

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*

AFFIDAVIT OF BRAD BUTT

I, **BRAD BUTT**, of the City of Mississauga in the Regional Municipality of Peel,
Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and Chief Executive Officer of the Greater Toronto Apartment Association ("**GTAA**"), and as such have knowledge of the matters to which I depose. Where I do not have such knowledge, I state the source of the knowledge and I verily believe it to be true.
2. I make this affidavit in support of the application by the GTAA for this Honourable Court to quash portions of By-law No. 506-2008 ("**By-law 506**") enacted by the City of Toronto ("**City**") on May 27, 2008.

Nature of the GTAA

3. The GTAA is a non-share capital corporation, incorporated under the laws of Ontario. Annexed and marked as **Exhibit "A"** is a copy of the GTAA's Corporation Profile Report.

4. The GTAA represents the interests of more than 240 property management companies that own and/or operate more than 160,000 apartment units in the greater Toronto area ("**GTA**"). The GTAA regularly addresses issues and advises its members regarding realty taxes, municipal fees, property and fire standards, inspections and municipal by-laws.

5. The GTAA regularly meets with municipalities throughout the GTA, including politicians and officials, voicing industry needs regarding new policies and regulations. The GTAA also provides the politicians and officials with research reports before policies or regulations are enacted that adversely affect its members.

6. The GTAA seeks to work with the City to minimize any adverse impacts on the GTAA membership of any policies pursued and implemented by the City.

Objections of the GTAA

7. For the past several years, the City has engaged in a review of its waste management and recycling services. The GTAA participated throughout this process.

8. The GTAA was a vocal opponent of some of the changes to the City of Toronto Municipal Code ("**Municipal Code**"), Chapter 844. On several occasions, the GTAA voiced these concerns to the City.

9. The GTAA's objections were raised formally and informally. The GTAA made formal deputations to City Council on several occasions in an effort to bring the unfair and discriminatory nature of what was at that time a proposed amendment to waste collection provisions of the Municipal Code. Formal deputations to council occurred as early as February 15, 2005 and continued until By-law 506 was passed by the City.

Legislative Action by the City

10. By-law 506 amends the Municipal Code, Chapter 844 to introduce provisions which have a substantial, adverse and discriminatory impact on members of the GTAA. Annexed and marked as **Exhibit "B"** is a copy of By-law 506.

11. The GTAA seeks to quash the following provisions of By-law 506:

Municipal Code §844-3. Eligibility for services.

- §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.

Municipal Code §844-27. Annual garbage rebates.

- §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.

12. The effect of By-law 506 is that an owner who opts out of receiving City waste collection service is not only forced to pay the full cost of its garbage collection service, but is also required to pay its property tax bill as if the City was collecting its waste and receives no rebate. This is discriminatory. It is also an additional cost amounting to a penalty imposed on an owner who relieves the City from the cost of waste collection from the owner's property.

13. Another effect of By-law 506 is that where an owner of property disposes of any amount of its waste, however small, through other than City collection, the owner is not entitled

to any tax rebate while being liable for full amount of waste collected by the City through City fees for waste collection.

Operation of By-law 506

14. The City, in purporting to implement a volume-based rate system, has in fact imposed additional charges on owners of properties who opt out of the City's waste collection system, produce no volume of waste collected in the City, and are required to continue paying for such City services through their property taxes.

15. Those that participate in the system receive a rebate of municipal property taxes. This rebate is calculated based on a City wide average of \$157 per unit per year. The rebate is set out in each invoice for municipal waste collection services. An account that is billed on a monthly basis would receive a rebate of 1/12 of \$157 for each unit in a given apartment complex. Annexed as **Exhibit "C"** is a copy of invoices for some of our members' properties, showing the operation of the rebate of taxes on the invoice. Annexed as **Exhibit "D"** are copies of the tax bills for these properties.

16. The rebate of \$157 per unit does not take into account the size of a particular unit. A 4 bedroom townhouse apartment is treated the same as a bachelor apartment.

17. Most buildings operated in the City by GTAA members are incurring costs in excess of the rebate no matter what efforts are made to reduce waste. The result of By-law 506 for many of the properties owned or operated by GTAA members are waste levy charges that are more than double the City's estimated per unit cost. In other words, some of the property owners, after receiving the tax rebate from the City, are paying in excess of \$157 per suite net of the rebate. As such, By-law 506 appears to allow the City to recover more in fees and charges than is reasonably necessary to match fee revenues with the costs of administering the waste removal program established by By-law 506.

18. These charges are incurred despite concerted efforts by GTAA member building owners to promote the City's goal of diversion. Examples of the efforts made by our members to increase waste diversion include:

- (a) the engagement of professionals to conduct recycling audits to mitigate the impacts of By-law 506 to multi-unit residential buildings;
- (b) special training for staff to provide the tools necessary to increase recycling in buildings;
- (c) ensuring all bins that are set out for pick up are full;
- (d) significant capital expenditures on recycling infrastructure including construction of indoor recycling facilities, which in some instances has resulted in the loss of parking spaces because it is necessary to locate recycling facilities in areas where they are easily accessible;
- (e) provision of totes, tri-sorter receptacles, signage, blue bags, educational materials and recycling calendars to tenants;
- (f) replacement of waste receptacles with recycling receptacles;
- (g) strategic placement of recycling receptacles in areas of buildings used by most tenants such as laundry rooms and mail rooms;
- (h) yard sales to divert waste;
- (i) clothing donation bins;
- (j) providing recycling receptacles as a "gift basket" to incoming residents;

19. Even with these efforts, the landlords still cannot control the items being placed in their waste facilities or sent down building garbage chutes. It is inevitable that these costs will be passed on to tenants by increases to their rents. If increasing rents in accordance with the guidelines established by the Province of Ontario is not sufficient, then landlords will be forced to seek above guideline increases to rents in accordance with applicable legislation.

20. I am advised by Brian Moore of Pinedale Properties, and verily believe, that Pinedale Properties has prepared a breakdown of the costs it is incurring, or estimates it will incur, for 13 properties that it owns. In each case, Pinedale Properties is experiencing an increase in waste collection fees in excess of the per unit rebate from the City. The net per unit increase to the properties owned by Pinedale Properties ranges from \$43.11 per unit per year to \$139.62 per unit per year. The average net increase for all 13 properties is estimated to be between \$107.84 and \$109.78 per unit. Annexed as **Exhibit "E"** is a breakdown prepared by Pinedale Properties of estimated increases to its waste removal costs.

21. It appears that either the \$157 rebate from the City is unreasonably low or that the City is charging fees in excess of its administrative and regulatory costs in a manner that raises revenue through user fees.

22. By-law 506 also creates a user pay service for waste removal notwithstanding the fact that waste removal has historically been a service provided for public use and funded from property taxes.

23. In addition, at the present time many property owners have yet to receive invoices for waste collection so they are unable to gauge the impact of By-law 506.

Request for Legislative Permission Made to the Province of Ontario

24. On May 14, 2007, the City Council proposed that "the cost of the solid waste management program be removed from the broad property tax base and, instead, the City implement a volume-based solid waste rate structure better related to a property's residual solid waste needs". Annexed as the **Exhibit "F"** is a copy of the May 14, 2007 Staff Report ("**May 2007 Report**") from the Acting General Manager, Solid Waste Management Services, and the Deputy City Manager and Chief Financial Officer to the Executive Committee recommending the implementation of a volume-based solid waste rate structure.

25. In the May 2007 Report, the senior members of the City's staff make it clear that "... currently, the City cannot remove the Solid Waste Management cost from the property tax supported program, and provide an equivalent flat reduction per household in property tax".

26. As such, the May 2007 Report recommended that the rebate system for property owners that participate in municipal garbage and recycling programs be made subject to the enactment by the Province of enabling legislation which would permit the rebate of municipal taxes. Part of the recommendation included the following request to the Province of Ontario for legislative change:

6) the Province of Ontario be requested to make the following short and long-term legislative and/or regulatory changes:

...

(b) Long-term: to allow property tax reductions or credits as deemed appropriate by City Council, despite the existence of any legislation or regulation, where the City is providing a service that is currently funded through taxes and subsequently passes a by-law establishing a user fee system to fund that service.

27. The staff recommendation to request legislative change was approved by City Council at its meeting held on June 19, 20 and 22, 2007. Annexed as the **Exhibit "G"** is a copy of the City Council Decision Document from its meetings on June 19, 20 and 22, 2007, adopting the May 2007 Report's recommendation to request a legislative change from the Province of Ontario.

28. On November 14, 2007, the Acting General Manager, Solid Waste Management Services, and the Deputy City Manager and Chief Financial Officer to the Public Works and Infrastructure Committee reported back to the Public Works and Infrastructure Committee after discussions with staff at the Ontario Ministry of Municipal Affairs and Housing regarding the requested legislative changes ("**November 2007 Report**"), annexed as **Exhibit "H"**. The November 2007 Report states that:

A letter has been sent to the province requesting these two changes. Our understanding from meetings and discussions with Ministry of Municipal Affairs and Housing staff is that a regulation to establish priority lien status, which will provide the City with the ability to transfer outstanding amounts to the property tax bill, is relatively straight forward and is, in fact, being prepared. However, that legislation to allow property tax reductions "as deemed appropriate by council" presents somewhat of a challenge. The existing regulation/legislation requires taxes to be reduced in proportion to ratios in which the taxes were collected, meaning any reduction would have to include a business tax reduction and that higher valued residential properties would get a greater tax reduction. Staff continues to seek the requested legislative changes.

29. On May 27, 2008, City Council enacted By-law 506 despite the fact that the enabling legislation authorizing such provisions was not enacted by the Provincial Legislature.

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Court File No. CV-09-379099

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Proceeding commenced at **TORONTO**

AFFIDAVIT OF BRAD BUTT
(Sworn the 22nd day of May, 2009)

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