

LAW REFORM COMMISSION OF BRITISH COLUMBIA

Minor Report on The Legal Consequences of a Temporary Land Title Office Shutdown

“The Commission is to take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....”

Law Reform Commission Act
Statutes of British Columbia 1969

LRC 145

March, 1996

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In 1994, the Treasurer of the Law Society of British Columbia, following a resolution of the Benchers, made a formal request that the Law Reform Commission examine the consequences of a computer failure in Land Title Offices. The resolution and the subsequent request to the Commission had been prompted by the report of the Law Society's Land Titles Computerization Committee, a body formed to discuss the impact of proposed changes that would increase the dependence on computer systems in Land Title Offices. Earlier, in giving judgment in the case of *Norfolk v. Aikins*,¹ Madam Justice Southin of the Court of Appeal had described the implications of a disruption of Land Title Office services as deserving attention by the Commission.

In response to these invitations, the Law Reform Commission added the matter of a potential interruption of operations in the Land Title Office to its program. The project extended to the problems that might result from prolonged cessation of Land Title Office services due to any cause, including computer downtime, work stoppages, and natural disasters. The Commission's work in this area coincided in time with the phased implementation of the ALTOS 2 Project, an initiative that will introduce very significant technological advances into British Columbia Land Title Offices.

THE DRAFT REPORT FOR CONSULTATION

After initial research and a meeting with officials of the Land Title Branch, the Commission issued a *Draft Report for Consultation on the Legal Consequences of a Temporary Land Title Office Shutdown* in July 1995.

The *Draft Report* contained several tentative recommendations for alleviating the difficulties that would likely arise from a protracted interruption. They related not only to sales of real estate, but to all transactions involving the registration or filing of a document in the land title system. For the purposes of the *Draft Report*, the Commission took account of the changes slated to be made under the ALTOS 2 Project, but formulated its tentative recommendations in light of existing conveyancing and real estate industry practices.

CONSULTATION

The *Draft Report* was circulated for comment to numerous agencies, organizations and individuals concerned with land transactions, including the Real Estate Association, the Real Estate Foundation, the Real Estate Sections of the Canadian Bar Association, the Society of Notaries Public, the Director of Land Titles, and Registrars of British Columbia Land Title Districts. As with all the Commission's publications, it was made available to the general public in print and electronic versions.

1. (1990), 41 B.C.L.R. (2d) 145, 152 (C.A.).

In virtually all cases, comments received were supportive of the tentative recommendations in the *Draft Report*.² Correspondents expressed a decided preference for a legislative, rather than purely contractual, solution for accomplishing the extension of the completion date in a real estate sale pending the resumption of land title services.

THE COMMISSION'S RECOMMENDATIONS

In light of the results of the consultation process, the Commission confirms the substance of the recommendations tentatively advanced in the *Draft Report*. As the explanatory text of the *Draft Report* requires no significant alteration in order to provide the background for the final recommendations that appear below in italics, it is incorporated by reference as part of this Report.

The Commission recommends:

1. (1) The Property Law Act should be amended to provide that if the time specified in an enactment for applying for registration of, depositing, lodging or filing an "instrument" within the meaning of the Land Title Act expires while the Land Title Office has ceased, or is unable, to accept applications for registration or provide access to computerized title information, the time is extended to the end of public business hours on the next day throughout which those services are continuously available.

(2) The extension of time under Recommendation 1(1) should not apply if the period in which the Land Title Office ceases, or is unable, to accept applications for registration or provide access to computerized title information commences during the day on which the time specified in the enactment expires, and ends on the same day more than two hours before the time at which the Land Title Office normally closes to the public.

(3) The amendment to the Property Law Act described in Recommendations 1(1) and 1(2) should also apply to time limits specified in contracts of purchase and sale of land for the lodging in the Land Title Office of registrable instruments required to complete the contract, unless the parties expressly agree otherwise.

(4) In the event of a conflict between the proposed amendment to the Property Law Act and section 25(3) of the Interpretation Act, the proposed amendment to the Property Law Act should prevail.

2. The Property Law Act should be amended to provide that unless the parties expressly agree otherwise, a term is implied in every contract of purchase and sale of land that if, on the date specified in the contract for completion,

(a) the operations of the Land Title Office are interrupted so as to prevent the receipt of applications to register the instruments needed to complete the contract, or the performance of any necessary or customary searches incidental to its completion, and

2. One correspondent was critical of current conveyancing and Land Title Office procedures, and objected to the Commission's approach in seeking solutions within them. The correspondent suggested commonly employed conveyancing expedients sit uneasily with both the law of contract and some provisions of the *Land Title Act*.

(b) the purchaser is ready, willing and able to fulfil all obligations owed to the vendor under the contract on or before the date specified in the contract for completion, including payment of the full amount due to the vendor on completion,

the purchaser may waive a term of the contract relating to anything to be done at or in the Land Title Office that is not for the benefit of the vendor, and require the vendor to fulfil obligations owed to the purchaser under the contract.

3. An extension of the completion date under Recommendation 1(3) should not prevent application of the Frustrated Contract Act and the general law as it relates to frustration of contracts, if they would otherwise be applicable in the particular circumstances of the case.

4. An amendment to the Property Law Act should empower the Supreme Court to rescind a contract of purchase and sale of land if

(a) the contract has not been completed because

(i) on the date stipulated in the contract for its completion, the Land Title Office had ceased, or was unable, to accept applications for registration or provide access to computerized title information,

(ii) the services mentioned in paragraph (i) were not continuously available throughout any one of the 30 consecutive days following that date,

and

(b) it appears just and equitable to grant the relief.

5. (1) The Land Title Act should be amended to expressly authorize the Registrar, with the approval of the Director of Land Titles, to suspend, or carry on in a provisional fashion, one or more of the operations of a Land Title Office prescribed by the Act if circumstances make it impracticable to continue them for the time being, and to continue any remaining operations that may still be carried on normally.

(2) A loss occurring as a result of a measure taken or decision made under the amendment to the Land Title Act referred to in Recommendation 5(1) should not give rise to a cause of action or claim against the assurance fund, the Crown, the Attorney General, or a Crown employee.

ACKNOWLEDGMENTS

We wish to acknowledge the assistance of all those persons and organizations who provided us with comments on the *Draft Report for Consultation*. We have drawn great benefit from their insight.

In particular, we wish to thank Mr. Malcolm McAvity, former Director of Land Titles, and Mr. Darcy Hammett, of the Land Title Branch, for taking the time to meet with Commission staff and providing much essential information and comment. They have assisted us greatly in our task.

Mr. Tom Zworski and Ms. Lois Patterson, two law students serving temporarily with the Law Reform Commission, carried out preliminary legal research for this project. Mr. Mark

Hiltz, a former member of the Commission staff, also provided assistance with respect to certain issues. Theirs was a valuable contribution, and we thank them for their efforts.

INTERIM COMMITTEE ON LAW REFORM¹

Arthur L. Close, Q.C.

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¹ In late December 1995 the expiration of a Commissioner's appointment caused the number of members to fall below the minimum of three stipulated in the *Law Reform Commission Act*. One of the last acts of the Commission while fully constituted was the creation, under section 4 of the Act, of a special advisory committee to carry on the work and functions of the Commission until a quorum is regained. The members of the "Interim Committee on Law Reform" are the three legal counsel who serve the Commission.