

June 3, 2019

Dear Presidents and Real Estate Representatives,

We are pleased to provide you with an update on real estate matters and ask that you forward this information to the real estate lawyers in your Association. It is extremely important that the real estate bar be informed of the issues affecting daily practice and you are our best opportunity to get this information to your colleagues.

**Law Society review of “Lending Client”**

The Law Society is seeking input on proposed amendments to clarify the meaning of ‘finance company’ in the Rules of Professional Conduct. Written submissions are due by **June 30, 2019**.

The specific Rules under review provide an exception to the conflict of interest rules by specifying that a lawyer may act for both a lender and borrower where the lender is a lending client. A lender client is currently defined as “a client that is a bank, trust company, insurance company, credit union or *finance company that lends money in the ordinary course of its business*” (Rule 3.4-13 emphasis added)

Finance company is not currently defined, and the Law Society is proposing the following underlined amendments:

In Rules 3.4-14 to 3.4-16 a ‘lending client’ is any of the following:

1. A bank, trust company, insurance company, or credit union;
2. a finance company that is a corporation or partnership:
3. whose material business involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit; and
4. whose shares or ownership interests (or another person or entity with which it is affiliated) are listed on a stock exchange within or outside Canada that is a Designated Stock exchange for the purposes of the *Income Tax Act (Canada); or*
5. a person who is designated as an approved lender under the *National Housing Act (Canada).*

The Law Society’s consultation paper can be found [**here**](https://lawsocietyontario.azureedge.net/media/lso/media/about/initiatives/consultationdocument-definitionfinancecompany.pdf).

FOLA is currently reviewing this issue. If you have comments that you would like FOLA to consider in its review, please contact us at merredith.maclennan@stewart.com or ehorner@hp-lawyers.com. If you are making submissions to the Law Society, we would appreciate receiving a copy as well.

***Planning Act* proposed amendments**

Bill 88, the *Planning Amendment Act*, passed second reading in the Ontario legislature on May 30, 2019 and has been referred to the Standing Committee on Finance and Economic Affairs. FOLA’s endorsement was noted several times during the debate, and portions of our letter of support were read. We are pleased that MPPs from all political parties are supportive of this bill and note that Doug Downey reported being copied on over 350 emails of support from lawyers and other stakeholders to their local MPPs.

**Plenary Report**

FOLA’s spring plenary took place earlier this month in Toronto. A copy of our report on real estate issues and activities can be found [**here**](https://img1.wsimg.com/blobby/go/63f6349d-d85d-4511-bc5f-4314d54b45d0/downloads/Real%20Estate%20Report%20-%20May%202019.pdf?ver=1556450036485).

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Merredith MacLennan & Eldon Horner
FOLA Real Estate Co-Chairs