

Legal Refresher for the Federal Real Property Community

Presentation to the Real Property Institute of Canada
October 21, 2014
Frank D'Alessandro

Relevant Legislation

Key Statutes/Policies in the Federal Real Property Regime

- 1. Federal Real Property and Federal Immovables Act ;*
- 2. Financial Administration Act;*
- 3. Department of Public Works and Government Services Act;*
- 4. Payments in Lieu of Taxes Act.*

Applicable policies and important directives/standards

1. *Policy on the Management of Real Property*
2. *Guide to the Management of Real Property;*
3. *Directive on the Disposal of Federal Real Property;*
4. *Appraisal and Estimates Standard;*
5. *Accessibility Standard for Real property.*

Authority

Basis for TB policy authority;

- *Financial Administration Act*, section 7 (d.1). TB can make policy in respect of “*the management and development by departments of lands, other than Canada lands as defined in subsection 24 (1) of the Canada Lands Surveys Act*”.
- FRFPIA, section 16 (4).

FRFPIA

Key definitions

- a) “Administration” (section 18)
- b) “Department” (mirrors definitions of department in FAA—Schedule I, I.1, and departmental corporations in Schedule II);
- c) federal real property/federal immovable—any property which belongs to Her Majesty;

FRPIA (cont'd.)

(d) real property—land in and outside Canada, buildings, structures, improvements, mines and minerals above or below the surface of the land, and includes an interest therein;

(e) immovable—any property, in and outside Canada, that is an immovable within the meaning of the civil law of the Province of Quebec;

(f) Licence—any right to use or occupy real property or an immovable.

FRPIA (cont'd.)

- Section 3 - Delegation
- Section 4 - *“Subject to any other Act, no disposition or lease of federal real property and federal immovables shall be made and no licence shall be given in respect of any such property except in accordance with this Act.”*

FRPIA (cont'd.)

- Sections 16 (1) and (2):
 - 1. Section 16 (1) gives authority to the GIC, on recommendation from the Treasury Board, to authorize a number of transactions set out in that section. These include, acquisition, dispositions, leases, transfer of administration, transfer of administration and control, authorize acceptance/release of security.
 - 2. Section 16 (2). This section authorizes the *GIC* to make regulations authorizing a series of real property transactions.

FRPIA (cont'd.)

- Section 16 (5). Saving provision dealing with the effect of the interplay between TB policy and the exercise of authority under the FRFPIA.
- Section 18. Administration of Federal real property.

FRPIA Regulations

The Regulations authorize certain real property transactions without the need for an OIC:

1. Definition of acquisition and disposition. Does not include transfer of administration and administration and control.
2. Exceptions to the application of the Regulations include;
 - (a) expropriations of real property by the Crown;
 - (b) dispositions where the whole of the purchase price or other consideration is not received at or before closing;
 - (c) dispositions to a crown corporation that meets the requirements of section 3 (1.1) of the Regulations.

- The FRFPIA or the FRFPIA Regulations?
- Legal and policy rationale.

- Section 4 is the general authority section that authorizes a Minister to enter into an acquisition, disposition or enter into a licence agreement.
- Sections 5 and 6 deal with transfers of administration and transfers of administration and control.

- Section 8. No payment shall be made in respect of an acquisition until good title satisfactory to the Minister of Justice is obtained through that Minister.

PWGSC Act

- The Department of PWGSC Act gives the Minister the responsibility for *“the provision of accommodation and other facilities for departments.”*
- Note section 10 of the Department of PWGSC Act. This provides that *“the Minister has the administration of all federal real property and federal immovables not situated in Yukon, the Northwest Territories or Nunavut except those under the administration of any other Minister, board or agency of the Government of Canada or any corporation.”*

Brief Review of three topics

1. PILT;
2. Duty to Consult and Aboriginal Title;
3. Directive on the Sale or Transfer of Federal Real Property

Review

Brief Summary, Discussions and Questions