



THE CANADIAN
BAR ASSOCIATION
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Via email: normand.masse@tpsgc-pwgsc.gc.ca

Normand Masse
Director-General
Services and Technology Acquisition Management Sector
Public Works and Government Services Canada
11 Laurier Street
Gatineau, QC K1A 0S5

Dear Mr. Masse:

Re: Government of Canada Relocation Support Services – Integrated Relocation Program

I am writing on behalf of the Canadian Bar Association's Real Property Section (CBA Section) in response to the Government of Canada Relocation Support Services (GCRSS) Integrated Relocation Program (IRP). The CBA is a national association of 36,000 lawyers, Québec notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section consists of real estate lawyers from all regions of Canada as well as Quebec notaries. We previously wrote to you in December 2015 to discuss the GCRSS program and are contacting you again to provide further comments. We hope that our input will assist you in improving the GCRSS program for government employees.

Under the IRP, the government enters into a multi-year contract for relocation support services for its employees under the National Joint Council (NJC), represented by the Treasury Board of Canada Secretariat (TBS), the Canadian Armed Forces (CAF) and Royal Canadian Mounted Police (RCMP). This year, the government issued two RFPs under the GCRSS, one for the CAF (Solicitation No. W6369-150002/A) and another for the RCMP and TBS (Solicitation No. M7594-16457A/A). Under this bid solicitation process, the government will enter into contracts with one or more bidders to provide relocation support services to CAF, RCMP and other federal government employees. These contracts set out the terms and conditions for relocation services, including services of various third parties, such as legal services.

The basis on which companies bidding on these contracts purport to determine the third party costs is not clear. For legal services, it does not appear to take into account the market value of the services. To date, lawyers involved in real estate transactions have not been consulted in this process, and we have a number of concerns with the IRP. In the interest of broad consultation, we would like to meet with you to discuss the terms and conditions for lawyers when they accept a mandate under the IRP. As the current contracts under the IRP end on November 30, 2016 and the Government has begun the bid solicitation process, a meeting is timely and appropriate.

Concerns with the IRP

Lawyers are an important safeguard in the Canadian real estate process – a home is typically the most significant financial asset a person will deal with in their lifetime – and the public benefits from a reliable and trusted home buying/selling process with lawyers acting as the gatekeepers. The artificially low fees mandated under the IRP do not represent the actual costs of the services. Increasingly lawyers cannot afford to provide these services.

Government employees should have access to a lawyer of their choice. The current practice of setting low fixed fees for legal services limits employees under the GCRSS in choosing their own lawyer. Some lawyers continue to accept these files at the set fees for various reasons, including a sense of duty to existing clients. But many lawyers can no longer afford to accept them. Since the government will reimburse employees only for services under the IRP contract, government employees will use only listed third party providers, not necessarily the lawyer of their choice.

Lawyers must provide all clients with high quality services. The effort and responsibility associated with these transactions to the professional standard of service required by the law societies that govern lawyers, and expected by government personnel, is not commensurate with fees offered.

Some lawyers who do not provide these services due to cost constraints have been told by real estate agents that unless they accept referrals under the GCRSS they will not get other referrals. The terms and conditions of the IRP enable real estate agents to exercise their market position to pressure other service providers. The Government of Canada should be concerned with contracting with a party that condones these aggressive practices.

Real estate agents' fees under the IRP are based on a percentage of the purchase price and automatically adjust with the cost of living. For lawyers, the fees are set at a flat rate, which has remained constant for approximately ten years, without cost of living increases. Meanwhile, the demands on lawyers, liability exposure and operating costs continue to increase. Under the TBS *Contracting Policy*, the procurement process should consider best value, and “[i]nherent in procuring best value is the consideration of all relevant costs”. A flat fee for the next 6 plus years does not promote this.

While we appreciate that bidders decide how to structure pricing, the government reviews and approves bids and must comply with its obligations under TBS *Contracting Policy*, including its overall policy objective of acquiring services “in a manner that enhances access, competition and fairness and results in best value”.¹

We hope that a meeting will allow us to highlight these concerns in greater detail and assist you in ensuring the agreements reflect acceptable conditions for lawyers and Quebec notaries to properly represent government employees when acquiring their most important asset, their home.

Thank you for your consideration and we look forward to hearing from you.

Yours truly,

(original letter signed by Gillian Carter for Albina P. Moran)

Albina P. Moran
Chair, CBA Real Property Law Section

¹ Treasury Board of Canada Secretariat, *Contracting Policy*. www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=html. Government of Canada, 2013.