

Deed Transfer Tax Exemption Clarified

Section 2A(2) of the *Deed Transfer Tax Act*, S.N.S. 1968, c.10, has long been the subject of debate between municipal collectors and solicitors for certain categories of purchasers.

The debate has now been resolved in favour of transferees by Mr. Justice Nunn by his decision in *Missions v. Dartmouth (City)* (unreported, July 31, 1986, N.S.S.C., S226/21).

Section 2A reads as follows:

- 2A (1) Notwithstanding Section 2 or any enactment, this section applies to every municipal unit that under the authority of this Act or any other Act levies a tax of the kind permitted by this Act.
- (2) Where a deed transfers property
- (a) between persons married to one another;
 - (b) by way of gift, notwithstanding that
 - (i) the deed transfers property subject to an encumbrance including a mortgage or a lien for rates and taxes and the grantee assumes the amount of the encumbrance, including interest and expenses thereon, or
 - (ii) there is a nominal consideration therefor, it is exempt from deed transfer tax 1982, c.52, s.1

It had been contended by solicitors for municipal units that this provision required the tax be paid on a purchase represented by the outstanding balance of a mortgage being assumed by the grantee, since this was not a gift.

For instance, if a property worth \$100,000 and subject to a mortgage of \$80,000 was the subject of a gift, it was argued that upon a transfer of the property, the grantee assumed the burden with respect to the mortgage he was now assuming and that this amount represented the consideration for the transfer, taking it out of the gift category and rendering it, therefore, taxable.

The position taken by the municipal units was not without justification. Placement of the exemption provision commencing with the word "notwithstanding" could logically lead to the argument that this exemption applied only to

clause (b) deeds by way of gift and did not cover the categories described in paragraph (a).

Domestic arrangements led to a variety of fact situations where questions arose as to whether this section applied to a transaction or to exempt it. Of great difficulty were those cases where the parties had gone through a divorce and as a result of the terms of the divorce settlement or a spouse was required to transfer property to another.

Mr. Justice Nunn has now ruled that the "notwithstanding" clause applies to both categories of transaction. In rendering his decision he stated as follows:

"Clearly whatever the intent is with regard to gift interspousal transfer or gift and interspousal transfer the intent is that the notwithstanding clause applies to both. In my view you have to apply the usual principles of statutory interpretation and where the words are clear and plain, give them their ordinary meaning. While punctuation marks are not necessarily vital, nevertheless punctuation marks and structure do give an indication of the intent. In this case the existence of the semicolon after (a) and the division of the matters into (a) and (b) indicate to me a disjunctive intent. I think the section is poorly drafted if the intent was conjunctive as suggested by counsel for the City of Dartmouth. If that was the intent it could easily have stated that a deed transfer of property by way of gift between persons married to one another was exempt from tax which would clearly have been conjunctive.

I do believe that in view of the existing state of the law at the time the legislation was passed as set forth in the *Haggard v. City of Halifax* case, 45 N.S.R. (2d) 5 and *City of Dartmouth v. Hogue and Hogue*, 4 N.S.R. (2d) 162, the intent of the Legislature was to avoid the problems presented in those cases and to clarify the statute. It seems to me from an intent point of view it was clearly intended to exclude transfers of property between persons married to one another and also there was an intent to clarify the transfer

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Case Identification

The Canadian Law Information Council (CLIC) has developed a standard for identification of cases by name for use in case tables and computer searching. The new system is now in use by some Canadian legal publishers and others will begin to use it in the near future.

Nova Scotia Law News adopted this method of case identification at the commencement of Volume 13, with the issue of August 1986. The case tables in *Nova Scotia Current Law* (which is a running index to *Nova Scotia Law News*) are now prepared using the new system. The annual index to Volume 13, which will be distributed in the summer of 1987, will be set up in the same way.

As part of the new system, you will see "Indexed as:" before some of the digests in *Nova Scotia Law News* and at the head of case reports in various series of law reports. This indicates that the case table entry for that case is in the form of the "Indexed as:" entry, although the style of cause at the head of the case report may be different in some or all of its parts from the index entry.

Perhaps the most significant change in case tables is the use of the original trial name of the case through all appeals and interlocutory motions, no matter how the parties or their names may change. This is intended to facilitate finding whether or not a case has been appealed, as well as tracing it through its history. Another major change is in indexing civil cases involving the Crown. The name of the jurisdiction is used, followed by the name of the department or minister in brackets. Abbreviations for the names of unions are used, as listed in Labour Canada's *Directory of Labour Organizations in Canada*.

A brochure entitled "A User's Guide to Case Identification/Finding Cases by Name" has been distributed by the Canadian Law Information Council. It is available in all law libraries. For additional information, please contact the editor of *Nova Scotia Law News*.

Quik - Law

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Anyone wishing more information about Q-L should contact the librarian Barbara Campbell, at 425-2665.

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property by way of gift. Apparently gifts were not in issue between the City and those who received transfers of property by way of gift because gifts were not included in the sale price definition. The difficulty with the definition was that it did include reference to mortgages, and therefore any gift that was subject to a mortgage was taxable at least to the extent of the mortgage."

The implications of this decision were the subject of research by the solicitors for the City of Halifax and their interpretation of the section is contained in a letter of September 24, 1986, which the City Solicitor was kind enough to send to me wherein he states as follows:

"I have had a discussion with one of our lawyers on the *Mission* decision, as a consequence of which the City policy where property conveyances between spouses originate as a result of separation or divorce will be viewed as being inter-spousal transfers of property and they are therefore not subject to the deed transfer tax. This is in accordance with Mr. Justice Nunn's interpretation of the amendment of Chapter 10 of the Acts of 1968 regarding Municipal Land Transfer Tax."

Charles W. MacIntosh

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