
ONTARIO COURT CONFIRMS CHURCH PROPERTY USED FOR RELIGIOUS SCHOOL EXEMPT FROM MUNICIPAL PROPERTY TAX

*By Esther S.J. Oh**

A. INTRODUCTION

In [*St. George and St. Rueiss Coptic Orthodox Church v Municipal Property Assessment Corp.*](#),¹ the Superior Court of Justice of Ontario found that property owned by a Coptic Orthodox Church (“Church”), and shared with a charitable religious school (“School”), was exempt from property tax under the *Assessment Act*² (Ontario) (the “Act”). The Court noted that while both the Church and the School were separately incorporated charities (the Court stated that the Church had incorporated the School for insurance and liability reasons), the Church controlled and dominated the School and the operation of the School was an important part of the Church’s religious activities.

B. REVIEW OF CASE

1. Relationship between the Church and the School

Examples of indicia of the Church’s control over the School included the Church’s appointment of School directors, the requirement for the parish priest’s approval to hire teachers at the School, the requirement that the School’s Christian-based curriculum must be approved by the Church (and was also approved by the Ministry of Education), the School’s financial dependence on the Church (including the Church’s provision of a tuition subsidy to almost every student) and Church ownership of substantially all of the assets of the school (including the desks, tables and chairs). The

* Esther S.J. Oh, B.A., LL.B., a partner, who practices charity and not-for-profit law with Carters’ Orangeville office.

¹ *St. George and St. Rueiss Coptic Orthodox Church v Municipal Property Assessment Corp.*, 2016 ONSC 1723 (CanLII), <http://canlii.ca/t/gnncr>.

² *Assessment Act*, RSO 1990, c A.31, <<http://canlii.ca/t/52kkcr>>

Court noted that the School offered students religious instruction and teaching of the ancient Coptic language, the preservation of which was intimately tied to the Church's Coptic faith.

2. Assessment Act (Ontario)

Paragraph 3(1)(3) of the Act exempts from property tax land that is owned or leased by a church or religious organization and is a "place of worship [...] and [...] used in connection with it." Paragraph 3(1)(5) of the Act exempts from property tax land that is "owned, used and occupied solely by a non-profit philanthropic, religious or educational seminary of learning or [...] leased and occupied by any of them." There was no dispute that the Church was "a church or religious organization" within the meaning of paragraph 3(1)(3) of the Act and there was no dispute that the School was a "non-profit philanthropic, religious or educational seminary of learning" within the meaning of paragraph 3(1)(5) of the Act.

3. MPAC's position

As background, the Ontario Municipal Property Assessment Corporation ("MPAC") had assessed the Church's previous building located in downtown Toronto (in which the Church had operated the School, but as a program of the Church) as being exempt from taxation. However, the Church purchased and constructed a new building in North York in the year 2011 and also separately incorporated the School that same year. With respect to the new Church building, MPAC took the position that upon separate incorporation of the School, the School's use of the classroom areas, school administrative areas and the gymnasium would be taxable portions of the building and assessed accordingly. The Church took steps to appeal MPAC's assessment of its new building, which is the subject matter of this case and simply referred to as the "Church building" in this *Bulletin*.

MPAC conceded that the School or the Church would most likely be tax exempt if they separately owned the facilities that they shared, and the Church would be tax exempt on all of the facilities if it operated the School directly instead of through a controlled/dominated corporation. However, MPAC took the position that since the School was separately incorporated, the portion of the Church building used by the School would no longer be exempt since the School neither owns the property or has exclusive use and occupation of the land, as required under paragraph 3(1)(5) of the Act.

4. The Court's Analysis

The Court stated that the exemptions under the Act were not to be narrowly construed and, therefore, the exemption available under subparagraph 3(1)(3)(i) of the Act for a “place of worship” should apply to all portions of the building routinely used by the Church for its traditional functions in connection with its worship activities. This included classrooms which were used for Sunday School, and the gymnasium which was used for church activities – all of which were also used by the School.

In arriving at its decision, the Court stated, “the mere fact that some of the facilities used in connection with the place of worship are also used by the School does not strip them of their primary purpose.” In this regard, the Court found that due to the “common patrimony” between the School and the Church, the exemption in paragraph 3(1)(3) was available based upon the Church’s ownership and the common patrimony associated with its use.

However, the Court did not extend the exemption to the administrative facilities used by the School, to which parishioners did not normally have access in the ordinary course of Church activities.

While the Church building also housed a small store that sold religious articles and books to parishioners after Church services, the Court did not provide a ruling on whether the store qualified for an exemption under the Act due to insufficient evidence. The Church building also housed a day care facility (operated in a different portion of the building) which the Court did not consider, since the assessment of that portion of the property was not at issue.

C. CONCLUDING COMMENTS

As the Court in the above case was focussed on addressing municipal property taxation issues, the Court did not provide any comments concerning the possibility of cross-over liability between the Church and the School, a risk that can occur between related corporations in some situations. In this regard, while structuring of a close relationship between related corporations could support a shared exemption from property tax, subject to the applicable background facts, it could also result in an enhanced risk of cross-over liability between the corporations. As such, churches and other charities seeking exemptions under the Act are recommended to review their specific fact situations with legal counsel in order to ensure an integrated approach that considers all of the relevant issues.



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