



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***THE BOARD OF GOVERNORS OF THE SOUTHERN ALBERTA INSTITUTE OF
TECHNOLOGY (as represented by Altus Group Ltd), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***R. Glenn, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
R. Cochrane, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER: 201837010

LOCATION ADDRESS: 1301 16 Ave NW

FILE NUMBER: 72330

ASSESSMENT: \$644,500

This complaint was heard on Tuesday, the 30th day of July, 2013 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 2.

Appeared on behalf of the Complainant:

- A. Izard, Agent
- K. Lilly, Agent

Appeared on behalf of the Respondent:

- J. Young, Assessor

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] When asked, neither party raised any issues with regard to either Jurisdiction or, Procedure.

Property Description:

[2] The subject, alternatively known as SAIT Polytechnic, is substantial post secondary educational institution located prominently on the North Hill, occupying all the space between 10 St and 14 St NW, comprising a number of large buildings and facilities, including two large residential (student dormitory) buildings. Within a number of the campus buildings, there are sales outlets for fast food franchises which are independently owned and operated. Some are open year round, some are only open from the fall to spring regular academic year. The Complainant refers to all the subject businesses as 'food court services'.

Issues:

[3] The Respondent seeks to tax the subject business locations, because they say there is very little difference between a fast food outlet or business located on the campus proper, and an outlet or business of the same type which is located immediately across the street from the campus.

[4] The Complainant asserts that the subject outlets or businesses are, or should be, exempt from taxation because they are an integral part of the educational process or purpose pursuant to section 362(1)(d)(i) of the MGA

Complainant's Request:

[5] Exempt from taxation

Board's Decision:

[6] The subject properties in issue are exempt.

Complainant's Position:

[7] The Complainants state that the subject properties have been exempt for many years, and trying to change that exempt status now is unfair and unwarranted. They say the businesses on the campus cannot advertise to the public and that they are a proper part of the educational process. They suggest the subjects are taxable if they were a dormitory, but they are not. The taxpayer here is the Board of Governors of SAIT.

[8] The Complainants state that the subject properties fall directly within the definition of exempt property within section 362 (1)(d)(i) of the MGA which states that property is exempt if it is:

- (a) used for an educational purpose, and,
- (b) held by a Board of Governors

[9] The Complainants say the 'held by' portion of the definition is self-evident in this matter. They go on to say that a commercial use and an educational use are not mutually exclusive, and that a property may have dual purposes.

[10] The Complainants go on to argue that exemptions are not lost simply because part of a building that would otherwise be exempt has an ancillary or incidental purpose in addition to its chief purpose. They state that this is a test case because only a third of the on-campus businesses have been assessed, and there remain two-thirds of the on-campus businesses that were not assessed.

[11] They complete their argument by stating that the intent of the tax exemption legislation is to subsidize activities that are providing a benefit to the general public, or society as a whole.

Respondent's Position:

[11] The Respondents argue that the food court is not used in conjunction with educational activities. They state that just being owned by the SAIT Board of Governors, or, being located on the SAIT Campus, does not automatically mean the subject properties are exempt. They say the facts are critical.

[12] The Respondents claim the food courts are not stable, and that they do not discriminate between students and non-students, and that their prices are not adjusted for these on-campus locations. They say that if the students do not receive an advantage from the businesses being located on the Campus, then there is no 'educational purpose'.

[13] The main thrust of their argument then is that the subject properties are not used for an educational purpose. They go on to state that "operating a 'Tim Horton's' is not something from which a public benefit is derived.

[14] They carry on to argue that “if SAIT bought a liquor store and moved it onto campus, it certainly would not be exempt”. They say that it should be the food court businesses that pay the tax, not SAIT. They opine that the ‘actual use’ of the subject property is a vital consideration, and that the convenience of people (students and otherwise) on the Campus is not a legal test and therefore not a proper consideration in this matter.

[15] The Respondents argue and provide evidence that similar businesses on the University of Victoria Campus in Victoria, British Columbia are not exempt, so the subject businesses should not be exempt.

Board’s Decision:

[15] The Board is of the opinion that both sides of this matter were well argued and the arguments were quite well documented. However, prior to the writing of this decision, a decision of a Court of Queen’s Bench Justice in Alberta became available (the matter was heard March 5th, 2013, but the decision of Mr. Justice Donald Lee was not released until August 2nd, 2013). That decision is directly on point, and binding on the Board. The decision is cited as: **Edmonton (City) v Governors of the University of Alberta, 2013 ABQB 440.**

[16] There, the original matter in issue was the question of an exemption for a combined shopping mall and student residence located on the University of Alberta Campus, known as: The Hub Mall. The question of the exemption was dealt with by a City of Edmonton Composite Assessment Review Board in 2012. The Edmonton Board found that the entire subject property was exempt from taxation under s. 362(1)(d) of the MGA, as property used “in connection with educational purposes”.

[17] The question before the Honorable Justice Lee was whether he would grant leave for the City to appeal to the Alberta Court of Appeal on the question of the exemption. Under the MGA, the Court may grant leave to appeal only on questions of law that are of sufficient importance to merit an appeal and which have a reasonable chance of success. The City alleged that the CARB applied an incorrect test when interpreting whether the property was used in conjunction with educational purposes.

[18] The CARB asked whether the property was used for the purposes of achieving educational purposes “in a practical and efficient manner”, a test suggested by the Court of Appeal when interpreting. 362(1)(d) of the MGA in **University of Alberta v Edmonton (City), 2005 ABCA 147 (Aramark)**. The City argues that the test must be something more than convenience and should address numerous factors, like whether the business in question is operated similarly both on and off campus, is operated for a profit, is primarily aimed at students, or offers students price subsidies.

[19] In the view of Mr Justice Lee, the City had raised a question of law, that is: “what is the correct test to be applied when determining whether a property is used in conjunction with educational purposes?”. But he did go on to say that based on the Court of Appeal’s decision in **Aramark** that the appeal is unlikely to succeed and therefore the requested leave to appeal was denied.

[20] From this decision, the Board concludes that the subject businesses here are properly classified as exempt from taxation and herewith orders the Respondent to change the subject properties status to exempt. The amount of the assessment is therefore reduced to zero based on the exempt status.

DATED AT THE CITY OF CALGARY THIS 5th DAY OF September, 2013.



R. Glenn
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R2	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) *the assessment review board, and*
- (b) *any other persons as the judge directs.*