



**FREDERICTON
CHAMBER
OF COMMERCE**
— The Voice of Business —

364 York Street, Suite 200
Fredericton, NB
E3B 3P7



28 October 2019

Hon. Jeff Carr, Minister of Environment and Local Government
Marysville Place
P. O. Box 6000
Fredericton, NB E3B 5H1

VIA Email: jeff.carr@gnb.ca

RE: Certain conditions in the legislation and regulations for the *Days of Rest Act* (O.C. 85-734)

Dear Minister Carr,

I am writing today to follow-up on my letter from 21 March 2019 regarding an issue with the *Days of Rest Act*. The original text of my March letter is reproduced below, specifically outlining an archaic red tape issue in the real estate industry.

We have seen your government be keen to clean up legislation, make common sense changes and unlock the power of the private sector. Just earlier this month, the Department of Health acted on our suggestion to prorate restaurant licensing fees and one of our members had to pay two full annual fees two weeks apart because her restaurant happened to open in mid-March.

It seems to me that the issue described below can be corrected quickly and simply, without affecting other sections of the *Days of Rest Act* or other legislation.

"I am writing today to state the Fredericton Chamber of Commerce's support for a policy position of the New Brunswick Real Estate Association regarding the *Days of Rest Act*. Presently, New Brunswick is the only Canadian province where there is a risk that an Agreement of Purchase and Sale for the transfer of real estate may be found by a Court to be unenforceable because it was signed on a Sunday.

Subsection 4(1) of the *Act* is substantially the same as the wording used in the *Lord's Day Acts* passed over 100 years ago. The present wording states: "no person shall, on the weekly day of rest, [defined as a Sunday] sell or offer for sale or purchase any service, goods, chattels or any real estate."



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The *Act* creates an offence under the *Provincial Offences Procedure Act* for persons who violate it, resulting usually in the imposition of a fine. It is also open to a civil court deciding that the contract for the sale of real estate is void and therefore unenforceable because it was signed on a Sunday, should one of the parties involved in the transaction file the court action.

The *Days of Rest Act* makes a distinction between a prescribed day of rest (enumerated holidays) and a weekly day of rest (a Sunday). The wording proscribing the selling of real estate (subsection 4(1)) only applies to Sundays. It does not apply to holidays (subsection 4(2)). The strongest argument in support of this conclusion is the wording of the Regulation 85-149 (the Regulation) made under the *Act*.

Subsection 3 (1) (d) of the Regulation says that:

“the activities or the operation of businesses or industries that are exempt from the application of the *Act* are as follows:

(d) the viewing or displaying of real estate which may be traded on a day other than the weekly day of rest;

Reading this subsection in its grammatical and ordinary sense means the activity of showing (viewing or displaying) real estate is exempt from the application of the *Act*. This means that the *Act* does not apply to the showing of real estate, whether it is shown on a holiday or a Sunday. More importantly, this subsection goes on to say that real estate “may be traded on a day other than the weekly day of rest” [a Sunday].

In our view, this means that real estate can be traded on a holiday. But because of Subsection 3(1)(d) of the Regulations, quoted on Page 1, real estate cannot be traded on a Sunday.

Together, the existing legislation and regulations do not have matching requirements. They allow for the showing and trading of real estate in New Brunswick on a holiday, but allow only for the showing of real estate on a Sunday provided that the trade (actual contract signing) occurs on another day of the week. Therefore we are seeking a revision to the references to real estate in the regulations that apply to the *Days of Rest Act*.



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This would involve enacting a regulation under section 11 of the Act to amend subsection 3(1) (d):
Subsection 3(1) of the Regulation states:

The activities or the operation of businesses or industries that are exempt from the application
of the Act are as follows:

(d) the viewing or displaying of real estate which may be traded on a day other than a
weekly day of rest, however, no contract relating to the purchase and sale of real estate
made on a weekly day of rest shall be unenforceable for that reason.

This would eliminate the apparent double standard which presently permits or exempts persons to
rentor sell almost any service, good or chattel on a Sunday but prohibits persons from selling real
estate.”

Sincerely,

Krista Ross, CEO
Fredericton Chamber of Commerce

cc: Hon. Blaine Higgs, Premier

cc: Hon. Ernie Steeves, Minister of Finance

cc: Hon. Mary Wilson, Minister of Economic Development and Opportunities New Brunswick

cc: Jamie Ryan, CEO, New Brunswick Real Estate Association