<u>Goods and Services Tax</u>

Seminar for Real Estate Legal Assistants

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Goods and Services Tax

I. Introduction and Overview:

Few pieces of legislation have ever caused as much confusion, and even consternation, to our real estate practices as the proclamation of the E*xcise Tax Act of Canada* ("ETA") and the January 1, 1991 introduction of the Goods and Services Tax ("GST"). Although the Canadian Tax Foundation, Canadian Bar Association and Legal Education Society of Alberta have done a commendable job in analyzing and explaining this legislation, it required a pretty steep learning curve for all lawyers, particularly those with a commercial and/or real estate practice.

Although the initial frenzy about the impact of GST has long abated, its application on our conveyancing practices remains a fundamental factor and must be continually addressed. Its interpretation and affect on the sale and purchase of residential and commercial property may be now relatively settled, but both lawyers and their support staff must continue to be attentive to the potential impact of GST on each transaction.

I will limit our discussions in this paper to the impact of GST on conventional real estate transactions, particularly from the perspective of a legal assistant. Probably more than in any other area of law, real estate lawyers delegate day-to-day responsibilities to their support staff. It is a reality of the business of the practice of law that to generate a reasonable financial return from conveyancing, a high volume of transactions is required putting much pressure on staff. This requires continuous vigilance by the legal assistant on each file

II. General Application:

Philosophically, GST is a form of value added tax on commercial and consumer transactions whereby the ultimate purchaser of consumer and commercial goods or services is to pay a federal tax based on the purchase price. With the use of input tax credits, the theory is that only the ultimate purchaser pays the tax. Initially the tax was a flat 7% which was reduced to 6% this year. The tax is to be collected by the seller of such goods or services and remitted to Canada Revenue Agency ("CRA").

The general rule of thumb is that land and buildings (technically real property but in this discussion usually referred to as property) are goods, so the buyer must pay GST to the seller to be remitted to CRA.

III. Residential Property:

There is a clear distinction between the sale of existing previously occupied residential property ("used residential property") and new unoccupied property. Technically, the