Trends in Land Registration

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This is the first of two articles written to review the new Land Titles Act in the Province of New Brunswick. The primary objective of this article is to review current trends and reform in land registration systems, with particular emphasis on Canada and Australia. The objectives of land registration are discussed. Such topics as automated titles, the completion of the register, cadastral mapping and boundaries, servosity rights, institutional reform, and reform of deeds registration systems are discussed. The article emphasizes the importance of the equality of the legal and survey component in a successful land registration system.

Voici le premier de deux articles traitant de la Loi sur l’enregistrement foncier du Nouveau-Brunswick. Le principal objectif du présent article, c’est de souligner les tendances actuelles et les réformes dans le domaine des systèmes de cadastration, surtout au Canada et en Australie. Des sujets tels l’automatisation des titres, les inscriptions au registre, la cartographie cadastrale et les bornes, les droits de possession, la réforme des institutions et la réforme des systèmes d’enregistrement des actes font l’objet d’une attention particulière. L’article insiste sur l’importance d’accorder une attention égale aux questions légales et à celles qui touchent l’arpentage pour qu’un système de cadastration soit efficace.

INTRODUCTION

This is the first of two articles written to review the new Land Titles Act which was assented to on July 18, 1981 in the Province of New Brunswick, Canada. The legislation became operational in Alberta County in 1984. This article reviews trends and experiences in other land registration systems in Canada and Australia. The second article will review the new legislation and attempt to establish whether it is in accord with developments and trends elsewhere.

The legislation is particularly of interest since it is the first land titles statute to be introduced into North America for many decades, or perhaps any common law jurisdiction for that matter. This alone would be justification for the review; however, there are a number of other issues which should be examined in the light of the new legislation. First, the social and political environment is very different today to that when most of the successful land titles statutes were introduced. In Australia, for example, these statutes were introduced during the mid to late nineteenth century at a time of significant colonization. Consequently the vast majority of land parcels in Australia automatically came under the system (with the exception of a relatively small, but significant number of parcels in the eastern states of New South Wales, Victoria and Tasmania which are still under a deeds registry system). The Canadian experience was similar. The western provinces also introduced land titles at the time of alienation and as a consequence are almost all under this system. Ontario is partly under a land titles system, but with the majority of parcels held under the deeds registry system. The Atlantic provinces, due to early settlement, are all under registration of deeds systems. Quebec also has a form of deeds registration, although it functions under a civil code form of property law. The
experience to date in Canada and Australia is that it is most difficult to convert operational registration of deeds systems to registration of title, especially once the majority of available land has been alienated and in general the cadastral framework has been established. It is with this in mind that the New Brunswick legislation takes on a particular interest.

The difficulties of introducing registration of title into an established registration of deeds system can be clearly seen in the United States. At one time or another twenty states have introduced land titles legislation. Eight of these states have subsequently repealed the legislation or allowed it to lapse. In those states where the legislation is still law only isolated counties have adopted the system. In no jurisdiction has the system been fully introduced. For many reasons, registration of title in the United States must be considered an abject failure.

A second issue concerns the fact that the nature and function of registration systems has changed over time. This review will discuss some of the major changes that have occurred to such systems and examine certain trends concerning the future role of land registration. An emerging consideration over the last decade in this regard is that governments are increasingly demanding more from land registration than an efficient and secure conveyancing system. This aspect will be discussed in depth.

The article concentrates on technical and administrative issues, with an emphasis on those aspects associated with surveying and mapping. Even though a number of legal and social issues, such as the merits of possessory rights are discussed, the article in general does not deal with legal concerns within the conveyancing process. For a critique of the legal aspects of title registration, reference should be made to such reviews as Torrens' Elusive Title by Thomas Mapp [1978], where the "Torrens system" in Alberta is critically reviewed.

Terminology

At the outset, a short explanation should be made of the terms used in this and the following paper. This primarily concerns the use of the terms land registration, title registration and deeds registration. It is considered that the terms land registry system and land registry are synonymous with the term land registration. Also the terms registration of title, land titles office and Torrens system (particularly in the Australian and Western Canadian context) are synonymous with title registration, and registration of deeds, deeds registry and deeds registration system with deeds registration. The problem with these terms is that they have grown to suggest two systems which are complete opposites and that any particular system must either be one or the other. In other words there has developed a "black and white" mentality concerning such conveyancing systems. Certainly there are specific attributes that can be attached to a "pure" deeds registration or title registration system, but in reality most systems lie on a spectrum somewhere in between the two extremes. Many "title registration" systems for example don't "guarantee" title in the Torrens sense (Malaysia, Fiji, Thailand), while with others the register is not conclusive as to the boundaries or extent of title (Ireland, Ontario). Some systems permit the full range of possessory rights to affect the register while others permit none. At the same time, a number of so-called "deeds registration" systems offer virtually all the security of the "best" title registration systems (South Africa and Holland). As well, there are a whole range of deeds registration systems such as in Ontario and in some American jurisdictions which are much improved over the classic rudimentary deeds registration systems of Atlantic Canada and parts of Australia.

Trends in Land Registration

It is suggested that a better distinction would be to term such systems "active" or "passive", primarily in recognition of the nature and extent of involvement of the state in the conveyancing process. Such involvement concerns the role and legal status of the register, the role of the state in analyzing documents, the amount of responsibility accorded by the state to legal and survey documents lodged in the system, the extent of a state "guarantee" or indemnity in the system, the effect of possessory rights on the register, and so forth. Again, it must be recognized that there is a spectrum or continuum from one extreme to the other.

Another problem with the terms title and deeds registration is that they suggest purely legal systems, that is they are exclusively concerned with title or deeds. Such terms do not recognize the other equally important component of surveying and mapping in any such system, nor do they suggest the very important role in land administration to which such systems contribute.

In recognition of these problems, the term land registration has been used to cover the spectrum of systems from "deeds registration" to "title registration". In the context of this paper, however, the terms deeds registration and title registration will continue to be used due to their general acceptance and recognition, and because in most common-law jurisdictions (and particularly in Canada and Australia) the two systems are relatively distinct.

Objectives of Land Registration

The functions of a land registration system include: (i) providing an institutional framework for the orderly allocation and development of the land, and for the subsequent monitoring and regulation of the land development process; (ii) supporting the property conveyancing process; and (iii) providing information about certain attributes and activities associated with the land. Traditionally, the primary role of land registration in common-law jurisdictions has been to support a system of conveyancing and of registering proprietary interests in land. Historically, title registration has been viewed simply as a conveyancing tool, as Torrens stated: "Conveyancing and registration are one and the same thing" [Torrens 1859, p. 14]. From this narrow perspective the desired attributes of a registration system should include: security, simplicity, accuracy, expediency, efficiency, suitability to circumstances and completeness of record [Simpson 1976, p. 17]. Also it has been stated by Ruoff [1957], a former English registar, that such a system "succeeds or fails according to the degree with which the local law and the local administration accord, or do not accord, with certain fundamental principles". These are the "mirror" principle, the "curtain" principle and the "insurance" principle. Such objectives are widely understood, accepted and promoted by land administrators. Unfortunately, most of the effort in designing and updating a land title system is directed at that part of the register which concerns ownership and the associated interest in land, not the survey, boundaries or parcel component (nor the land administration aspect for that matter). This is usually the case in existing land titles systems as stated by the Director of Land Titles, British Columbia:

...the Land Title Branch administers a public conveyancing system based on legal principles. As such, its mandate is the assurance of estates in land as recognized by law. The cadastral surveying and mapping function undertaken by government is undertaken in pursuance of a significantly different mandate [McAvery 1984].

There are three generally accepted components to any land titles register: the property,
proprietorship and incumbrances sections [Simpson 1976, p. 17]. From a practical point of view, these sections can be viewed from two perspectives: the first concerning the definition and description of the parcel (the graphically-oriented parcel or boundaries component); and secondly the interest category (the legal or quasi-legal area associated with conveyancing — the textual, legal or title component). For a land titles system to operate effectively, we will argue that each of these categories should be given equal weight and emphasis. As Whalan, a professor of law and a noted authority on the Australian Torrens system, has stated “the Register and the Survey are the twin pillars of the Torrens system” [1982, p. 19]. Unfortunately, this rarely happens in practice with the result that the flexibility and utility of the land titles system is often severely constrained and limited by a mediocre cadastral survey and mapping framework.

Unlike the common-law experience, there has been a long-standing awareness in many European cadastral systems that land registration is a fundamental component within the broader land administration processes. There is an acceptance that land registration has a greater role to play than supporting the conveyancing process. This realization has become increasingly evident to governments in common-law jurisdictions during the last decade, as indicated by the following quotation from Ontario:

Land registration systems are undergoing change worldwide. Governments are discovering that land records provide an information resource. Registration systems are becoming land information systems. Land information is becoming a basic resource that modern government cannot do without. [Land Registration Management Committee 1979, p. 20].

Considerable attention has been given to the role of land registration in land information systems in recent years (e.g., Williamson 1983a). In this article attention is directed at a relatively narrow system which is primarily concerned with comprehensive parcel based land information systems. Such systems are concerned at the basic or central level with the parcel description and the proprietary interests related to it. This central component of the land information system is usually referred to as the cadastre [McLaughlin 1975; National Research Council 1983]. Within the system at the secondary level are the other parcel based subsystems for assessment, local government and utilities, to name the major ones.

Recent investigations by Palmer and McLaughlin [1984], for example, recognize the problems of integrating land data in modern government at a broader level. Discussion is therefore concerned also with “land-related information networks”. Such networks attempt to integrate environmental, infrastructure, cadastral and socio-economic land-related data. The network may comprise many individual land information systems, such as the cadastral-based system mentioned above of which land registration is an integral component. As stated by Palmer and McLaughlin, “while a land information system may be regarded as an attempt to improve the effective flow of information within an organisation, a network may be viewed as an attempt to improve the effective flow of information between organisations” [1984, p. 102].

Trends and Reform in Land Registration

Within the last decade, land registration reform has emerged as a concern within the context of the broader land information environment. Advocates of reform have considered both the legal component, and the survey or graphic component. As a fundamental precept it has been recognized that there should be one title register for all land parcels in a jurisdiction. All parcels, whether freehold or crown lands, should be incorporated in the register. The register should be complete; there should be no lands existing outside the register. The register should be supported by one comprehensive and systematic cadastral map series linking the parcels and the register by a unique identifier.

Over the last decade a number of jurisdictions have taken slightly different approaches to achieve this goal of an integrated set of records supported by one mapping base. In Canada, the original work on establishing the Land Registration and Information Service (LRIS) [Roberts 1980] in the Maritime Provinces provided the conceptual basis for the multipurpose cadastre concept; unfortunately this ideal has not been fully realized. Ontario has carried out extensive investigations for an improved land registration system under what has been termed the Polartis project [Land Registration Management Committee 1979]. The proposals include legal system improvements, improved microfilm document and plan systems, government guaranteed computerized indexes, and computerized property maps. At present a pilot project has virtually been completed and legislation is before the provincial parliament to introduce the system. One deficiency of the Ontario system is that it has not been recognized to date as a central component of a provincial wide land information system. Arguably the most advanced system conceptually, from an information management perspective in Canada, is that of the Province of Alberta. This province has proposed the development of a number of land-related information systems (also known as LRIS) based on the network concept [Land-Related Information Services Group 1984]. The concept is based on three primary systems with a high degree of centralization which will form the core of the LRIS network. The three systems are the Alberta Geographical Positioning System, the Alberta Mapping System and the Alberta Land Registry System. Progress has been reported with all three systems, although automation of the Alberta land registry system has been delayed. One major deficiency in the Alberta system is that freehold and Crown titles will apparently not be consolidated into one computerized title registry. As well, one major initiative has been taken in British Columbia where an automated on-line land titles system is being incrementally introduced. Even though there is considerable potential to utilize this system within a broader land administration context, such developments are only at a very early stage.

In Australia, the state governments of Western and South Australia have gone a long way toward achieving a statewide land information system centered around a digital cadastral data base and the existing title registries. Within the restricted conveyancing area of land registration, the most innovative state is arguably New South Wales. This state has made fundamental amendments to its Real Property Act to permit the creation of one automated register for freehold and Crown lands.

Automated Titles

To date, perhaps the only common-law jurisdictions to have introduced automated titles are the State of New South Wales in Australia and the Province of British Columbia in Canada. In New South Wales, the Real Property Act has recently been amended to permit “computer folios”. Commencing in 1983, no new paper records are being created through the registration process. At the same time new lots created as a result of registering plans of subdivision are being placed in an Automated Land Titles System (ALTS). This amounts to about 40 000 new lots per year. In time the existing 2 500 000 titles will be gradually automated. For the computer folios, direct access is available for inquiry and searching through terminals. Updating of the system is by overnight batch processing. There is only one identifier in the new system — a parcel identifier which is a lot number in a deposited plan (usually a plan of survey). As distinct from most Torrens systems, there
will be no diagram associated with the folio. If required, a copy of the relevant deposited plan can be obtained. Research for the ALTS concept has been undertaken by the Land Titles Office over the past 15 years. New South Wales has had a special urgency to computerize its records, since its land titles office is centralized and probably the largest of its type in the world (handling approximately 2500 lodgements of dealings each working day).

British Columbia has also introduced an automated land titles system, as described by the Director of Land Titles:

Our system has now been automated to include title information previously contained in the numerical index, the property register, power of attorney index and the name index on an electronic data base. It is essentially an on-line system [McAvery 1984].

Of the seven district land registries in British Columbia, two are presently being automated. Of the 1.8 million live titles in the province, 80 000 have been placed on the computerized register to date (May, 1984). As a consequence of the Land Titles Amendment, 1982, which facilitated the introduction of the automated system, the traditional register "books" are now termed "records" and a "certificate of title" is now termed an "indefeasible title".

There has also been considerable other activity in Canada regarding the introduction of automated land titles. The Land Registration and Information Service (LRIS), for example, spent nearly a decade on research for the introduction of such a system into the Maritime Provinces. Nevertheless, due to political, technical, and professional difficulties, automated titles are not part of the new Land Titles Act in New Brunswick (although the legislation does have the flexibility to permit their introduction). Under the Polaris project in Ontario, a limited form of automated titles will be introduced. In this province, government guaranteed indexes showing all the basic parcel and ownership information for the land titles systems and the deeds registration system will be prepared, although the source documents in hard copy will still be the basis of the system. The Alberta Land Titles Automation project (ALTA) is on hold at the moment; however the objectives of the proposed project are extensive and should be of interest to those concerned with automated titles. Fully automated titles, as in the New South Wales and British Columbia systems, are an integral part of the concept [Systems West Consultants 1983].

Completion of the Register

In completing the register, two reforms have been undertaken in Australia. The first concerns the conversion of all lands held under deeds registration to title registration. This applies to the three eastern states of New South Wales, Victoria and Tasmania. The experiences of these states would be equally applicable to those provinces in Canada which have lands under a deeds registration system. Australia has been more active than Canada in converting deeds registry systems to title registration. The second reform concerns bringing all Crown lands and Crown tenures onto the title register.

There are basically two strategies which are generally used for introducing such reforms. One adopts a sporadic or "dealing driven" approach while the other adopts a systematic or "plan driven" approach. Most common-law jurisdictions, including Australia and Canada, have opted for the sporadic approach. For more details on such practices refer to Simpson [1976], and for the case of the New South Wales experience refer to Holstein and Williamson [1984].

As in Canada, most Australian jurisdictions have found considerable difficulty in converting existing deeds registration systems to title registration. The major problem is that if a purchaser has just paid considerable legal fees to have a title checked under the deeds registration system and consequently feels secure regarding the conveyance, that purchaser is not disposed to incur further expense and delays to convert to title registration. Therefore if the government wishes to convert deeds registration to title registration, it must introduce a system which neither causes significant additional delays nor expense to the land holder. Such criteria create a problem since the conversion to title registration usually entails an extensive title search and survey, both of which are expensive and time consuming. On the government side, the administrative checks required to issue a full Torrens title are also usually extensive. These problems have been resolved in many jurisdictions by issuing titles which are qualified as to title, and titles which are qualified as to boundaries.

In Australia, such approaches have been employed with varying degrees of success. In Canada, Ontario has adopted two forms of title, both qualified as to title, one termed a possessory title, the other termed a qualified title. Neither has been used to any great extent. A good example of a system which permits a qualification as to title is in the New South Wales Real Property Act, 1900, Part IV A. The qualification is to title only and requires a suitable plan of survey to define the parcel. Usually a "qualified" title will be issued either when a deed is registered as a consequence of a conveyance for value, or when land held under deeds registration is subdivided. When the qualified title is created it includes a caution warning persons dealing with the registered proprietor that the land continues to be subject to any subsisting interest, whether recorded therein or not. The caution lapses after six years if there is a transfer for value or after twelve years if there is no transfer (twelve years being the statutory period for adverse possession under the Limitations Act, 1969).

Concerning qualifications as to boundaries, South Australia and Victoria have such provisions in their statutes. In New South Wales, the current provisions in Part IVB of the Real Property Act have proved unworkable and are being redrafted. However, one of the best examples is in the New Zealand Land Transfer Act, 1952, Part XII. These provisions permit a title to be issued for a parcel which has a poor survey or no survey at all, but where the title particulars are acceptable. The title is issued subject to a caution "limited as to parcels". It is possible to lift the caution simply by lodging a plan of survey for the parcel.

With respect to the registration of Crown lands, progress to date has not been as successful. One of the major initiatives in this area has been by New South Wales in the Real Property Act, 1900, Part III. In general the provisions allow all tenures associated with Crown lands to be brought onto the register. Where appropriate, the registered proprietor is "the State of New South Wales", holding an estate in fee simple. For administrative reasons, only a relatively small number of these titles have been created to date.

Cadastral Mapping and Boundaries

An integral part of the vast majority of land registration systems is some form of cadastral mapping or charting system. The cadastral map shows the various legal parcels, each having a unique identifier, commonly referred to as the parcel identifier or PID. It is the PID which connects the title records to the map and in turn relates it to the ground. The boundaries of the parcel describe the extent of title.

Traditionally, the foundation for the parcels section in a Torrens system has been a plan...
of survey. The survey has in general been carried out in "isolation", that is it has not been based on any systematic survey framework. In such a system parcels have been generally described mathematically using precise bearings and distances. The surveys have usually been carried out under the control of a survey's act and associated regulations. Prior to issuing a title based on such a survey, a government agency (generally within the land titles office) usually checks the survey for mathematical consistency and compatibility with surrounding surveys and titles. For searching and administrative purposes, these surveys are usually plotted or charted approximately on some form of property map. In some cases the surveyed boundaries are not plotted, but instead a notation making reference to the survey plan is recorded on the map. In general, these maps or charts have had a low integrity as a cadastral map since they have not been part of a statewide mapping system, nor have they been completed or updated. In such systems, the individual plan of survey is the central component. This approach has been adopted in Australia and in parts of Canada. One innovation which is of particular interest within an "isolated" survey framework is the Boundaries Act in Ontario. This statute permits the confirmation of boundaries and in effect established a new root of survey information for the parcel. Boundaries confirmed under this act are deemed to be true and unalterable. It would appear to be a very useful approach in systems which have many boundary disputes, although the extent of its utilization does not appear to have been documented. 

The trend in common-law jurisdictions is to supplement and in some cases replace the individual survey plan by a large-scale cadastral map. The individual survey plan retains its legal status showing all detailed cadastral survey information, which is used to update the accurate large-scale map. For the majority of identification purposes the large-scale map will then be used as the primary source document. Parcel identifiers are created as an integral part of the cadastral mapping process, as has traditionally been the case in Europe [Williamson 1981] and elsewhere. Examples of such developments can be seen with the LRIS property mapping system in the Maritime provinces, and in most of the Australian states. One problem with the Canadian and Australian approaches is that, even though they are controlled by a coordinated survey system, the integrity of the cadastral boundaries is often poor. This occurs because the cadastral map is compiled from the best available evidence of boundary location which may be a registered plan of survey, but which may also be based upon assessment records, deed descriptions, etc. Even considering these deficiencies they are often considered to be of an acceptable standard to be used as the basis of the parcels section in a land titles system as is proposed with the New Brunswick legislation.

One major technical development over the past five years has been to prepare a large-scale cadastral map in digital form, creating what is commonly termed a digital cadastral database (DCDB). In time this DCDB will probably replace the isolated survey plan as the basis for the parcels section in most title registration systems. Data for DCDB may be based upon coordinated cadastral surveys, or may be derived from various sources (such as digitizing of existing cadastral maps and/or calculating coordinates from existing surveys). Under such a system there should be no need for a diagram on the title as in the Torrens system. Reference will simply be made by a unique identifier to the DCDB. The utility of having a title without a diagram is seen with the automated titles system in New South Wales and in those systems in Western Canada which are supported by a good charting or mapping system, such as in Alberta. In Canada, Alberta and Ontario are both developing digital cadastral data bases. In Australia all states have such programs, with the most advanced being those in Western and South Australia.

Another reform which has been suggested and promoted over the years is the concept of "guaranteed boundaries". Sometimes the proposals have also been extended to refer to the "guarantee" of numerical data such as coordinates. Unfortunately such proposals are not compatible with the accepted doctrines of traditional English common law and consequently have never been introduced into any common law jurisdiction. Two jurisdictions have seriously considered introducing guaranteed boundaries by giving legal significance to individual boundary coordinates: the Maritime Provinces, where an act was passed by the legislature in Nova Scotia although the statute was never proclaimed [Roberts 1975, p. 413]; and in South Australia where the concept is still being seriously considered [Kennedy 1978]. This concept of "guaranteed" boundaries has led to some confusion, especially as it applies to title registration using the Torrens system. It is not clear what is to be guaranteed (is it the survey or the boundaries) nor what the guarantee constitutes.

Possessory Rights

Whether possessory rights should or should not be allowed under a title registration system is a social issue. It is not something to be determined at the whim of a legal draftsman or determined for perceived administrative expediency. As Mapp has clearly stated in his book:

Whether or not a jurisdiction should permit one in adverse possession to acquire a right to divest the registered ownership is an important socio-economic question. It is the author's opinion, however, that the decision should not be influenced by the fact that a jurisdiction has a Torrens system. If a registered owner failed to pay real property taxes, his registered ownership would be subject to divestiture. If he suffered one to adversely possess his land for ten years, the same consequence could result [Mapp 1978, p. 173].

The most common possessory right, adverse possession, is a fundamental principle of English common law. It is a principle that really has little to do with title registration, yet its abolition is often viewed as a fundamental requirement of such a system. For example, in a book by Steacy [1974], which overviews land title systems in Canada and the United States and includes a copy of Torrens' original statute, he states in the foreword that "there can be no adverse possession under Land Titles". Yet many authorities over the years have questioned the lack of adverse possession within the Torrens system. Simpson [1976, p. 153] considers such a situation in the light of English land law: "It is difficult to understand... why it was ever supposed that registration of title had a special quality which somehow made it unnecessary to protect established and peaceful possession". The reasons in favor of not allowing possessory rights in a land titles system are security and sanctity of ownership, although these are complex issues and are open to question. On the other hand the reasons in support of possessory rights include the effective use of land, social harmony by not disrupting longstanding occupation and arguably a more efficient conveyancing process where the purchaser can buy what is observed on the ground. On this last point, in many systems which don't permit possessory rights the purchaser buys title to a tract of land which may or may not bear any relationship to the occupations on the ground. Whatever are the stronger arguments, certainly today there is a trend to allow possessory rights in land titles systems.

There may be an argument to disallow adverse possession in a title registration system when parcels are surveyed and described in isolation; however, once the parcels section is
supported by an accurate large-scale cadastral map the argument is weakened. With a map most occupations are shown and consequently the map provides notice. This then overcomes the problem of the mirror principle with regard to boundaries; such is the case in the classic English system.

Today, several land titles acts permit possessory rights in some form or other. With an amendment to the Real Property Act in New South Wales in 1979 which permits possessory titles, all states of Australia now have provisions in one form or another in their Torrens statutes to permit adverse possession (with the exception of the Northern Territory and the Australian Capital Territory which could be considered special cases) [Whalen 1982]. Obviously this is also the case with all the Atlantic provinces which are under the deeds registry system, as are most parcels in Ontario. In Alberta the validity of adverse possession under the Land Titles Act was recently challenged in the case of Luta v. Kaula [1981], 15 R.P.R. 40. In its judgment, the Alberta Court of Appeal clearly stated that title by adverse possession may be obtained against a registered owner under the Land Titles Act. Also the report on an improved land registration system for Ontario recommended that adverse possession should be allowed under certain conditions in the land titles system for abandoned land, and boundary encroachments [Land Registration Management Committee 1979, p. 107].

Many title registration systems which use large-scale mapping as the basis for the parcel definition recognize adverse possession. The English system is a good example which uses this approach. Even countries such as Thailand which based their system on Torrens principles within an integrated mapping system have adopted adverse possession as a fundamental component of their system [Williamson 1983b]. For more details on possessory rights in general, refer to Simpson [1976], and in the Australian context see Whalan [1982] and Williamson [1983a].

Institutional Reform

In most common-law jurisdictions, the title register is administered by legal or administrative personnel under the jurisdiction of a Ministry of Justice. Cadastral surveying and mapping has traditionally been dominated by surveyors under the control of a Ministry of Lands or Natural Resources. The current trend is to bring these two operations under one administration. This would appear to be necessary if the government is to achieve the full potential from the title registration system.

Arguably, the ideal arrangement is that found in the State of South Australia where the Department of Lands incorporates the Land Titles Office, the Surveyor General’s Office, the Valuer General’s Office and the Office of Land Resource Management. Another arrangement which has merit is that operating in the State of Western Australia where the Office of Titles and the Department of Lands and Surveys have retained their individual identity, but overall direction for reform comes from the Land Information System Support Centre in the Treasury. An important aspect about this Western Australian arrangement is that the Department of Lands and Surveys under the direction of the surveyor general, is the primary authority responsible for cadastral surveys and mapping in the state.

Some of the Canadian jurisdictions have attempted to resolve the above difficulty by establishing a strong survey section within the title registration authority. In Saskatchewan, it is the Office of the Chief Surveyor under the Master of Titles within the Property Management Branch in the Ministry of Justice. In the case of Ontario, it is the Trends in Land Registration

Legal and Survey Standards Branch, within the Property Rights Division of the Ministry of Consumer and Commercial Relations. Even though both these efforts have gone a long way toward bringing the legal and survey aspects closer together in the land registration process, they are still divorced from the major survey and mapping activities in those provinces. This separation of the cadastral surveying and mapping operations in a jurisdiction can prove to be counterproductive if an efficient large-scale cadastral mapping system, in either digital form or hard copy, is to be created and maintained in an efficient manner.

Miscellaneous Reform

Over the last couple of decades various other reforms to title registration systems have been put forth; however, what is often a reform in one system has been commonplace in another for many years. There are also some fundamental administrative and technical differences between various systems. For example, all Australian systems issue duplicate certificates of title, such certificates having to be lodged with the Land Titles Office before a dealing can be undertaken; this is not the normal practice in the Canadian systems. Also in Australia, dealings are filed chronologically for the whole register, whereas in Canada it is more common to file all historic dealings relating to one parcel in a single packet or file. Another difference is that in Canada, with the exception of Ontario, a new certificate of title is prepared each time the registered proprietor changes, whereas in Australia the new proprietor is simply noted on the title. In Australia land title registries are centralized with one in each capital city, whereas in Canada, and in most other jurisdictions, registries are decentralized, often at a county level.

One trend over the last decade or so in Australia is for the Land Titles Offices to computerize the various indexes. This is often part of a "parcellation" program to give unique parcel identifiers to all land parcels and to cross-reference the legal identifier (volume/folio) and plan identifier (lot/deposited plan). Some of the Australian systems are now introducing the facility of a cross-index with the street address as well; this is usually in conjunction with the Valuer General’s Department. During the last couple of decades, most systems in Canada and Australia have introduced "short forms" for conveyancing, a loose-leaf register (as distinct from the certificates of title bound in books), and microfilm and/or microfiche for ease of storage, security and searching.

Another trend which appears common in many jurisdictions over the last few years is a greater awareness of the cost of maintaining the system and the consequent need to take more of a "business risk" approach to title registration. This change in philosophy is resulting in less checking of title searches for conversion to title registration and a less detailed and rigorous checking of cadastral survey plans. There is an increasing belief that if a solicitor or surveyor has made a mistake then it is their responsibility and they must shoulder the consequences.

Another interesting initiative is that undertaken by Alberta relating to mineral rights. In that province the certificate of title distinguishes between surface rights and mineral rights. The Land Titles Offices are permitted to issue mineral certificates to concerned parties.

Over the last decade there have also been several initiatives to resolve the problem of "overriding interests". Difficulties arise because most legislation permits statutory changes to override the conclusiveness of the register. In recognition of this problem the government of New South Wales approved the establishment of a separate Central Register of Restrictions on Land in 1977. Unfortunately this initiative, like most others in
this area, has not been successful. One interesting concept to help overcome the problem of overriding interests is reviewed by Mapp [1978, p. 181]. He suggests that Torrens' legislation should contain a provision to the effect that no statute of the jurisdiction can create an interest in land which overrides the register unless the statute expressly refers to the statute creating the Torrens system and provides for an overriding interest. Consequently if all overriding interests could be identified, they could and should be carried as a printed warning on the register.

Reform of Deeds Registration Systems

As discussed earlier, it is difficult to categorize all land registration systems as either deeds registration or title registration. Many deeds registration systems have introduced legal, technical and administrative reforms which are more advanced and efficient than some land titles systems. Some of the major reforms that have been introduced into deeds registry systems are itemized below.

1. Arguably the best reform that can be made to a deeds registry system is that it becomes parcel based instead of person based. All dealings are then indexed against an individual parcel. For some time this has been adopted in many counties in the United States for new subdivisions. The resulting indexes are termed Tract Indexes. The LRIS in the Maritime Provinces has been heading in this direction by utilizing the computerized parcel files created as part of the LRIS property mapping program. These files and maps are improving the efficiency of the deeds registries, however, the registries and LRIS offices are still two separate organizations.

2. A number of systems, particularly in Australia and Ontario have introduced the requirement that all surveys of lands held under the deeds registry system be examined and carried out to the same standard as surveys for lands under the land titles system. A corollary of this is that all documents lodged for registration in the deeds registry are checked to see if they are consistent and are in registerable form. This is common practice in the Maritime Provinces and Ontario.

3. Other reforms include standardized documents, short form conveyancing, automated microfilming, computerized grantor/grantee indexes and compulsory registration.

Probably the most advanced deeds registry system in Canada and Australia is the system in Ontario (although it does not approach the sophistication of the South African system for example). The Ontario system has had geographic indexing by township lot since the middle of the last century. Within the system it is possible to make a claim against the government for an error in the deeds registry which would cause a searcher to prepare an incorrect abstract due to an incorrect recording of a deed. Basically the survey system for land in the deeds registry is the same as that held in the land titles office in Ontario. Also a registrar can require a plan of survey when the quality of an existing metes and bounds description is poor. Within the system the statutory period for a good root of title is generally 40 years. In 1958 Ontario introduced the Certification of Titles Act which establishes a new root of title at the time of certification. At the time of certification the title is absolute and indefeasible, however the administration takes no responsibility for the effectiveness of subsequent dealings [Magwood 1959].

As part of the improved land registration system for Ontario [Land Registration Management Committee 1979] many advanced and innovative improvements have been recommended for the deeds registry system (in conjunction with reform to the land titles system) as described below.

1. Computerized property maps, index records and activity reports should be gradually introduced into each registry.
2. Property maps should show each registered parcel together with a PID which will be the link to the index records.
3. All local registry offices should eventually be paperless and should incorporate data entry terminals, intelligent cash registers, etc.
4. A more stringent and extensive examination of survey plans should be introduced. Use of coordinates should be mandatory where possible in the province.
5. Computerization should allow a variety of selective and aggregate information reports to be prepared.
6. Immediate feedback should be given to discharged and expired interests.
7. A more complete title and survey record should be maintained.
8. Shorter standardized forms should be introduced.
9. Rules governing assurance and compensation should be improved. A compensation fund should be created for the deeds registry system.
10. All records should be on microfil.
11. All new plans of subdivision should be certified under the Certification of Titles Act.

CONCLUSION

The primary objective of this article has been to review current trends and reform in land registration systems, with particular emphasis on Canada and Australia. A comparison between these two countries is justified considering the similarities in their legal, social and administrative systems and the general similarities in size, topography and history. The article has attempted to highlight the need for equality between the legal and survey components within a land registration system. Without such equality it is difficult for a system to achieve its full potential.

The article has also attempted to emphasize the importance of the dual role of land registration. First the system should support an efficient and secure conveyancing system and secondly it must be an integral part of a jurisdiction's land administration arrangements. During the last decade this latter requirement has been especially apparent in the development of state-wide parcel-based land information systems. It is recognized that any land administration system is dynamic and requires continual amendment if it is to meet the social, historical, administrative and legal requirements of a particular jurisdiction. It is also recognized that administratively the system must be a success otherwise the best drafted land titles act will fail. Such success requires a commitment at the highest levels of government.

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