

Tax Bills

From the Roll to the Register

Eastern Ontario Treasurer's Association

**Presented by Tony Fleming
And
David Munday**

June 7, 2013

Overview

- Interesting (perhaps only to me) cases
- Priority liens and collection issues
- Tax sale issues – examples from real life (you can't make this up)

Interesting Cases

s. 331, the purpose of this section is to insure eligible properties are taxed at the same level as comparable properties

(2) The municipality shall determine the taxes for each eligible property based on a fixed formula

Eligible properties mean;

- Properties with additional assessment
- Properties that cease to be exempt from taxation after 2001
- Properties that are subdivided or severed
- Properties with a new classification after 2001



Interesting Cases

Neamsby Investments v. Markham

- 2001 building erected on property
- Taxes for 2001 to 2004 calculated without considering section 331 (deliberately, as tax software is not available)
- 2005 taxes calculated under section 331 with a difference of \$780,000
- “shall” is directory, not mandatory – does not create a limitation period
- The delay was not prejudicial to the owner

Interesting Cases

Home Depot v. Markham

- 2001 to 2007 taxes calculated in error - \$2,000,000
- Errors discovered when conducting the section 331 calculation (delayed for four years)
- Taxes upheld at trial
- On appeal, the court found that section 331 does not create an additional right to correct errors
- Section 359 applies and Markham must comply with those time limits

Interesting Cases

S. 341 - Adjustments to the Roll

- The treasurer shall adjust the tax roll for year to reflect changes made under the Assessment Act after the roll is prepared
- Overpayments are refunded to the owner of the land as shown on the tax roll on the date of the adjustment is made

Interesting Cases

Mornelle Properties v. Malla Properties

- The vendor sold apartment while tax assessment appeal was pending
- Purchaser received a refund of \$250,000 (refund accrued largely during ownership of vendor)
- The Act requires the municipality to pay the refund to the current owner, notwithstanding any legal reason or entitlement to the refund by another party – the City of Toronto was not liable for its payment of the refund in accordance with the Act

Interesting Cases

S. 345 – Late Payment Charges

- The Municipality may pass by-laws to impose late payment penalties for non-payment of taxes
- interest for non-payment of taxes cannot exceed $1\frac{1}{4}$ % each month
- Charges and interests are deemed to be taxes
- No interest can be imposed on the charges

Interesting Cases

Thunder Bay v. 1037618 Ontario Inc.

- The municipality calculated interest on unpaid taxes based on the original assessment roll, notwithstanding an assessment appeal had reduced the assessment
- The difference based on the interest was over \$200,000
- The Court of Appeal overturned a decision allowing the municipality to keep the higher amounts of penalty
- The Act was subsequently amended to prevent this from happening
- Late payment charges now must be cancelled after errors are corrected or the roll is revised



Interesting Cases

Goodfellow v. Lincoln (Div. Ct.)

- The Town of Lincoln incorrectly classified property, resulting in higher taxes
- Owner had accumulated three years of tax arrears, plus interest and penalty (protesting another wrong committed by the Town)
- the owner brought an application arguing the equitable jurisdiction of the court to deal with unfairness (he had previously been successful in having the classification corrected)
- the trial court found the property was incorrectly classified between 1991 and 2004 and reduced the interest and penalty to achieve “fairness”
- The court had no jurisdiction to reduce taxes owing, which include interest and penalty



Interesting Cases

1331679 Ontario Ltd. v. Brampton

- “A Kafkaesque series of administrative errors, complicated by remarkably stubborn bureaucratic intransigence and a plain lack of common sense brings what should be an easily resolvable dispute to the brink of a costly trial”
- purchased vacant land in 1999 - formerly owned by Ontario (no roll number)
- purchaser sent a letter to the City requesting future tax bills be sent to it, which the City ignored
- no tax bills received from 1999 to May 2003
- tax bill in 2003 was nearly \$500,000
- numerous errors contained in the assessments, including classification



Interesting Cases

1331679 Ontario Ltd. v. Brampton (cont.)

- The City entered a settlement reducing the assessed value the property, correcting the classification and consented to a further reassessment
- after correction of errors in reassessment the overcharge by the City amounted to over \$300,000 in taxes, penalties and interest
- the City refused to reassess the property from 1999 to 2003 (when tax bills were not sent)
- tax sale proceedings were initiated
- the Owner obtained an Injunction on two occasions preventing the sale - based on the City's refusal to correct errors in the disputed two years (which errors substantially increased the arrears)

Interesting Cases

1331679 Ontario Ltd. v. Brampton (cont.)

- The City was denied leave to appeal the injunction, on the basis that irreparable harm would have resulted from the “City’s effort to so constrain the exercise of its administrative discretion due to the imagined implications of the legislative framework as to render its decision devoid of decency and common sense.”
- The City moved for judgment without trial, arguing it was entitled to the payment of taxes, interest and penalties
- judgment was refused, arguing that there was a triable issue as to whether the city can recover the penalty and interest on the unpaid taxes
- the court argued there was an “gap” in the legislation that required a trial (all statutory mechanisms had been exhausted”

Interesting Cases

s. 357

- The municipality may cancel, reduce or refund all or part of taxes levied on land in the year in respect of which the application is made
- (f) where a person was overcharged due to a gross or manifest error that is clerical or factual in nature, but not an error in judgment in assessing the property

Interesting Cases

s. 357(5)

- Council “shall” hold the meeting to hear the applicant for section 357 request
- Toth Equity v. Ottawa (Court of Appeal)
- Council meeting is not mandatory
- (8) provides an appeal to the ARB where Council fails to hold a hearing
- therefore the hearing is not mandatory
- no appeal to court is available until ARB remedies are exhausted

Interesting Cases

s. 358 - overcharges

- The municipality may cancel, reduce or refund all or part of taxes levied in one or both of the two years preceding the year of application
- available for overcharges caused by a gross or manifest error in the preparation of the assessment roll that is clerical or factual in nature, but not an error in judgment in assessing the property
- (5) no application in the year where the land was subject to an appeal or application under sections 40 or 46 of the Assessment Act, with limited exceptions
- (9) Council shall hold a meeting
- no right of appeal where Council fails to make a decision
- Council must therefore hold a meeting

Interesting Cases

s. 359 – undercharges

- The municipality may increase taxes
- available for undercharges caused by a gross or manifest error in the preparation of the assessment roll that is clerical or factual in nature, but not an error in judgment in assessing the property
- (5) no application in the year where the land was subject to an appeal or application under sections 40 or 46 of the Assessment Act, with limited exceptions
- (9) Council shall hold a meeting
- no right of appeal where Council fails to make a decision
- Council must therefore hold a meeting
- Appeal to ARB is final (no judicial review)

Interesting Cases

s. 359.1 – error in calculating taxes

- The municipality may correct errors in calculating taxes
- public meeting is required
- appeal provisions are provided to ARB
- previous year's taxes cannot be altered
- Lundy's Lane Portfolio v. Niagara Falls (Divisional Court)
- an appeal to the ARB under this section is also final (no judicial review)

Priority Liens

Section 349 – taxes are a priority lien

- Taxes have priority over every claim, privilege, lien or encumbrance of every person except the Crown
- the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or through taking no action to register a tax arrears certificate
- each year's taxes constitute a separate amount owing and the municipality may bring separate actions for each

Priority Liens

Section 398 – fees and charges constitute a debt

- The Treasurer may add the debt to the tax roll and collect in the same manner as taxes, for the following property:
 - For fees and charges for the supply of a public utility, the property to which the utility was supplied;
 - In all other cases, any property for which all of the owners are responsible for paying the fees and charges
 - Who is responsible is key
 - Joint ownership may defeat the ability to add the debt

Priority Liens

- Costs to take remedial actions can be recovered as a lien registered on title
- Section 446
 - Authority under the Municipal Act or another act – or By-law
 - Authority to direct or require a person to do something
 - In default of compliance the Municipality may do that thing at the person's expense
 - Recover costs by action or by adding the costs to the tax roll and collecting in the same manner as taxes
 - Includes interest
 - May be registered as a lien on title

Priority Liens

- Fees and charges are not priority liens, unless specifically stated as such
- S. 1(3) - If an amount added to the tax roll in respect of a property is a priority lien, that amount, including interest:
- (a) May be collected in the same manner as taxes;
 - (b) May be recovered with costs as a debt from the owner and any subsequent owner;
 - (c) Is a special lien on the property in the same manner as taxes; and
 - (d) May be included in the cancellation price in a tax sale

Priority Liens

- Priority liens have priority to every claim, privilege, encumbrance or lien of every person, except the Crown
- Cancellation price includes priority liens
 - Recovered under a tax sale
 - Priority as against any other encumbrance or registered lien
- Business improvement levy has priority lien status
- Municipal utilities charges have priority lien status

Tax Sale Issues

David

Questions

Ask me anything

Profile

Tony Fleming is a Partner in the Land Use Planning, Development and Environmental Group and the Municipal Group at Cunningham Swan. Tony is recognized by the Law Society of Upper Canada as a Certified Specialist in Municipal Law (Local Government/ Land Use Planning and Development). As a Certified Specialist, Tony has demonstrated expertise in the fields of municipal law and land use planning and development law.

Tony provides advice to municipalities and private sector companies on all aspects of land use planning and development as well as environmental law. Tony appears regularly before the Ontario Municipal Board, the Assessment Review Board and the Environmental Review Tribunal. In addition, Tony appears in all levels of Ontario Courts on administrative law matters, including defending challenges to municipal laws.

Prior to joining Cunningham Swan, Tony was Senior Legal Counsel with the City of Kingston. Tony focused on providing advice on land use planning and development and environmental law with the City of Kingston, building on his experience in private law firms in Toronto where Tony practised as a land use planning and environmental lawyer.

To contact Tony, please email tfleming@cswan.com, or call 613.546.8096