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Via email: [hdi.minister-ministre.lds@infcc.gc.ca](mailto:hdi.minister-ministre.lds@infcc.gc.ca);  
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The Honourable Ahmed Hussen, P.C. M.P.  
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Inclusion  
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Romy Bowers  
President and Chief Executive Officer  
Canada Mortgage and Housing Corporation  
700 Montreal Road  
Ottawa, ON K1A 0P7

Dear Minister Hussen and Ms. Bowers:

The Real Property, Criminal Justice and Immigration Law Sections and the Ethics and Professional Responsibility Subcommittee of the Canadian Bar Association are writing to comment on the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, the regulations and policy directions being developed before the Act comes into force on January 1, 2023.

The Canadian Bar Association is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice and effective law reform, and offer expertise on how the law touches the lives of Canadians every day.

The CBA Real Property Section focuses on issues inherent in ownership, mortgages, liens, uses, leasing and other real estate dealings. The Criminal Justice Section includes lawyers specializing in the areas of criminal law from all parts of Canada, and a balance of Crown and defence lawyers. The Immigration Law Section has approximately 1,200 members across Canada practicing in all areas of immigration and refugee law. The Ethics and Professional Responsibility Subcommittee is dedicated to fostering and advancing ethical and professional conduct and standards in the legal profession.

### **Enforcement Guidance**

We wish to convey our concerns about the potential for overreach in enforcing the Act. Section 6 creates the following offence:

#### **Offence**

6 (1) Every non-Canadian that contravenes section 4 and every person or entity that counsels, induces, aids or abets or attempts to counsel, induce, aid or abet a non-Canadian to purchase, directly or indirectly, any residential property *knowing that the non-Canadian is prohibited*

*under this Act from purchasing the residential property* is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

### **Party to offence**

(2) If a corporation or entity commits an offence, any of the following persons that directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and liable for the offence whether or not the corporation or entity has been prosecuted or convicted:

- (a) an officer, director or agent or mandatary of the corporation or entity;
- (b) a senior official of the corporation or entity;
- (c) any individual authorized to exercise managerial or supervisory functions on behalf of the corporation or entity. [emphasis added]

For an offence to be committed, section 6 requires that the person counseling a non-Canadian to purchase residential property *have actual knowledge* that the purchase was prohibited under the Act.

The French version of the Act confirms this threshold. To rephrase, it must be shown that the person counseling a non-Canadian to purchase a residential property did so “tout en sachant que la présente loi en interdit l’achat à ce dernier.”

The required *mens rea* component is that the person helping must have had some active participation in the illegal act and knowledge of the illegal nature of the act (in other words, actual knowledge that the non-Canadian is prohibited under the *Act* from purchasing residential property).

We understand that the Act should not lead to accusations against a lawyer or notary who, for example, gave counsel or aid on the purchase of residential property to a non-Canadian client without having actual knowledge of the legal prohibition affecting this client.

### **Recommendation 1**

**Give appropriate guidance to the authorities as the Act is enforced to avoid prosecutorial overreach and reflect the position that an offence requires that the lawyer or notary acted *in full knowledge of the illegal nature of the transaction*.**

### **Canada’s Ability to Attract Skilled Workers**

The policy directions in the CMHC’s consultation materials may negatively impact Canada’s ability to attract skilled temporary foreign workers and foreign students, and ultimately may undermine the government’s goal of settling almost 1.5 million immigrants in Canada in the next three years.

Under the proposed policy direction, temporary foreign workers would be prohibited from purchasing a home in Canada unless they:

1. Hold a valid work permit as defined in section 2 of the *Immigration and Refugee Protection Regulations* or is otherwise authorized to work in Canada in accordance with section 186 of the Regulations.
2. Have worked in Canada for a minimum continuous period of three years within the past four years, where the work meets the definition set out in s. 73(2) of the Regulations; and

3. Have filed a Canadian income tax return for a minimum of three of the past four taxation years preceding the year in which the purchase is made.

Through a variety of programs, such as the Global Skills Strategy, Canada seeks to recruit foreign nationals to address chronic shortages of skilled workers in the domestic labour market. While they come to Canada on temporary work permits, temporary foreign workers are also a large component of the pool of candidates from which Canada selects future permanent residents.

Further, highly skilled talent is in demand around the world, and Canada competes with other countries to attract highly skilled resources. A policy prohibiting foreign workers from owning a home in Canada for many years after their arrival is counterproductive, may discourage foreign workers and their families from integrating in their community and could leave Canada in an uncompetitive position.

### **Recommendation 2**

**Foreign nationals who hold a work permit valid for one year or longer, or are otherwise authorized to work in Canada in accordance with section 186 for at least one year, and who are residing in Canada, should be exempt from the prohibition from purchasing a residential property for their personal use.**

The proposed policy direction also suggests that international students in Canada on study permits are prohibited from purchasing residential property, unless they:

1. Are pursuing a program of authorized study at a designated learning institution as defined in s. 211.1 of Regulations.
2. Would be eligible for a work permit issued under subparagraph 200(1)(c)(ii) or (ii.1) for work described in paragraph 205(c) of the Regulations upon completion of the program.
3. Have filed a Canadian income tax return for each of the five taxation years preceding the year in which the purchase is made; and
4. Have been physically present in Canada for a minimum of 275 days in each of the five calendar years preceding the year in which the purchase is made.

Further, the exception would be limited to the purchase of residential property not exceeding a purchase price of \$500,000, anywhere in Canada. In many urban markets across Canada, this is effectively a total prohibition.

As with temporary workers, Canada also competes with other countries in attracting the brightest international students. Canadian universities and colleges seek to attract a substantial number of students each year from around the globe. These students also often go on to apply for permanent residence and seek to make Canada their permanent home. The prohibition on owning residential property for many years after their arrival in Canada may deter students from deciding to study at Canadian post-secondary institutions and may discourage foreign students who do come to Canada from integrating into Canadian communities and deciding to settle in Canada permanently.

### **Recommendation 3**

**Foreign nationals who hold a study permit valid for at least one year, are studying at a designated learning institution and are residing in Canada, should be exempt from the prohibition from purchasing a residential property in Canada for their personal use.**

Ultimately a policy that prohibits foreign workers and foreign students from owning residential property in Canada for many years after their arrival is contrary to the welcoming and inviting immigration policies Canada has implemented over many years and could have a negative impact on Canada's ability to meet the very ambitious immigration levels announced on November 1, 2022.

We trust our comments will be considered as the Act is enforced and regulations and guidance material are developed. We would be pleased to elaborate further on the matters raised in this letter.

Yours truly,

*(original letter signed by Marc André O'Rourke for Graham A. B. Barr, Kevin B. Westell, Colin Ouellette, Lisa Middlemiss)*

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