



Federation of Ontario
Law Associations

Fédération des associations
de barreau de l'Ontario

REAL ESTATE TALKING POINTS - FOLA 2023

ISSUES TO BE DISCUSSED

1. The Value of Lawyers in Real Estate and Access to Justice

Lawyers have, for the past 100 + years been a valuable ally to the government in ensuring that the public has confidence in the Land Registry System in Ontario. The role that lawyers play in limiting incidents of fraud and abuse are well documented. Both individuals and businesses benefit from a stable, reliable system and a system which creates efficient transfers of real property.

An underappreciated benefit to having lawyers interact with the public on all land transactions (save for the re-financing of mortgages) is that these lawyers often provide the only direct contact point for the public with the justice system. Lawyers, particularly in smaller and more remote communities, tend to have active real estate practices. Experience, and overwhelming anecdotal evidence confirms that clients buying, selling, or borrowing use the interaction to seek input on many other important legal issues including wills, power of attorneys, matrimonial questions, and business or other matters. Once introduced to their real estate lawyer, members of the public feel comfortable in future to reach out to “their lawyer” to make inquiries. Those lawyers may then assist or be able to direct people to government or other resources and/or to experts in a particular field.

The Land Titles System, and what remains of the Registry System, serves the public well but there are issues which exist, and which could see improvement moving forward.

2. Supporting the Land Titles System with Land Transfer Tax Revenues

The past few years have seen extraordinary growth in the price of residential real estate, and to some degree agricultural land and commercial properties. These increased prices have been accompanied by a significant growth in the volume of registrations in Ontario. Land Transfer Tax alone generated over \$5.6 Billion in fiscal 2021-2022.

Land Transfer Tax is collected as a percentage of the consideration for almost every registered Transfer. Over the past few years the tax collected has increased exponentially but the tax collected does not appear to have been invested back into the system. There are significant staff shortages and despite the dedication of those certifying Transfers and other documents (registrations have to be individually reviewed to ensure compliance with the rules), there are still delays in processing. The Land Transfer Tax revenues should be expended to hire more staff and ensure that documents are certified in a timely fashion. At the moment, requests to correct “issues” (which should be done by a simple process without fees) must wait while all staff time is directed to the processing of registrations, verifying plans and creating condominiums. These delays result in costs in many ways for the public using the system and could create significant problems in relying on the validity and certainty of title, which is a hallmark keystone of the system.

The closure of the physical Registry offices was designed to result in more efficient and consistent service however the lack of a single point of contact where lawyers, surveyors and others can clarify procedures for unique or complicated matters is an issue.

3. Conveyancing and Law of Property Act amendment

FOLA would like to see the government introduce legislation to reverse the common law on positive covenants with respect to existing shared services or access roads.

Currently only negative covenants continue to affect land once it is resold to a future owner. If there is an agreement on title that includes positive covenants (like contribution to a shared reserve or maintenance fund), the positive covenants are not binding on future owners unless the future owners specifically assume them. These positive covenants are being much more common and impactful on purchasers of these properties as well as the owners of the other related properties and the municipalities in which they are located.

For example, if there is a joint use and maintenance agreement giving you a right to use common or shared property/services, and requires you to pay a proportionate share, the right to use the common/shared property will run with the land but the obligation to pay maintenance fees will not, to the detriment of the other owners. This could be readily implemented in existing communities or arrangements with multiple landowners tied to shared access roads or servicing obligations.

4. Delays in tribunal proceedings and Small Claims Court

We continue to hear reports from across Ontario of serious backlogs within the Tribunal system. In the real estate world these impacts are most acutely felt with delays at the Landlord and Tenant Board and the Ontario Land Tribunal. Given the tremendous revenue provided by the Land Registry/Land Titles System (see #2 above) we would encourage consideration of appointing limited term appointees to remove some of the backlog for the completion of hearings and hiring of contract staff to assist with the processing.

5. Prohibition on Purchase of Residential Property by Non-Canadians

On January 1, 2023, the federal government's *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the "Act") came into force, despite objections from FOLA. The Act has unclear drafting/regulations, a disproportionate application or enforcement across the country, unreasonable thresholds for control and a focus on penalizing brokers, agents, vendors of residential property, lenders and lawyers. The Province should be alerting the federal government of these issues, noting the Act may be unconstitutional as regulating something within Provincial jurisdiction. The Act will also effectively freeze or eliminate the Non-Resident Speculation Tax levied on non-residents who purchase real estate in Ontario. It is also overly broad, restricting investors who acquire vacant land for residential construction purposes.

KEY POINT TO LEAVE ON

As members of FOLA and our Law Association, we want to work with you to help with any policy initiatives impacting justice.