Briefing Note

New Brunswick Real Estate Association
Mar. 15, 2019

Re: Property taxes in New Brunswick and related issues

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This briefing note is a summary of the issues raised, and proposals made, by the New Brunswick Real Estate Association. These are based on issues that REALTORS® have encountered in their dealings with buyers, sellers and property owners over the last 15 years.
As detailed in this document, there have been numerous attempts to address these financial and governance issues, but few recommendations have made it to the floor of the legislature.

These are issues that have a direct impact on home ownership, real property investment opportunities, and the fairness of the property tax system in New Brunswick.
They include:

- How property assessments are done
- The provincial tax on non-owner occupied properties, also known as "double taxation"
- The impact property taxes have on business in New Brunswick
- The lack of fairness in how the Land Transfer Tax is applied

It is our view that the results of the 2018 provincial election show that voters are expecting responsible financial stewardship. There is a perception that leadership is required to solve financial issues in the province. This is reflected in a December 2018 editorial in the Telegraph-Journal:

> "Municipalities and the province must take a broad, balanced look at the tax structure and devise a better model for all parties, without placing the fix on the shoulders of only one tax payer.
>
> After all, the essence of New Brunswick's problem is not the difference in tax burden between industry and residents, but between cities and the central government. Through an entirely inappropriate provincial property tax scheme, Fredericton poaches money from the cities every year that should stay in local communities."

Who We Are

The New Brunswick Real Estate Association (NBREA) represents 800 REALTORS® throughout the province. We are also partners in protecting the public interest through co-regulation with The Financial and Consumer Services Commission (FCNB).

New Brunswick REALTORS® are trusted advisors who help consumers make some of the largest purchases of their lives. Our members are in the business of supporting communities – not just selling homes. REALTORS® value quality schools and parks, safe neighbourhoods, a strong economy and efficient transportation choices.

Home buyers and sellers trust REALTORS® for their insights every day. New Brunswick REALTORS® assisted with more than 7,820 home sales in 2018, as recorded through the MLS® systems in the province. The insights REALTORS® gain through their work are valuable to policy makers and reflect the opinions of many New Brunswickers.

As REALTORS® we likely visit more homes to talk with people about their hopes and dreams than individuals in any other profession. We learn from our clients the things they value, and what their concerns are.

Together we work hard to promote public policy in a shared belief in a quality of life in New Brunswick. That Quality of Life philosophy is based on five principles important to REALTORS® in building better communities. Over the years we have applied these principles to our volunteer work, fundraising, and advocacy for changes in provincial laws.

- *Ensuring Economic Vitality:* Quality of life starts with a good job. The key to our quality of life is a strong economy
- *Preserving our Environment:* REALTORS® recognize that one of the most important elements of our quality of life is clean air and water, parks and open space
- *Protecting Property Owners:* A strong economy depends on preserving the investment people have made in their homes and protecting the ability to freely own, use, buy and sell property
- *Building Better Communities:* Communities with good schools, safe neighbourhoods, reliable public services and transportation, beautiful parks and open space are healthy communities. Better communities are created when governments are our partners and sufficiently fund schools and infrastructure systems which are essential for a community's quality of life
- *Providing Housing Opportunities:* Quality of life means having a roof over your head. We all want a safe, decent and affordable home near where we work, shop and play. A community needs a choice of affordable housing with a range of design, costs and locations

Real estate plays an integral role in our economy. Residential real estate provides housing for families. It's often the greatest source of their wealth and savings.

When it comes to property tax and municipal reform, the government of New Brunswick has ignored its own advice.

As early as 1975, problems with the civic structure and property tax revenues in New Brunswick were acknowledged by the provincial government. The Hatfield government ordered a report reviewing the issues, but none of the recommendations in the report were implemented.

The McKenna government did carry through with some town amalgamations and some reforms with different types of service commissions, but did not address the larger problems associated with the unincorporated communities.

Premier Camille Thériault then created the Municipality Act Review Panel, but lost the 1999 provincial election. The Review Panel's recommendations were then presented to Bernard Lord's incoming conservative government.

The Rural Community Incorporation and Restructuring Regulation under the *Municipality Act* was finally adopted in 2005 to encourage amalgamation. It is, however, a voluntary approach permitting the creation of "rural communities" by amalgamating several LSDs, LSDs with a municipality or several municipalities. In 2017, the provincial government set the requirement that a new entity should have a population of at least 3,000 or a $200 million tax base.

In 2008, the Graham government established the Commission on Local Governance under Commissioner Jean-Guy Finn to address the issue of ineffective local governance and to investigate the idea of a "self-sufficiency" program for the province. The Finn report included more than 90 recommendations, including one to re-structure the province into 53 municipalities and 12 regional service districts and boards. The Graham government was defeated after one mandate, so no action was taken on the recommendations.

The Finn Report noted at that time that work done previously had been ignored, but was still valid:

> *Before identifying some of the specific changes that should be addressed in the development of a new legislative framework for local government, we wish to underline that the vast majority of the recommendations of the 1999 Report of the Municipalities Act Review Panel that were not implemented are still valid and should be considered in a revision of the legislation.*

While Commissioner Finn was addressing the issue of municipal organization, in 2008 the government also established The Select Committee on Tax Review, an all-party committee of the Legislative Assembly that was charged with examining taxation in New Brunswick, including income tax and the harmonized sales tax.

Ten years ago, that report identified several issues in the provincial property tax system – issues, we note, that have still not been resolved. The Tax Review report identified the issues as:

- Differential tax treatment of residential and non-residential property

- Differential tax treatment of owner-occupied and non-owner occupied residential property; uneven application of the 65¢ per $100 tax in LSDs
- Assessment spikes and escalating assessments that increase property taxes over time

The final report of The Select Committee on Tax Review included the following recommendations:

- Reduce the non-residential rate from $2.25 to $1.50 per $100 of assessed property value
- Reduce the $1.50 per $100 of assessed property value on non-owner occupied residential property
- Extend the 65¢ tax rate to all types of properties in LSDs
- Implement a three-year average assessment value on property
- Promote the full utilization of the Assessment Reduction Program for properties owned by non-profit organizations

In 2012 the government of New Brunswick under Premier David Alward published a policy paper entitled “Improving New Brunswick’s property tax system: A white paper”. It included three major recommendations on how to improve the property assessment system in the province. It also noted that in the public consultations that led up to the publication of the white paper, three areas were identified as flaws in the property tax system. They included:

1. The special 63.15 cent levy applied only to owner-occupied residential properties (homeowners) in local service districts (LSDs);
2. The double taxation on apartments, second homes and cottages; and
3. The relatively high property tax burden on businesses.

One major recommendation in that 2012 report was a proposed schedule for the reduction of the provincial tax on non-owner occupied housing. It was implemented by the government at that time, but the reduction schedule was phased out.

The following is an excerpt from the 2012 white paper:

Recommendation 3: Reduce the provincial taxation on non-owner-occipied housing.					
	Provincial Property Tax Rate				
Property Type	**2012**	**2013**	**2014**	**2015**	**2016**
Residential Non-Owner-Occupied Housing	$1.4573	$1.3973	$1.3373	$1.2773	**$1.1233**

The government at that time (then-Finance Minister Blaine Higgs) said the white paper would begin the process of solving some of the problems of taxation inequities that exist within the current system. As a next step, the government wanted to introduce a new community funding model to support the principles of fairness and provide a degree of financial stability and predictability for communities.

As the 2012 white paper concluded:

> *Reforms contained in the white paper are aimed at improving the fairness of the property tax system for New Brunswickers…. It is clear the time is right to introduce a number of reforms that will modernize the property tax system in the province. However, these changes must be made in a fiscally responsible manner that ensures that we continue to live within our means.*

Double taxation has had a negative impact on real property investment, and is now having an impact on rental housing

NBREA is again calling on the New Brunswick government to remove the inequity of double taxation on non-owner occupied residential properties. In 2012, the government announced a phased-in reduction of the tax, beginning in the 2013 fiscal year - despite criticism that the move would only benefit property owners, and not tenants. However, the planned adjustments ended in 2016.

The call to end the provincial property tax, or "double taxation," has increased in the past two years. Mayors, business leaders, and several research groups have all labeled it unfair and a detriment to investment in real property. REALTORS® annually provide anecdotal evidence of how the double tax discourages individuals from investing in cottages or rental properties.

It is difficult to determine the exact net revenue streams for the province from the property tax; government budget documents do not break out the real property tax paid on residential and commercial properties. However, the 2017 provincial budget estimated that in 2018, total provincial real property tax revenues would be $515 million.

The key elements of the present provincial/municipal fiscal arrangements, including the introduction of the "double taxation" formula, were put in place in 1966 along with the implementation of the Equal Opportunity (EO) program. They reflect the redistribution of responsibilities between the Province and the municipalities that took place at that time. To help cover costs, the province would impose a form of luxury tax – or new property tax – on anyone who owned property in New Brunswick but did not live there full time.

That was more than 50 years ago. "Tax creep" has set in to the point where provincial property taxes are also applied to commercial and multi-tenant buildings, as well as personal property owners.

But all property owners have access to, and benefits from, local/municipal and provincial services. The level of services delivered to all properties is the same regardless of whether it is owner occupied or not, yet under this current model, non-owner occupied properties essentially pay twice the tax - but get no additional benefit.

Since the introduction of this tax framework to ensure equality across the province, New Brunswick has experienced significant demographic changes. Government services have evolved. It's time for a 50-year update.

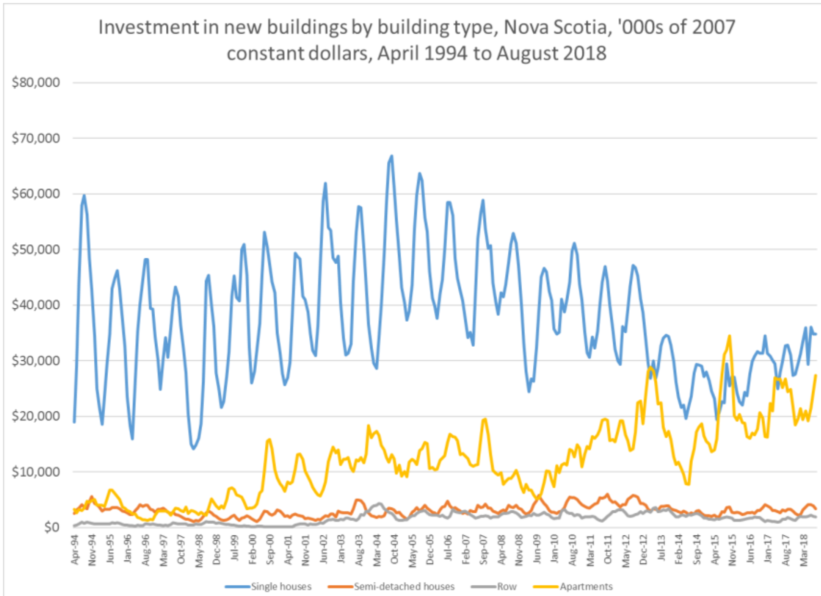
Impact of Double Taxation on rental residential units

According to the New Brunswick Apartment Owners Association, property taxes for apartments in New Brunswick are nearly twice as high as those in the rest of the Maritimes and more than 2.5 times higher than those in the rest of Canada. Approximately 250,000 New Brunswickers rent their home, which means through their rent they are paying the double property tax imposed on non-owner occupied residential buildings.

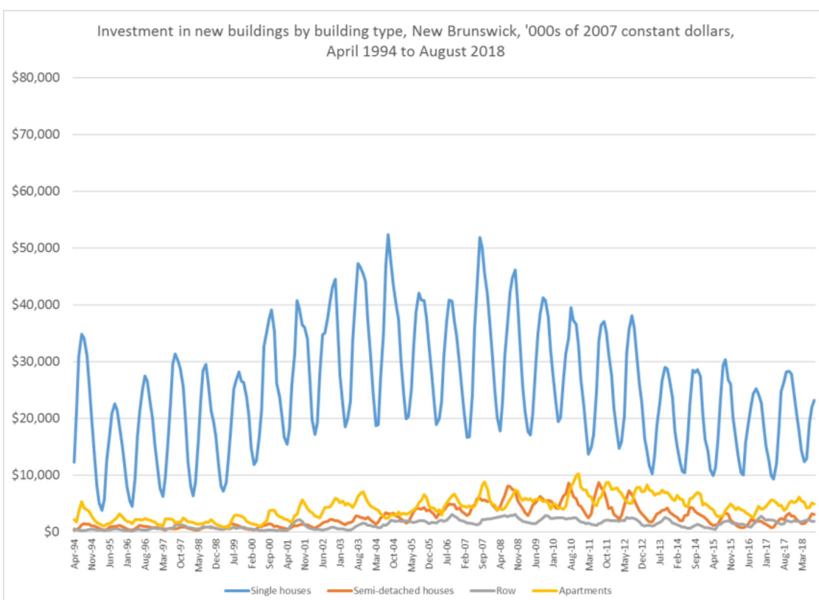
For the first time in decades, demand for rental housing nationally is outpacing ownership, driving rent prices higher and deepening Canada's housing affordability woes.

Between 2011 and 2016, nearly 753,000 new households were formed in Canada. About 396,000 of those were rentals, which now account for 32 per cent of the country's homes, according to data from the 2018 Canadian Rental Housing Index. Over the same period, the percentage of home ownership fell from 68.9 per cent to 67.8 per cent, the first drop since 1971.

Statistics Canada data (1994-2018) shows that investment in apartments is displacing investment in single homes in Canada. In Nova Scotia, investment in new single homes is declining in value but the value of investment in apartments is increasing.



By comparison, in New Brunswick there is declining investment in new single-family homes, but no growth in corresponding new apartment investment, as there is in Nova Scotia.



These statistics suggest that the “double tax” on rental units is discouraging investment in this housing type in New Brunswick. There may be confounding influences to consider in determining the reasons for the differences in housing investment between the two provinces.

How New Brunswick Applies the Land Transfer Tax Is Unfair.

The current policy of using EITHER purchase price OR assessed value (whichever is higher) to calculate the tax on the transfer of property is unfair. With other commodities consumers are taxed on the actual price. The current policy also cannot reflect real market conditions for the property involved. If there is a market downturn within the 12-month assessment cycle, it would be reflected immediately in the real price paid. It may only be reflected in the assessed value years later. In real estate, the real value of a property is what a buyer is willing to pay, not what someone thinks it could be worth.

Government policy should be to apply the tax on the actual purchase price if the real property is being transferred as a result of a registered transaction. Just as other provincial taxes are applied to the actual price, the same policy should apply in a real estate transaction. The government should not be applying tax on an amount they believe is higher; the tax should be applied on what the consumer actually paid.

The current version of the *New Brunswick Real Property Transfer Tax Act* states that:

> 2(1.03) On or after April 1, 2016, every person who tenders a deed for registration in the Province shall pay, before the deed is registered, a tax computed at the rate of 1% of the greater of (a) the consideration for the transfer, OR [emphasis added] (b) the assessed value of the real property.
>
> 2(1.04) Despite subsection (1.03), in respect of an agreement for sale or purchase executed before February 3, 2016, the percentage referred to in subsection (1.03) shall be read as 0.5%, regardless of the date on which the deed is tendered for registration.

The land transfer tax is, by application, unfair, because it forces a small segment of taxpayers (property buyers) to fund services designed to benefit all citizens.

One of the distinctive differences between traditional property taxes and the land transfer tax is its impact on mobility. The transfer tax creates a disincentive for property owners to sell their homes and move. More owners remain in unsuitable housing, reducing the number of homes for sale.

Traditional property taxes have the advantage of not discouraging mobility, as all property owners across the municipality contribute.

Using an average price of a home in New Brunswick ($164,000) as a guide, the increase in the land transfer tax in 2017 resulted in an additional $820 in costs for New Brunswick families. This becomes another obstacle to young families purchasing their first home. It is an additional cost for New Brunswickers who want to purchase a new home to meet their changing housing needs, and they are not receiving any added value for this increase.

According to MLS® statistics, 56 per cent of the approximately 7,000 houses sold across the province in 2017 went for less than their assessed value, while 42 per cent sold for more than the assessed value. That means 98 per cent of the assessments in 2017 didn't match the market value.

Don't confuse housing that is affordable with affordable housing

According to the Canadian Real Estate Association, in 2018 the average MLS® price for a single-family home in New Brunswick was $ 177,200.. The Canadian average was $ 488, 600. This means the purchase of a home in New Brunswick is more affordable than it is in other provinces.

However, it costs more to keep a home in New Brunswick. According to a 2017 report by Zoocasa, an online real estate marketing company, Saint John NB had the highest residential property tax rate in Canada at 1.785%. This compared to 1.42110% in Fredericton, 1.1850% in Halifax or 0.73000% in St. John's. Higher residential property tax rates, which are the responsibility of local governments, mean the province must rationalize the other part of the tax formula – assessments, and how they are calculated.

Property assessment issues

Since 2010, NBREA has been advocating for a modernization of the property tax system and for municipal reform. The sheer magnitude of such change implies a phased-in approach, so the government could coordinate modernization with revenue adjustments for both municipalities and the provincial treasury.

NBREA recognizes that these taxation adjustments cannot be done in a vacuum, and cannot be done for short-term gains. We recognize the financial challenges the government faces in developing solutions to property taxation issues.

NBREA first expressed concern about the provincial property tax system by publishing a comprehensive review of property tax issues in New Brunswick, recommending the first priority be making the property tax system fair for all residents.

The Association defines "fairness" as meaning there is a statistical methodology for calculating assessment increases based on real market conditions. This means recognition in the system that prices can go down, or remain unchanged, and increases are not considered a "norm". Fairness refers to property owners and not to municipalities, as municipalities have access to alternative revenue sources, while property owners do not.

There are other "fairness" issues in the assessment system. For example, there is currently no mechanism in place for a property owner to appeal an assessment based on the assessment of a similar property. With the existing legislation there is no obligation for the assessment authority to assess two like properties in the same way. There can be two very similar properties with two very different assessments yet under the current system property owners can't argue that this is unjust. A missing equity provision is a major deficiency of the existing assessment legislation in New Brunswick.

Property value assessments have been identified as being at the heart of the New Brunswick property tax issue, as they do not reflect real market conditions. As the primary driver of the system in New Brunswick, many owners believe there are problems with how property value assessments are calculated.

The discussion of property taxes and the New Brunswick assessment system was “hijacked” in April of 2017, when the Service New Brunswick controversy took over the headlines. The government revealed that more than 2,000 homes not only received hefty property assessment increases, but those increases were declared to be the result of non-existent home renovations.

The combination of inflated assessments and fake renovation claims allowed Service New Brunswick to raise those homeowners' property tax bills beyond the province's 10 per cent legal limit for an annual increase. A review later indicated EACH home had been overvalued an average of $27,300.

In April 2017, Premier Gallant announced the appointment of Justice Joseph T. Robertson to “undertake an independent review of the facts and circumstances related to inaccuracies and possible errors in Service New Brunswick's calculation of real property tax assessment values for the taxation years 2011 through 2017”.

But on May 9, 2017, Auditor General Kim MacPherson told the government she intended to examine property assessment procedures as part of her annual review of the government's financial statements.

Then in June, the government announced it would freeze assessments for 2018 while the auditor general conducted a review of the property assessment system. We later learned from Finance Minister Rogers that she had ordered a complete review of property tax issues. The difference: she was having Finance Department staff do it internally. No details were ever released.

Service New Brunswick also spent an extra one million dollars to hire extra staff to catch up on the record number of appeals filed in 2017 and 2018.

At that time, the NBREA message was that the government’s plan to resolve the property tax assessment controversy did not go far enough. The focus remained on justifying the parameters of the existing assessment system, rather than finding the way to make it fair and justifiable, which would restore property owner confidence in the process.

Our message has not changed.

Real estate markets are based on supply and demand in determining the appropriate sale price for a property. There are motivated sellers and buyers who agree on a price, and that price reflects the current market value of the property. We require an assessment system that reflects, as closely as possible, real market value.

Why A Task Force

Restoring confidence in the property tax and assessment system in New Brunswick remains a major challenge. NBREA considers the creation of a stakeholders task force as the best step to re-build confidence in the property tax system after everything that has happened in the past year. In addition to resolving immediate assessment issues, equal or greater emphasis should be placed on developing the property tax system of the future, considering the important role it plays on both the overall revenue for the province, and potential economic growth.

REALTORS® propose the creation of a Task Force with a mandate to consult with all stakeholders in the development of a fair and equitable property tax system. This includes recommendations on who does the assessment, the guidelines that are used, and the rights and procedures for appeal. We would recommend the Task Force members include not only members of the legislature, but stakeholder representation, to ensure a thorough investigation of issues and proposed solutions.

NBREA members are here to help resolve these complex issues, providing the expertise of REALTORS® in New Brunswick who deal with these property tax issues every day as they help families make the single biggest investment of their life.

On March 26, 2018, the Moncton Times & Transcript supported the proposal in this editorial – before the Service New Brunswick assessment controversy took over the headlines.

> Appoint task force to fix broken system
>
> AS any amateur home handyman or woman will reluctantly tell you, sometimes, some things are so broken that you have to admit defeat, step back and let somebody else take a crack at fixing it.
>
> So it is with New Brunswick's beleaguered property tax assessment system.
>
> New Brunswickers have rightly lost faith in the system, which calculates how much tax they must pay on their properties, and the government must act decisively and openly to fix it and restore that faith.
>
> Last year, the province fast-tracked new assessment technology that led to the release of 2,048 incorrect property assessments, prompting an investigation by the auditor general and resulting in 18,601 appeals - that's double the usual number of appeals.
>
> In Metro Moncton alone, 5,152 appeals were received, 68 per cent of which were approved, meaning assessment values for some 3,500 homes were reduced. That's a mistake rate of more than two-thirds. And that's only among people who bothered to appeal. How many other properties have been incorrectly assessed but not challenged?
>
> The New Brunswick Real Estate Association, whose members work daily with matters like property assessments, is calling on the province to fix what

government relations chairwoman Kari McBride described in an interview as "an unfair system, improper and broken."

As it is now, the system leads to "widespread unfair taxation," in part because no one can explain how it works, McBride added: "The values are created arbitrarily and the methodology is extraordinarily complicated."

We agree with the realtors' association, which is calling for a task force to be appointed to recommend changes to the system to make it more fair.

The people of this province have a right to expect to be treated fairly by their tax authorities. The sharp increase in the number of appeals in the wake of the government's botched changes to the assessment system shows just how much taxpayers' trust has been abused.

That's not acceptable in a democracy.

New Brunswick needs an impartial, third-party task force of recognized experts to study the assessment system and recommend ways to fix it. This process must be free of political interference of any kind; its work must be conducted in full public view; and when it's complete, the government must not be allowed to cherry-pick or ignore its recommendations at will. Anything less would call the integrity of the process into question, leaving it open to abuse and doing nothing to restore the public's trust in the institutions that decide how much of their hard-earned money they must hand over each year.

At this point, leaving any reform of the assessment system in the hands of the province's bureaucrats and their political masters just isn't an option if fairness and public trust are to be restored. After all, they're the ones who caused the problems in the first place; why should we trust them to be able to fix it?

Our Recommendations

1. New Brunswick requires a comprehensive review of the province's entire property tax structure to ensure that New Brunswick follows best practices and is competitive in a global marketplace with a fair and equitable tax system.

   This can be done through the creation of a Task Force, with a mandate to investigate deficiencies and unfair aspects of the current property tax regime and make recommendations on how they can be resolved. The Task Force has the benefit of the previous comprehensive studies and reports prepared for the government of New Brunswick, dealing with the same issues.

   This should include a review of *New Brunswick's Assessment Act,* which is more than 50 years old, to ensure the province has a fair property tax system that helps – not hinders – economic activity and growth. For example, the assessed value of forested properties has been frozen for more than 20 years.

2. Our assessment system must be seen to be fair. To determine assessed value, if a property is sold within a taxation year, the actual amount the property is sold for should be used as the property value assessment. If a property is not sold, then the amount the property was previously sold for, plus applied annual increases (such as COLA), should determine what the assessed value is.

   The importance of this assessed value should dictate a more aggressive on-site inspection program to verify structural changes or renovations that could introduce a variation to this approach.

   A review of the existing real property assessment system must be one of the priorities for the review of the property tax structure in Recommendation One.

3. The double taxation on non-owner occupied residential properties should be eliminated. Recognizing the requirement for fiscal responsibility, NBREA recommends this be done using an annual reduction formula, similar to that introduced in the government's 2008 white paper.

4. The provincial tax on non-residential (commercial and business) properties in the province should be reduced to help encourage business development. As the C.D. Howe Institute points out in its annual analysis of business costs in Canada, because of double taxation on commercial and business properties, New Brunswick has one of the highest property tax burdens on businesses in Canada.

5. The property transfer tax must be applied to the real sale price of the property. The tax is currently based on the actual re-sale value of the property OR the assessed value, whichever is the greater. This is unfair – the Land Transfer Tax should be applied to "what is" paid, not based on "what if" the property was worth more. All other taxes are based on the actual amount paid – real estate should be treated the same way.

As other jurisdictions have done, New Brunswick should also offer first time home buyers a property transfer tax exemption or rebate to encourage investment in real property.