate transactions in Yukon online, and that this could end the existence of a local legal community in Yukon, as local lawyers will not be able to make a living. Others said they were not worried about outside competition and support the introduction of online submission; some said it would be very helpful to their practise, regarding improved access to real estate information. One lawyer stated that she felt that lawyers owed it to their clients to take advantage of technological advances to provide the highest level of service. Law Society members wondered if there might be a way to provide online access while protecting the continued existence of a local bar. Some noted that online filing has helped to counter fraud.

Surveyors discussed the importance of ensuring that the Land Titles Office database is secure, and said that they anticipate the need for electronic imaging for surveys. They discussed limiting access for online filing to lawyers, notaries, surveyors and registry agents, as is the case in B.C. They told us that information will be much more available and searchable when both the Surveyor General Branch database and the land titles database are electronically accessible. The databases could be kept secure by allowing only certain groups of people such as registered professionals to file, thereby controlling fraud. It was suggested that it would be ideal to overlay the two computer systems to make the systems operate more efficiently.

### **c. Training**

Stakeholders indicated that they would appreciate training if it is needed to understand how to efficiently use a new system. The City of Whitehorse felt that offering training for new business practices is a good idea, but that the Land Titles Office should not be responsible for training people how to register documents; rather, it is up to the professionals to know how to deal with these documents. Having standardized, straightforward forms would make the process easier.

Land-Titles Office staff echoed the concern that they would be called upon to train people on any new system. They hoped that any online forms would be simple enough to guide people through the process. If training is needed, however, they said there should be a dedicated trainer in the Land Titles Office so that staff members would not have to drop their other work to train the public. While some staff felt that any training should be charged for, as is the case in Saskatchewan, others felt that if training had to be provided, then it made sense that government provide it without cost.

## **4. What we heard about the legislation creating the land registry system in Yukon.**

### **a. The Legislation**

As noted above, stakeholders overwhelmingly agreed that Yukon must retain the Torrens system in new legislation. They are happy with the accuracy and reliability of the Land Titles Office, and support the modernization project to improve turn around times without sacrificing the integrity of what they perceive to be fundamentally a good system for registering interests in land. Stakeholders supported a new *Land Titles Act* that primarily retains its principles and structure, but is modernized to eliminate aspects that are no longer relevant, allow for current best practices, and permit electronic searches, filing, and registration. Several lawyers commented that the legislation still works, even though the legislation is over a century old and needs updating.

Stakeholders want to see flexibility in our legislation, so that when changes in real estate practices occur in future, our legislation can allow for these as much as possible. Several suggested that non-foundational aspects of the legislation might be put into regulation thereby allowing changes to be made more easily.

### **b. Stakeholders' Input**

Stakeholders are willing to contribute to working groups for various aspects of a new Act, to ensure that their insights and professional information is accessed throughout the project. For example, the Association of Canadian Land Surveyors offered its members' support to help with any aspect of the next phases of the modernization project. The Surveyor General Branch would like to be part of planning for online submissions. Yukon Electric also wants to participate in future consultation meetings in order to as give their input.

Members of the Law Society are willing to work with Yukon legislative drafters on a legislative drafting working group. They recognized the value in having a draft of the legislation prepared fairly early in the process and using that draft as a basis for work done by the group.

### **c. Specific Concerns**

The Surveyor General Branch told us that the present legislation allows a misalignment to exist between cadastral maps and the titles registered in the Land Titles Office because a survey plan can sit in the Land Titles Office for many years with no requirement to raise title until there is some activity on it, such as a transfer or a mortgage registered. They requested that this be changed to require title be raised within a certain time period, as is the norm in other jurisdictions. This issue was also voiced by Yukon Electric.

Developers told us that raising title means they would have to pay taxes on the property, which they do not want to be required to do until they are ready to develop or sell the property. They asked whether there might be tax relief for titles that have to be raised, but are not sold.

The Surveyor General Branch told us that Yukon's legislation should no longer require the Commissioner to sign off on plan approvals and suggested that signing authority be delegated to the subdivision approval officer.

### **d. Specific Drafting Suggestions**

Some stakeholders recommended specific provisions in other jurisdictions' legislation; we were told that the B.C. registration system is very professional but can become complex; others recommended Alberta's land titles system as easy to navigate and understand. The Surveyor General Branch pointed out that the Northwest Territory's *Land Titles Act* has been modernized to provide for deferred survey postings, water boundaries and plan approval process at sale. The Northwest Territory's Land Titles Plans Regulation is much more specific than Yukon's.

We received other specific drafting suggestions, many of them relating to survey issues, regarding:

- adverse claims,
- prescriptive easements,
- air space parcels,
- automatic cancellation of titles and issuance of new titles on the registration of a new survey plan, and
- the interface between the *Land Titles Act* and the *Highways Act* in respect of the transfer of title to roads under section 273 of the *Municipal Act*.



The members of the Association of Canada Lands Surveyors, the City of Whitehorse and Yukon Electrical provided their perspectives on whether the Yukon's legislation should stipulate that surveys of easements must be done by a Canada Lands Surveyor in all instances. Currently, the Act permits sketches. The Association of Canada Lands Surveyors and the City of Whitehorse support such a new requirement, and the Yukon Electrical Company said that it was not necessary.

One lawyer said that revising the *Condominium Act* should be a higher priority than modernizing the land titles system; in his view, the shortcomings of the current *Condominium Act* present a higher level of serious risk for Yukoners, and both projects are large undertakings that present considerable work and responsibility to take on at once. The importance of a new *Condominium Act* was also stressed by developers and surveyors.

**Appendix “A”  
List of Stakeholders and Meetings**

July 30, 2012	Surveyor General Branch, Natural Resources Canada officials
Sept. 4, 2012	City of Whitehorse officials
Sept. 17, 2012	Land Titles and Survey Authority of B.C. officials (teleconference)
Sept. 26, 2012	Developers and Financial Institutions officials
Sept. 26, 2012	Law Society of Yukon representatives
Oct. 16, 2012	Association of Canada Land Surveyors (ACLS) representatives
Oct. 22, 2012	Appraisers practicing in Yukon
Oct. 26, 2012	Yukon Electric officials
Oct. 29, 2012	Land Titles and Survey Authority of B.C. Site Visit
Oct. 31, 2012	Yukon Departments Working Group on Land Titles Modernization
Nov. 7, 2012	Alberta Land Titles Office, Service Alberta, Site Visit
Nov. 8, 2012	Saskatchewan Information Services Corporation (ISC) Site Visit
Nov. 20, 2012	Yukon Housing officials
Nov. 23, 2012	Land Titles Office members of staff
July 30 – Dec. 7	Email messages received at <a href="mailto:landtitlesmodernization@gov.yk.ca">landtitlesmodernization@gov.yk.ca</a>