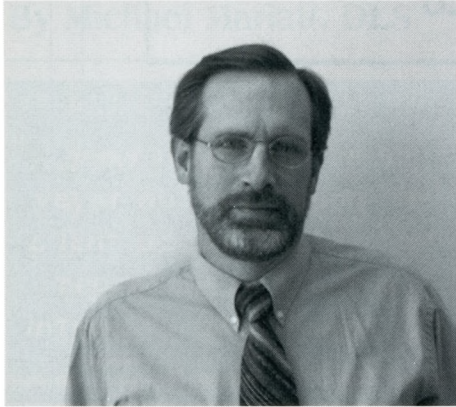


An Overview of LTCQ from a Surveyor's Perspective.

By Ron Stewart, BSc, OLS, Marshall Macklin Monaghan

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THE OLD SYSTEM

Prior to automation of the Land Registry Offices in Ontario, two basic systems of land registration were in place in most jurisdictions: registration of deeds, governed by the *Registry Act*, and registration of titles, governed by the *Land Titles Act*. Because the Land Titles system incorporated certain advantages over the older Registry system, including certificates of title with qualified state guarantees, conversion from Registry to Land Titles, where available, was an effective forum for title resolution issues and was mandatory prior to development.

Conversion was accomplished by first registration under the *Land Titles Act*. The process included a thorough title search on the part of a solicitor and a precise boundary survey of the subject lands by an Ontario Land Surveyor to identify description, boundary and encroachment problems, including interests which might arise out of prescriptive or adverse possessory claims. On first registration under the *Land Titles Act*, certificates were issued granting titles as either absolute or, due to unresolved questions, qualified. With respect to a fee simple absolute estate, standard qualifications as set out in subsection 44(1) of the *Land Titles Act* were implicit.

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been brought into the Land Titles system designated as LTCQ."

LTCQ (LAND TITLES CONVERSION QUALIFIED)

The introduction of POLARIS to some Land Registry Offices has seen several versions of automation. In some areas former Registry parcels remain governed by the *Registry Act*; those Land Titles parcels with fee simple absolute titles remain the same with automation effecting nothing other than re-entry of each Parcel Register with a distinct Property Identifier Number (PIN) into a digital data base. However, many parcels formerly governed by the *Registry Act* have been brought into the Land Titles system designated as LTCQ.

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There are certain benefits resulting from LTCQ: *Planning Act*, dower and escheat concerns, qualifiers with the fee simple absolute title, are addressed before automation to LTCQ. These are issues that are being promoted as advantages of LTCQ over the old fee simple absolute title, but are purely *quality* title concerns. There are other important issues, formerly addressed by the first registration process, which are not addressed with LTCQ: title is qualified with respect to (a) potential claims arising from prescription and adverse possession; and (b) boundary and description issues dealing with *extent* of title.

These concerns were specifically identified in the survey part of the former process. While the *Land Titles Act* guarantees title (with several qualifiers), extent of title has never been guaranteed; but because the former process required precise survey which was subject to

intense scrutiny by adjoining owners and Ministry staff, prescriptive and adverse possessory claims were dealt with or eliminated and little room was left for potential boundary problems.

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The option is available, and mandatory for development, for owners with LTCQ properties to upgrade their titles by applying for the "LT Plus" designation. This involves the implementation of a survey by way of Reference Plan, and serving notice on interested parties, including adjoining owners. With no objections, and proof of service, title will be upgraded to LT Plus, which effects a removal of the qualifiers with respect to adverse possession and prescription. If there is an objection, failure of the parties to negotiate a settlement will trigger the need for a hearing to adjudicate disputes.

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A SURVEYOR'S CONCERNS

One important component of POLARIS implementation is the compilation of Index Maps which are prepared by digital compilation of surveys of record in the Land Registry Offices, complemented by mathematical fitting of metes and bounds descriptions, and comparison with other tools such as assessment records. Where discrepancies are found, greatest weight is placed on that which is considered to be most reliable, normally most recent surveys. Where there is insufficient information, nominal values are introduced or special notes are entered on the maps to alert users as to uncertainties. Each map denotes that it is not a Plan of Survey.

The Index Maps form the basis of identifying parcels, which will be automated, and each property is assigned a separate PIN. Economics requires practicality; consequently, not all problems can be resolved when the maps are prepared. The potential exists for parcels to be created on Index Maps and assigned PIN numbers where no parcel actually exists, and this has in fact happened. Conversely, although highly unlikely by virtue of utilization of assessment records, a parcel may also be missed. In either case, potential claims against the assurance fund may arise where the LTCQ conversion was adopted.

Probably the most significant issue from a surveyor's perspective is the potential for boundary problems, including prescription and adverse possession as well as difficulties with descriptions. The LTCQ process specifically qualifies the title in this regard; the standard note on

the PIN printout states that title is subject to "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".

"...but the extent issue leaves LTCQ at a disadvantage which may be quite significant."

With that qualifier in place, LTCQ is a good product in that some quality of title issues are more certain than with the old fee simple absolute, but the extent issue leaves LTCQ at a disadvantage which may be quite significant. A lay person, with simple access to the system, may not understand the distinction, and mistakenly rely on the Index Map and the assurance that title is guaranteed under

the *Land Titles Act*. Further, if boundaries are depicted in error on the Index Maps, then adjoining owners may use those errors as bases of objection when applications are made to upgrade titles to LT Plus, resulting in potential for expensive legal proceedings.

The system is currently in transition, and will probably require several years for completion. While the conversion of title records in the Province to an automated system will certainly solve many logistical problems, time will tell the significance of new problems created by the system.

Ron Stewart is an Ontario Land Surveyor specializing in problem boundary surveys. He can be contacted at the Thornhill office of Marshall Macklin Monaghan, 905-882-1100 or e-mail at stewartr@mmm.ca.

