



May 30, 2017

BY E-MAIL

The Hon. Charles Sousa, Minister of Finance
Ministry of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Dear Minister Sousa:

Re: Recent *Land Transfer Tax Act* Measures

Further to our letter of May 15, 2017, we write today in response to the portions of *Bill 134, Budget Measures Act (Housing Price Stability and Ontario Seniors' Public Transit Tax Credit), 2017* (the Bill) relating to the implementation of the non-resident speculation tax (NRST), and the collection of prescribed information for the purposes of a form (the "Return") under section 5.0.1 of the *Land Transfer Tax Act* (the "LTTA").¹

The Ontario Bar Association

Established in 1907, the Ontario Bar Association ("OBA") is the largest legal advocacy organization in the province, representing more than 16,000 lawyers, judges, law professors and students. The Real Property Law Section constitutes approximately 600 lawyers who serve as legal counsel to virtually every stakeholder in the industry. As you know, our members are lawyers who are frequently retained to perform real estate transactions.

The Real Property Law Section Executive of the Ontario Bar Association has considered the Bill, as it relates to the Return and the NRST (together, the "LTT Measures") and wish to raise several issues for your consideration.

The LTT Measures

In our letter of May 15th, we set out our concerns relating to the potential for the combined legislative and administrative framework to oblige lawyers to act as an agent of the state by actively

¹ R.S.O. 1990, c. L.6

auditing and verifying client statements, which could be viewed as an unwarranted intrusion by the state into the solicitor-client relationship. Of course, we maintain our view that such a scheme would be inappropriate.

We were therefore pleased to note that section 5 of the Bill, which proposes to repeal and replace section 5.0.1 of the LTTA, imposes a duty on a “transferee” to provide information, rather than on a “person,” a broader term which could include lawyers. However, in our view, this legislative change does not go far enough to remove the state from the solicitor-client relationship and clarify the role of lawyers in the collection and provision of information as part of the administrative scheme.

Solicitors have effective exclusive domain over the tendering of Transfers for electronic registration. A solicitor must sign an electronic Transfer, and they or their designate submit it for registration. The Transfer contains an electronic Land Transfer Tax affidavit, which now must also include statements as to the applicability of NRST to the transaction. Similarly, with the return pursuant to Section 5.0.1 of the LTTA, only a solicitor is authorized to submit a return through Teranet Express.

The proposed amendment in the Bill, creating section 5.0.3 of the LTTA creates an offence for anyone who “makes or assists in making a statement...that is false or misleading.” The offence appears to be one of strict liability. In light of the solicitor’s role in preparing and submitting the Transfer, it is of concern that, under the proposed statutory language, lawyers may be deemed to “assist in” a client’s false statement, despite the lawyer having complied with their professional obligations and submitted the client’s information in good faith. Neither the Bill, as proposed, nor the LTTA provide a bar to liability for a solicitor in that position.

We note that this concern also applies to section 9.2 (7) of the LTTA, which was introduced recently in *Bill 127, Stronger, Healthier Ontario Act (Budget Measures), 2017*, in relation to the lawyer’s role in claiming first-time home buyer rebates.

In our view, this should be corrected. Removing the requirement that this information be provided would satisfy this concern. Another option for consideration is the inclusion of a deeming provision in the LTTA to clarify that a statement made on the Return or with respect to the contents of a Land Transfer Tax affidavit is that of the person with knowledge of the fact, and that by merely submitting the Return or affidavit a solicitor is not deemed to “assist”, “participate” or in any other way be the maker of the statement. Alternatively, measures could be taken in the regulations under the LTTA to clarify that a statement made on the Return or with respect to the NRST is that of the person with knowledge of the fact.² Indeed, this approach has been adopted in other Ontario legislation, including under the regulations to the *Land Registration Reform Act*.³

² Under paragraphs 22(2)(j) or (l) of the LTTA there is broad authority to make regulations “defining any word or expression used in this Act that has not already been expressly defined” or “respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.”

³ R.S.O. 1990, c. L.4, See section 40 of O. Reg. 19/99: [Electronic Registration](#).

The combined legislative and administrative framework cannot compromise the integrity of the solicitor-client relationship. The imposition of these additional duties, obligations and liabilities on the solicitor for the purpose of government tax collection is inconsistent with these fundamental principles.

Conclusion

We urge the Ministry to carefully consider the issues raised in this letter, and would be pleased to answer any questions that may arise.

Yours truly,

A handwritten signature in black ink, appearing to read "Ian Speers". The signature is written in a cursive, flowing style.

Ian Speers, Chair
OBA Real Property Law Section Executive

cc: The Honourable Yasir Naqvi, Attorney General of Ontario