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Wednesday 30 April 2008

**Journal
des débats
(Hansard)**

Mercredi 30 avril 2008

**Standing Committee on
Regulations and Private Bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Chair: Michael Prue
Clerk: Sylwia Przedziecki

Président : Michael Prue
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 30 April 2008

Mercredi 30 avril 2008

The committee met at 1002 in committee room 1.

MADRESA ASHRAFUL ULOOM ACT, 2008

Consideration of Bill Pr5, An Act respecting Madresa Ashraful Uloom.

The Chair (Mr. Michael Prue): We'll call the meeting to order. Just to recapture what happened the last time, we had a motion on the floor. A motion was moved by the parliamentary assistant that the bill be amended by striking out "In this section" at the beginning and substituting "In this act." There was an opportunity at that point, as well, to allow for further consultation and further debate, and I trust we are ready to proceed.

We did have people before the committee from both the city of Toronto and from the applicant. Are there any further questions of those people from committee?

Mr. Bas Balkissoon: Is there anything the applicants would like to tell us?

The Chair (Mr. Michael Prue): If you're asking questions of them, then I invite them to come forward.

Mr. Shafiq Qaadri: As you know, we're back here once again considering this particular act. I inform my colleagues here that since we last met, there has been a site visit by city solicitors. I also understand that Mr. Fleet has come prepared to address some of the concerns with regard to the idea of setting a precedent, and I would invite the committee to hear his remarks.

The Chair (Mr. Michael Prue): Is it the committee's wish to hear the remarks? Please proceed.

Mr. David Fleet: I'm here on behalf of both Mr. Sanford and myself. He had a previously arranged speaking engagement, and on his behalf, I apologize that he wasn't able to be here too.

We were specifically asked to enumerate for the committee those elements that set aside Bill Pr5 from other potential precedents, and in order to do that, I went through our materials. There are 17 separate points—not that I set out to have a long list, but that's just what's there. I don't want to repeat in any detail any of the previous documents or arguments, so with your accommodation, I'll just list off all of the points.

First, the factual background involves actions of an old assessment authority, which was the local office of the Ministry of Finance, which is now gone.

Second, it involves actions of an old municipality, which was the old city of Etobicoke, which is now gone.

Third, it involves an idiosyncratic and outdated assessment practice, on a local basis, which is how they recognized tax-exempt properties.

Fourth, it involves a similarly unusual municipal practice, on a local basis, that was tied into the assessment practice, which was how they processed what were called section 442s.

Fifth, there was unchallenged and direct testimony about those practices, both from Mr. Sanford and myself.

Sixth, there's been a change in procedure in terms of the current assessment authority. MPAC gives notice to taxpayers of the need to commence a court proceeding, and had that happened, we wouldn't be here today.

Seventh, there's been a change in procedure by the current municipality. The city of Toronto requires full compliance with the Assessment Act, as well as the City of Toronto Act, 2006.

Eighth, there's a bona fide applicant. It's unquestioned that it's bona fide because there's been full recognition of the tax exemption provided, starting in 2001.

Ninth, the committee is not being asked to grant a tax exemption but only an opportunity for the applicant to have a day in court.

Tenth, if the bill is passed, the usual court rules will thereafter apply, so there's no leg up for the applicant compared to the law under the Assessment Act that applied to other taxpayers for the years in question.

Eleventh, last week the city had raised the question of possible prejudice due to the passage of time. I suppose that's true to an extent, but only in the sense that there's an onus on the applicant in court. So, if there is any prejudice, it's only to the applicants, not to the city.

Twelfth, there's been an extraordinary level of consultation at the provincial level of government. This bill has now been scheduled before this committee on four separate occasions, starting last spring, when it was adjourned at the last minute at the request of one of the ministries, and then two prior attendances over the last month.

Thirteenth—and this is a key point from last week—the principle of city consultation, in our view, has been satisfied. The city has now provided a letter to the committee, they made submissions in person last week, and

there are two representatives again this week who are present.

Fourteenth, the ministry has proposed amendments to the bill—and I take it the committee will be considering them in a few minutes—and the purpose of those amendments, as we understand it, is a sense of deference to the city. Ironically, we heard from the city representatives last week that those amendments were prepared without prior consultation with the city and were described as unhelpful to the city, which would suggest, we would submit, that you don't need the amendments.

Fifteenth, this bill mimics the Malton Seventh-day Adventist Church Act, 2004, which was Bill Pr1 back in 2004, so Bill Pr5 that's before you today is not groundbreaking.

Sixteenth, there's no known new property hiding in the wings—one of the worries about a precedent—with facts that apparently resemble remotely the facts in this case. I don't mean to suggest that nobody will ever come forward with another private member's bill about a tax exemption; just not on the basis that you've seen anything coming forward and all the documents that have been put before this committee already.

Seventeenth, in trying to fulfill the request made to us by members of this committee, both Mr. Sanford and I gave thought to the concept of a precedent. In common law, lawyers will describe this as a doctrine of stare decisis if you're in front of a court. But that doesn't exist for this committee.

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The best analogy I could come up with in terms of the role of this committee, in terms of private bills, is that there is really no precedent in Bill Pr5, or probably any other bill. Over the years, lots of these bills come forward. It's rarely, if ever, more than a trickle. There's no flood. It just doesn't happen that way. Every bill is individually considered.

The analogy that came to my mind is, if you were to think about what scientists would call—and I don't pretend to be a scientist myself. If they encounter a rare phenomenon that doesn't fit within the conventional scheme of scientific theory, they will usually call that event a singularity. You can have more than one singularity, but no one singularity necessarily relates to or is similar to another.

Private bills are like that as well. They're individually considered. They're not matters of public policy in the same sense that public bills are. In that sense, although I understand the staff concern about the notion of precedent, that's not the purpose of a private bill, which is targeted to either one entity or one property.

Hopefully, by putting that on the record as we were asked, that will be of assistance. There will be a Hansard. It's a record of why Bill Pr5 has come forward. We would urge the committee to adopt it without amendment. I'd like to thank you again for all the consideration that's been given.

The Chair (Mr. Michael Prue): Any further questions? Seeing none, thank you. Does anyone have ques-

tions of the city of Toronto or anyone else at this point? Any other questions to be asked?

Mr. Paul Miller: I just want to know if there have been any other situations regarding religious complexes that have paid their—once they were deemed, say it was 2000, that they got the ability to be designated as a religious centre. From then they were exempt—the period from 1994 to 2000. Are there any other cases you know of that they did pay their back taxes before they got their designation?

The Chair (Mr. Michael Prue): Just for Hansard, your name for the record.

Ms. Giuliana Carbone: Giuliana Carbone, director of revenue services for the city of Toronto. I do recall properties—I'm not 100% sure if they were religious, but they were properties that would have been exempt, but they didn't apply on time, so they would have had to pay a portion of the taxes prior to the exemption coming into effect. Then they would continue to be exempt from there on.

Mr. Paul Miller: So there is knowledge of that. If we did any research, there may be other cases in the province that are similar. Once a piece of property has been designated, then the prior time of back taxes would have been paid up in full?

Ms. Giuliana Carbone: Yes.

Mr. Paul Miller: Okay. Thank you.

Mr. Bas Balkissoon: On that note, Ms. Carbone, can you clarify? Since you're saying there are other organizations that paid their back taxes, would they be in a similar state, where they had applied to the city and it had been dragged out for many years and they ended up giving up and just paying—which is similar to this organization. This organization had applied in 1995.

Ms. Giuliana Carbone: That question is difficult for me to answer because I came into the organization, into this particular portfolio, in 1998. From my years, I don't recall that. That doesn't mean that—prior to amalgamation, there may not have been a case. So I can't answer that with confidence.

Mr. Bas Balkissoon: So really the issue about a flood or whether there were people, you're not 100% accurate—that is, similar and paid?

Mr. Paul Miller: Mr. Chair?

The Chair (Mr. Michael Prue): He's still asking a question. Then I have Mr. Ruprecht, and then back to Mr. Miller.

Ms. Giuliana Carbone: You're referring to my concerns about this setting a precedent?

Mr. Bas Balkissoon: No. Mr. Miller asked a question, had there been organizations that applied and did not get the back taxes paid because of whatever reason. I'm asking if you have evidence that they had applied previous to the day they were granted exemption: therefore, the period of qualification from the date they received charitable status or the date they applied to the city. Have you got hard evidence that they are similar to this one? This one applied in 1995. It got dragged out until 2000, when it finally went to court, and then the

court granted it from 2000 going forward. Do we have a flood of applications similar to this one at the city where the groups have just gone away and you're worried that if we grant this one, they'll come back?

Ms. Giuliana Carbone: Truly, I'd have to go back to the office and do some research. In terms of this particular case, there were applications. Those applications were heard. The dilemma is that the organization didn't apply to the courts for the exemption until 2001. The applications that the city received were heard. There was a little hiccup there with amalgamation, but those applications were heard.

Mr. Bas Balkissoon: And they were granted?

Ms. Giuliana Carbone: That's correct, to a percentage.

Mr. Bas Balkissoon: Thank you.

Mr. Tony Ruprecht: This is to Mr. Fleet. If there indeed is no precedent to this case, how does that connect with the example you gave of the United Church? I think you said it was in Mississauga.

Mr. David Fleet: The Adventist—

Mr. Tony Ruprecht: The Adventist church, right.

Mr. David Fleet: I don't know all the facts behind that case, but I do know there was a private bill that went through that granted a time extension to go to court so they could prove the facts of their case. I don't know all the facts in that case, and there may have been others in the more distant past that came forward. The point I was trying to make is that the concept of coming forward to the Legislature for a private bill for an individual property merits consideration of every bill on its own merits, and you don't go beyond that.

The fact that it was granted in one or denied in one doesn't mean that when the next one comes up, there is an evaluation of its merits, if they exist. I doubt very much if the facts in that case resembled the facts in this case, because the facts in this case I would describe as extraordinarily unusual, and a whole series of events, not just one event.

But the notion of a bill drafted with the same structure to the bill: This is not a precedent in that way. That precedent, if there ever was one, was long since set. The worry was expressed to us that maybe this bill was creating something new that had never been done before, and as far as I'm aware, that's not the case.

Mr. Tony Ruprecht: Thank you very much, Mr. Chair. This answers my question.

Mr. Paul Miller: I appreciate the solicitor's analogy of how this committee should work and what he feels is non-precedent-setting. My question was, which I didn't get answered last time, if there are groups out there that were exempt, and before the exemption they did pay their back taxes, are they going to come back at the municipality or anyone else involved to say, "You granted this organization exemption of paying their back taxes. We paid"—whatever number; let's pick a number—\$500,000 or \$400,000—whatever they paid. Are they going to say, "We want our money back because we were in the same situation, but you took our money for our back taxes.

Now you're exempting this organization from paying their back taxes. We are going to set out in law a case and lawyers would be involved. We're going to put a suit in against the city for our money back because you've exempted them"? It could be grandfathered. They would go under that analogy. That's my concern, that people who had gone through this before and were forced to pay their—not forced—who should have paid their back taxes are going to say, "This is not fair. You've allowed one group not to pay it and they owed whatever amount they owed. We paid a substantial amount of money from our religious organization which we could use for our church and our congregation." What are you going to say then?

Mr. David Fleet: No.

Mr. Paul Miller: No?

Mr. David Fleet: There's no way this private bill, if passed, would recover from all possible mistakes you made in the past precedent. It just doesn't do that. No knowledgeable and responsible solicitor is even going to give that advice. Lots of my clients would have liked to claim something that maybe in theory they could have done in the past. This bill doesn't do anything to help them or anybody else I can imagine.

Mr. Paul Miller: Well, in my experience, sir, with unions, past practice does come into the consideration on new collective agreements. They do that. Lawyers do use past practice to come to an agreement. So I'm not quite sure I agree with you on that.

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Mr. David Fleet: Curiously, though, I've been a mediator and occasionally an arbitrator in labour disputes, and I understand the notion of past practice, but I don't think the context of past practice in labour relations matters has any applicability, candidly. From my point of view as a lawyer, it would be great if it did. I could bring in all kinds of things and ask for relief for my clients, but it's just not viable, and I can't imagine anything in Bill Pr5 doing that. There's always the possibility of a ghost out there, I suppose, that will materialize, that nobody's heard of, but it is a ghost-like consideration. There's nothing tangible that any of us has been able to touch in any way, shape or form at the city, the province or individually, Mr. Sanford or I or my partners, when we've talked about this case.

It's difficult for me to imagine in any context that anybody's going to hit all 17 of the points I've rhymed off and say, "Gee, we're just like that one." It's more in the nature of a singularity. Somebody would have to come forward with a different set of facts.

Mr. Paul Miller: Would it be my understanding that lawyers can be creative and they can challenge legislation and it's their job to make changes and amendments; is that not correct?

Mr. David Fleet: It can be, but it doesn't mean you're going to win just because you raise an issue. My career would be different if that were true.

Mr. Paul Miller: My questions are finished. Thanks.

Mr. David Fleet: But thank you very much.

The Chair (Mr. Michael Prue): Is this a question or to proceed?

Mr. Mario Sergio: To proceed.

The Chair (Mr. Michael Prue): Okay.

Mr. Mario Sergio: I'm ready to proceed, Mr. Chairman.

The Chair (Mr. Michael Prue): All right. I take it, then, there are no additional questions. I thank the applicant. We will proceed. We have a motion on the floor. Is that motion to proceed or will you be withdrawing it?

Mr. Mario Sergio: It is to proceed. I don't know which motion you have. I have three different motions.

The Chair (Mr. Michael Prue): There's only one motion on the floor. I will read the motion that's on the floor.

Mr. Mario Sergio: We had started, but we didn't finish. If you'll recall, we didn't—

The Chair (Mr. Michael Prue): I know we didn't finish, but the motion was on the floor and it hasn't been withdrawn. The motion that was on the floor was, "I move that subsection 1(1) of the bill be amended by striking out 'In this section' at the beginning and substituting 'In this act'." That was moved.

Mr. Mario Sergio: That's the first one.

The Chair (Mr. Michael Prue): And that's still being moved.

Mr. Mario Sergio: It is still being moved. It's technical in question. Unless the members want some explanation, it's all technicalities.

Mr. Paul Miller: I'm always interested in technicalities.

Mr. Mario Sergio: This particular one, which is the first motion in the package, would strike out "In this section" at the beginning of subsection 1(1) and substitute "In this act." In effect, this motion would make the definition "specified property" in subsection 1(1) apply to the new provision to be added by another motion, which is the third one. There's a third motion coming up.

Mr. Paul Miller: So you're basically amending 1 through 3?

Mr. Mario Sergio: That's right.

Mr. Paul Miller: Maybe you could spell out the new provision in more detail, what you're trying to do here, because it was a little confusing.

Mr. Mario Sergio: You have to wait. The third motion, I would say, is the more substantive one.

Mr. Paul Miller: Could you read the third motion to me—

Mr. Mario Sergio: The third one?

Mr. Paul Miller: —if they're interlocking?

Mr. Mario Sergio: May I go in order, Mr. Chairman, since I have a second motion?

Mr. Paul Miller: All right. I'll wait for it.

The Chair (Mr. Michael Prue): I can make it very simple. If you have Bill Pr5 in front of you, under the title "Definition"—it's only a one-page bill. It's on the back.

Mr. Paul Miller: That's all I've got.

The Chair (Mr. Michael Prue): Everybody has the bill before them?

Mr. Paul Miller: There we go.

The Chair (Mr. Michael Prue): You can see what is being proposed is the definition, subsection 1(1). It reads, "In this section," and then goes on to describe "specified property" under that subsection. Instead, it would read, "In this act," and then the definition of "specified property." That's what's being changed. All right?

Mr. Paul Miller: Okay.

The Chair (Mr. Michael Prue): Is there any further discussion on this motion? We have to deal with the motions one at a time.

Mr. Mario Sergio: Will you be voting on a one-to-one basis?

The Chair (Mr. Michael Prue): One to one to one.

Mr. Mario Sergio: That is fine.

The Chair (Mr. Michael Prue): If we've got three or five or seven motions, however many are made, we have to do them one at a time.

Mr. Mario Sergio: Then, with your indulgence, Mr. Chairman, before we go into the voting on the first motion, let me acknowledge the work that has been done by the sponsor, the member for Etobicoke North. We recognize the work and the effort he has put into this bill on behalf of the applicant.

If we are ready to move on motion 1, then I'll proceed with motion 2.

The Chair (Mr. Michael Prue): No, we're not ready yet. We've got to vote. We have a motion before us. The discussion is now concluded. All those in favour of the motion, as put forward? Opposed? That's carried.

You have another motion.

Mr. Mario Sergio: I move that subsection 1(2) of the bill be struck out.

The Chair (Mr. Michael Prue): Do members understand what that does? The bill that you have before you, which reads "Extension of time" and that which goes after "Extension of time" will be struck out. Any other discussion? Seeing no discussion, all those in favour? Opposed? That carries.

You have an additional motion.

Mr. Mario Sergio: The third and final motion.

I move that the bill be amended by adding the following section, and that is section 1.1 of the bill—

Interjection.

The Chair (Mr. Michael Prue): Excuse me, I'm being reminded that I have to take this in order. This is unusual. This doesn't happen in this committee very often. Now that we have completed section 1, I have to ask the question: Shall section 1, as amended by the two motions, carry? Carried.

Now we have a new section. Please proceed.

Mr. Mario Sergio: I move that the bill be amended by adding the following section:

"Application to court

"Resolution approving extension of time

"1.1(1) The city of Toronto may, not later than 180 days after the day this act receives royal assent, pass a

resolution in support of extending the time within which an application may be made to court under section 46 of the Assessment Act for a determination of whether the classification of the specified property is incorrect for the purposes of the 1994 to 2000 taxation years.

“Extension of time

“(2) If the city of Toronto passes a resolution under subsection (1), the last day for applying to court under section 46 of the Assessment Act for a determination of whether the classification of the specified property is incorrect for the purposes of the 1994 to 2000 taxation years is the day that is 90 days after the day the resolution is passed.”

The Chair (Mr. Michael Prue): Discussion or questions?

Mr. Paul Miller: The gist of this is that you're extending the time to apply six years, 1994 to 2000, plus 90 days?

Mr. Mario Sergio: Well, 180 days, and then there are 90 days from the day that the resolution is passed for them to apply in court.

Mr. Paul Miller: So we're exempting the six years and we're adding a 90-day time to apply to the courts.

Mr. Mario Sergio: Yes, provided that they go through the city of Toronto, as well.

The Chair (Mr. Michael Prue): Any other discussion or explanation? Shall the motion carry? Carried.

Shall section 1.1, as amended, carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

There being no other matters before this committee, we stand adjourned.

The committee adjourned at 1029.

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