

ACCESS TO AFFORDABLE HOUSING: THE OVERLOOKED BENEFIT OF MUNICIPAL PROPERTY TAX EXEMPTIONS

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Affordable housing is dominating the headlines in the media, proclaiming that Canadians are currently in the midst of an affordable housing crisis. While affordable housing has community-wide benefits, some mechanisms that are available to access affordable housing are under-utilized. Among these available mechanisms are municipal property tax exemptions under the Assessment Act (the "**Act**"). This exemption is limited by specific criteria.

An exemption from municipal property tax can enable an organization to spend more of their limited resources on their primary purpose. The relief they provide ultimately outweighs the public interest in the generation of revenue through taxation of real property on its own.^[1]

Exemption applications:

Subject to exemptions, all real property in Ontario is liable to assessment and taxation under the Act.^[2] One of the exemptions provided for in the Act exempts "lands owned, used and occupied by any charitable, non-profit philanthropic corporation organized for the relief of the poor if the corporation is supported in part by public funds."^[3]

Unlike general assessment appeals which are brought before the Assessment Review Board, property tax exemption applications must be brought before the Ontario Superior Court of Justice ("**SCJ**").^[4] Applications must demonstrate that the property qualifies to be exempt from taxation. The test used to determine whether the municipal tax exemption should be granted is whether the Primary Purpose of the institution comes within the words defining the exemption in the Act.^[5] The Ontario Court of Appeal has found that "Primary Purpose" is to be defined objectively and distinguished from purposes that would

be considered incidental.[6]

If the SCJ finds that an exemption applies, that exemption applies to the tax year in which the application was made, and all future tax years, provided the circumstances concerning the use of the property stay the same.[7] Therefore, SCJ applications need to be issued by December 31st of a year to contest an exemption for that year.[8]

Exemptions for Affordable Housing

Certain types of affordable housing will qualify for an exemption pursuant to Paragraph 12 of Subsection 3(1) of the Act if they meet the following four criteria. First, the statutory precondition is that the land must be "owned, used and occupied" by the organization to serve its purpose of ensuring that the exemption is limited to land being used directly by the charity in carrying out its charitable activity.[9] For the purposes of this exemption, the term "occupation" does not require actual or exclusive occupation by the charitable institution.[10] The Ontario Court of Appeal found that a property that is being used directly by the charity in furtherance of its objective of relieving the poor constitutes occupation within the meaning of Paragraph 12 of Subsection 3(1) of the Act.[11]

Second, the organization applying for the exemption must be either the Canadian Red Cross Society, the St. John Ambulance Association, or any charitable, non-profit philanthropic corporation.[12] A corporation needs to demonstrate that their sole purpose is to operate as a charitable, non-profit philanthropic corporation. For corporations registered as a charity or designated as a charitable corporation by the Canada Revenue Agency, this requirement is easily met.

Third, the corporation must be organized for the relief of the poor. The expression "poor person" does not mean the very poorest or the absolute destitute.[13] To satisfy this requirement, there must be an element of economic deprivation or need, the relief from which is part of the purpose of the corporation claiming the exemption.[14] Furthermore, if some individuals who benefit from services provided by a charitable corporation are not poor, that does not necessarily mean that the corporation is not organized for relief of the poor.[15]

Finally, the corporation must be supported in part by "public funds". Canadian courts have found that charitable institutions must receive the funds directly from a government source to qualify, which includes funds from a municipal, provincial or the federal government.[16]

It is not uncommon for applicants to disagree with MPAC's evaluation, in which case it is

recommended that organizations get independent legal advice.

[1] *Ottawa Salus Corp. v. Municipal Property Assessment Corp.*, 2004 CarswellOnt 236 (ONCA) at para 15.

[2] Assessment Act, R.S.O. 1990, c. A.31, s. 3(1)

[3] Assessment Act, R.S.O. 1990, c. A.31, s. 3(1)(12)(iii).

[4] Assessment Act, R.S.O. 1990, c. A.31, s. 46(1).

[5] *Buenavista On the Rideau v Ontario Regional Assessment Commissioner*, Region No. 2, 1996 CarswellOnt 1492 (Ont Div Ct.) at para 12; cited with approval in *Diocese of Toronto Camps (Anglican Church of Canada) v. Municipal Property Assessment Corp.*, 2004 CanLII 34918 (ONCA) [Anglican Church of Canada].

[6] *Anglican Church of Canada* at para 12.

[7] *Municipal Property Assessment Corporation*, "Assessment Procedure for Court of Law Appeals / Applications".

[8] An exception applies to applications based on omitted or supplementary assessments, which can be made in the year the assessment is made or the year after.

[9] *Ottawa Salus Corp. v. Municipal Property Assessment Corp.*, 2002 CanLII 62448 (ON SCDC) at para 14.

[10] *Ottawa Salus Corp. v. Municipal Property Assessment Corp.*, 2004 CarswellOnt 236 (ONCA) at para 36.

[11] *Ottawa Salus Corp. v. Municipal Property Assessment Corp.*, 2004 CarswellOnt 236 (ONCA) at para 36.

[12] Assessment Act, R.S.O. 1990, c. A.31, s. 3(1)(12)(iii).

[13] *St. Catharines Seniors Apartments Phase Three Inc. v. Municipal Property Assessment Corp.*, 2015 ONSC 3896 (ONSC) at para 41.

[14] *St. Catharines Seniors Apartments Phase Three Inc. v. Municipal Property Assessment Corp.*, 2015 ONSC 3896 (ONSC) at para 42.

[15] *St. Catharines Seniors Apartments Phase Three Inc. v. Municipal Property Assessment Corp.*, 2015 ONSC 3896 (ONSC) at para 46.

[16] *Causeway Foundation v. Ontario Property Assessment Corp.*, 2004 CanLII 8242 (ONCA) at para 24.

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