

**REVIEW OF THE PERFORMANCE  
OF THE LTSA AND THE PROVINCE  
UNDER THE OPERATING AGREEMENT:  
2005-2010**

**Final Report**

**Prepared For:**

**The Ministry of Agriculture and Lands**

**The Land Title and Survey Authority**

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# TABLE OF CONTENTS

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<b>SECTION ONE: THE ASSIGNMENT .....</b>	<b>3</b>
<b>SECTION TWO: THE PROCESS FOLLOWED .....</b>	<b>4</b>
<b>SECTION THREE: BACKDROP TO ESTABLISHMENT OF THE LTSA.....</b>	<b>5</b>
<b>SECTION FOUR: PERFORMANCE AGAINST DEFINED CRITERIA.....</b>	<b>7</b>
4.1 OBLIGATIONS, RIGHTS AND PROCESSES RELEVANT TO BOTH THE PROVINCE AND THE LTSA: ....	7
4.2 OBLIGATIONS, RIGHTS AND PROCESSES RELEVANT TO THE PROVINCE .....	9
4.3 OBLIGATIONS RIGHTS AND PROCESSES RELEVANT TO THE LTSA: .....	10
4.4 ADDITIONAL SPECIFIED MATTERS .....	13
<b>SECTION FIVE SERVICES TO CUSTOMERS AND STAKEHOLDERS .....</b>	<b>14</b>
5.1 BC'S LAND TITLE AND SURVEY SYSTEM IS CRITICALLY IMPORTANT .....	14
5.2 MEASURED PERFORMANCE HAS VASTLY IMPROVED SINCE LTSA WAS CREATED.....	14
5.3 THE RELATIONSHIP WITH STAKEHOLDERS HAS IMPROVED SIGNIFICANTLY .....	17
5.4 STAKEHOLDERS' VIEWS ABOUT THE REASONS FOR LTSA'S SUCCESS .....	18
<b>SECTION SIX: FINANCIAL PERFORMANCE.....</b>	<b>19</b>
6.1 LTSA'S FINANCIAL PERFORMANCE HAS BEEN STRONG .....	19
6.2 CUSTOMER FEES.....	22
<b>SECTION SEVEN: THE RELATIONSHIP BETWEEN THE PARTIES .....</b>	<b>25</b>
7.1 ROUTINE ACTIVITIES ARE FUNCTIONING WELL .....	25
7.2 EXPERIENCE WITH CHANGE MANAGEMENT ACTIVITIES HAS BEEN VARIED .....	25
7.3 SOME COMMON THREADS CAN BE IDENTIFIED.....	26
<b>SECTION EIGHT: SUMMARY OF FINDINGS AND SUGGESTIONS FOR IMPROVING THE PROVINCE/LTSA RELATIONSHIP.....</b>	<b>28</b>
8.1 SUMMARY OF FINDINGS .....	28
8.2 THE WAY FORWARD.....	28
<b>APPENDIX A: TERMS OF REFERENCE.....</b>	<b>30</b>
<b>APPENDIX B: PERSONS INTERVIEWED.....</b>	<b>36</b>

## **SECTION ONE: THE ASSIGNMENT**

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In 2005, the Land Title and Survey Authority (LTSA) was established as an independent authority to manage, operate and maintain the land title and survey systems of British Columbia and to facilitate the execution of Crown grants. The Authority is governed by an 11-person Board of Directors that is composed of persons selected from nominees of eight stakeholder organizations.

While independent from government, the Authority must operate within the constraints of the *Land Title and Survey Authority Act* and the Operating Agreement between the Authority and Province. The Operating Agreement includes:

- The joint and individual obligations of the Authority and the Province;
- The minimum service levels to be maintained by the Authority;
- The process for establishing fees charged by the Authority and limitations on increases to those fees; and,
- The process for payment of monies due to the province.

It also includes the requirement that “the parties will appoint an independent management consultant to conduct a performance review in relation to the performance of the parties under this Agreement in respect of each five year period that commences on or after the Commencement Date”. In March 2010, I was engaged jointly by the LTSA and the Province to undertake the first of these performance reviews. Appendix A contains the detailed terms of reference for my review.

The following sections summarize the process followed, my findings and some suggestions for ways to improve identified weaknesses. For those less familiar with the LTSA, I have also included a short section on the issues that lead to establishment of the LTSA.

## **SECTION TWO: THE PROCESS FOLLOWED**

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I approached the assignment by first reviewing an extensive package of documentation prepared by the LTSA. This package included a wide variety of documentation including annual reports, business plans and legislation. Following this step, in depth interviews were held with my principal client representatives for the Province and the LTSA.

Having established a firm understanding of the assignment, I proceeded to conduct interviews with the parties best able to report on the performance of LTSA and the Province under the Operating Agreement. The persons interviewed are listed in Appendix B. These were:

- Members of the Stakeholder Advisory Committee (11 members and 3 associates were interviewed; one SAC member was not available)
- Provincial representatives (22 staff members from 7 ministries)
- Members of the LTSA executive
- The LTSA Board Chair.

At the conclusion of the assignment, my draft findings were presented to the Minister of Agriculture and Lands, the LTSA Board of Directors, the full LTSA Executive, representatives of the ministries interviewed and the Stakeholder Advisory Committee.

### **SECTION THREE: BACKDROP TO ESTABLISHMENT OF THE LTSA**

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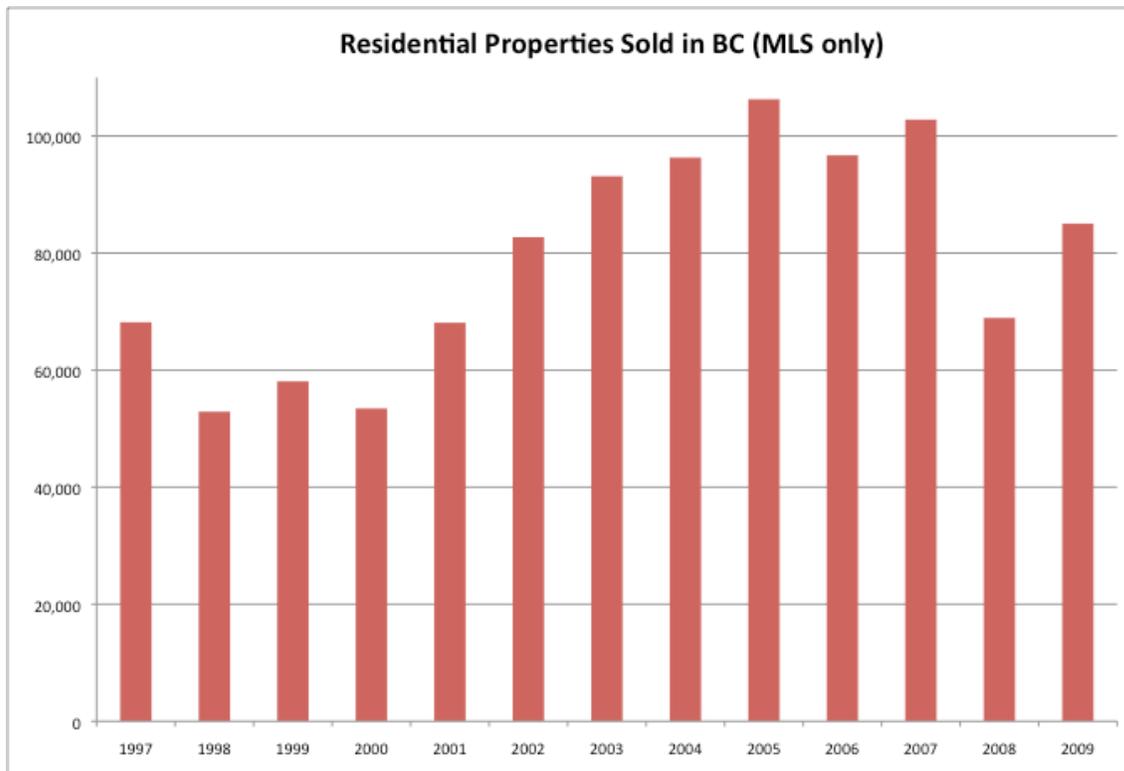
In 2003, the Land Title Office (as it was then) was unable to sustain historic service levels: the time taken to process land title transfers had increased from the benchmark of 6 days to over 40 days. This deterioration in service was directly attributable to two causes:

- The sharp increase in real estate transactions since the late 1990s – see Figure 3.1, which also shows more recent data; and,
- Government-wide budget restraints that prevented the Land Title Office from expanding its capacity to respond to the increase in demand for service.

Indeed, budget restraints had already led to the closure of some regional offices and the prospective closure of the front counter Victoria and Kamloops Land Title Offices had been announced.

**FIGURE 3.1:  
INCREASE IN DEMAND FOR SERVICE**

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In response to possibility of a prolonged period of poor service and further office closures, the Law Society of British Columbia proposed to government an alternative governance and delivery approach for land title and survey related activities. The proposed model was based on the Vancouver International Airport Authority (YVR). Under this model, governance is delegated to an independent, professional board of directors and the board can use revenues generated from fees to deliver services. Stakeholders believed this model would allow service levels to be maintained for three primary reasons:

- Revenues would increase as demand for service increased. The Authority would be able to use these revenue increases to sustain and, possibly improve, service levels. This had not been the case for the Land Title Office within government.
- An independent Authority would be able to carry forward excess revenue from one fiscal year to another. Therefore, it would be in a better position to invest in long-term service improvements. This is generally not possible as a government department.
- The Board of Directors would be fully focussed on delivering and improving service standards.

The provincial government approved implementation of the Authority model in the spring of 2004 and legislation creating the LTSA was passed later that year. The new Authority came into existence on January 20, 2005.

## **SECTION FOUR: PERFORMANCE AGAINST DEFINED CRITERIA**

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This Section presents my findings of performance against the specific criteria listed in Part B of my Terms of Reference (see Appendix Three). The findings in this Section are based heavily on the interviews held with stakeholders and ministry representatives. Sections Five and Seven provide more detail on the results of these interviews.

### **4.1 OBLIGATIONS, RIGHTS AND PROCESSES RELEVANT TO BOTH THE PROVINCE AND THE LTSA:**

#### **Obligation #1:**

*To consult with each other, in advance, prior to any public announcement or communications about issues related to the Operating Agreement or the Land Title and Survey Authority Act (Article 4.01).*

#### **Performance:**

- Obligation met by both parties with one prominent exception – see Provincial Obligation #1 below.

#### **Obligation #2:**

*To each designate a person as its primary contact and an alternate; the representative will be the primary contact for all issues and communications related to the Operating Agreement and the administration of the Land Title and Survey Authority Act and the Land Title and Survey Enactments (Article 4.02).*

#### **Performance:**

- Appointment obligation has been met by both parties.
- LTSA has contact with a variety of ministries on a variety of issues. As a result, contact between LTSA and ministries has not always been through the primary provincial contact. This arrangement makes sense for routine issues but less so for ‘change management’ issues (see Section Seven) where it may be helpful for the primary provincial contact to be involved from an issues management and resolution perspective.

**Obligation #3:**

*To maintain a collaborative working relationship in respect of the on-going business interactions described in the Operating Agreement (Article 4.03) including, but not limited, to interactions referenced in Schedule B of the Operating Agreement.*

**Performance:**

- There is a good working relationship between the Province and LTSA on routine operational matters.
- On issues that involve significant ‘change management’, the relationship has been uneven. In some cases, the parties have worked and continue to work well together. In other cases, collaboration has not been as strong as desired by both parties.
- Both sides have agreed that priority should be given to addressing any weaknesses in the relationship.

**Process and mechanism #1:**

*Dispute resolution mechanisms (Article 12).*

**Performance:**

- The dispute resolution process has not been initiated by either party.

**Process and mechanism #2:**

*Fee Commissioner process and criteria (Article 5).*

**Performance:**

- The Fee Commissioner process has been activated once in the five year period. The process followed was consistent with the Act and the Operating Agreement, including Schedule D. [Note: I have not seen a fee increase proposal as contemplated under Section 20 (3) of the LTSA Act. Instead, the Commissioner’s report refers to an open ended question on the level of required fee increase.]
- The Minister and the LTSA agreed to the person appointed as Commissioner and agreed that the review be a “forward looking process, reviewing the reinvestment objectives and strategies of the LTSA”.

- The Operating Agreement includes criteria for the Commissioner to consider in making a determination, but does not specify the process for seeking information from both the Province and the LTSA. Neither the Act nor the Operating Agreement provides any guidance as to how the Commissioner is to undertake his/her work in terms of information gathering. In the future, the process would be strengthened by ensuring a broader scope of information gathering from both parties.

## 4.2 OBLIGATIONS, RIGHTS AND PROCESSES RELEVANT TO THE PROVINCE

### Obligation #1:

*To provide reasonable notice and consult with the Authority in respect of any changes to legislation that may impact the operations of the LTSA and in particular, give 60 days' notice as to any changes to the statutory fees payable to the Province and collected on its behalf by the LTSA (Article 3.01).*

### Performance:

- Notice obligation met on most but not all legislation.
- There have been no changes to statutory fees since LTSA was created.
- The LTSA has been given early notice of changes to the *Land Title Act* and all other legislation administered by the Authority.
- Under Section 5.13 of the Operating Agreement, the Province was exempt from payment of LTSA base fees only until April 1, 2006. The Province reinstated the exemption effective April 1, 2009 through Bill 2 (2009), which implemented a variety of budget related legislation. The Province did not give early notice to the LTSA concerning the decision to reintroduce the exemption.
- The Ministry (MAL) did not discuss with LTSA the inclusion of this policy change as a possible budget measure prior to its submission to Treasury Board. The Province believed it could not disclose the content of budget legislation to an arm's-length agency once the decision had been taken to adopt the measure and prior to tabling of the budget.

### Obligation #2:

*To indemnify, save harmless, and represent in litigation, the LTSA, the Surveyor General and persons acting under them when acting as an agent of the Province or the Minister, or as a delegate of the Minister (Articles 3.09 and 3.10).*

**Performance:**

- Indemnity in place. Other issues as noted above have not arisen.

**Rights #1:**

*To access the books and records of the LTSA concerning all amounts it is required to, or authorized to, collect, pay or set-off as agent of the Province (Articles 6.01, 6.02 and 6.06).*

**Performance:**

- Province did not choose to exercise this right over the 5 year period. Province is satisfied with the routine information being provided by LTSA.
- An audit of statutory fee collections is being undertaken in 2010.
- The Auditor General has performed various audit procedures each year surrounding the collection of Property Transfer Tax and has not had concerns.

**Rights #2:**

*To participate as a regular member of the LTSA Stakeholder Advisory Committee, and attend annual joint meetings with the Board of the LTSA, and the Annual General Meeting.*

**Performance:**

- Right has been respected by LTSA.
- Provincial representative has been invited to all named events.
- The Deputy Minister (MAL) was invited and attended the 2009 annual joint meeting of the SAC and the Board.

**4.3 OBLIGATIONS RIGHTS AND PROCESSES RELEVANT TO THE LTSA:**

**Obligations #1**

*To provide such assurances to the Province as required, to maintain the confidentiality of information provided to the LTSA respecting changes to legislation (Article 3.01).*

**Performance:**

- Obligation met.

## **Obligations #2**

*To operate the land title and survey systems in accordance with the Operating Agreement, the Land Title and Survey Authority Act, and the Land Title and Survey Enactments and ensure the specified processing times (Article 3.02).*

### **Performance:**

- Obligation met.
- Processing times have been consistently below the benchmarks in the operating agreement.

## **Obligations #3**

*To manage records in accordance with the Land Title and Survey Enactments and all other applicable enactments (Article 3.04).*

### **Performance:**

- No indication of concern from either party.

## **Obligations #4**

*To collect on behalf of the Province, and pay to the Province on a monthly basis, the statutory fees payable to the Province which are collected by the Surveyor General as agent for the Province (Article 3.07).*

### **Performance:**

- Obligation met (payments are provided on a weekly basis).

## **Obligations #5**

*To assume and without charge perform all obligations in relation to the provision of Crown grant, Surveyor General and land title services as specified (Article 4.04).*

### **Performance:**

- Obligation met.

## **Obligations #6**

*To collect the statutory fees payable to the Province under the Land Title Act and taxes under the Property Transfer Tax Act and Social Services Tax Act payments on behalf the Province and pay them to the Province (Articles 6.01 and 6.02).*

### **Performance:**

- Obligation met.

### **Obligations #7**

*To set off against payments required to be made by the LTSA in accordance with the Cash Management Agreement (Article 6.03).*

#### **Performance:**

- No indication of concern from either party.

### **Obligations #8**

*To operate as a not-for-profit Authority and use revenues in excess of operating expenses only for specified purposes (Article 7).*

#### **Performance:**

- Obligation met in that the Canadian Revenue Agency treats LTSA as a not-for-profit agency.
- In addition, any revenues in excess of expenses are used for the purposes outlined in Article 7.02.
- The Fee Commissioner concluded that the authorised base fee increases of 29.1% on July 1, 2009 was consistent with the Authority's not-for-profit status.

### **Obligations #9**

*To meet accountability requirements in relation to:*

- *Board renewal selected from stakeholder nominees;*
- *public availability of a record of Board deliberations;*
- *financial audits and reporting, including public availability and reporting of annual audited financial statements at an annual public meeting;*
- *governance reviews;*
- *stakeholder involvement, including establishment and maintenance of a stakeholder advisory committee;*
- *code of business conduct and ethics, including Board and Officer conflict of interest disclosure procedures; and*
- *public complaint process and procedures.*

#### **Performance:**

- Obligations met.
- The site is very comprehensive source of information for the public and stakeholders.

## **Rights #1**

*To charge fees or charges for business activities (Article 6); including, beyond those explicitly noted in the Agreement (Article 5.06).*

### **Performance:**

- Fee adjustments have been in accordance with the terms of the Operating Agreement.

## **Rights #2**

*To set-off against payment to the Province (Article 6.03).*

### **Performance:**

- See LTSA Obligation #7 above

## **4.4 ADDITIONAL SPECIFIED MATTERS**

*At the request of one party, and upon the agreement of the other party, the management consultant may review and assess additional specified matters.*

No jointly approved request has been received.

## **SECTION FIVE**

### **SERVICES TO CUSTOMERS AND STAKEHOLDERS**

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This section summarizes my findings concerning the service provided by LTSA to customers and stakeholders. It is based primarily on the views expressed by members of the Stakeholder Advisory Committee (SAC). The composition of this Committee is established through a bylaw of the LTSA Board and is representative of those entities that the Province has determined to have a statutory role in the operations of the land title and survey systems. The Committee includes self-governing professionals with certification authority under the *Evidence Act*, nominating entities to the Board, taxation authorities, and representatives of registered charge holders (i.e. credit unions and banks) and those with an interest in oversight of historical records.

#### **5.1 BC'S LAND TITLE AND SURVEY SYSTEM IS CRITICALLY IMPORTANT**

All members of the SAC pointed out the vital role that an effective land title and survey system plays in BC's society and economy. Their responses included the following observations:

- Private ownership of land and real property forms the bedrock of a democratic society.
- Certainty of title sustains public confidence in the private property system and the value of real estate, which is the single most important asset for most families.
- Certainty of title increases access to capital for large and small business and fosters economic development in the province.
- Low processing costs and short timelines increase the efficiency of land conveyance in BC.
- A reliable land title system is an essential element of the property tax system, which is the primary revenue source for local governments.
- As well as ensuring that records are up to date, the system is also the custodian of important historical records.

#### **5.2 MEASURED PERFORMANCE HAS VASTLY IMPROVED SINCE LTSA WAS CREATED**

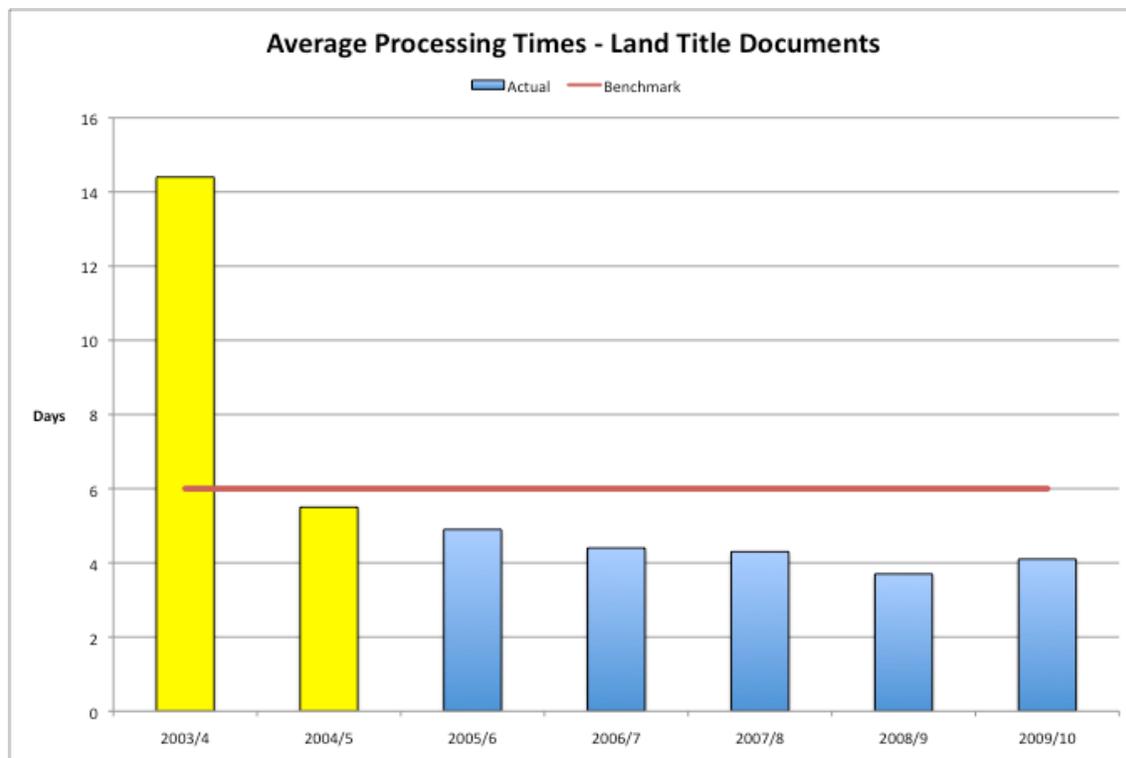
Section 3.02 of the Operating Agreement between the Province and the LTSA includes the following specific service targets:

*"The Authority will operate the land title and survey systems in British Columbia:*

- *in a manner which ensures that the Average Processing Time for Land Title Act instruments does not exceed 6 business days over any Fiscal Year that commences on or after April 1, 2006;*
- *in a manner which ensures that the Average Processing Time for Crown Grants does not exceed 21 days over any Fiscal Year that commences on or after April 1, 2006; and*
- *in a manner which ensures that the Average Processing Time for Land Act Surveys does not exceed 21 business days over any Fiscal Year that commences on or after April 1, 2006”*

The annual reports of the LTSA show that actual performance has met and exceeded these targets in each year of operation. SAC members confirmed that significant improvements in processing times have been made since LTSA was established with respect to the processing of land title instruments, Crown grants and *Land Act* surveys. Figures 5.1 and 5.2 show annual performance for two of these performance indicators against the performance standard and, in the case of land title documents, against actual performance in the two years prior to LTSA’s creation.<sup>1</sup>

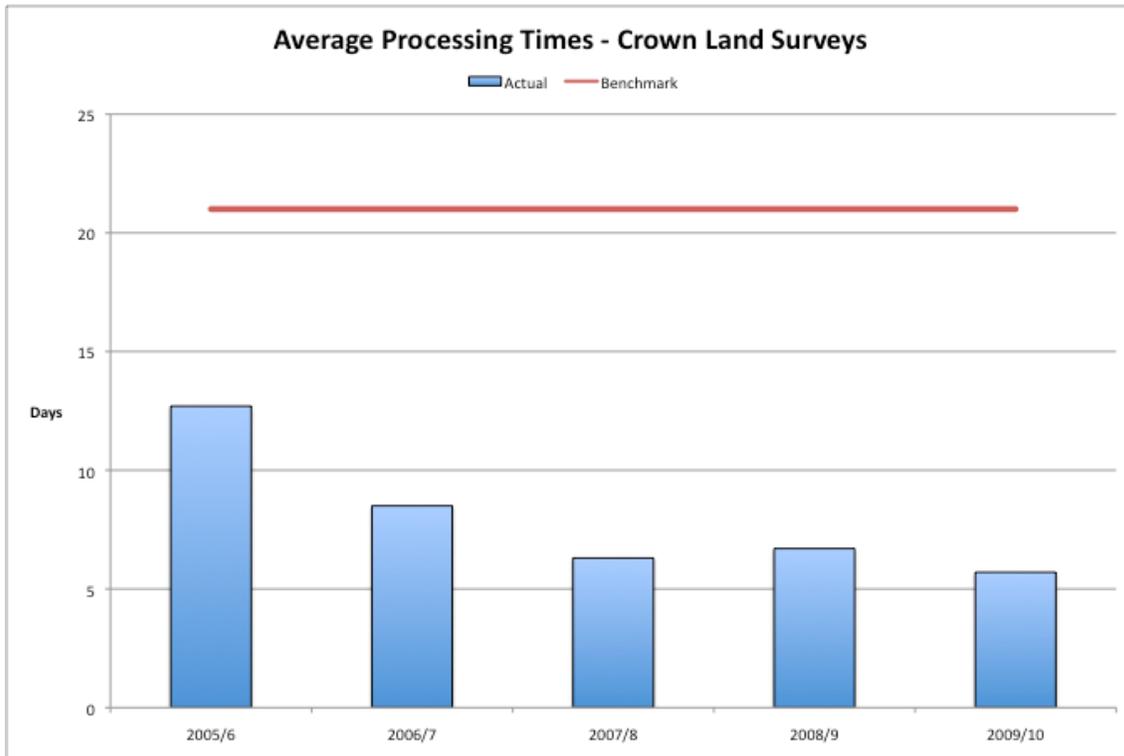
**FIGURE 5.1:  
PERFORMANCE INDICATOR – LAND TITLE RESPONSIBILITIES**



<sup>1</sup> Actual performance for processing of Crown Land Surveys prior to 2005/6 is not available.

Although SAC members are unanimous in their views of service improvement, Figure 5.1 shows that performance actually began to improve in 2004/5, the year before LTSA was created, in response to an injection of funding made possible by an increase in land title fees and a matching recovery to land title operations for that period.<sup>2</sup> However, SAC members expressed uncertainty that the improvements shown in 2004/5 would have been sustained given the pressures on Provincial budgets.

**FIGURE 5.2:  
PERFORMANCE INDICATOR – SURVEYOR GENERAL RESPONSIBILITIES**



In addition, SAC members noted that not only have clear improvements been made when measured on an annual basis but also service is now more consistent throughout the year.

Although not a formal target in the Operating Agreement, another noticeable accomplishment has been enabling customers' shift to electronic filing for land title transfer documents as well as *Land Title Act* and Crown land survey plans. Electronic filing capability for land title documents was introduced in 2004, before the LTSA was created. Through the provision of LTSA-supported training and more electronic forms, the use of electronic filing has increased significantly and,

<sup>2</sup> Fees were increased by 8% in July 2004 – see Section 5.2.

by 2008/9, had reached 38.6% of all registrations. The proportion of *Land Act* surveys received electronically in 2008/9 was 73%.

The strongly positive views expressed by stakeholders does not mean that they are fully satisfied with the service provided. A number of interviewees identified ways in which service could be improved in the future. They generally felt that LTSA has given appropriate considerations to their suggestions in terms of current business planning processes and that there are appropriate avenues for raising these suggestions again in the future.

### **5.3 THE RELATIONSHIP WITH STAKEHOLDERS HAS IMPROVED SIGNIFICANTLY**

Beyond the specific numerical benchmarks identified in the Operating Agreement, SAC members indicated that their relationship with the service provider has improved noticeably under the LTSA. For example, they point out that:

- The organization has a stronger customer focus than was the case as a government department.
- It has developed a strong and respectful relationship with stakeholders that was not as prevalent before. The LTSA is genuinely interested in views of stakeholders and is very responsive to any questions and concerns raised by them. As a result, stakeholders feel valued.
- It is open and transparent with stakeholders and with the public.

SAC members illustrated the various channels of communication that are used by the LTSA to stay in touch with stakeholders. They include:

- The SAC meets three or four times per year including a joint meeting with the Board of Directors. Overall, this Committee is viewed as an effective vehicle for exchanging information.
- Regular one-on-one meetings between staff and members of the SAC. For some, these meetings are even more useful than the SAC meetings themselves because they allow more concentrated attention on issues that are specific to each stakeholder group.
- Focus groups that discuss specific issues.
- On-line stakeholder satisfaction surveys. The most recent of these surveys was conducted in March 2009.
- Annual publications, the LTSA website and email correspondence.

#### **5.4 STAKEHOLDERS' VIEWS ABOUT THE REASONS FOR LTSA'S SUCCESS**

SAC members believe the strong performance of LTSA was made possible because:

- In a strong real estate market, LTSA earns additional revenue that allows it to maintain and improve service levels. This has been the case over the past five years.
- It has been immune from government restraint programs.
- The limited mandate of the organization has allowed it to focus on its core responsibilities and adjust resources to meet the workload.
- Certainty of funding has allowed it to plan and implement service improvements.
- It is lead by motivated Board members and senior staff.

In their view, the performance improvements have been possible without compromising the fundamental strengths of BC's land title and survey systems. They appreciate that there have been some increases in land title fees to build and sustain the LTSA but they see these increases as relatively small in the context of the benefits achieved and the overall cost of conveyance.<sup>3</sup>

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<sup>3</sup> Section 5.2 discusses fees and fee increases.

## **SECTION SIX: FINANCIAL PERFORMANCE**

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As was reported in Section Four, the financial management and accountability provisions in the Operating Agreement have been fully met by LTSA. This Section provides additional information supporting specific aspects of those provisions.

Article Seven of the Operating Agreement requires the Authority to operate in a not-for-profit manner<sup>4</sup> and to ensure that any excess revenues are used to:

- *“Add to or improve services provided by the Authority in accordance with its purposes;*
- *Fund or maintain reserves reasonably necessary for the sustainable conduct of the operations of the Authority;*
- *Fund capital expenditures by the Authority;*
- *Repay debt of the Authority; or*
- *Reduce Base Fees and fees resulting from adjustments to Base Fees.”*

LTSA is also constrained, under Article Five, to increase its fees<sup>5</sup> annually by no more than the rate of increase in the CPI unless authorised to do so by a Fee Commissioner. This section examines whether these expectations and constraints have been met.

### **6.1 LTSA’S FINANCIAL PERFORMANCE HAS BEEN STRONG**

As Figure 6.1 shows, LTSA consistently generated excess revenue in each of the first four years of operation. The audited financial results for 2009/10 will not be available until August 2010 but are expected to show another year of excess revenue. This strong performance is largely attributable to the vibrant real estate market that continued over most of this period – see Figure 6.2, which compares land title transactions in recent years to the period just prior to establishment of the LTSA.

The excess revenue earned by LTSA has been either invested in capital assets or placed into reserve funds of three principal types:

- An Assurance Fund – out of which would be paid any claims against the Authority for loss attributable to inaccuracies in title. The amount in this Fund is set by the LTSA Board on the basis of professional advice from an

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<sup>4</sup> Also a requirement of the *LTSA Act*.

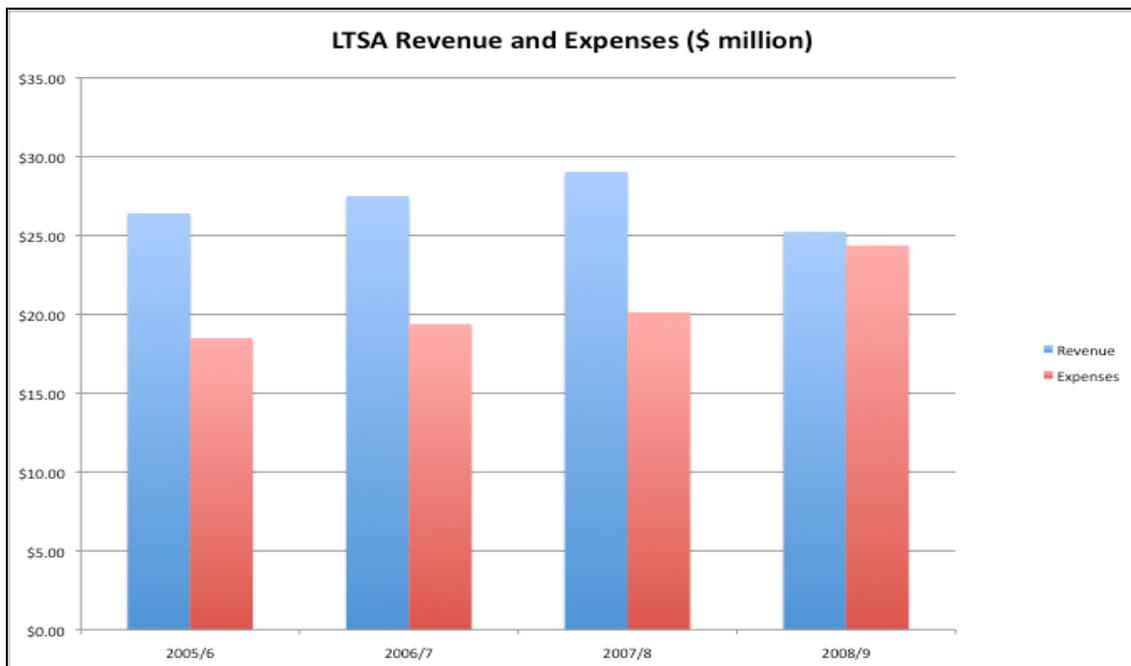
<sup>5</sup> Called ‘Base Fees’ in the Operating Agreement.

actuary. The amount provides greater than 90 percent confidence that the Fund will have sufficient resources to pay out claims arising.<sup>6</sup>

- A Contingency Fund – to allow LTSA to weather any downturn in revenue or unexpected costs. The Board has set the contingency fund at 26% of cash operating expenses.
- Funds for Reinvestment (included in "cash and cash equivalents" and "short-term investments" in the consolidated financial statements and labelled unrestricted in Figure 6.3) – available funds will be used to finance: planned expenditures on business transformation (including transitioning from legacy to current software); and for the consolidation of Victoria-based offices into rented facilities that include a custom-designed vault for safe, climate controlled storage of historical documents and secure access to those documents.

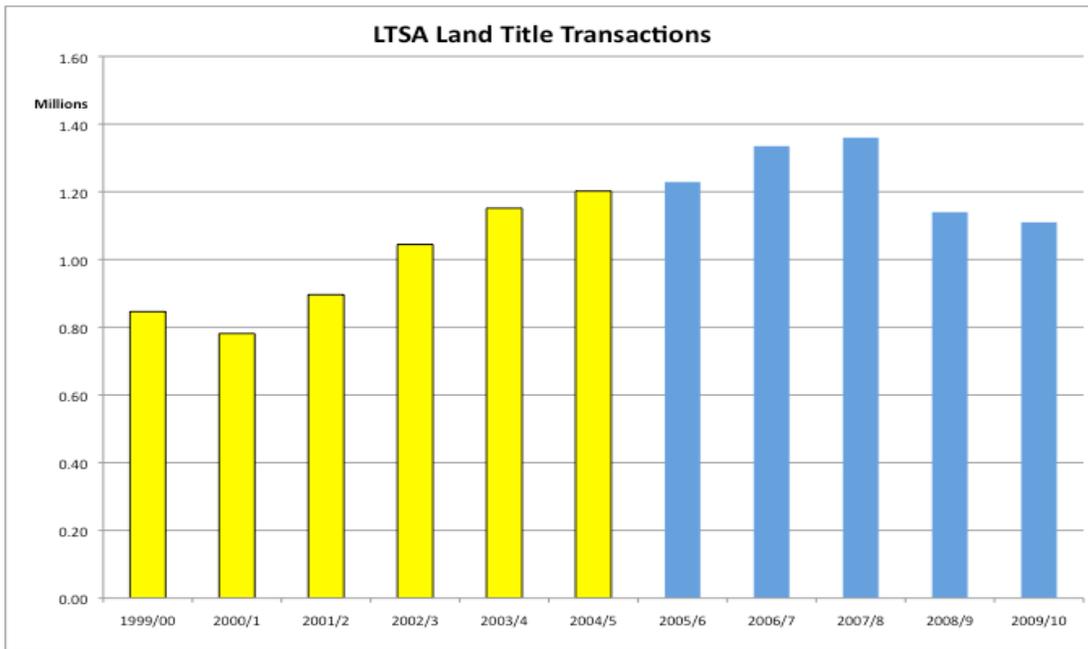
Figure 6.3 shows how each of these funds have grown in recent years.

**FIGURE 6.1:  
REVENUE AND EXPENSES**

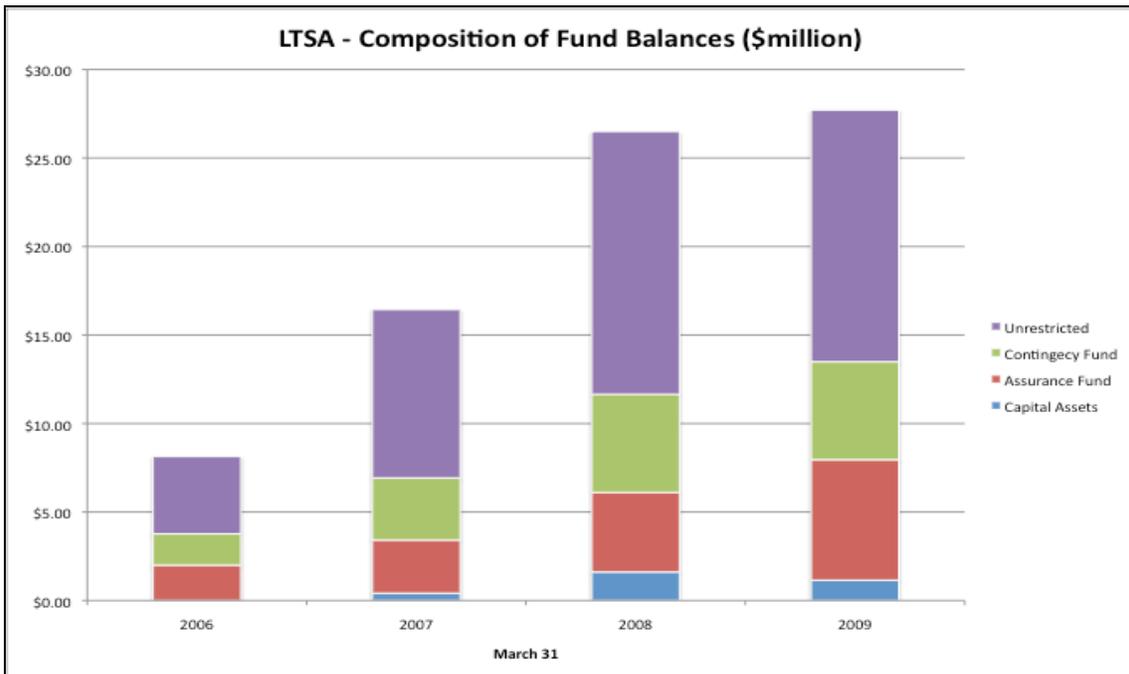


<sup>6</sup> The LTSA is not liable for claims arising from title transfers made prior to its establishment. The Province remains liable for such claims.

**FIGURE 6.2:  
LAND TITLE TRANSACTIONS**



**FIGURE 6.3:  
LTSA FUND BALANCES**

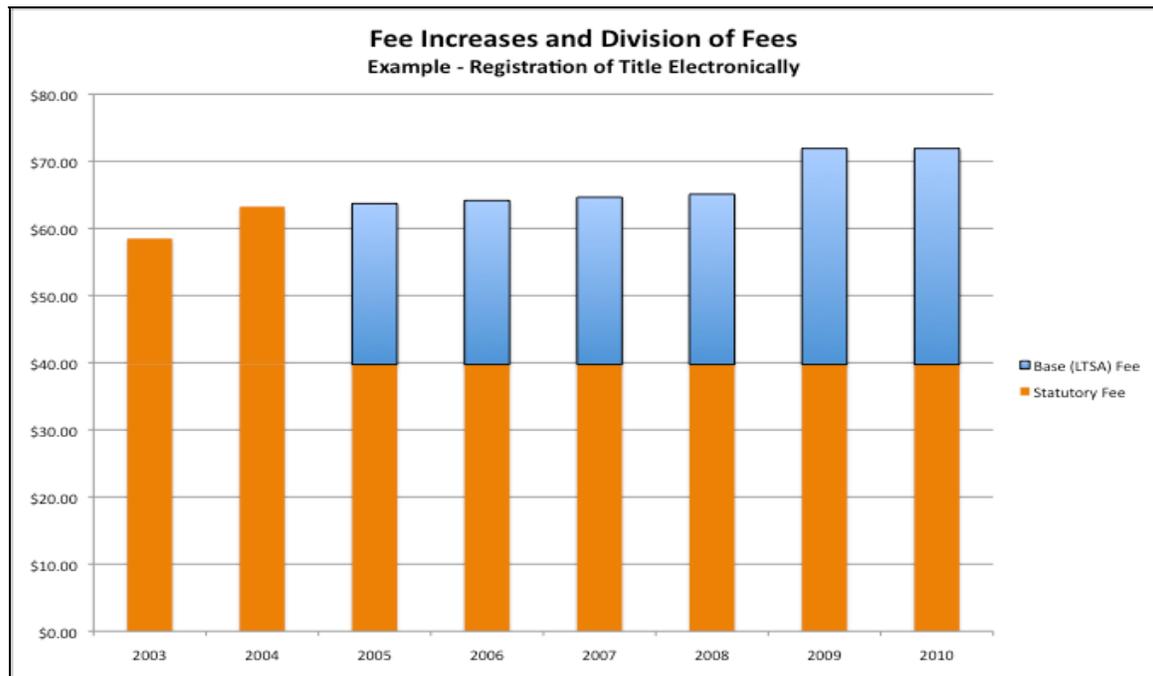


Since actual and planned uses of the excess revenue generated by LTSA are consistent with the permitted uses under Article Seven, I can conclude that the LTSA has adhered to the not-for-profit restriction in the Operating Agreement. Moreover, each year LTSA prepares a full corporate income tax return and the Canadian Revenue Agency has accepted LTSA's tax exempt status.<sup>7</sup>

## 6.2 CUSTOMER FEES

The revenue generated from land title fees is shared between the Province and the LTSA. The Province's share is called the statutory fee; LTSA's share is called the base fee. The original split between the LTSA and the Province was 31%/69%, on average. As a result of increases to the base portion of the fees overall, in 2010 approximately 39.15% of the fee is retained by the LTSA with 60.85% being retained by the Province. Figure 5.4 shows the division between the two components for one of the more common fees charged, that for registering title electronically.

**FIGURE 6.4:  
BASE AND STATUTORY FEES**



<sup>7</sup> LTSA has created a wholly-owned subsidiary operating as LandSure Systems Ltd. This organization delivers cost-effective systems and communications consulting services to LTSA. It is a taxable corporation that earns revenue from selling services to LTSA.

Figure 5.4 also shows the history of this fee since 2003. In 2004, fees were increased by 8% to provide funds to improve service levels and to ensure LTSA would begin with sufficient funding to sustain those levels. Since LTSA was created, base fees have increased in line with the increase in the Consumer Price Index and the statutory component of fees have remained unchanged. An exception was in 2009, when a significant fee increase was approved by the Fee Commissioner.

Due to changing economic conditions and the need to invest in business modernization, it was determined that the 2009-2010 user fee schedule related to *Land Title Act* and *Land Act* statutory services would not permit operations to be sustainable, even with a typical Consumer Price Index (CPI) rate increase. The LTSA Board of Directors, in conjunction with the Ministry of Agriculture and Lands, agreed to appoint an independent Fee Commissioner to determine the level of increase to user fees required to maintain the long-term viability of the LTSA. Effective July 1, 2009, user fees for services increased by about 9 percent.

The Commissioner was appointed in keeping with the process spelled out in the Operating Agreement and was given a broad mandate to consider what increase in the base fee was necessary to maintain the long-term viability of the LTSA. The criteria for the Commissioner's decisions as to fee increases are set out in the Operating Agreement (schedule D) as follows:

- The increase in fee or new fee established must be consistent with the not-for-profit nature of the Authority;
- The increase in fee or new fee established must relate to
  - > the actual cost of service for the particular activity or set of activities,
  - > take into account direct and indirect costs of the Authority, including without limitation, contingency and insurance requirements, and
  - > users' needs for efficient services;
- The increase in fee or new fee established should be consistent with general economic conditions in the province and therefore be consistent with the ability of users of the land title and survey systems to pay for services rendered;
- The decision of the Commissioner must be made in a timely manner, having regard to the Authority's obligations under sections 5.03 and 5.04 of this Agreement; and
- The decision of the Commissioner must be made public by the Commissioner.

As a result, the Commissioner recommended an average 29% increase in base fees, which in the case of the example presented in Figure 5.4 translated into a 10.4% increase in the total fee.

It is clear from this history that all fee increases have been fully consistent with the terms of Article 5 of the Operating Agreement.

## **SECTION SEVEN: THE RELATIONSHIP BETWEEN THE PARTIES**

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This section summarises my findings on the relationship between the Province and the LTSA, which are based on interviews with ministry staff and members of the LTSA executive. The observations are divided into two categories: routine activities and change management activities.

### **7.1 ROUTINE ACTIVITIES ARE FUNCTIONING WELL**

Routine activities are those that are conducted on a daily or weekly basis such as:

- Transfers of monies collected on behalf of the province by the LTSA (e.g. the property transfer tax and the provincial share of land registration fees).
- Transfers of land title and survey data from the LTSA to government agencies that rely on this data.
- Processing by the LTSA of land title transactions initiated by the province (e.g. restrictions on title associated with property tax deferrals).
- Processing of Crown grants by the Surveyor General.

With respect to these routine activities, I received consistently positive comments on the work undertaken by the LTSA on behalf of the Province. LTSA staff are also of the view that these arrangements have been working well. The procedures in place are fully consistent with the requirements and expectations in the Operating Agreement and the Cash Management Agreement.

### **7.2 EXPERIENCE WITH CHANGE MANAGEMENT ACTIVITIES HAS BEEN VARIED**

Change management activities are those that occur infrequently and often involve a significant change, or potential change, in either the way that LTSA's services are to be delivered (i.e. consideration of options for renewal of shared-services arrangements) or to the types of services to be provided (i.e. a new type of First Nations title interest or a change to property tax deferral program). Examples of change management issues that have been addressed in the last five years include:

- Contract renegotiation related to historical service delivery arrangements
- The Province's status in terms of fee payments
- Development of new areas of shared business interest
- Regulatory and legislative change proposals, and their operational impacts.

The parties interviewed on these topics reported widely mixed views on their experience in identifying and resolving issues and these views ranged from strongly positive to strongly negative. It is fair to conclude that the frequency of the negative experiences has caused the relationship between the parties to be less productive than it could be.

### 7.3 SOME COMMON THREADS CAN BE IDENTIFIED

I have chosen not to present a detailed examination of each change management issue. Instead, I have tried to pull out some common threads from the experiences and have listed them below:

- **Frequency and significance of change management issues:** The number of change management issues that have arisen and their potential impact has been greater than expected. Most of these issues were not anticipated in the Operating Agreement. As a result, the amount of time needed to address such issues was understated by all parties. This has been compounded by two related issues:
  - > **Inadequate attention to relationship management** – both parties underestimated the frequency of contact and the level of effort that would be needed to successfully sustain a positive relationship; and,
  - > **A failure to identify, discuss and resolve issues early** - before they become more significant and resolution more protracted.
- **Lack of experience in relationship management:** The Authority model of governance is very different to the Crown corporation model and there are only a couple of examples of its use at the provincial level. Neither the Province, nor individual ministries have had very much experience in managing the relationship with such entities. The same is true for senior managers within the LTSA, who are also learning by doing.
- **Finding the right balance:** The Authority model delegates maximum discretion to the LTSA Board subject to the defined expectations laid out in the Operating Agreement. For the model to work, the independence of the Authority has to be respected by the Province and the Authority has to acknowledge that it remains a ‘creature of government’ and accountable to it. Finding the right balance has been difficult for both parties:
  - > **Partnership and Independence** – The LTSA needs to demonstrate to the Province that it can both fulfill its mandate as an independent agency and enable opportunities to foster alignment with government priorities/objectives.
  - > **More Consistent Support for the New Relationship** – Ministries need to demonstrate to the LTSA that they respect the unique features of the new business relationship and the successes achieved by the LTSA as an independent Authority. The relationship would be

strengthened by greater attentiveness and more effective mechanisms to coordinate and communicate between the ministries and the LTSA.

Fortunately, it remains early days in the relationship. Both sides recognise potential benefits from addressing identified concerns and genuinely wish to see significant improvement in their relationship over the next five years. The next section provides my suggestions on how such improvement could be achieved.

## **SECTION EIGHT: SUMMARY OF FINDINGS AND SUGGESTIONS FOR IMPROVING THE PROVINCE/LTSA RELATIONSHIP**

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### **8.1 SUMMARY OF FINDINGS**

To a substantial degree, both the LTSA and the Province have met the performance expectations in the Operating Agreement but this positive story has been compromised at times by weaknesses in the relationship between the parties. This finding is supported by the evidence presented in earlier Sections.

Clearly, the LTSA receives glowing tributes from its stakeholders both with respect to its performance against defined benchmarks (e.g. processing time for land title transactions) but also for their attentiveness to the views of stakeholders. In many ways, the successes achieved have gone beyond the expectations laid out in the Operating Agreement.

The relationship between the Province and the LTSA on routine matters has also functioned well but this experience has been sometimes overshadowed by the distinctly inconsistent pattern of relationships around 'change management'.

### **8.2 THE WAY FORWARD**

Based on my reading of some of the underlying causes of the problems that have occurred, I put forward the following suggestions for consideration by the parties:

- **Creation of a Strategy and Planning Forum** – composed of senior staff of the LTSA and the Province that would meet four times a year. These meetings, to be jointly chaired by the LTSA and the Province's contact under the Operating Agreement, would be the major forum for dialogue between the parties and would include: strategizing, information sharing and consultation on matters of mutual interest and concern. The lead representative for the Province would, as today, be the Ministry of Agriculture and Lands (MAL) with participation from appropriate ministries invited by LTSA or MAL, depending upon particular matters under consideration. The purpose of these meetings would be to:
  - > Inform each other of major strategic priorities and anticipated policy or program shifts.
  - > Identify early any issues that might affect the way the land title and survey systems are delivered and the types of services that are currently provided and, where necessary, establishing a mechanism for resolving any conflicts concerning those issues.

- > Establish annual priorities for joint action in support of common objectives for sign-off by the CEO of the LTSA and Deputy Minister of MAL.
- > Establish lead agencies and prime contacts for executing joint projects in support of joint objectives.
- > Monitor progress against jointly established priorities and issues for resolution.
- **Scheduled semi-annual meetings between the Minister and the Board Chair** – these meetings would be used to maintain a dialogue at the highest level, would endorse and/or modify any understandings reached at the staff level and would confirm progress and results of the Strategy and Planning Forum.
- **A structured dispute resolution process** – to create discipline in the resolution of disagreements.
- **A letter agreement addendum to the Operating Agreement** - confirming any new processes such as those suggested above.

Each entity will continue to have its own mandate and its own set of priorities. However, following implementation of the suggested approaches, we can anticipate that the manner in which any differences are identified, tracked and resolved will change. As a result, the relationship between the parties will have the opportunity to become more consistently collaborative and productive.

Positive change will be more likely if the procedural changes listed above are accompanied by attitudes and commitments reflective of the following:

- Demonstrated recognition of each other's role in the delivery of land title and survey systems and associated public services.
- Full and open disclosure of interests and objectives by both sides.
- A high level of trust and respect among the persons responsible for the relationship.
- A flexible approach to resolving issues.
- Dedication of resources to relationship management.
- Establishment of accountability measures within the Province and the LTSA that give priority to relationship building.

I have put these suggestions forward in the hope that they will be useful. However, it is not vital that the parties accept all or any of the suggestions made here. It is much more important that they work together to develop a course of action that they genuinely believe will lead to an improvement in the relationship and to which they are prepared to commit.

## **APPENDIX A: TERMS OF REFERENCE**

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### **Background**

The Land Title and Survey Authority of British Columbia (LTSA) is an independent not-for-profit corporation established under the *Land Title and Survey Authority Act* effective January 20, 2005. The LTSA is responsible for:

- managing, operating and maintaining the land title and survey systems in British Columbia and providing land title and survey services to the public, including processing of Crown grants;
- supporting the Province's property taxation system through daily downloads to BC Assessment Authority of property transfer information; and
- collecting provincial revenue and taxes under the *Land Title Act*, *Property Transfer Tax Act* and *Social Services Tax Act*, and remitting these funds to the Province.

An asset transfer agreement (the "Transfer Agreement") dated January 20, 2005 between the LTSA and the Province provided for the LTSA's purchase from the Province of specified operating systems, materials and records identified as necessary for the operation of the land and survey systems of British Columbia. A Cash Management Agreement dated January 14, 2005 established procedures for LTSA's collection and remittance to the Province of statutory fees and taxes. Pursuant to the Province's Agreement with Access BC respecting BC OnLine, the LTSA has committed under a Service Delivery Agreement with the Province dated August 15, 2008, to continuing to deliver its services to customers through BC OnLine's main menu until at least October 31, 2014.

An Operating Agreement ("the Operating Agreement") between the Province and the LTSA, with a term of 60 years, established the conditions for the LTSA's management, operation and maintenance of British Columbia's land title and survey systems. The Operating Agreement (Article 3.05) requires that, every 5 years, the Province and LTSA (the "Parties") jointly appoint an independent management consultant to review the performance of the parties under the Operating Agreement during the previous 5 years. The Agreement further stipulates that the cost of review be shared equally by the parties and that the results can be made public by either party. The Province or the LTSA, in consultation with the other party, may publish the results of the review.

The 5-year review is in addition to an obligation that, every 10 years, the parties are to meet to review the LTSA's performance obligations in relation to timely delivery of land title and survey services and the sufficiency of revenues from base fees (Article 2.03). The Operating Agreement provides that the parties must, in good faith, negotiate and attempt to conclude amendments to the

Operating Agreement that are considered necessary as a result of the 10-year review (Article 2.04). The Operating Agreement, however, may be amended in advance of the 10-year review if both parties agree.

The *Land Title and Survey Authority Act* provides for establishment of an 11-member LTSA Board of Directors selected from the stakeholder nominating entities defined in the Act, including 2 members who are selected from nominations submitted by the Province. The LTSA Board is authorized to establish bylaws to govern their activities, and their bylaws include a requirement to establish a Stakeholder Advisory Committee for providing the CEO with advice relating to the LTSA's mandate to operate the land title and survey systems in accordance with the Province's legislative framework. The Province is a standing member of this Committee which meets regularly to review and provide input to LTSA's business planning processes and operations; in addition, the Board meets annually with the LTSA Stakeholder Advisory Committee for stakeholder entities' reports on LTSA's management of the land title and survey systems.

The LTSA and the Province meet regularly as part of annual business planning and reporting requirements, and in advance of each LTSA Stakeholder Advisory Committee meeting. These meetings include twice-yearly (at least) meetings between the Board Chair and the relevant Minister assigned responsibility for the *Land Title and Survey Authority Act*; regular meetings at the senior executive levels of the LTSA and the Ministry including the Province's primary contact identified under the Operating Agreement; and regular pre-meetings in advance of each LTSA Stakeholder Advisory Committee meeting.

#### **A. Purpose, Approach and Objectives**

1. A management consultant, jointly appointed by the Province and the LTSA (the parties), will undertake an independent review and assessment of performance under the Operating Agreement for the period between January 20, 2005 and January 19, 2010.
2. The management consultant's review and assessment will consider:
  - a. The performance of the LTSA and Province in collaborating and / or cooperating on efforts related to their business interactions, primarily as described in the Operating Agreement.
  - b. The performance of the Province in relation to the obligations, rights and processes specified in the Operating Agreement and in supporting the LTSA in achieving its objectives.
  - c. The performance of the LTSA in relation to the obligations, rights and processes specified in the Operating Agreement including LTSA's obligations to support those on-going business interactions with the Province as described at Article 4.04 and Schedules B and C of the Operating Agreement.

- d. The performance of the LTSA and Province in considering additional new lines of activity of interest to the other party.
3. The management consultant's report will document input received, arrange the input and findings into themes, and identify matters and options respecting performance and business interactions which might benefit from further consideration by the parties, including specific review of the effectiveness of the existing stakeholder involvement and liaison processes as between the Province and LTSA. Upon review of the options presented in the draft report, the parties will provide mutually acceptable instructions to aid the management consultant in the final preparation of recommendations to the parties. Where mutuality does not exist, the consultant should not provide any further evaluation or recommendations but should document the differing views of the parties.
4. The consultant may review, assess and, subject to the foregoing, may make recommendations on the successes and challenges in the working relationship and communication between the parties.

## **B. Focus of the Review**

Guided by the above objectives, the review of the parties' performance will focus on the following:

1. Obligations, rights and processes relevant to both the Province and the LTSA:

### Obligations:

- a. To consult with each other, in advance, prior to any public announcement or communications about issues related to the Operating Agreement or the *Land Title and Survey Authority Act* (Article 4.01).
- b. To each designate a person as its primary contact and an alternate; the representative will be the primary contact for all issues and communications related to the Operating Agreement and the administration of the *Land Title and Survey Authority Act* and the Land Title and Survey Enactments (Article 4.02).
- c. To maintain a collaborative working relationship in respect of the on-going business interactions described in the Operating Agreement (Article 4.03) including, but not limited, to interactions referenced in Schedule B of the Operating Agreement.

### Processes and Mechanisms:

- d. Dispute resolution mechanisms (Article 12).
- e. Fee Commissioner process and criteria (Article 5).

2. Obligations, rights and processes relevant to the Province:

Obligations:

- a. To provide reasonable notice and consult with the Authority in respect of any changes to legislation that may impact the operations of the LTSA and in particular, give 60 days' notice as to any changes to the statutory fees payable to the Province and collected on its behalf by the LTSA (Article 3.01).
- b. To indemnify, save harmless, and represent in litigation, the LTSA, the Surveyor General and persons acting under them when acting as an agent of the Province or the Minister, or as a delegate of the Minister (Articles 3.09 and 3.10).

Rights:

- c. To access the books and records of the LTSA concerning all amounts it is required to, or authorized to, collect, pay or set-off as agent of the Province (Articles 6.01, 6.02 and 6.06).
- d. To participate as a regular member of the LTSA Stakeholder Advisory Committee, and attend annual joint meetings with the Board of the LTSA, and the Annual General Meeting.

3. Obligations, rights and processes relevant to the LTSA:

Obligations:

- a. To provide such assurances to the Province as required, to maintain the confidentiality of information provided to the LTSA respecting changes to legislation (Article 3.01).
- b. To operate the land title and survey systems in accordance with the Operating Agreement, the *Land Title and Survey Authority Act*, and the Land Title and Survey Enactments and ensure the specified processing times (Article 3.02).
- c. To manage records in accordance with the Land Title and Survey Enactments and all other applicable enactments (Article 3.04).
- d. To collect on behalf of the Province, and pay to the Province on a monthly basis, the statutory fees payable to the Province which are collected by the Surveyor General as agent for the Province (Article 3.07).
- e. To assume and without charge perform all obligations in relation to the provision of Crown grant, Surveyor General and land title services as specified (Article 4.04).
- f. To collect the statutory fees payable to the Province under the *Land Title Act* and taxes under the *Property Transfer Tax Act* and *Social Services Tax Act* payments on behalf the Province and pay them to the Province (Articles 6.01 and 6.02).

- g. To set off against payments required to be made by the LTSA in accordance with the Cash Management Agreement (Article 6.03).
  - h. To operate as a not-for-profit Authority and use revenues in excess of operating expenses only for specified purposes (Article 7).
  - i. To meet accountability requirements in relation to:
    - o Board renewal selected from stakeholder nominees;
    - o public availability of a record of Board deliberations;
    - o financial audits and reporting, including public availability and reporting of annual audited financial statements at an annual public meeting;
    - o governance reviews;
    - o stakeholder involvement, including establishment and maintenance of a Stakeholder Advisory Committee;
    - o code of business conduct and ethics, including Board and Officer conflict of interest disclosure procedures; and
    - o public complaint process and procedures.
- Rights:
- j. To charge fees or charges for business activities (Article 6); including, beyond those explicitly noted in the Agreement (Article 5.06).
  - k. To set-off against payment to the Province (Article 6.03).
4. At the request of one party, and upon the agreement of the other party, the management consultant may review and assess additional specified matters.

### **C. Process**

Interviews and Consultations: The consultant will interview and consult with the following key contacts and stakeholders:

- LTSA Executive and the LTSA Board Chair and LTSA Stakeholder Advisory Committee members;
- Provincial Government Executive and management-level staff (including the Ministry of Agriculture and Lands, Integrated Land Management Bureau, Ministry of Attorney General, Ministry of Aboriginal Relations and Reconciliation, Ministry of Finance, Ministry of Citizens' Services, BC Assessment Authority); and
- At the request of one party, and upon the agreement of the other party, the consultant may interview additional contacts and stakeholders.

Review Materials: The consultant will review material provided by the LTSA and Province including, but not limited to:

- LTSA Board minutes, business plans, annual reports, other publicly available materials respecting LTSA performance, and other materials provided by the LTSA; and

- Government reports, financial accounts, and other materials provided by the Province.

Consultation Staging: The consultant will:

- meet with identified LTSA and Provincial contact person(s) at the start of the review process, and during the review process no less than bi-weekly;
- receive input on the draft report from the parties, address any expressed concerns, and complete the final report; and
- formally present the results of the report to each party, upon request, following the joint delivery of the draft report.

## **APPENDIX B: PERSONS INTERVIEWED**

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### **PERSONS AT LTSA INTERVIEWED**

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<b>Person</b>	<b>Position</b>
Wanda Costuros	Chair, Board of Directors
Godfrey Archbold	President and Chief Executive Officer
Gregory Pedersen	Vice President and Chief Financial Officer
Leslie Hildebrandt	Vice President and Corporate Counsel
Mike Thomson	Surveyor General of British Columbia

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### **STAKEHOLDER ADVISORY COMMITTEE MEMBERS INTERVIEWED**

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<b>Persons Interviewed</b>	<b>Representing</b>
Connie Fair	BC Assessment Authority
David Bazett Chuck Salmon*	Association of British Columbia Land Surveyors
Ralston Alexander, Q.C. Tim McGee* Adam Whitcombe*	The Law Society of British Columbia
Chris Nation	Union of British Columbia Municipalities
Debbie Larson	BC Association of Professional Registry Agents
G. W. (Wayne) Braid	Society of Notaries Public of British Columbia
Robert Laing	British Columbia Real Estate Association
Jacqueline Gresko, Ph.D.	British Columbia Historical Federation
Shawn Tryon	Canadian Bankers Association
Darren Kozol	Central 1 Credit Union
Steve Michoulas	Canadian Bar Association

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Note: Persons indicated by (\*) were included in the interview but are not members of the SAC

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## PROVINCIAL MINISTRY PERSONS INTERVIEWED

<b>Person</b>	<b>Ministry/Agency</b>
Larry Pedersen (Deputy Minister)	Agriculture and Lands
Grant Parnell (ADM, CLAD)	Agriculture and Lands
Allan Lidstone (Director)	Agriculture and Lands
Ward Trotter (Director)	Agriculture and Lands
Denise Bragg (ADM)	Agriculture and Lands
Gerry Gutensohn (Director, CSD)	Agriculture and Lands
RJ Senko (Ministerial Assistant)	Agriculture and Lands
Steve Carr (CEO)	Integrated Land Management Bureau
Mark Zacharias (ADM)	Integrated Land Management Bureau
Francesca Wheler (Ex. Director)	Integrated Land Management Bureau
Andy Calarco (Manager)	Integrated Land Management Bureau
Jim Fowles (Lawyer)	Attorney General
Steve Munro (ADM)	Aboriginal Relations and Reconciliation
Julie Williams (Special Advisor)	Formerly MARR now Premier's Office
Cory Herrera (Negotiator)	Aboriginal Relations and Reconciliation
Mark Lofthouse (Chief Negotiator)	Aboriginal Relations and Reconciliation
Doug Foster (Director)	Finance
Sam Broadbent (TB Analyst)	Finance
Tara Richards (Ex. Director)	Finance
Hilary Harley (Director)	Finance
Sue Parks (Ex Director)	Citizens' Services
Lois Fraser (ADM)	Citizens' Services
Lori Wanamaker (Deputy Minister)	Formerly Citizens' Services, now Tourism, Culture and the Arts
Mike Lambert (Executive Director)	Energy, Mines and Petroleum Resources