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FOLA Submissions

Comments on Bill 42: An Act to Amend the Prince Edward Island Lands Protection Act (No. 2), promoted by the Hon. Bloyce Thompson

Submitted to: Honourable Bloyce Thompson
Minister of Justice and Public Safety and Attorney General
MinisterIPS@gov.pe.ca

Submitted on: November 4th, 2021

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We are the co-chairs of the Real Estate Committee of the Federation of Ontario Law Associations (FOLA) and are providing you with these submissions in connection with the proposed amendments of Bill 42. FOLA represents the voice of Ontario’s practising lawyers, numbering over 57,000. Our responsibility is to protect and promote the interests of practising lawyers, and while our mandate is focussed on issues within the Province of Ontario, we feel compelled to speak on relevant issues in other jurisdictions that impact Ontario lawyers or raise concerns with the way lawyers are affected in the fulfillment of their professional obligations.

Bill 42 is such an example of legislation that could have a material negative impact on Ontario practising lawyers, as well as practising lawyers within Prince Edward Island.

The proposed legislation would require any person or corporation that has an aggregate land holding in excess of the applicable limit to submit an aggregate land holding declaration to the Commission and thereafter comply with the terms of the divestiture schedule issued by the Commission. A corporation could operate contrary to this provision by effecting a change in shareholders or voting control, whether or not the dealings with the shares occurred within or without the province. Solicitors who may be assisting PEI corporations with their corporate affairs outside of PEI could be seen as agents of the corporation under section 14 of Bill 42, and liable to a fine under the strict liability offence “whether or not there has been a determination that the corporation has contravened this Act.”

Similarly, a solicitor acting in good faith and discharging her duties and instructions from her client to effect a transfer or conveyance of land that runs afoul of the provisions of Bill 42 could also face a \$20,000 fine under this strict liability offence.

Our concern is that solicitors, in the course of performing their obligations and mandate directed by clients, should not be held liable under a strict liability offence without due process. Solicitors who assist in corporate transactions and real property registrations are not directing minds of their corporate clients but rather fiduciary agents. The current language of the Bill suggests a lawyer in another jurisdiction (such as Ontario) who commissions documents to facilitate the registration of land in PEI could be found guilty of an offence under section 14. This cannot be the intention of the proposed legislation.

It is our submission that Bill 42 be amended to clearly state that solicitors retained to effect corporate reorganizations, share transfers or title conveyances are excluded from the reach of section 14 of Bill 42, such that they are not ‘agents...who...acquiesced or participated in the contravention.’

We are hopeful that you will consider these submissions on behalf of practising lawyers generally and the implications of the current language of Bill 42 on corporate and business transactions within the province.