

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Stamford Kiwanis Non-Profit Homes Inc. v. Municipal Property Assessment Corp., 2023 ONSC 6625

Ontario Superior Court of Justice, Lococo, Emery and Schabas JJ., 8 December 2023

An appeal as to the property tax exemption of a housing corporation.

Key words: Tax, Ontario, Canada, Appeal, Municipal Property, Charitable, Relief of the Poor

1. Lococo J gave a judgment to which Emery J agreed, and Schabas J gave a separate concurring judgment.
2. Stamford Kiwanis Non-Profit Homes Inc. (Stamford Homes) is a not-for-profit corporation incorporated in 1984 with objects to (at [5]):
 - acquire, construct, hold, supply, operate, manage and maintain housing accommodations and incidental facilities for the purpose of operating a non-profit housing project for lower income people, senior citizens, functionally handicapped person or others with special needs; and
 - raise money through subscriptions, memberships.
3. Stamford's Homes directors served without remuneration, but the day-to-day management was contracted out to a for-profit company founded and previously owned by the current president (and a director) of Stamford Homes.
4. Stamford Homes owns three multi-unit residential properties consisting of 107 residential units that provide affordable housing to low-income residents of the respondent Corporation of the City of Niagara Falls (the City).
5. Ninety-four units are rented to low-income tenants who pay rent geared to income (RGI) or are otherwise paying rent below the market average. RGI is a system that limits the rent paid by tenants to what they can reasonably afford. The occupants of the remaining units pay market rents, which subsidise the rents for the below-market units.
6. Stamford Homes had been paying municipal taxes but, in 2021, sought a declaration that the properties were exempt from such taxes.
7. The [Assessment Act, R.S.O. 1990, c. A.31](#), (the Act), section 3(1)12, provides charitable institutions specified in the section are exempt, including:

Land owned, used and occupied by,

- i. The Canadian Red Cross Society,
 - ii. The St. John Ambulance Association, or
 - iii. any charitable, non-profit philanthropic corporation organized for the relief of the poor if the corporation is supported in part by public funds.
8. The only issue before the primary Court was whether Stamford Homes was “organized for the relief of the poor”.
9. Citing *Religious Hospitallers of St. Joseph Housing Corp. v. Regional Assessment Commissioner* (1998), 42 O.R. (3d) 532 (C.A.) (Religious Hospitallers), the primary Court found that Stamford Homes was not “organized” for the relief of the poor. In that case, the Court interpreted the words “organized for the relief of the poor” to mean that it would be the corporation itself, by some form of endeavour of the corporation, which would provide the relief involved. After reviewing the limited role of the housing corporation that owned the property in that case, the court determined that the housing corporation “was not ‘organized for the relief of’ the tenants within the meaning of the exemption provision”.
10. The primary Court held that the facts in the case before it were indistinguishable from *Religious Hospitallers*.
11. Stamford Homes appealed, arguing that the *Religious Hospitallers* case did not bind the primary Court, which should have applied the principles for interpreting taxation legislation. It also argued that the primary Court erred in its factual findings, or its application of legal principles to the evidence, including in its conclusion that *Religious Hospitallers* was not distinguishable on its facts.
12. The Appeal Court noted that the standard of review was correctness for questions of law, including legal principles extricable from questions of mixed fact and law. Stamford Homes had to show that the error went to the root of the challenged finding such that it could not safely stand in the face of the error.
13. The Appeal Court summarised the authorities that set out the principles that applied to the interpretation of tax legislation being:
 - The interpretation of tax legislation should follow the ordinary rules of interpretation;
 - A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach;
 - The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question and not on the existence of predetermined presumptions;
 - Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute;
 - Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.
14. The Appeal Court then examined the case of *Religious Hospitallers*, where it was found that the corporation was not organised for the relief of the tenants within the meaning of the exemption provision. It quoted from the judgment of *Religious Hospitallers* (at [43]):

I read the words "organized for the relief of the poor" to mean that it would be the corporation itself, by some form of endeavour of the corporation, which would provide the relief involved. In this case, the corporation itself does very little. It raises no funds by efforts of its members for the support of the institution, such as solicitation of the public or other fund-raising projects or events. It does not manage the operation; that is done by the order of the *Religious Hospitallers of St. Joseph* in return for payment of an annual fee of approximately

\$60,000. The Housing Corporation is the registered owner of the property which it purchased from the Order, but the purchase was fully financed, and the cost of financing is paid for in total, by government funds. From the outset, the actual operation and administration were organized so that the Housing Corporation has provided nothing which is for the relief of the tenants. The total cost is borne by a combination of the tenants themselves and government.

15. The Appeal Court also reviewed the decision in *Ottawa Salus Corp. v. Municipal Property Assessment Corp.* (2004), 69 O.R. (3d) 417 (C.A.) (Ottawa Salus) that relied on *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3.

16. In *Ottawa Salus*, the Appeal Court noted that the amended language in an earlier amendment had not narrowed the exemption, but that (at [37]):

...the court held that taking into account the provision's legislative purpose, the more expansive interpretation adopted by the court below (that is, the charity need not itself occupy the land, but the land must be used directly by the charity in carrying out its work) was the preferred interpretation that created "a balanced and just interpretation of the exemption".

17. *Stamford Homes* argued on appeal:

- **Error in statutory interpretation:** In *Religious Hospitallers*, the Court of Appeal applied outdated principles of statutory interpretation relating to taxation legislation, rather the updated principles set out in *Notre-Dame de Bon-Secours* and *Ottawa Salus*. The application judge erred in law in relying on *Religious Hospitallers* in these circumstances.
- **Error in legal test as to interpretation of "endeavour":** The application judge erred in the statement and application of the legal test for determining whether an institution is "organized for the relief of the poor", including by giving an expansive interpretation to the requirement in *Religious Hospitallers* of some kind of "endeavour". Among other things, the Court of Appeal in *Religious Hospitallers* erred in law in interpreting "endeavour" as imposing a requirement that the institution seek and obtain outside funding beyond that provided by government sources and its tenants.
- **Was *Religious Hospitallers* distinguishable?** The application judge erred in finding that the Court of Appeal decision was not distinguishable on its facts. The facts under appeal were materially different from those in *Religious Hospitallers*.

Error in statutory interpretation?

18. The primary Court at [64]-[65] quoted the following passage from *Religious Hospitallers*, at p. 10, which called into question the utility of granting a taxation exemption that would have the effect of shifting the burden of the housing corporation's funding shortfall from the provincial government to the municipality, rather than freeing up limited resources for use to relieve poverty:

On the facts as outlined above, if the Housing Corporation were to succeed in obtaining an exemption, there would be no item in its statements showing municipal property taxes as an expense. This would reduce their deficit by the amount of those taxes. However, since the provincial government makes up the total amount of that deficit, the Housing Corporation has nothing obvious to gain in obtaining an exemption. It appears that the only result is to shift the burden of the shortfall, to the extent of the municipal property tax amount, from the province to the municipality, which was never a party to the arrangement in the first place.

It is evident from the foregoing that in *Religious Hospitallers*, the Court of Appeal was aware that shifting the burden of the property owner's funding shortfall from one level of government to another would not serve the purpose of freeing up funds for the owner's use to relieve poverty, which the court in *Ottawa Salus* identified as the legislative purpose of the tax exemption in s. 3(1)12. In these circumstances, I see no legal error in the application judge's reliance on *Religious Hospitallers* despite the absence of an explicit reference to the interpretive principles in *Notre-Dame de Bon-Secours*.

Error in legal test?

19. Stamford Homes argued that the primary Court erred in the legal test for determining whether an institution is "organized for the relief of the poor", including by giving an expansive interpretation to the requirement in *Religious Hospitallers* for some "endeavour", and the Court of Appeal in *Religious Hospitallers* erred in law in interpreting "endeavour" as imposing a requirement that the institution seek and obtain outside funding beyond that provided by government sources and its tenants.
20. The Appeal Court was of the view that there is nothing in the case law to suggest that the Court of Appeal in *Religious Hospitallers* erred in law in deciding that the activities the property owner undertakes (which may reasonably be characterized as some form of "endeavour") should be considered when determining whether the owner is "organized" for the relief of the poor.
21. In any case, it was not for the Appeal Court of the primary Court to upset the previous decision.
22. Further, it was not open to the Appeal Court to attempt to narrow the scope of *Religious Hospitallers* by engaging in "restrictive distinguishing".

Was Religious Hospitallers distinguishable?

23. Stamford Homes argued that the facts of the matter under appeal were materially different from those in *Religious Hospitallers*.
24. The Appeal Court dismissed the argument with (at [79]):

In effect, what Stamford Homes is asking this court to do is to reweigh the evidence and make findings in substitution for those of the application judge on questions of fact and the application of legal principles to the evidence. As previously noted, the applicable standard of review in these circumstances is palpable and overriding error. I see no palpable and overriding error in the application judge's findings.

25. The appeal was dismissed.

Schabas J concurring

26. The Judge agreed that the appeal should be dismissed, but was of the view that the decision in *Religious Hospitallers* needed to be revisited. He noted (at [89]):

...the corporate applicant is the entity which is ultimately responsible for the enterprise, and it does nothing else. It is difficult to see, therefore, how it is not "organized" for the relief of the poor.

27. He further explained (at [98]):

My colleague, like the application judge and like the Court of Appeal in *Religious Hospitallers*, notes that exempting the applicant from property tax is unlikely to free up funds for the applicant to use to relieve poverty, as the gain to the applicant may lead to a reduction in its subsidy. But this is not a justification for maintaining a vague requirement of “some form of endeavour” which has no support in the legislation and can lead to irrational and unfair results which can deny otherwise eligible corporations of a tax exemption inconsistent with a recognized purpose of the legislation.

28. The appeal was dismissed.

COMMENT



The *Religious Hospitallers* Appeal Court took the view that there was “no purpose in a Taxing Act but to raise money, and ... every exemption throws an additional burden on the rest of the community” (citing the 1891 English House of Lords decision in *Pemsel*) (at [41]). Shifting the burden of the property owner’s funding shortfall from one level of government to another would not serve the purpose of freeing up funds for the owner’s use to relieve poverty.

Schabas J responded that (at [98]):

But this is not a justification for maintaining a vague requirement of “some form of endeavour” which has no support in the legislation and can lead to irrational and unfair results which can deny otherwise eligible corporations of a tax exemption inconsistent with a recognized purpose of the legislation.

The Court in *Religious Hospitallers* seemed inconsistent with the recognition, made in *Notre-Dame de Bons-Secours*, that tax laws also serve the purpose of advancing social and economic objectives beyond simply raising money to pay for government expenditures.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/on/onscdc/doc/2023/2023onsc6625/2023onsc6625.html>

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