

The future of law

Why the real estate lawyer is the quarterback of the real estate deal

On June 22, 2016, surrounded by family and colleagues, Kathleen Waters was honoured with the 2016 Ontario Bar Association's Award of Excellence in Real Estate. Her remarks included comments on the lawyer as quarterback and advice on moving successfully into the digital future.

"I'm a passionate believer in the role of the lawyer as defender of freedoms in a democracy," she said. This concept was outlined by the United Nations in its "Basic Principles on the Role of Lawyers," written in 1990.¹

That document captures many ideas that are foundational to life in a democracy: "adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession." Governments and lawyer associations are called upon to promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.

Even LAWPRO's Statement on Corporate Social Responsibility views a committed, healthy and diverse bar as essential to the functioning of a democracy and to the protection of individual rights in society.

"Where I diverge from many commentators is that I don't believe the important role of a lawyer in a democracy is reserved to the barristers among us," she said. More than half

of the 26,000 lawyers in private practice in Ontario do predominantly solicitor's work and 21 per cent (approximately 5,400 lawyers) identify themselves as having real estate law as their primary or secondary area of practice.

Waters pointed out that real estate practice is a financial mainstay of the typical solo or small firm solicitor's office, without which it would be very difficult to maintain a broad distribution of lawyers throughout Ontario. These same small law firm lawyers are preparing wills, incorporating small businesses, advising estate trustees, helping troubled spouses and even doing some criminal defence work. "Talk to an MPP at Queen's Park about what it would mean if there were no lawyers left in the constituency. How will the MPP explain to a constituent with a child protection issue that the nearest lawyer is 100 kilometers away?" she queried.

In Waters' view, it is so important that we maintain real estate legal practice in Ontario. This is not about protectionism for lawyers. It is a societal issue that serves a greater good.

Consider the contrast with our neighbours to the south, where real estate conveyancing has largely been taken over by title insurance companies and escrow agents. Waters observed, "what we learn, by comparison, is the tremendous simplicity and cost effectiveness of having the lawyer as fiduciary and quarterback at the heart of the deal as we do in Canada. Tons of expensive government regulation is avoided."²

What does the future of real estate practice in Ontario look like?

Financial institutions that provide mortgage loans are often the most powerful clients in residential real estate practice. Banks and lenders are subjected to onerous data security and privacy obligations by regulators. In the coming years, lawyers practising real estate law in Ontario will be called upon to help banks fulfill these obligations by operating under an electronic umbrella that gives better protection to all their client data. An example of expectations might be providing and receiving mortgage instructions electronically.

For this and many other reasons, operating a real estate law practice and relying on faxes and couriers just won't cut it in the future. Faxes are hard to read, not private, and susceptible to data errors. And after surviving the digitization of real estate data and automation of conveyancing – more secure electronic communications should be plain sailing for the Ontario real estate bar, "whatever waves may seem to be on the horizon."

In conclusion, Waters urges real estate practitioners to take pride in their role as ambassadors to clients and the community and the significant role they play in our democracy and economy. ■

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¹ ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx

² Kathleen A. Waters & Jonathan L. Schwartz, "What is 'RESPA' and Why should you Care?," in The Law Society of Upper Canada, *The Six-Minute Real Estate Lawyer 2003*, Tab 21; Rich Patterson, "Keeping Lawyers in the Future of Residential Real Estate Conveyancing: The American Experience," CBA, Canadian Legal Conference, August 13-15, 2006; Letter from James R. Maher, Executive Vice President, American Land Title Association to Steve Forbes, Editor in Chief, Forbes, undated; Mark Shroder, "The Value of Sunshine: The Efficacy of the *Real Estate Settlements Procedures Act* Disclosure Strategy," in July/August 2008 *Probate & Property*.