

# Registration System Needs Drastic Overhaul - Ontario Law Reform Commission

A 325-page report on land registration tabled during the last session of the Ontario Legislature by Attorney-General Allan Lawrence calls for a drastic overhauling of the present system.

The report is one of a series of 10 undertaken by the Ontario Law Reform Commission. The commission was established by the Ontario Government in 1964 under the chairmanship of H. Allan Leal to suggest reforms in Ontario's law and legal institutions.

Mr. Lawrence said the far-reaching effects of the report must be assessed before the province decides on changes in land title laws.

It recommends that an improved land titles system should be the sole system for land registration in Ontario, and should be called the "Land Registration" system.

The following is a general summary of the recommendations:

## The Land Registration System

The Commission recommends that:

1. The existence and ownership of the fee simple absolute, charges, leases (subject to the limitations on length of terms of leases in the existing land titles system), and easements should be affirmed.
2. The owners of claims for which affirmations of existence and ownership are not to be made should be able to register the documents that create their claims.
3. Owners of charges, leases, and easements should be able to register documents that create their claims, without having affirmations made.
4. The owners of claims should be able to register cautions.
5. If any interest for which an affirmation of existence and ownership is not made is created in a registered document and is terminated or appears to be terminated, an affirmation should be made that the interest is terminated.
6. A power to rectify affirmations in appropriate situations should be given.
7. Compensation should be paid for interests that are extinguished by making affirmations without the consent or fault of the owners.

8. The compensation should be the value of the interest, and not be limited with two exceptions: (1) claims that secure the payment of money should be limited by the value of the land less the value of any prior claims; and (2) the substance of the existing limitation for interests in the land that derive their value from minerals should be preserved.
9. The arrangements for future claims, trusts and concurrent interests in the existing land titles system should be preserved until reports are made about the basic principles of real property law, and trusts.
10. Registration should give priority over unregistered claims or claims registered later, except that registration should give priority over a claim created before the creation of the registered claim only if the registered claim was acquired for value and without fraud.

11. The protection for the priority of short-term leases in the existing land titles system should be continued.

## The Claims That Need Not Be Registered

The Commission recommends that:

1. The liens of the government against specified parcels should be registered to be effective, except the lien to secure payment of municipal taxes and any other debts that are secured and collected through this lien.
2. The liens of the government against all land owned by a debtor should be abolished, except the liens to secure payment of corporations tax and succession duty.
3. The lien to secure payment of corporations tax should secure debts of only current owners in the land registration system.
4. The liens to secure payment of succession duty should secure only duty levied after the death of the current owner in the land registration system.
5. The lien to secure payment of corporations tax should extend only to the fee simple in the land registration system.

6. Consents from the Department of Revenue should be required for a transfer in the land registration system of any interest that is affirmed and that may be subject to the lien to secure payment of corporations tax or the lien to secure payment of succession duty. If a lien is claimed against the current owner, the transfer may be made, but subject to the lien, and the lien should be recorded against the parcel.
7. Writs of execution should secure debts of only current owners in the land registration system, and should be delivered to the appropriate office to be effective.
8. A search should be made at the time of each transfer in the land registration system to ascertain whether writs of execution exist against the owner. If an execution exists against the owner, the transfer may be made but subject to the execution, and the writ of execution should be recorded against the parcel.
9. All by-laws passed under section 30 of **The Planning Act**, and similar by-laws, must be registered to be effective. These by-laws need not be indexed against any of the parcels affected, but must be kept consolidated and in a reasonably usable form.
10. Any order made by any government department to make changes in land or buildings that includes remedies affecting the land or buildings, and not the owner personally, must be registered to be effective against a **bona fide** purchaser for value.
11. The affirmations of ownership in the land registration system should include an affirmation that a violation of section 26 of **The Planning Act** does not deny the ownership.
12. Claims against land governed by the land registration system may not be acquired or extinguished by adverse possession.
13. The policy whereunder rights acquired under **The Expropriations Act, 1968-69** are registered against parcels governed by the existing systems should be continued under the land registration system.
14. Statutes containing provisions under which the present and future use and value of land may be affected by an agreement between the owner of the land and the government, should contain a provision, to the effect that the agreement shall not be binding upon the original owner's successors in title unless registered.

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# Land Registration Needs Overhaul

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## Descriptions and Boundaries

The Commission recommends that:

1. A co-ordinate control system should be established.
2. The extent, design, installation and cost of the system should be determined and shared by the prospective users.
3. The system should be used for indexing parcels and to record the location of monuments; the possibility of use of the system for creation of boundaries by the specification of co-ordinates alone should be explored through more analysis and experimentation.
4. Controls of the general nature used in the existing land titles systems over descriptions, plans and surveys should be continued in the land registration system.
5. Affirmations that no conflicts appear from the terms of other descriptions should be made for all descriptions in the land registration system.
6. Affirmations of the location of boundaries should be an ultimate objective of the land registration system.
7. Affirmations of precise location should eventually be made for most boundaries created in the future and for some existing parcels.
8. Affirmations of approximate location should eventually be made for most existing parcels.

## Registration of Title to Land as a Problem of Management of Records

The Commission recommends that:

1. A computer system should be used for land registration. The major elements of this system are:
  - (a) a record for each parcel should be stored in a central computer. This record should include the name of the owner, and references to the descrip-

tion and current documents. The record should also include, as supplementary information, the date, names of parties, and kind of each current document; and summaries of the terms of payment of charges;

- (b) the records in the computer should be available in local offices through remote terminals;
  - (c) the descriptions and microfilm reproductions of the registered documents should be stored in the local offices;
  - (d) registrations should be made at the local offices for the parcels that are affected;
  - (e) the microfilm reproductions and the changes in the record stored in the computer should be made at a central office; and
  - (f) copies of descriptions and documents for searches should be obtainable by mail.
2. An index that is derived from co-ordinates and designed in co-operation with other prospective users should be used.

## Conversion

The Commission recommends that:

1. The initial stage of conversion to the land registration system should be composed of,
  - (a) the conversion to the affirmations of title;
  - (b) the conversion to the affirmations of descriptions;
  - (c) the limitation of the liens to secure payment of corporations tax and succession duty and writs of execution to liens against current owners only;
  - (d) the preparation and conversion to the co-ordinate index and the index

maps; and

- (e) the conversion to the computer system.
2. The province should be divided into areas, to be specified by administrative determination, and this initial stage of conversion should be done for all the parcels in each area at the same time.
  3. Conversion to affirmations of the location of boundaries should be made during this initial stage only for parcels for which the existing information is adequate. For the remaining parcels, these affirmations should be made later, and only when justified by need and cost.
  4. The government liens against specified parcels and the liens against all land owned by a debtor that are to be abolished, should be abolished throughout the province after reasonable warning period.
  5. Compensation should be paid for interests extinguished by conversion, except the liens of the government.

## The Registry System, Title Insurance and the Structure of Government

The Commission recommends that:

1. Because of the recommendations made in this report for the adoption of a new system of land registration, no substantial changes should be made to improve the existing registry and land titles systems pending the adoption of the new system.
2. The use of title insurance should not be encouraged and should not be an element of improvements made in land registration.
3. **The executive staff of the administrative staff for land registration should be greatly expanded.**
4. **The executive staff should have more extensive and permanent arrangements for communication with the legal profession.**