



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

October 25, 2021

Ministry of Finance
PO Box 9048 Stn Prov Govt
Victoria, BC V8W 9E2

Attn: The Honourable Selina Robinson, Minister of Finance

Dear Minister,

Re: Extension or temporary suspension of the enforcement of filing deadlines pursuant to the Land Owner Transparency Act (“LOTA”)

Introduction

As you are aware, the recently enacted *Land Owner Transparency Act*, SBC 2019, c.23 (“**LOTA**”, or the “**Act**”) requires that certain registered owners of real property interests in British Columbia file initial transparency reports disclosing their interest holders by **November 30, 2021**. This deadline is imposed pursuant to section 19 of the Regulations. While the membership of the CBA’s Real Property Section approves of and supports the B.C. Government’s efforts to increase transparency in relation to land ownership in British Columbia, we believe, for the reasons enumerated below, that the November 30, 2021 filing deadline is not feasible.

Our Request

We respectfully request that the Ministry of Finance (the “**Ministry**”) consider amending the *Land Owner Transparency Regulation*, BC Reg. 250/2020 to formally extend the filing deadline by a period of one year in order to provide legal professionals and property owners sufficient time to comply with the Act. In the alternative, we request that the Ministry consider implementing a temporary suspension of the enforcement of the filing deadline by a period of one year. At the same time, we seek clarification as to how the Ministry intends to enforce the Act following the initial filing deadline.

Suspension of Enforcement

The concern regarding the November 30, 2021 filing deadline is shared among a large segment of the legal community. In recent months, the CBA Real Property Section’s membership has been actively engaged in roundtable discussions with lawyers and industry stakeholders. As the filing deadline approaches, the consensus is that a November 30, 2021 deadline is unrealistic for a number of reasons.

Firstly, there have been limited efforts by the B.C. Government to adequately inform property owners of their obligations under the Act. While the B.C. Government stated as early as February 2021 that it would be circulating notices to property owners alerting them to the November 30, 2021 filing deadline,

no formal communication has been forthcoming, and the B.C. Government's targeted social media campaign, while laudable, has insufficient reach to raise adequate awareness. Moreover, recent newsletters and notices circulated by the LTSA, Lawyer's Indemnity Fund and Law Society of British Columbia regarding the upcoming deadline are addressed to legal professionals rather than property owners, which excludes property owners who do not have an ongoing legal relationship in British Columbia. As further discussed below, property owners without such ongoing legal relationships will have increasing difficulty in obtaining proper legal advice given the limited capacity of legal professionals to take on new filings. Proper communication is further complicated by the very nature of property ownership in British Columbia, which may commonly involve trust arrangements that are not required to be filed or appear on title to property. This type of ownership makes it impossible to identify with certainty the property owners entitled to notice of the filing deadline. The result of the foregoing is that, even today, a large number of property owners in British Columbia are unaware of their obligations under LOTA and the approaching filing deadline. Therefore, we respectfully request that the B.C. Government takes more effective and meaningful steps to adequately inform property owners of their obligations under LOTA by sending notices by mail to all property owners to this effect.

Secondly, there has been a lack of meaningful guidance to legal professionals through authoritative policy statements by the Ministry regarding the interpretation and application of the Act. Even today, after nearly a year of LOTA being enacted, there remains little, if any, consensus among legal professionals regarding the correct interpretation of a number of LOTA provisions. Legislative complexity coupled with inadequate guidance means that legal professionals are spending more time handling each LOTA matter, which, in turn, leads to backlogs of client requests and the inability to provide adequate legal representation. The result is that legal professionals are forced to triage work in anticipation of the upcoming filing deadline. Increasingly, property owners will be unable to secure proper legal representation in respect of their LOTA matters.

Lastly, the ongoing COVID-19 pandemic and the associated governmental restrictions have caused additional procedural delays for property owners attempting to meet the filing deadline, and hampered the B.C. Government's efforts to provide timely notice to property owners of their obligations under LOTA.

The current situation is unprecedented, both with respect to the uniqueness of the legislation and the economic and political context in which it has been introduced. Our view is that an extension or a temporary suspension of the enforcement period after November 30, 2021 would address the foregoing concerns by giving property owners additional time to understand their obligations under LOTA and to secure proper legal representation.

Clarification on Enforcement Measures

Regardless of whether our call for an extension or temporary suspension of enforcement of the filing deadline is implemented, we respectfully request that the Ministry clarify its intentions with respect to the enforcement of LOTA following the deadline. We trust that the Ministry will provide a warning or action letter to legal professionals before it intends to implement the full extent of its enforcement



abilities under the Act. In our view, such a warning is warranted given the complexity of the Act, the scope of the penalties under the Act, and the potential for misfilings due to misinterpretations, especially in light of the lack of meaningful guidance to legal professionals. Despite the foregoing request for guidance from the Ministry, the CBA is committed to encouraging its members to continue providing filings in sight of the approaching deadline, and to continue to provide filings throughout the duration of any extension period, if granted.

We are grateful for your consideration of this matter and we look forward to the Ministry's response; as the deadline is next month, we invite you to contact the Chair of Real Property Section at CBABC, Brett Horton, at brett.horton@stewart.com with your response.

Yours Truly,

Clare Jennings
President CBABC

cc. Renee Mounteney, Assistant Deputy Minister,
The Honourable David Eby, Attorney General,
Richard Fyfe, Deputy Attorney General