



THE LAWRENCES[®] LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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TORONTO'S NEW MUNICIPAL LAND TRANSFER TAX: What Does It Mean For Investors?

Ayo Ogor

The City of Toronto's much-debated new Municipal Land Transfer Tax (MLTT) on property purchases took official effect on February 1, 2008. If you have any plans to purchase commercial or residential property in the City of Toronto, you must have enough funds to pay both the Provincial Land Transfer Tax (LTT) and the new MLTT.

Certain purchases, for example all transactions exempt from paying the LTT, will also be exempt from the MLTT. Other statutory exemptions are those transactions of a public entity such as a hospital, a university or the City. First-time purchasers of residential property, whether new or resale, will receive a rebate, to a maximum of \$3,725. This rebate does not apply to first-time purchasers of commercial property, however.

How much is the new tax? Like the LTT, the MLTT is calculated in an upward sliding scale, but usually works out to slightly less than the LTT. Commercial purchases attract lower tax overall than residential, due to a slight difference in the scale of calculation.

To apply the formula to actual figures: a residential home purchased for \$500,000 will attract \$5,725 in MLTT and \$6,475 in LTT, for a grand total of \$12,200. A \$2-million multi-unit residential building purchased in the GTA will attract a total of \$72,200 in transfer taxes. Passing on these costs to eventual residents or purchasers will cause prices to rise further.

Is the MLTT amount deductible if the purchase is for investment or business purposes? It is yet another cost of doing business, but whether Canada Revenue will treat it this way, only time will tell.



Further details about the MLTT can be found at <http://www.toronto.ca/taxes/mltt.htm>.

To help ease down the pill, some of the major banks have a limited-time offer to cover the MLTT, or a portion of it, for their clients. Of course, the conditions of the offer are fairly stringent, but it is an option for homebuyers who absolutely cannot come up with an extra \$4,000 or so up front.

What will be the long-term effects of the tax? At this stage, it is impossible to predict. The only certainty right now is that for any would-be purchasers, the new tax will be a significant factor to consider when deciding whether or not to buy in Toronto.

If you have questions about the new tax, Lawrences' Real Estate Group can help you assess your situation before you decide.



Ayo Ogor is an associate in Lawrences' Real Estate Group. She handles both commercial and residential transactions and can be reached at (905) 452-6887 or aogor@lawrences.com.

In this issue:

Toronto's New Municipal Land Transfer Tax: What Does It Mean For Investors? 1

A Matter of Trust: Joint Bank Accounts With Children 2

How to Minimize the Costs of Litigation 3

Life at Lawrences[®] 4

A MATTER OF TRUST: Joint Bank Accounts With Children

Michael J. Prsa



who is under age 18, it is presumed that the parent intended the money in the account to pass to the minor child on the death of the parent.

The question of the parent's intention often becomes an issue after the parent has died. In some cases, the child who is the joint account holder will claim that the money in the account belongs to him or her and not to the parent's estate. The other beneficiaries or creditors of the estate may disagree. To avoid such disputes and minimize cost and expense to the estate, we recommend that all parents who have joint accounts with their children document their intentions in writing.

Professional advice should be obtained in all cases where money is being placed in a joint account, since such transfers may also trigger unexpected tax consequences and creditors' claims. Our Wills and Estates Group can advise on all aspects of joint accounts.



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What seems like a simple matter of access to a parent's bank account can be more complex than most family members realize.

Let's suppose that Bob is a 75-year-old widower with \$50,000 in his bank account. Bob has two children: Jack, who lives in Alberta, and Jill, who lives nearby. Bob asks his daughter to help him with payment of his bills and for convenience, adds Jill's name to his bank account. What will happen to that account when Bob dies? Will the money in the account belong to Jill—or to Bob's estate?

Until recently, the law presumed that the person who added an adult child's name to a bank account intended to make a gift to the child. This is no longer the law in Canada. The Supreme Court of Canada recently released two decisions that have a significant impact on all persons who have joint accounts with their adult children. The Court ruled that in situations where a parent has transferred a bank account into joint names with an adult child, the money in the account is *presumed* to be held by the child in trust for the parent or the parent's estate. Accordingly, in the above example, it is presumed that the money will not belong to Jill. If Bob had intended the money to belong to Jill, he would have had to make that intention clear. Opening a joint account with right of survivorship is not enough.

If the bank account is held by the parent and a child

THE LAWRENCES® LETTER

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RISK MANAGEMENT

How to Minimize the Costs of Litigation

Ed Upenieks

Litigation can be very expensive: one recent Ontario survey found that the average matter proceeding to trial costs each party \$38,000 in legal costs. If litigation is inevitable in a business dispute, several steps can be taken to minimize the cost.

- **Call your lawyer early in the process.** Don't wait until you are served with a Statement of Claim or you can't sleep at night. Call your lawyer when your gut first tells you that something is wrong: it probably is. Far better to seek legal advice now and head off future problems than to try to save money and wing it.
- **Prepare for the first meeting.** Legal services are billed based on the time spent. The more advance work you can do, the less time your lawyer needs to spend on your behalf. Be organized. Send us the key documents, a thumbnail sketch of what you think the issues are and a chronology in advance of the first meeting.
- **Tell us what's been keeping you up at night.** You could be worrying about something that doesn't matter, or where you have assumed certain legal consequences that do not follow.
- **Tell us everything — the good, the bad and the ugly.** Remember that all of your conversations with your lawyer are protected by solicitor-client privilege, meaning that they are forever confidential. In the first meeting with a client, I always ask, "Is there anything else?" In my experience, when the client says, "This is probably nothing, but..." what follows ends up being pivotal.
- **Keep us updated.** Let us know if you found other documents or notes, remembered other discussions, or have been contacted by the other side. All of these things can have a material bearing on the outcome.
- **Pick your battles.** Fight only those that you absolutely have to win in order to stay in business. Be prepared to compromise to get the best result for the long run.
- **Do not talk to the other side.** Anything you say to them or an intermediary can be used against you. Better simply not to talk about the legal dispute at all.
- **Do what we ask of you.** If we need your written comments on a pleading or on some testimony, respond in the time requested, since we are usually meeting court-imposed deadlines. If we ask you not to do something, follow our instructions: they're intended to prevent things from getting worse.



- **Be open to resolution.** Most legal disputes are resolved short of trial, but often too late in the proceedings to save thousands of dollars and prevent an emotional roller coaster ride. Mediations, arbitrations, or settlements reached between the lawyers directly can all lead to early resolution, usually with much less cost and stress. In most files we strive for some form of early dispute resolution whenever possible.



Ed Upenieks chairs Lawrences' Litigation Group. He has 25 years' experience as a litigator, and has been certified by the Law Society of Upper Canada as a Specialist in Civil Litigation. Ed can be reached at (905) 452-6873 or eupeniaks@lawrences.com.

The more advance work you can do, the less time your lawyer needs to spend on your behalf. Be organized.

Life at Lawrences®

Lawrences®' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

Comings...

Lawrences started the New Year off well by welcoming two new associates to the firm.



Roslyn Baichoo joined Lawrences' Employment & Labour Group after a stint as in-house counsel at a large multinational company. Her experience includes being a partner in an employment law firm, in-house counsel for the Ontario Government, and an associate at a large downtown law firm. Roslyn acts for both

unionized and non-unionized, public and private sector employers, representing them before provincial and federal labour and arbitration boards, the Ontario Human Rights Commission and all levels of the Ontario courts. She also provides corporate human resources' training to employers on workplace investigations, hiring, terminations, and general proactive approaches to workplace concerns. Roslyn can be reached at 905 452-6878 or rbaichoo@lawrences.com.



Ayo Ogor joined Lawrences from her own practice of real estate law. She brings significant experience in both commercial and residential real estate, including property acquisition, transfer and mortgaging, property leases and deeds, advocacy, arbitration and mediation. Ayo also has experience in client settlement

negotiations. She acts for commercial real estate clients at all stages of transactions. Ayo can be reached at 905 452-6887 or aogor@lawrences.com.

...and Goings



In the New Year, Lawrences also bid farewell to partner **J. Farquhar MacDonald**, who retired after serving the Brampton community since March, 1969, as part of Lawrences' Real Estate and Estates & Trusts Groups.

Farquhar remembers Brampton in those days as just beginning to develop and grow. Some of his first clients were farmers selling their land to developers: "We thought the developers paid astonishingly high prices, but it seems like a pittance now--\$3,000 to \$7,000 per acre." One

such deal was the sale of farm land on Dixie Road, at the site of what is now Rosedale Village. By contrast, the same land today is worth about \$500,000 per acre.

Lawrences' managing partner Heather Picken has worked with Farquhar since being called to the bar in 1987. "Having been a teacher before law school, he was a wonderful mentor to the younger lawyers," she remembers. "He had a busy, successful practice, but he always managed to find time for us. He would always see the client's side of things and be concerned about getting the client's business done."

Heather thinks it's thanks to Farquhar's insistence on excellence in client service that Lawrences' Real Estate and Estates & Trusts Groups are on such solid ground today: "It's enabled us to branch out into new areas of law as our clients' needs expand." Two examples are her own niche in commercial condominiums and Estates' partner Mike Prsa's focus on complex trusts.

Everyone at Lawrences wishes Farquhar a long and happy retirement.

On the Bookshelf



The New Year also saw the publication of a new legal textbook from Lawrences' prolific senior litigation partner, **Rob van Kessel**. *Dispositions Without Trial*, just released by LexisNexis Canada, details the many ways in which lawyers can help their clients resolve disputes without the uncertainty and expense of a trial.

Rob is well known in the legal profession, where his four textbooks are considered "must have" resources for insolvency and litigation lawyers. This latest work updates his 2002 classic *Summary Judgments and Dispositions Before Trial*, of which Justice A.D.K MacKenzie said: "Mr. Van Kessel's book is a very valuable contribution to litigators seeking to advance their clients' interests in a more expeditious resolution of their disputes before the courts."

At the Podium

Community involvement has always been a feature of life at Lawrences. In the fall of 2007, Lawrences' Student-at-Law Tejdeep S. Chattha took part in the World Religions Conference in Waterloo, Ontario, attended by over 500 people. Tejdeep represented the the Sikh Faith at the conference, whose theme was: How Can Religion Protect the Environment?

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