



SMHI LEGAL NOTES

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Ontario Extends Land Transfer Tax Rebate to Resales

For many years, the province of Ontario has sought to provide financial assistance to first-time homebuyers with its *Land Transfer Tax Refund Program*. One of the key qualifying conditions, however has always been that the home being purchased be a newly constructed home.

As of December 13, 2007, the rebate program for first-time homebuyers has been extended to include resale homes.

Who is eligible for the Land Transfer Tax Refund?

All first-time homebuyers are now eligible for the Land Transfer Tax refund. To be considered a first-time homebuyer, the purchaser, must be at least 18, cannot previously have owned a home or had any ownership interest in a home, anywhere in the world.¹

Further, a spouse of a purchaser cannot previously have owned a home or had any ownership interest in a home, anywhere in the world. A spouse includes a common law spouse. To be considered common law spouses, the parties must have lived together continuously for a period of not less than three years, or be in a relationship of some permanence, if they are the natural or adoptive parents of a child.

If the first-time homebuyer is purchasing the home with someone other than a spouse and that other person is not a first-time homebuyer, the refund will be pro-rated.

Are there any time limitations?

For a purchaser of a resale to be eligible for a refund, the agreement of purchase and sale must have been entered into after December 13, 2007. There is no such restriction if the home is a newly-constructed home.

Whether the purchaser is acquiring a newly-constructed home or a resale, the purchaser must occupy the home as his or her principal residence within 9 months of the closing date.

How is the refund claimed?

Although the *Land Transfer Tax Refund Program* has been extended to include resales, the actual amendments to the law have not yet been passed. Until the amendments are passed, purchasers of resales must continue to pay the land transfer tax at the time the deed is registered.

In addition, the purchaser must submit a refund affidavit to the Ministry of Revenue in order to be eligible to receive the refund. Refund cheques will be issued by the Ministry once the amendments come into force. The necessary forms will be provided to the purchaser by the lawyer handling the sale.

For those buying a newly-constructed home, refunds will continue to be handled as they have always been. That is, the refund will be processed at the time of purchase.

How much is the refund?

The maximum rebate, whether a resale or a newly constructed home, is \$2,000.

Where can I get more information?

Please contact our office for additional information about the Land Transfer Tax as well as the refund program. Our real estate lawyers would be happy to assist you. 

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The articles in SMHI Legal Notes are necessarily of a general nature and cannot be regarded as legal advice. Our firm will be pleased to provide additional details on request.

¹It should be noted that this definition of first-time homebuyer differs from the one used by the federal government's *Home Buyer Program*. Under that program, a first-time homebuyer is someone who has not owned a home during the period beginning January 1 of the fourth year before the year of withdrawal from an RRSP and ending 31 days before the withdrawal.

The Second Land Transfer Tax

Last fall, the City of Toronto put into place its own land transfer tax, referred to as the Municipal Land Transfer Tax (MLLT). This tax is similar to the Ontario Land Transfer Tax and is an additional tax that must be paid by those purchasing land within Toronto, at the time a conveyance is registered.

What follows is a brief explanation of how the MLLT works.

When was the MLLT implemented?

The MLLT is being charged on homes purchased in the City of Toronto with closing dates on or after February 1, 2008. It should be noted that this tax applies only to properties within the City of Toronto.

What are the MLLT rates?

The following rates apply to property containing at least one, and not more than two, single family residences.

- 0.5% of the value of consideration for the transfer up to and including \$55,000.
- 1% of the value of the consideration which exceeds \$55,000 up to and including \$400,000.
- 2% of the amount by which the value of the consideration exceeds \$400,000.

The following rates will apply to all other properties.

- 0.5% of the value of consideration for the transfer up to and including \$55,000.
- 1% of the value of the consideration which exceeds \$55,000 up to and including \$400,000.
- 1.5% of the value of the consideration which exceeds \$400,000 up to and including \$40,000,000.
- 1% of the amount by which the value of the consideration exceeds \$40,000,000.

What rebates are available?

Purchasers who signed their agreement of purchase and sale on or before December 31, 2007, are entitled to a full rebate of the MLLT, even if the closing date is on or after February 1, 2008.

First-time homebuyers are eligible for a rebate of the MLLT up to a maximum of \$3,725. The rebate applies to newly-constructed homes and resales with two or less single-family residences.

The rules with respect to who is considered a first-time homebuyer are the same as the Ontario Land Transfer Tax rules. (See page 1.)

How is the rebate claimed?

If the homebuyer is eligible for a full rebate of the MLLT, it will automatically be granted at the time of the registration of the conveyance.

If the homebuyer is eligible for a partial rebate only (i.e. the home is worth more than \$400,000) the full tax will be collected at the time of registration. The purchaser must then submit a rebate application and affidavit, which the lawyer can supply. Once these have been received by the government, the rebate will be paid to the purchaser.

Where can I get more information?

For additional information about the Municipal Land Transfer Tax please contact our office. 

Clarification

The following is a further clarification of our article on the Employer Amnesty in the winter 2008 edition of *SMHI Legal Notes*.

Beginning April 1, 2008 and on a continuing basis, employers who voluntarily register with the Workplace Safety & Insurance Board (WSIB) will receive a partial amnesty. What this means is that there will be:

- No penalties.
- No reconciliation interest on retroactive premiums.
- No prosecution at the time of registration.

However, **premiums will be retroactive** to the date of first hire or January 1 of the year preceding the date of voluntary registration, whichever is later.

The amnesty policy is not applicable to employers who have been identified for registration by the WSIB's various enforcement activities prior to their voluntary registration.

For more information about registration and the amnesty programs visit the WSIB's website at www.wsib.on.ca

If you require assistance with this or another employment matter please contact our firm. We would be pleased to assist you. 

On Becoming Self-Sufficient

A court of competent jurisdiction may . . . make an order requiring a spouse to . . . pay, such lump sum or periodic sums . . . as the court thinks reasonable for the support of the other spouse.

Section 15.2 (1), The Divorce Act

Earlier this year, the Ontario Court of Appeal released an interesting decision dealing with the issue of spousal support. In this case, the court considered what is meant by a spouse becoming self-sufficient following the breakdown of a marriage.

The Facts

The Fishers, who had no children, were married for 19 years. The wife worked in the area of fine arts and earned approximately \$30,000 a year. The husband had been a teacher for 11 years, before accepting a job with the Ontario Secondary School Teachers' Federation. His new job eventually resulted in a significant salary increase. By the time the couple separated in 2004, the husband was earning \$120,000, plus car allowance and benefits.

Following the separation, the husband's girlfriend and her two young children moved in with him. The wife, who had not seen the breakup coming, became clinically depressed and ended up taking an 11-month disability leave from her job. At the time of separation, the wife was 41 and the husband was 42. The wife sued for spousal support.

Spousal Support: Some Background

When a marriage fails there are many legalities which must be addressed. One of those legalities is the issue of whether spousal support must be paid by one spouse for the benefit of the other. Pursuant to the *Divorce Act*, four objectives are sought when deciding spousal support. Those objectives are to:

- a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Pursuant to the *Divorce Act*, spousal support will be paid based on the condition, means, needs and other circumstances of each spouse, including:

- a) the length of time the spouses cohabited;
- b) the functions performed by each spouse during cohabitation; and
- c) any order, agreement or arrangement relating to support of either spouse.

In 2005, in an effort to bring more certainty and predictability to the determination of spousal support, a team of legal academics, practitioners and judges released the *Spousal Support Advisory Guidelines*. These Guidelines, which have no legal authority, are meant to be a tool to aid in determining the range of amounts and a guide to the parameters involved in assessing the duration of a spousal support award once entitlement has been established.

The Award

The trial judge in the Fishers' case did award the wife spousal support. The wife, however took issue with the amount and the timing of the award and appealed to the Ontario Court of Appeal.

The appellate court allowed the appeal and awarded the wife \$3,000 a month commencing on October 1, 2004, the date the wife brought her initial application, and continuing to March 1, 2008. The amount of support was to then be reduced to \$1,500 a month and would terminate after the September 1, 2011 payment.

In reaching its decision, the court reviewed the objectives of a spousal support award. They focused in particular on the economic disadvantage visited upon the wife from the marriage breakdown as well as her ability to become self-sufficient.

The court noted that the couple had formed a relationship of financial interdependence which began when the wife worked full-time while the husband finished his schooling. And later during the marriage the husband supported the wife's decision to go back to university. In addition, the couple settled into a comfortable middle-class lifestyle over the years.

When the marriage ended, it was the wife's lifestyle and financial stability that were most negatively affected. Suddenly her comfortable lifestyle was gone along with the husband's salary increase that she had had every expectation that she would share in. Her finances were also affected, at least in the short term, by the clinical depression she suffered.

With respect to the issue of self-sufficiency, the court drew a distinction between one's ability to simply meet one's basic

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needs and the ability to support a reasonable standard of living. The court stated, “Self-sufficiency, with its connotation of economic independence, is a relative concept.”

The court went on to find that self-sufficiency, at least in the context of divorce, is more than a spouse being able to meet his or her basic expenses. Instead, the court concluded that self-sufficiency related to that spouse’s ability to support a reasonable standard of living. Further, the meaning of self-sufficiency in a particular case is “to be assessed in relation to the economic partnership the parties enjoyed and could sustain during cohabitation, and that they can reasonably anticipate after separation.”

To make that determination, the Court of Appeal set out a list of criteria that should be taken into account. These include:

- The parties’ present and potential incomes.
- The parties’ standard of living during marriage.
- The likely post-separation circumstances (including the impact of equalization of their property).
- The duration of the parties’ cohabitation.

While the court recognized that the wife’s dependency on the marital standard of living was different than if there had been children, it nevertheless rejected the husband’s contention that the wife should be considered self-sufficient because she was earning \$30,000 a year. Rather, the court concluded that her ability to become self-sufficient, even if her income increased, was not practicable in a reasonable time. Therefore, to help her transition to the new reality, the court felt that spousal support would be required for a seven-year period.

The court indicated that this seven-year award recognized the wife’s “economic disadvantage arising from the marriage and its breakdown, while also encouraging the appellant to complete her transition to self-sufficiency, whether by reason of earning a higher income or, more likely, by adapting her lifestyle to her then income.”

Another important factor that was addressed by the court was the husband’s contention that his ability to pay any significant spousal support was compromised by his responsibility for his new partner and her children. The court rejected this argument since the husband had voluntarily assumed this responsibility and also because he supported his new partner’s decision to be a stay-at-home mother despite being a physiotherapist. The court also recognized that in this particular situation the husband was under no legal obligation to support this new family and that in any event there was no evidence that his obligation to his first family would impoverish this second family.

Bottom Line

The law has come to recognize that the longer a marriage lasts, the more entwined the lives of the spouses become, particularly in respect of finances and standard of living. Therefore, it is wise to assume that spousal support will be an issue to be addressed, preferably before there is a second family in the picture.

If you require assistance with a matrimonial matter, please contact our firm. We would be pleased to assist you. 

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