

# 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.



## Fung Loy Kok Institute of Taoism v. Municipal Property Assessment Corporation, 2024 ONCA 415

Court of Appeal for Ontario, Pepall, George and Dawe JJ.A, 20 May 2024

Appeal from a decision to deny municipal tax exemption for land claimed to be used for worship.

**Key words:** Tax, Ontario, Canada, Place of Worship, Religious Organisation, Rates Exemption

1. This was an appeal from [FLK Institute of Taoism v. MPAC](#), 2022 ONSC 57.
2. The reasons of the Court were given by Dawe J.A.
3. Fung Loy Kok Institute of Taoism and Taoist Tai Chi Society of Canada (FLK) are religious organisations within the meaning of the [Assessment Act, R.S.O. 1990, c. A31](#) (the Act) concerning municipal taxation of land.
4. FLK owns a large FLK temple, an international centre, and nineteen other satellite properties in Ontario.
5. The FLK temple site was mainly classified as exempt as a place of worship, but parts of it, such as an overflow campground, residential suites, a contemplative garden, and a sales area, were not regarded as exempt.
6. The FLK also conducted Taoist tai chi classes on the other satellite sites. Initial classes are free, and participants pay a fee for subsequent classes.
7. The Municipal Property Assessment Corporation (MPAC) is a non-profit corporation responsible for assessing and classifying all properties in Ontario about which there was a dispute in compliance with the Act. Various municipalities where FLK's properties were located also joined the action, but took no part.
8. Given the factual evidence in the matter, the First Court denied an exemption under the Act to the satellite sites, and also to certain areas of FLK's international centre.
9. The First Court found that the satellite sites were taxable because they were not primarily used for worship, as it found that FLK's tai chi classes did not qualify as worship. Concerning the international centre, the so-called meditation suites used as bedrooms by visitors, a retail store, the contemplative garden used for private prayer, and a vacant field used as a campground during significant events, were not tax-exempt as they were again not primarily used for worship.

10. The Second Divisional Court upheld the First Court's decision as they found that such a conclusion could be made on the evidence.
11. FLK then appealed to the Court of Appeal (Third Appeal Court) on the issues, except the campground field.
12. The Third Appeal Court noted that the relevant statutory provision did not define "worship", or the related phrase "place of worship".
13. As there were issues of law and fact, the Third Appeal Court noted that the standard of review for issues of law was "a correctness standard", and findings of fact were reviewable only on "the basis of palpable and overriding error".
14. Both parties agreed that worship was adequately defined as: "Reverence or veneration paid to a being or power regarded as supernatural or divine; the action or practice of displaying this by appropriate acts, rites or ceremonies." A factual determination was then required as to whether each property was "primarily used" for a purpose that falls within the definition of "worship".

### **Satellite Sites**

15. FLK argued:
  - that the religious nature of a particular practice must be determined subjectively, and that the only question a court can properly ask is whether the claimant's belief is honestly and sincerely held; and
  - whether FLK's tai chi classes were worship should be determined by considering how these classes were subjectively perceived by FLK's directing minds rather than by considering the subjective perceptions and beliefs of the class participants.
16. The Third Appeal Court noted that:
  - the meaning of worship is a legal question, not a matter of religious doctrine, and not every action motivated by a religious purpose qualifies as worship for property tax purposes; and
  - the focus of the definition of worship is on the participants' intention, not the organisers' intention. Those who taught the classes were not religious teachers or leaders, or were not required to have Taoist knowledge.
17. The Third Appeal Court would not interfere with the First Court's assessment of the evidence and findings of fact about the satellite sites.

### **International Centre**

18. FLK argued that the contemplative garden and sales area were also exempt from taxation.
19. The Third Appeal Court decided it was open on the evidence to conclude that the garden was only occasionally used for formal worship, not 'primarily' for worship, but rather for private prayer and reflection.
20. FLK argued that the sales area was land used where worship took place elsewhere on the property, such as a gift shop in a cathedral. However, FLK did not present evidence about how gift shops at other religious facilities had been treated historically.
21. The Third Appeal Court again found that it should not interfere with the previous decisions on the issue.

22. The appeal was dismissed.

## COMMENT



The evidence in the case was that Taoism was a continuum of beliefs and practices that straddled the borders of what Western society would define as philosophy, culture, and religion. A central component of Taoist beliefs is a belief in Qi (pronounced chi), an invisible vital force that flows through meridians, or “energy pathways”, in the body and in the land.

Taoist tai chi is a form of moving meditation, a spiritual practice undertaken by moving the body through a sequence of prescribed forms. Although tai chi may be practised in various ways and for multiple purposes, its distinctive feature is its association with the Taoist religion.

The Taoist position is that words cannot capture the essence of the Tao. Rather, its teachings must be experienced through bodily activities. These include ritual performances at altars, natural meditation practices, and tai chi.

## VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/on/onca/doc/2024/2024onca415/2024onca415.html>

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