

REAL ESTATE

NOVA SCOTIA MUNICIPAL BOARD

IN THE MATTER OF: An Appeal under the Deed Transfer Tax Act by PETER KEDDY from a decision of the DIRECTOR OF ASSESSMENT dated December 28, 1990, which confirmed that Provincial Deed Transfer Tax is payable on forest property located at Owl Lake, Kings County.

Materials supplied by Randall R. Duplak, Q.C. of The Department of Municipal Affairs, Halifax, Nova Scotia for Continuing Legal Education, April 20, 1991.

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NOVA SCOTIA MUNICIPAL BOARD

IN THE MATTER OF: An Appeal under the Deed Transfer Tax Act by PETER KEDDY from a decision of the DIRECTOR OF ASSESSMENT dated December 28, 1990, which confirmed that Provincial Deed Transfer Tax is payable on forest property located at Owl Lake, Kings County.

BEFORE: MICHAEL G. JOHNSON, Chairman,
LINDA D. GARBER, Vice-Chairman,
RICHARD L. WELDON, Member.

COUNSEL: ALAN TUFTS, LL.B, for the Appellant,
Peter Keddy;

RANDALL R. DUPLAK, Q.C., for the Director
of Assessment.

HEARING DATE: February 28, 1991.

DECISION DATE: April 8, 1991.

DECISION: Appeal Allowed.

D E C I S I O N

This appeal concerns the Deed Transfer Tax Act, R.S.N.S. 1989, c. 121, which was amended by S.N.S. 1990, c. 10. The amendment established a Provincial Deed Transfer Tax of two per cent on the transfer of certain property.

This is the first appeal under this Act to be heard by the Board. The Board has not as yet adopted Rules of Practice and Procedure for these appeals. The solicitor for the Appellant, at

the request of the Board, prepared a List of Documents. This was introduced as Exhibit K-1. An Agreed Statement of Facts was also introduced as Exhibit K-2. The Board asked the Appellant to testify that the matters listed in the Agreed Statement of Facts were true and he did so.

Section 16P (4) of the Act permits the parties at the hearing to adduce evidence, cross-examine witnesses and make representations to the Board. The Board is satisfied with the procedures adopted at this hearing.

On October 23, 1990, Scott Worldwide Inc. ("Scott") conveyed by Quit Claim Deed 152 acres of forest property at Owl Lake, Kings county to Peter Keddy, the Appellant, for \$81,000.00.

On October 25, 1990, the Appellant recorded the Deed, accompanied by the Provincial Deed Transfer Tax Form, at the Registry of Deeds in Kentville. The property was described on the form as resource property and no provincial deed transfer tax was paid.

By letter dated October 29, 1990, Alan Tufts, Solicitor for the Appellant, was advised by H. E. Larkin, Regional Director of Assessment that the land was considered commercial property and therefore would generate provincial deed transfer tax in the amount of \$ 1,620.00. Mr. Keddy filed a Notice of Objection to the Regional Director's decision on November 12, 1990, with Robert Warren, Provincial Director of Assessment.

By letter dated December 17, 1990, Robert Warren confirmed the decision that the provincial deed transfer tax was payable. Mr. Keddy appealed that decision to the Board.

Section 16C of the Provincial Deed Transfer Tax Act provides as follows:

"(1) In this Section,

- a) "commercial property" means commercial property as defined by the Assessment Act;
- b) "residential property" means residential property as defined by the Assessment Act.

- (2) On every deed a tax of two per cent of
- a) the sale price of commercial property thereby conveyed; and
 - b) the amount, if any, by which the sale price of residential property thereby conveyed exceeds one hundred thousand dollars,

is imposed and levied and payable to Her Majesty in right of the Province except as otherwise provided in this Part."

Section 2 (d) of the Assessment Act, R.S.N.S. 1989, c. 23, defines "commercial property" as follows:

" "Commercial property" means all property or part thereof except residential property and resource property, and includes the forest property owned by a person who owns fifty thousand acres or more of forest property in the Province."

Scott owns in excess of 50,000 acres of forest property in the Province. Mr. Keddy owns less than 50,000 acres of forest property in the Province. While in Scott's hands the 152 acres comes within the above definition of "commercial property". After being conveyed to Mr. Keddy, the property no longer comes within that definition of "commercial property". The question is whether at the time it was conveyed by deed the property was "commercial property" and thereby subject to the Provincial Deed Transfer Tax.

The Director of Assessment argues that since the property was classified as commercial on the 1990 assessment roll it remained "commercial property" after it was conveyed to Mr. Keddy and the tax is payable. The Board notes that the Deed Transfer Tax Act makes no mention of the assessment roll.

In the Board's opinion, the classification on the assessment roll is not determinative of whether provincial deed transfer tax is payable. It is possible for an owner to change the

use of property in such a way as to affect its classification. Property which was classified as residential at the time the roll was prepared may be changed to commercial property prior to selling the property. In such a case, the deed would convey "commercial property" as defined in the Assessment Act and tax would be payable on the whole of the sale price despite the residential classification on the roll. There are other examples including situations where the assessor was unaware of a change of use of the property which would lead to a change of classification, but becomes aware of the change in use when the property is sold.

In this appeal the subject property is forest property. It was only classified as commercial property because of the characteristic of the owner, i.e. being a person who owns 50,000 or more acres of forest property. Once Scott conveyed the subject property, its characteristic changed to that of the new owner. The property was no longer commercial.

Section 16C(2)(a) refers to "commercial property thereby conveyed". The tax is not imposed until the property is conveyed. The subject property was commercial when owned by Scott. Upon receipt by Keddy it was no longer commercial as defined in the Act. What was conveyed?

The Deed Transfer Tax Act is a taxing Statute. The Canadian Encyclopedia Digest (Ontario) 3rd Edition (August, 1990) makes the following comments on the interpretation of taxing statutes:

"The rules relating to the interpretation of taxation statutes are somewhat unsettled. It has been suggested that statutes which impose a burden on an individual, such as statutes imposing and regulating the enforcement of taxes, are to be construed strictly, and, in all cases of ambiguity, that construction which is most favourable to the individual is to be adopted. This is particularly so where an enactment provides for tax recovery and sale for taxes, as in such cases a comprehensive construction

could lead to the gross violation of common right and justice. It has further been suggested that the onus is upon the Crown or municipality to show that a defendant comes within the taxing provisions and that in doing so the court should not direct its attention beyond the literal meaning of the words used in their plain grammatical and ordinary sense.

. . .

On the other hand, it has also been suggested that a taxation statute is not to be construed differently from any other Act, especially in view of the provision in the Interpretation Acts that every Act shall be deemed remedial and shall accordingly receive such liberal construction as will best ensure the attainment of the object of the Act according to the true intent, meaning and spirit thereof.

. . .

In interpreting a taxation provision, the court is required to adopt an interpretation which is consistent with the smooth operation of the taxing system and is to reject any interpretation which could introduce uncertainty into that system."

The traditional rules of statutory interpretation require a taxing statute to be strictly interpreted. In cases of ambiguity there is a presumption in favour of the taxpayer. In making an interpretation, one looks to how the ambiguous term has been defined in the past.

A search of various legal dictionaries has not revealed a definition for the word "conveyed".

Black's Law Dictionary, 5th ed., however, defines "convey" as follows:

"To transfer or deliver to another. To pass or transmit the title to property from one to another. To transfer

property or the title to property by deed, bill of sales, or instrument under seal. Used popularly, in sense of "assign", "sale" or "transfer"."

Black's does not define "conveyed". It is the past tense of "convey". It must mean that the property has been transferred by deed signed, sealed and delivered. Once the subject property was transferred it was no longer "commercial property".

The traditional rules of statutory interpretation permit the Board to find that Mr. Keddy was conveyed non-commercial forest property and therefore he is not liable to pay the Provincial Deed Transfer Tax.

Under this interpretation, if Scott were to repurchase the 152 acres of forest property for forestry purposes, Scott would be liable for the provincial deed transfer tax since once it was conveyed to Scott it would revert to "commercial property".

Under more current rules of statutory interpretation it is necessary to interpret a taxing statute in the same manner as any other legislation. In his brief, Mr. Tufts makes reference to Section 9(5) of the Interpretation Act R.S.N.S. 1989, c. 235, which states that every enactment shall be deemed remedial and lists the various matters which are to be considered in interpreting a statute. Paragraph (e) of that section includes "other enactments upon the same or similar subjects". This paragraph allows the Board to consider those sections of the Assessment Act dealing with the tax treatment of forest property.

Section 47(3) of the Assessment Act provides that the owner of forest property which is classified as commercial property is to pay a higher forest-property tax (40 cents per acre) than the owner of non-commercial forest property (25 cents per acre). This indicates an intention that the owner of commercial forest property is to be treated differently and is to pay a higher tax. By adopting the Assessment Act definition of commercial property and excluding non-commercial forest property from the deed transfer

tax, the Legislature must have intended to continue treating these owners differently.

The Board concludes that the Legislature intended that a purchaser who owns less than 50,000 acres of forest property is not liable to pay provincial deed transfer tax for the purchase of forest property while a purchaser who owns 50,000 or more acres of forest property is required to pay the provincial deed transfer tax for the purchase of forest property.

There was evidence that Mr. Keddy eventually intends to sell the subject property for residential lots. He may be, or become, liable for the change of use tax but that does not affect his liability for Provincial Deed Transfer Tax.

The Board finds that the property conveyed was not "commercial property" as defined in the Assessment Act. Section 16C(2) does not apply. The Board, therefore, finds that Mr. Keddy is not liable to pay Provincial Deed Transfer Tax on the subject property. In accordance with Section 16P(5) the Board reverses the assessment.

On the matter of costs, Mr. Duplak argued that there should be no cost to either party since:

1. This was the first appeal under the new legislation;
2. The parties were able to agree on the facts and thus shortened the proceedings;
3. There were no clear authorities to support either position;
4. There was public interest in having the Board decide the issue.

Mr. Tufts agreed with Mr. Duplak's factual representations but noted that his client was an individual caught with an unexpected tax. For an adequate representation of his position, Mr. Keddy required skilled legal representation. Mr. Keddy had no financial assistance in defraying expenses for what can be properly described as a test case.


The Board notes that the tax involved is only about \$1,600.00. The Board feels that the successful Appellant should not receive full taxed costs.


The Board feels that a lump sum of \$500.00 costs to the Appellant is the appropriate amount in accordance with Section 22 of the Municipal Board Act, R.S.N.S. 1989, C. 297.

The Board allows the appeal with cost in a lump sum of \$500.00 to the Appellant.

An Order will issue accordingly.

DATED at HALIFAX, Nova Scotia, this 8th day of April, A.D., 1991.


MICHAEL G. JOHNSON, Chairman,


LINDA D. GARBER, Vice-Chairman,


RICHARD L. WELDON, Member.

NOVA SCOTIA MUNICIPAL BOARD.

3. Appeals - To December 1990, all appeals filed except two were allowed. Many of these involved issues surrounding resource property transfers in particular forest property. If a Vendor owns less than 50,000 acres of forest property and their assessment reflects this, no transfer by that Vendor to a purchaser will attract the provincial transfer tax. If however the Vendor owns in excess of 50,000 acres, their assessment is deemed commercial (s. 2(d) of the Assessment Act) and the sale of any portion of that land will attract deed transfer tax as would the transfer of any other commercial property.

4. This brings us to one of the major points of misunderstanding and confusion by lawyers - namely the basis on which the tax is payable. The tax is payable on the assessed use of the property at the time of the transfer. The intended use by the purchaser of the property is irrelevant as is the legal use of the property to the extent that it varies from the assessed use. Let's examine for a moment a situation Mr. Duplak cited at his presentation. On January 15th, Jane Doe owned a two storey house in which she resided on Birmingham Street, in the City of Halifax. The property was assessed as residential and zoned commercial by the City of Halifax. In July, Jane Doe decides to sell her residence and the house was listed as commercial property. The purchaser proposes to establish a

restaurant business within the property. The transaction would not be subject to the 2% Provincial transfer tax on the first \$100,000.00, as the assessed use was residential at the time of the transfer.

5. Certificates of Assessment - Inquiries have been received from numerous lawyers as to whether Assessment Department was planning or prepared to issue a certificate similar to a tax certificate on which lawyers could rely for purposes of accurately determining the assessed use of the property their client is about to purchase. There is no certificate available presently, nor are there any plans to introduce a certificate process. However, lawyers can inquire in writing to the Assessment Department who will respond accordingly confirming the assessment roll information relating to a particular property. Lawyers should confirm that they are acting for a purchaser of a property when requesting confirmation of assessment information, and the information requested should include whether or not an appeal from the assessment has been filed. An appeal, if successful, could vary the assessment and therefore vary the application of the transfer tax payable. The assessor will only provide particulars of appeal however with the vendor's written consent so purchaser's lawyers are advised to obtain this in advance of their inquiries.

6. Sample Situations - Attached as Appendix "C" are examples of situations Mr. Duplak's office has

encountered posed in the form of questions - with the answers. These examples help clarify the way in which the tax will be interpreted and thereby assist us in our daily practice.

IV. CONCLUSION

The discussions surrounding the introduction and implementation of the provincial deed transfer tax will continue. Hopefully, these discussions will, as they have to date, foster a greater understanding by lawyers of the way in which this tax will be applied so that we can better advise our clients. Efforts will continue to be made to create a clear and efficient channel of information from the Department of Municipal Affairs to the practicing bar. At the same time, practitioners are encouraged to bring forward difficulties they encounter so that they can be addressed in a timely fashion for the benefit of us all.

Hopefully, my chronicle has provided the answers to some questions you had before I started - it undoubtedly has raised some new ones you may not have even thought of, as I promised at the beginning. As with any new law the questions will continue - as will our search for the answers.

APPENDICES

- Appendix "A" - Part II - The Deed Transfer Tax Act
- Appendix "B" - Sample front sheet from deed -
Deed Transfer Tax endorsement
- Appendix "C" - Sample situations - Municipal Affairs

PROVINCIAL DEED TRANSFER TAX

Supervision of Part

16A The Minister has the general supervision and management of this Part. 1990, c. 10, s. 17.

JUNE 19, 1990

10

deed transfer tax

R.S., c. 121

Application of Part

16B (1) This Part applies to deeds transferring property on or after the first day of July, 1990.

Exception

(2) Notwithstanding subsection (1), this Part does not apply to a deed to the extent that it transfers property pursuant to an agreement of purchase and sale entered into on or before the twenty-eighth day of May, 1990. 1990, c. 10, s. 17.

Interpretation of Section

16C (1) In this Section,

(a) "commercial property" means commercial property as defined by the *Assessment Act*;

(b) "residential property" means residential property as defined by the *Assessment Act*.

Tax

(2) On every deed a tax of two per cent of

(a) the sale price of commercial property thereby conveyed; and

(b) the amount, if any, by which the sale price of residential property thereby conveyed exceeds one hundred thousand dollars,

is imposed and levied and payable to Her Majesty in right of the Province except as otherwise provided in this Part. 1990, c. 10, s. 17.

Application of exemptions in Part I

16D (1) Subsection (2) of Section 4 and Sections 6 and 7 apply to this Part except that in Section 6 the Director shall be substituted for the clerk and the rate of interest shall be the prescribed rate.

Further exemptions

(2) Where a deed transfers property to

- (a) cities, incorporated towns and municipalities of a county or district;
- (b) a board of school trustees established pursuant to the *Education Act*;
- (c) a school board as defined by the *Education Act*;
- (d) a hospital as defined by the *Hospitals Act*;
- (e) a regional library board to which the *Libraries Act* applies;
- (f) the Metropolitan Authority continued by the *Metropolitan Authority Act*;
- (g) a service commission as defined by the *Municipal Affairs Act*;
- (h) a district planning commission established pursuant to or within the meaning of the *Planning Act*;
- (i) a regional transit authority incorporated pursuant to the *Regional Transit Authority Act*;
- (j) fire protection commissioners incorporated pursuant to the *Rural Fire District Act* or to whom the *Rural Fire District Act* applies;
- (k) village commissioners incorporated pursuant to the *Village Service Act* or to whom the *Village Service Act* applies;
- (l) persons, bodies or organizations, the deeds to whom are exempted by the regulations,

it is exempt from the tax. 1990, c. 10, s. 17.

Affidavit

16E (1) Not later than seventy-two hours after a transfer, and whether or not a tax is payable thereon, the grantee shall, in accordance with Section 16F, file an affidavit made by the grantee or by someone having a full knowledge of the facts, setting out

- (a) the names of the parties;
- (b) the location of the property;
- (c) the sale price of the property with full details of the consideration including the amount of any lien or encumbrance subject to which the transfer was made; and
- (d) such information as may be prescribed,

and, if the affidavit is not made by the grantee, it shall state that the person making it has personal knowledge of the facts stated in it.

Form of affidavit

(2) The affidavit shall be in the prescribed form.

Liability of maker of affidavit

(3) Where the affidavit is made by a person other than the grantee, that person is personally liable jointly and severally with the grantee for payment of the amount of the tax.

Where exemption claimed

(4) Where the grantee claims exemption from the tax, the affidavit shall be filed but shall set out the facts upon which the grantee claims to be exempt and, in the case of a registered Canadian charitable organization, shall give the number of its registration under the *Income Tax Act* (Canada). 1990, c. 10, s. 17.

Filing of affidavit

16F (1) Where a deed transfers property that is situate wholly within one registration district, the affidavit re-

ferred to in Section 16E shall be filed with the registrar for the registration district in which the property to which the affidavit relates is situate.

Property in more than one registration district

(2) Where a deed transfers property that is situate in more than one registration district, the affidavit in respect of that property may be filed with the registrar for any registration district in which the property is situate. 1990, c. 10, s. 17.

Computation of tax

16G (1) On receipt of the affidavit, the registrar shall compute the amount of the tax.

Payment of tax

(2) The tax shall be paid by the grantee named in the deed and shall be due and payable by the grantee at the time of making the transfer. 1990, c. 10, s. 17.

Endorsement of deed

16H Upon payment of the tax or upon an exemption being claimed in the prescribed form, the registrar shall endorse the deed in the prescribed form. 1990, c. 10, s. 17.

Recomputation of tax on review

16I After review, the Director may recompute the amount of the tax or assess the tax in respect of a deed within one year of the endorsement pursuant to Section 16H or, where the affidavit upon which the endorsement is based is false, at any time. 1990, c. 10, s. 17.

Investigation by Director

16J The Director may make investigations or inquiries for the purpose of enforcing this Act and every person shall co-operate with the Director for that purpose. 1990, c. 10, s. 17.

Interest and penalty

16K Where the grantee does not pay the tax when due, the grantee shall pay

- (a) interest thereon at the prescribed rate until paid;
- (b) a penalty at the prescribed rate on any tax or portion thereof that remains unpaid after thirty days from the date of transfer; and
- (c) a penalty in the prescribed amount. 1990, c. 10, s. 17.

Debt to Her Majesty

16L (1) The tax with interest and penalty constitutes a debt owing by the grantee to Her Majesty in right of the Province.

Lien

(2) Where the Minister files, with the registrar for the registration district in which the property is situate, a certificate evidencing the tax with interest and penalty, the tax with interest and penalty constitutes a lien upon the property if, at the time the certificate is filed, the grantee is the owner of the property. 1990, c.10, s. 17.

Endorsed deed required

16M Notwithstanding the *Registry Act*, a registrar for a registration district shall not receive for registration any deed of property wholly or partly within the registration district unless it is endorsed by the registrar in accordance with this Part. 1990, c. 10, s. 17.

Artificial reduction of tax

16N Anything that artificially reduces the tax payable shall not be taken into consideration in computing, assessing or determining the tax payable pursuant to this Part. 1990, c. 10, s. 17.

Notice of objection

16O (1) Where a person disputes liability for tax pursuant to this Part or disputes liability for the amount computed or assessed pursuant to this Part, that person may, personally or by a solicitor or agent, within sixty days of the

computation or assessment, serve on the Director a notice of objection setting out the reasons for the objection and all relevant facts.

Service of notice

(2) A notice of objection pursuant to this Section may be served by registered mail addressed to the Director.

Reconsideration by Director

(3) Upon receipt of a notice of objection pursuant to this Section, the Director shall, within sixty days, or upon receipt of an oral objection the Director may, reconsider the matter and vacate, confirm or vary the decision referred to in subsection (1) and shall thereupon notify by registered mail the person making the objection of the Director's action.
1990, c. 10, s. 17.

Appeal

16P (1) Where a person is dissatisfied with a decision of the Director pursuant to subsection (3) of Section 16O, that person may appeal from that decision to the Board.

Procedure

(2) A person shall appeal pursuant to subsection (1) by

(a) filing a notice of appeal, in the form prescribed by the regulations, with the Clerk; and

(b) serving a copy of the notice on the Director, either by personal service or by registered mail,

within thirty days after the date of the decision to which the appeal relates.

Time within which appeal heard

(3) The Board shall hear an appeal within sixty days after the notice of appeal is filed with the Clerk.

Persons appearing at hearing

(4) The appellant and the Director may appear at a hearing held by the Board pursuant to this Section, ei-

ther personally or by counsel, and may adduce evidence, cross-examine witnesses and make representations to the Board.

Consideration by Board

(5) After a hearing held pursuant to this Section, the Board shall consider the matter and, within sixty days, affirm, vary or reverse the assessment and shall give reasons for so doing and shall forthwith give the appellant and the Director written notice of the decision of the Board by personal service or by registered mail. 1990, c. 10, s. 17.

Further appeal

16Q The Director or the appellant may appeal from a decision of the Board to the Appeal Division of the Supreme Court upon any question of law raised upon the hearing of the appeal. 1990, c. 10, s. 17.

Regulations

16R (1) The Governor in Council may make regulations

(a) designating persons to perform the duties of the Director or a registrar pursuant to this Part;

(b) exempting, from the tax, deeds to persons, bodies or organizations that in the opinion of the Governor in Council provide a municipal or like service;

(c) providing a rebate of the tax to persons, bodies or organizations that in the opinion of the Governor in Council provide a municipal or like service;

(d) prescribing the form and content of affidavits, claims for exemption, certificates, endorsements, notices of objection and notices of appeal for the purpose of this Part;

(e) prescribing rates of interest and penalties;

(f) respecting objections and appeals pursuant to this Part;

(g) defining any word or expression used in this Part and not defined herein;

(h) respecting any matter or thing the Governor in Council deems necessary or advisable to carry out the intent and purpose of this Part.

Regulations Act

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. 1990, c. 10, s. 17.

PART III

GENERAL

Penalty

17 Any person who makes any false statement in an affidavit under Section 9 or 16E or any person who violates any provision of this Act shall be liable on summary conviction to a penalty not exceeding five hundred dollars and in default of payment to imprisonment for a term not exceeding three months, and further shall be liable to pay the amount of the tax, together with interest and penalty that should have been paid upon such deed. R.S., c. 121, s. 17; 1990, c. 10, s. 18.

SCHEDULE A

AFFIDAVIT OF VALUE

I,, of in the County of
(*occupation*) make oath and say that

(1) I am the grantee in the deed hereinafter described (or I am the solicitor or agent of the grantee in the deed hereinafter described and I have personal knowledge of the facts and information hereinafter set out).

(2) The facts and information hereinafter set out are true:

(a) name of grantee in full is

(b) name of grantor in full is

(c) location of property is

(d) date of transfer is

(e) manner of acquiring title is (*deed, will, intestacy, court order, etc.*)

(f) sale price as determined under the *Deed Transfer Tax Act* is \$....., made up as follows:

(g) complete description of property is

Sworn to at,
in the County of,
this day of,
19....., before me

.....
A Barrister, Commissioner
or Notary Public

R.S., c. 121, Sch. A.

R.S., c. 470

deed transfer tax

19

SCHEDULE B

CERTIFICATE OF CLERK

I hereby certify that the deed transfer tax on this deed has been paid in full on this day of, 19.....

.....
(City, Town, Municipal) Clerk
of the of

R.S., c. 121, Sch. B.

SCHEDULE C

CERTIFICATE OF CLERK

I hereby certify that no deed transfer tax is due or payable on this deed.

Dated this day of, 19.....

.....
(City, Town, Municipal) Clerk
of the of

R.S., c. 121, Sch. C.

1) SAMPLE MUNICIPAL ENDORSEMENT

I hereby certify that the Deed Transfer Tax on the within described property transfer has been paid on this 12th day of February A. D. 19 91.

Luis J. Mourwhite

Municipal Collector
Municipality of the County of Halifax

2) PRESCRIBED ENDORSEMENT PART I OF THE ACT

SCHEDULE C

CERTIFICATE OF CLERK

I hereby certify that no deed transfer tax is due or payable on this deed.

Dated this day of, 19.....

.....
(City, Town, Municipal) Clerk
of the of

R.S., c. 121, Sch. C.

3) SAMPLE ENDORSEMENT PART II OF THE ACT

"CERTIFICATE OF REGISTRAR

I hereby certify that no deed transfer tax has been paid on this deed by virtue of claimed exemption.

Robert A. Dickey
Registrar"

APPENDIX "C"

**CANADIAN BAR ASSOCIATION
REAL STATE SECTION MIDTERM QUIZ**

1. An individual owns a block of land which he subdivides into ten approved residential lots. Each lot individually has a market value of \$40,000.00. The individual has decided to transfer the lots to a company which has been incorporated and owned by his wife. The individual conveys the lots by separate individual deeds, claiming the \$100,000.00 deduction of Provincial Deed Transfer Tax, to the corporation.

ANSWER - False (s. 16N)

2. Two individuals own a property as joint tenants and have decided to convey the property to an incorporated company in which they are the shareholders. The property is liable for Provincial Deed Transfer Tax.

ANSWER - True (s 7(2), s. 16D(1))

3. Two individuals who each have their own company with assets that include land, decide to amalgamate the two companies in which each of them will be equal shareholders. The transfer of the land to the new company is not liable to Provincial Deed Transfer Tax.

ANSWER - True (No deed and therefore no tax)

4. John Smith decides to purchase 200 acres from Bowater Mersey for the purposes of starting a Christmas Tree farm. The land owned by Bowater Mersey is classified as Commercial, however, John Smith upon obtaining the land will receive a classification of Forest Resource Exempt. Part of the agreement of the transaction is that John Smith who has 100 acres of prime pulpwood land which is currently classed as Forest Resource Exempt. will convey this property as part of the deal to Bowater Mersey. On receipt of the property, the classification of this land will then become commercial

The 200 acres that John Smith bought in order to start a tree farm is not subject to Provincial Deed Transfer Tax.

ANSWER - False

The 100 acres that Bowater Mersey received is subject to Provincial Deed Transfer Tax.

ANSWER - False

5. On January 1, 1990, Jane Dow owned a two-storey house in which she resided on Birmingham Street in the City of Halifax. The property was assessed as residential. The property on which the house sat was zoned as commercial land. In July, Jane Doe decided to move her place of residence and sell the house on Birmingham Street. The house was listed as commercial property for sale and a company which runs a restaurant business purchased the property. The company was subject to the 2% Provincial Deed Transfer Tax on the purchase of commercial property.

ANSWER - False (First \$100,000 exempt)

6. An individual conveyed her home to her son in 1981. The son did not record the Deed until the death of his mother in August of 1990. When the Deed was recorded in the Registry of Deeds an Affidavit of Value was required to be filed and the Provincial Deed Transfer Tax paid on the value of the residential property.

ANSWER - False - (s. 16B)

