LEGAL ASPECTS FOR BUYING REAL ESTATE IN CANADA

BALDWIN SENNECKE HALMAN LLP

SEPTEMBER 5TH, 2023

INDEX

1. Governance Canada: Overview

British North America Act, 1867 renamed the Constitution Act, 1982 [1]

1.1 *Division of Powers* [2]

Federal Government:

Section **91** of the Constitution Act lists the national matters that are subject to federal legislation such as the "power to pass laws for the peace, order and good government of Canada; the regulation of trade and commerce; criminal law and procedure; direct and indirect taxation, banking; currency; defence; navigation; and copyright".

Provinces and Territories:

Section **92** of the Constitution Act lists the local matters that are subject to provincial legislation such as the "direct taxation; municipal institutions; local works and undertakings; the administration of justice; property and civil rights; and matters of a merely local and private nature in the province."

1.2 Federal Trade Treaties [3]

North American Free Trade Agreement, 1994 (NAFTA)
United States–Mexico–Canada Agreement, 2020 (USMCA)
Canada-European Union Comprehensive Economic and Trade Agreement, 2014 (CETA)

1.3 Investment Canada Act, 1985

The purposes of the *Investment Canada Act* are "to provide for the review of significant investments in Canada by non-Canadians in a manner that encourages investment, economic growth and employment opportunities in Canada and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security."[4]

1.4 Common Law [5]

Common law is a rules-based system of judges relying on prior decisions (precedents) of other judges. In effect, judges rely on a body of decisions (law) made by judges in similar fact situations which apply to contracts made by parties in Canada, subject to the application of Civil law in Quebec.

---

[1] https://laws-lois.justice.gc.ca/eng/Const/index.html
[2] https://www.constitutionalstudies.ca/2019/07/division-of-powers/
[3] https://laws-lois.justice.gc.ca/eng/acts/C-4.8/index.html
[4] https://ised-isde.canada.ca/site/investment-canada-act/ens.2
[5] https://www.justice.gc.ca/eng/csj-sjc/just/03.html

2. General restrictions on acquisition and conveyance

All standard form agreements of purchase and sale of real estate [immovable/real property] in Canada deal with certain statutory restrictions that limit a vendor's ability to sell his/her real property, which include family law issues, control of subdivision provisions and the residency status of a vendor/seller, see *Income Tax Act (Canada)*, Section 116 [6].

Conveyances of real property in Canada are governed by provincial laws and in most provinces, lawyers are retained to undertake a registration relating to a change in the title of real property. Quebec follows the Civil code and the notary public attends to the conclusion of the purchase and sale of real property and registers the transfer deed with the land register office.[7]

[6] https://laws-lois.justice.gc.ca/eng/acts/I-3.3/section-116.html
[7] https://www.cnq.org/wp-content/uploads/2020/12/838100-immobilier_iceberg_Letter_Eng_F_web.pdf

3. Restrictions under family law and matrimonial property regime(s)

In Ontario and the other nine (9) provinces and three (3) territories in Canada there are certain family law requirements with which spouses must comply before they can transfer or encumber an interest in a matrimonial home.
For example, the *Family Law Act* (Ontario) provides that each spouse has an equal right of possession in the matrimonial home, irrespective of the registered or beneficial ownership. This special possessory right in the matrimonial home is triggered on marriage breakdown or on the death of one of the spouses.

4. Federal restrictions regarding acquisition of residential property by non-residents

As of January 1, 2023, the federal government restricted all purchases of residential real estate in Canada for a period of 2 years. Initially, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* [8] provided for a blanket restriction. However, as of March 27, 2023, certain amendments were passed, with the affect that the restrictions now apply to all acquisitions by a **Non-Resident** of **Residential** real estate that is within a prescribed municipal **Area** (“CMA/CA”). The terms used above are defined terms and the definitions under the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* may be summarized as follows:

4.1 Non-Resident:

These are persons who are not: Canadian citizens, permanent residents, Canadian or provincially incorporated entities not controlled by a non-Canadian [control of a public entity is an interest in the entity over 10% [see also, the definition of a *“specified Canadian corporation”* under the *Underused Housing Tax Act*)], non-Canadian persons registered under the *Indian Act*.

Certain prescribed persons are exempt: temporary residents [9], protected persons [10], refugees [11], Non-Canadians whose spouse or common law partner qualify as resident; specified foreign state, diplomatic or consular persons, temporary resident work-visa with at least 183 day remaining on their work permit may purchase a residential property, and temporary resident-students, already in Canada for 244 days and provided they only purchase one residential property with a value of not more than $500,000.

4.2 Residential real estate:

All real estate used for residential purposes up to three (3) units. In other words, all real estate with four (4) or more units may be purchased by a non-resident purchaser.

---

[8] https://laws-lois.justice.gc.ca/eng/acts/P-25.2/FullText.html
[9] subsection 25.2 of the Immigration and Refugee Act (“IRA”)
[10] subsection 95(2) of the IRA
[11] subsection 99(3) of the IRA

The purchase of vacant land or land for development purposes was initially also restricted, but this was repealed by the amendments that came into effect on March 27, 2023, and it is now possible for a non-resident to purchase vacant land or land for development purposes.

4.3 *Area:*

As of March 27, 2023, a non-resident person may purchase residential property that is outside of the census metropolitan area ("**CMA**") or census agglomeration area ("**CA**"). [12] [13]

It is therefore necessary to refer to the specific town/city/municipality to determine whether the residential unit is in a protected area.

5. Provincial Legislation: Overview

Five out of the ten Canadian provinces do not have any restrictions with respect to the purchase of real property by foreigners.

British Columbia and Prince Edward Island have filing (disclosure) requirements.

The western provinces, Manitoba, Saskatchewan and Alberta, have filing and ownership restrictions.

For example, in Manitoba only a Canadian citizen or permanent resident or a qualified permanent resident, who intends to become an eligible individual within 2 years after acquiring farmland, is permitted to purchase an interest in farmland.

In Saskatchewan non-residents cannot own or acquire aggregate/farmlands with an assessed value for municipal tax greater than $15,000, excluding any assessment for buildings and similar improvements.

In Alberta, specified areas (Deadman's Flats, Exshaw or Harvie Heights) are restricted, but generally there are no restrictions on the purchase of real property by non-residents.[14]

However, the land registrar in Alberta can refuse to register a land transfer deed, if it is not accompanied by a statutory declaration containing prescribed information.

In addition, Crown land may not be sold to non-Canadian citizens or non-Canadian corporations.

---

[12] https://en.wikipedia.org/wiki/List_of_census_metropolitan_areas_and_agglomerations_in_Canada
[13] https://www12.statcan.gc.ca/census-recensement/2021/geo/maps-cartes/referencemaps-cartesdereference/cma_ca_ct-rmr_ar_sr/files-fichiers/2021-92146-535-00.pdf
[14] https://www.alberta.ca/foreign-ownership-land

6. One-time taxes payable by the purchaser of real property at the time of purchase

Both the federal government (GST) and the provincial governments impose taxes (LTT) that are levied at the time that a transfer of real property is registered.

6.1 Provincial / Municipal taxes

Section 3 of the *Land Transfer Tax Act (Ontario)* provides that a prescribed rate of tax is payable on the registration of a disposition of beneficial interest in land. Not included is a vesting of land in a trustee pursuant to a will or a transfer of beneficial interest arising from the death of the registered owner. Rebates are available for first time home purchasers/buyers.

In order to determine the value of the consideration for purposes of calculating the land transfer tax, a purchaser must file with the deed/transfer an "affidavit of residence and of value of the consideration". The prescribed rate of tax for the disposition of land including single family residential properties is up to 2.5% in Ontario. The land transfer tax ("**PLTT**") payable for a single-family residence with a value of consideration of over $2,000,000 = $6,475.[15]

The Municipality of Toronto charges an additional land transfer tax ("**TLLT**"). The rates are the same as those for provincial land transfer tax.[16]

Property in Toronto: $ 5 Million / PLTT $111,475.00 + TLLT $111,475.00 = $222,950.00

There is an additional tax in Ontario, currently 25% of the value of consideration, for a conveyance registered by a non-resident in Ontario, subject to certain qualification as provided by the *Non-Resident Speculation Tax* (Ontario) [17] ("**NRST**"). The NRST applies to the transfer of "designated land", which is land that contains at least one and not more than six (6) single family residences.[18]

British Columbia was the first province to introduce a non-resident speculation tax which applied to all purchases of real property for speculative purposes of up to 20% of the value of the real property. This has now been amended and only applies to certain areas.[19]

Alberta does not have a land transfer tax and charges only nominal fees on registration of a transfer of title.

Similarly, Saskatchewan does not charge a land transfer tax, but does charge registration fees at the time of title to a property is transferred.

---

[15] https://www.ontario.ca/document/land-transfer-tax
[16] https://trreb.ca/index.php/buying/calculators/commercial
[17] https://www.ontario.ca/laws/statute/90l06
[18] https://www.ontario.ca/document/non-resident-speculation-tax
[19] https://www2.gov.bc.ca/gov/content/taxes/speculation-vacancy-tax/faq-speculation-and-vacancy-tax

Provincial Overview – Land Transfer Taxes [20]

Province	Land Transfer Tax -Provincial	Other Non-Resident etc.
Alberta	* No LTT	Registration Fee * Property value: $50 + $2 for every $5,000 of property value * Mortgage value: $50 + $1.50 for every $5,000 of mortgage
British Columbia	* 1% up to $200k * 2% from $200k to $2,000,000 * 3% from $2,000,000 to $3,000,000 * 5% over $3,000,000	*20% NRST in specific regions:* Capital Regional District, Fraser Valley Regional District, Metro Vancouver Regional District, Regional District of Central Okanagan, Regional District of Nanaimo
Manitoba	* First $30k: 0% * $30,001 to $90k: 0.5% * $90,001 to $150k: 1% * $150,001 to $200k: 1.5% * Over $200k: 2%	* Not Applicable
Newfoundland and Labrador	Under $500.00: $100.00 Over $500.00: $100.00 plus $0.40 for every hundred dollars over $500.00	Registration fee * Property value: $100 + $0.40 for each $100 over $500 * Mortgage value: $100 + $0.40 for each $100 over $500
New Brunswick	* 1% of property value	* Not Applicable
Nova Scotia	* Varies by municipality between 0.5% and 1.5% * Halifax is 1.5%	5% Non-Resident Tax (PDTT)[21]
Ontario	* First $55k: 0.5% * $55,000.01 to $250k: 1% * $250,000.01 to $400k: 1.5% * $400,000.01 to $2,000,000.00: 2% * Over $2,000,000: 2.5% * Toronto: Additional land transfer tax **same** amount as provincial tax	25% NRST (all Ontario)
Prince Edward Island	* 1% of property value	* Not Applicable

[20] https://www.ratehub.ca/land-transfer-tax
[21] https://novascotia.ca/finance/en/home/taxation/tax101/non-resident-deed-transfer-tax.html

Province	Land Transfer Tax -Provincial	Other Non-Resident etc.
Quebec	* Up to $55,200: 0.5% * $55,200 to $276,200: 1% * Over $276,200: 1.5% * Montreal: Additional land tax (MLTT): Up to $55,200: 0.5% $55,200 – $276,200: 1.0% $276,200 to $552,300:1.5% $552,300 to $1,104,700: 2.0% $1,104,700 to $2,136,500: 2.5% $2,136,500 to $3,113,000: 3.5% $3,113,000+: 4.0%	* Not Applicable
Saskatchewan	* No LTT	Land Title Fee * Under $500: 0% * $501 to $8,400: $25 * Over $8,401: 0.3% *$160 for registration of new mortgage

6.2 *Sales taxes (value added taxes)*

On January 1, 1991, the federal government introduced the goods and services tax ("**GST**") [22] which applies to goods and services provided in Canada, currently at the rate of 5% which is applicable in the provinces: Alberta, British Columbia, Manitoba, Northwest Territories, Nunavut, Quebec, Saskatchewan, and Yukon.

There is also the provincial sales tax ("**PST**") which in certain provinces is added to the GST and known as the harmonized sales tax ("**HST**"). The HST applicable in Ontario is 13%; in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island it is 15%; the Quebec sales tax is 9.975%; in British Columbia and Manitoba the PST 7%, and in Saskatchewan it is 6%.

The GST is calculated at a rate of 5% of the value of the goods and services and is also applicable to the supply of real property situated in Canada subject to certain exempt supplies of real property. The sale of used residential real property is exempt, but not that of a new dwelling.

6.3 *Registration fees and other charges*

Upon registration, local land registry offices charge minimal document registration fees. For example, less than $100 per document in Ontario; see also above table.

[22] https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/charge-collect-which-rate.html

Lawyers' fees in Canada are determined on a quantum merit basis taking into consideration the time and effort required and spent, special skill and services provided and may also take into consideration the value of the real estate, the results obtained and any other special circumstances. Most lawyers in Ontario will charge an hourly rate for general real estate services. However, for the transfer of real estate lawyers (or notaries in Quebec) may enter into a fixed fee arrangement. The legal fee and disbursements excluding title insurance for purchasing a $1,000,000 residential property without financing in Ontario would be about $2500.

7. Annually recurring taxes and charges

7.1 Federal Underused Housing Tax

As of on June 9, 2022, the federal Government introduced the *Underused Housing Tax Act* ("**UHT**") [23] which stipulates that certain **owners** of **residential property** must file annual reports with the federal government and pay a 1% tax [24] in the event a residential property is not used (vacant) by the owner.

Excluded owners are those how either are Canadian citizens or permanent residents of Canada (as defined under the IRA) and publicly listed Canadian entities, registered charities and indigenous governing bodies, public government bodies, and trustee of a mutual fund trust or real estate investment fund.

Not excluded are *specified Canadian entities* such as a corporation owned by a Canadian citizen [> 90% voting rights] which owns a condominium, but such affected owner must only file the return, but is not required to pay the 1% underused housing tax.[25]

If an owner is not an excluded owner as of December 31st, then such affected owner must file an annual return (UHT-2900) by April 30 (for 2022 extended to October 31st, 2023), even if they are exempt from the payment of tax. [26] Affected owners include non-Canadians, privately held corporations, but excluding specified Canadian corporations (i.e. ownership of more than 10% by non-Canadian) or a deceased owner [27], or corporations incorporated outside of Canada.

The UHT applies to all residential property within a building of up to three (3) dwelling units but does not include any unit used for commercial purposes including bed and breakfast dwellings or mobile homes.

If the residential property is not available for use, such as a newly constructed dwelling or not suitable for year-round occupancy including seasonally inaccessible or uninhabitable due to renovations, then no tax is payable.

---

[23] https://laws-lois.justice.gc.ca/eng/acts/U-0.5/
[24] UHT section 6(3)
[25] https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/uhtn4/exemptions-specified-canadian-partnerships-trusts-corporations.html
[26] UHT section 7(1)].
[27] UHT section 6(7)-(9)

If the occupant is attending a learning institution and is using the unit as a principal place of residence or if the occupant is occupying the unit for at least 180 days, then such occupant is exempt from the payment of the tax.

There is a further exemption for vacation property located in an eligible area.[28]

7.2 Provincial and Municipal Vacancy Tax

In addition to the federal UHT as of January 1, 2022, in British Columbia[29] there is a 2% speculation and vacancy tax, and Toronto [30], Hamilton and Ottawa [31] impose a 1% vacancy tax.

The tax is 1% based on the current value assessment in Toronto and the taxable assessed value in Ottawa. This tax is only imposed if the residential unit is not a principal residence or occupied by tenants for more than 6 months during the year. There are exemptions such as the unit is undergoing renovations. An owner subject to the vacancy tax must file an owner declaration in Toronto by February 2nd of the year following the taxation year.

8. Provincial / Municipal Property Tax [32]

In January 1998 Ontario introduced a property tax assessment based on the current market value of the property. The Ontario Property Assessment Corporation ("**OPAC**") is a municipal corporation that works with the local municipalities to establish the municipal realty taxes payable by owners of real property located in Ontario. For example, the owner of a residence valued at $ 1,000,000 will be required to pay in mid Toronto approximately $ 6,300 (which includes educational tax) in annual property tax. [33] Similar municipal realty tax assessments are applicable throughout Canada.

In addition some provinces charge a provincial tax rate (education funding).

In Nova Scotia, a non-provincial-resident owner must pay a provincial rate of $1.8560 per $100 of assessment, whereas residents of Nova Scotia pay a rate of $0.5617 per $100 of valuation.
New Brunswick does not impose a higher tax rate on non-resident owners but does distinguish between residential owners occupied and non-owner occupied.[34]

In New Brunswick, the province charges a property tax and the municipality and there is a distinction between owner occupied and non-owner-occupied applicable rates.[35]

---

[28] UHT Regulations 6(7)
[29] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18046
[30] Toronto By-Law 97-2022
[31] Ottawa By-Law No. 2022-135
[32] https://www.wealthsimple.com/en-ca/learn/canadian-property-taxes
[33] https://www.toronto.ca/services-payments/property-taxes-utilities/property-tax/
[34] https://www2.gnb.ca/content/dam/gnb/Departments/lg-gl/pdf/PropertyTaxation.pdf
[35] https://www2.gnb.ca/content/gnb/en/departments/finance/taxes/real_property.html

9. Disclaimer

The above information is for general purposes only and is not legal or other professional advice. If you require professional advice, you should retain a lawyer authorized to practice law in a province of Canada.