

Count File No.

CV-09-379099

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GREATER TORONTO APARTMENT ASSOCIATION

Applicant

- and -

CITY OF TORONTO

Respondent

APPLICATION UNDER section 214 of the
City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended
and Rule 14.05(3) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant.
The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on Tuesday, the 15th day of
September, 2009, at 10:00 am at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any
step in the application or to be served with any documents in the application, you or an Ontario
lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by
the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not
have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and
you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY
EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES
ON THE APPLICATION**, you or your lawyer must, in addition to serving your Notice of
Appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does
not have a lawyer, serve it on the Applicant, and file it with proof of service, in the court office
where the Application is to be heard as soon as possible, but at least two days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE
GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU**

**WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL
AID OFFICE.**

Date: May 21, 2009

Issued by: _____

Local Registrar

S. Chandradat
Registrar

Address of Court Office:

393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: CITY OF TORONTO
City Clerk's Office
Toronto City Hall
100 Queen Street West
West Tower, 13th Floor
Toronto, ON M5H 2N2

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- (a) an order quashing the following provisions of City of Toronto Municipal Code, Waste Collection, Residential Properties, Chapter 844, as enacted by By-law No. 506-2008:
 - (i) §844-3 A, B, D, E, I; and
 - (ii) §844-27B and C; (collectively the "**impugned provisions**")
- (b) its costs of this application;
- (c) such further and other relief as this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) on May 27, 2008, the City of Toronto ("**City**") enacted By-law No. 506-2008, ("**By-law 506**"), which included the following amendments and additions to Chapter 844 of the Municipal Code:
 - §844-3 A. Subject to the terms and conditions contained in this chapter and any directives issued by City Council from time to time, the City shall collect garbage, recyclable materials, organic materials, yard waste and items eligible for special collection services from residential properties;
 - §844-3 D. The General Manager may determine that owners who do not participate fully in the City's collection of recyclable materials or organic materials or who sell or otherwise transfer recyclable materials or organic materials to persons other than the City are not eligible to receive any services;

- §844-3 E. No owner shall be eligible to receive or to continue to receive services unless the owner sets out for collection all waste in respect of which the City provides services to the owner;
 - §844-3 H. If an owner opts out of all of the services in accordance with Subsection F, the applicable annual garbage rebate in § 844-27 will be prorated to the effective date of the end of the services.
 - §844-3 I. If an owner opts out of all of the services in accordance with Subsection F, the owner will not be eligible for the applicable annual garbage rebate in § 844-27 beyond the effective date of the end of the services.
 - §844-27 B. The City shall rebate to an owner of a multiple household residence which receives residential bulk collection the annual amount of \$157 per dwelling unit in the form of a credit on the utility bill issued under Article III of Chapter 849, Water and Sewage Services and Utility Bill.
 - §844-27 C. The rebate amount in Subsections A and B will be prorated based on the appropriate billing frequency as set out in §849-30 of Chapter 849, Water and Sewage Services and Utility Bill, to reflect the appropriate portion of a full year rebate amount.
- (b) these provisions of By-law 506 are not supported by applicable or any enabling legislation;
- (c) specifically, the Province of Ontario has not passed enabling legislation to permit the City of Toronto ("**City**") to rebate property taxes or provide tax credits in the manner contemplated by By-law 506, though a request was made by the City to the Province;

- (d) By-law 506 purports to rebate municipal taxes to any property owner that elects to use the City's waste removal services only where all waste and recyclable material collected by the City is actually collected by the City;
- (e) a property owner that participates in the City's waste removal program pays the City a user fee for waste removal based on volume of material removed;
- (f) if a property owner opts out of City waste removal and arranges for private waste removal, the owner becomes disentitled to the City's tax rebate and, therefore, must continue to pay the City's estimated cost of waste removal;
- (g) the City has established an unlawful rebate regime which is designed to penalize those property owners that impose no burden on the City's tax system while treating those that do in a preferential manner;
- (h) By-law 506 constitutes unlawful discrimination in the imposition and rebate of a municipal property tax;
- (i) furthermore, By-law 506 imposes discriminatory rates of fees for municipal services without a rational basis or relationship to the objectives of cost recovery;
- (j) By-law 506 imposes unauthorized distinctions on members of the same class;
- (k) one or more of the provisions are ambiguous and incapable of implementing properly either a user-pay program or a municipal property tax;
- (l) sections 214, 259, 261(1) (the power to impose fees and charges), 268(3) and 274(1) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11. Sched. A, as amended;

- (m) the provisions of By-law No. 506;
- (n) Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure*;
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the Affidavit of Brad Butt sworn the * day of May, 2009; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: May 21, 2009

WeirFoulds LLP

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Lawyers for the Applicant

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- and -

CITY OF TORONTO
Respondent

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **TORONTO**

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