



THE LAWRENCES[®] LETTER

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

SPRING 2010

Are You Ready for the Harmonized Sales Tax (HST)?

Chris Markou

In Ontario, the 5% Federal Goods and Services Tax (GST) and the 8% Provincial Retail Sales Tax (PST) will be combined into a single 13% tax, effective July 1, 2010. The new tax will be known as the Harmonized Sales Tax (HST). Sales tax currently does not apply to many goods and services; however, that will change on July 1, when they will be subject to 13% HST. Some examples are electronic goods, internet service, haircuts, gym memberships, automobile fuel, lawyers' fees, home renovations, real estate commissions, and commercial rents.

The HST and Real Estate

If you are purchasing a new home, the purchase price above \$400,000 will be subject to HST unless you sign the agreement with the builder before June 18, 2009, in which case HST will not apply even if the deal closes after June 30, 2010. However, there are exceptions to this general rule, including the potential for a transactional tax adjustment payable by the builder and possibly passed on to the purchaser. In transactions where HST is payable, the purchaser may be eligible for a rebate of up to \$24,000.

If you are purchasing a resale home, the HST will not apply to the purchase price, but it will apply to other services connected with the purchase, such as home inspection, legal fees, movers' bills, and renovations. If you are selling a resale home, you will pay HST on the real estate agent's commission and condominium status certificates.

HST will *not* be charged on monthly residential condominium fees or residential leases of more than one month. However, since HST will be charged on services normally included in condo fees and rents, such as cleaning and garbage pickup, condo fees and rents are likely to rise. HST will be charged on monthly commercial condominium fees.

If you are purchasing commercial property, including land for development, you will be charged HST. Commercial purchasers who are currently registered for the GST can follow the same self-assessment and offsetting input tax credit procedures currently provided for under the GST legislation,



thereby relieving the vendor of the obligation of collecting and remitting the HST. If you are leasing commercial property, even if you signed the lease before July 1, 2010, you will have to pay HST on the monthly lease payments after June 30, 2010.

If you are about to buy, sell or lease real estate and are unsure of how the HST will affect the transaction, please contact any member of our Real Estate Group.

The HST and Business

Businesses that are registered for GST will now be required to collect the HST and must report their HST according to their current GST filing frequency. Retailers and service-providers should upgrade their point-of-sale, cost and accounting systems as early as possible to ensure that they meet the implementation date of July 1, 2010. There are transitional rules in place for certain transactions beginning as early as May 1 for goods and services delivered after July 1, 2010. Businesses will be able to claim input tax credits (ITCs) for HST in the same way that they currently claim ITCs for GST.

Additional information is available on the Canada Revenue Agency website (www.cra-arc.gc.ca).

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Life at Lawrences[®]

THE STANDARD LEASE: How Much Protection Does it Really Provide?

Kenneth G. Hood

Leases are a valuable form of protection—when properly drafted. Landlords run considerable risks if they rely on standard form leases, or if they enter into lease agreements without first obtaining legal advice.



A recent Ontario Court of Appeal decision, *Montgomery v. Van*, highlights these risks.

A tenant, who was injured when she slipped on ice on the walkway leading to her basement apartment, sued her landlord for her injuries and damages. In his defence, the landlord argued that since a clause in her lease provided that “Tenants are responsible for keeping their walkway and stairway clean (including snow removal),” the tenant should not be allowed to sue him, since she was the one who had failed to keep her walkway clear of snow and ice.

Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

The regulations of the *Residential Tenancies Act*, 2006, provide that exterior common areas must be maintained free of hazards and that unsafe accumulations of ice and snow must be removed. Any provision in a lease that is inconsistent with the Act or its regulations is void. The landlord in this case argued that while the regulations made him initially responsible for ice and snow removal, he had contracted with the tenant, in her lease, to make her responsible.

The Court of Appeal disagreed, finding that the “provision fails to define this individual tenant’s task clearly enough to create an enforceable contractual obligation.” Further, the Court stated that “... this vague provision... is nothing more than an impermissible attempt by the landlord to avoid his statutory obligations.” However, the Court left it open for landlords to contract with tenants in the lease for tenants to provide some of the landlord’s services. Such agreements do not avoid the landlord’s responsibilities under the Act and regulations, but they can enable landlords to sue tenants for breach of contract if they fail to carry out these responsibilities.

Had the clause in the lease been properly drafted as a stand-alone contract for the tenant to provide snow clearing services, the landlord would have been protected, because the Court agreed that landlords may contract with tenants to provide snow removal tasks or any other services that the landlord would usually be expected to provide. However, like any contract, such a provision would have to be clear, specifying what is required of the tenant, where and when the work is to be done, and what the landlord is giving in exchange for the tenant’s work. A standard form lease does not cover these provisions. Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

Lawrences’ Real Estate Group has significant experience in advising on leases for many different circumstances. We can help you ensure that the provisions of your lease will stand up in court.



Kenneth G. Hood is a member of Lawrences’ Litigation Group. A Certified Specialist in Civil Litigation, Ken has significant experience in landlord and tenant disputes. He can be reached at 905-452-6890 or khoo@lawrences.com.

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How Lawrences Can Help

Our lawyers and staff are familiar with how the HST will affect your transactions. Whether you are the purchaser or builder of a new home, a business owner selling products to the public, or have any other transactional needs, we will ensure that your interests are protected, including the application for any rebates that are available.

Where it may be beneficial for our clients, we will be billing work in progress before July 1, 2010, in order not to incur HST. If you have any questions about your bill, your lawyer will be happy to answer them for you.



Chris Markou is an associate in Lawrences’ Real Estate Group. Chris represents and advises clients on commercial and residential purchases, sales, mortgages, leases, and land development. He can be reached at (905) 452-6887 or cmarkou@lawrences.com.