

The Building is a Fixture: No Municipal Taxes!



By Brian Madigan LL.B.

The Greater Toronto Airports Authority constructed a building at the Toronto International Airport known as “Pearson” which happens to be physically located in Mississauga. The federal government owns the lands.

The City thought that the GTAA should pay municipal taxes and the GTAA said “no”.

Ultimately, the matter has resolved by the Ontario Court of Appeal. Building permits, development charges and taxes could not be levied.

Mr. Justice Laskin for the Court held that the Airport and its redevelopment are under exclusive federal jurisdiction.

Mississauga had stated that new buildings built at the Airport are the GTAA's separate property, and not property of the Crown, because of a provision in the Airport Ground Lease providing that, "as between" the GTAA and the Federal Crown, new buildings built by the GTAA would be "deemed" to be the separate property of the GTAA and not of the Crown during the lease.

The Ground Lease provision in issue provided as follows:

“The Landlord and the Tenant agree that

(a) any New Facility and any addition to, improvement to, alteration of or replacement of any Existing Facility which may be constructed upon the Lands from time to time are and shall be fixtures to the Lands and are intended to be and shall become the absolute property of the Landlord upon the expiry or early termination of this Lease without any payment being made therefore, free and clear of all mortgages, charges and encumbrances, but shall be deemed, as between the Landlord and the Tenant to be the separate property of the Tenant and not of the Landlord, during this Lease.”

The Court of Appeal concluded that, even during the currency of the lease, new buildings built by the GTAA at the Airport continue to be federal Crown property leased to the GTAA, and not the separate property of the GTAA.

The Court held as follows:

- 1) The deeming provision between the landlord (the federal Crown) and the tenant (the GTAA) affects certain rights of the parties between themselves.
- 2) This provision cannot affect the rights of third parties, nor, more importantly, can it affect the legal status of new buildings as federal property for constitutional purposes.

So, no matter what the actual lease says, the common law principles of real property will apply. Buildings become fixtures. The lease can provide that the tenant has certain rights to remove it, but that is an agreement just between those two parties. Nothing changes the law. When it comes to third party rights, what you see is what you get. The building is a fixture. It sits on federal Crown land. The local municipality can't tax it or assess charges against it.

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