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SC 527 AA09 & City of Vancouver v. Entre Nous Femmes Housing Society et al

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[Quick Link to Stated Case #527 \(Application for Leave to Appeal\)](#)

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**ASSESSOR OF AREA 09 – VANCOUVER SEA TO SKY REGION and
CITY OF VANCOUVER**

v.

**ENTRE NOUS FEMMES HOUSING SOCIETY,
RED DOOR HOUSING SOCIETY and
PROPERTY ASSESSMENT APPEAL BOARD**

SUPREME COURT OF BRITISH COLUMBIA (S080709) Vancouver Registry

Before the HONOURABLE MR. JUSTICE BROOKE
Date and Place of Hearing: July 29, 2008, Vancouver, BC

J.H. Shevchuk & B. Yep for the Appellant, Assessor of Area 09 – Vancouver Sea to Sky Region
T.M. Zworski for the Appellant, City of Vancouver
B.T. Gibson, Q.C. for the Respondents

***"wholly in use for charitable purposes" – "actual occupation" – Residential Tenancy Act –
Vancouver Charter – section 396(1)(c)(i)***

The Respondents are charitable institutions that operate residential housing for low-income tenants with financial assistance from the provincial or federal housing agencies. The properties are leased to tenants or sub-tenants who live in the units. The issue before the Property Assessment Appeal Board ("the Board") was whether the Respondents were in "actual occupation" of the properties and whether the properties were "wholly in use for charitable purposes" within the meaning of section 396(1)(c)(i) of the Vancouver Charter and therefore exempt from taxation.

The Board found that the Respondents were in "actual occupation" of the properties and that the properties are "wholly in use for charitable purposes", therefore the properties are exempt from taxation. The Assessor and the City of Vancouver appealed that decision to this Court.

HELD: Appeal Dismissed.

The facts relied upon by the Appellants included the facts that each of the strata units is leased to a tenant or sub-tenant, those leases are subject to the Residential Tenancy Act, and that the Respondents operate under an agreement with CMHC which states that in exchange for federal assistance for capital costs provided by CMHC the Respondents will lease units for specified rental rates to approved tenants for stipulated lease terms. The leased units are subsidized to enable them to be rented at rates in a range from 30 percent to 10 percent less than market rents. The Respondents provide services beyond the normal purview of a landlord and these services include identifying tenants' needs and referring those tenants to appropriate social programs. Those services are within the organizational mandate and structure of the Respondents and are provided to educate tenants and to improve and maintain their

quality of life. The provision of these services on site supports a determination that the properties are occupied by the charitable institutions and are wholly in use for charitable purposes.

This Court was satisfied that in applying the test in *Ronald McDonald House (TM) Society of British Columbia v. Assessor of Area 09 ("Ronald McDonald") and Vancouver (City) v. Coast Foundation Society (1974) ("Coast")* the Respondents were in actual occupation of the subject properties and this Court did so by applying the purposive approach taken by the Court of Appeal in both *Ronald McDonald and Coast*. Using that approach the Court held that the subject properties were held and used for charitable purposes and that the Respondents were in actual occupation. The evidence supported the finding that the individual tenants' residential use is part of the charitable purpose of the Respondents which is the provision and operation of residential low-income housing which necessarily involves a residential purpose. The manner in which the property is occupied (actual occupation by the charity) and used (wholly used for charitable purposes) are vital considerations and determinative of whether the property is exempt. The form of tenure (e.g., license or lease) and the use made by the licensee or tenant are neither vital to the issue nor determinative of the outcome.

This Court answered all the questions put forth by the Assessor and the City of Vancouver in the negative.

Reasons for Judgment

March 16, 2009

[1] This is an appeal by Stated Case brought by the Property Assessment Appeal Board (the "Board") at the request of the Assessor of Area #09 – Vancouver Sea to Sky Region (the "Assessor") and the City of Vancouver, pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20.

[2] In its reasons delivered December 21, 2007 the Board found that the Respondents *Entre Nous Femmes Housing Society* and *Red Door Housing Society* (the "Respondents") were in "actual occupation" of the properties that are "wholly in use for charitable purposes" as required by s. 396(1)(c)(i) of the *Vancouver Charter*, S.B.C. 1953, c. 55 and therefore exempt from taxation.

[3] The Stated Case poses these questions:

A. The questions stated by the Assessor are these:

1. Did the Property Assessment Appeal Board ("Board") misinterpret and misapply section 396(1)(c)(i) of the *Vancouver Charter* and thereby err in law when it determined that *Entre Nous Femmes Housing Society* and *Red Door Housing Society* were in "actual occupation" of the entirety of the subject properties?
2. Did the Board err in law when it failed to conclude that the tenants were in "actual occupation" of their accommodation units by virtue of the terms of their leases, the provisions of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 and their possession of the accommodation units?
3. Did the Board err in law by not distinguishing, for the purposes of determining "actual occupation", between a mere licence of occupation revocable at the discretion of the landlord in *City of Vancouver v. Coast Foundation Society (1991) Stated Case 347 (B.C.C.A.)* and leases entered into, and made pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78 which is the case in the subject properties?
4. Did the Board err in law by failing to give effect to the Court's distinction in *Coast* between persons who received and required support services available to psychiatric patients as opposed to "persons living in subsidized housing programs which do not have tax free status"?
5. Did the Board take an unreasonable view of the evidence and thereby err in law when it determined that the services provided by *Entre Nous Femmes Housing Society* and *Red*

Door Housing Society placed Entre Nous Femmes Housing Society and Red Door Housing Society in "actual occupation" of the subject properties?

6. Did the Board misinterpret and misapply section 396(1)(c)(i) of the *Vancouver Charter* and thereby err in law when it determined that the subject properties were "wholly in use for charitable purposes"?
7. Did the Board take an unreasonable view of the evidence and thereby err in law when it determined that the subject properties were "wholly in use for charitable purposes"?
8. Did the Board err in law by rejecting a "primary purpose" approach to the determination of whether the subject properties were "wholly in use for charitable purposes"?

B. The questions stated by the City of Vancouver are these:

1. Did the Property Assessment Appeal Board commit an error of law when it decided that the Appellants were in "actual occupation", within the meaning of section 396(1)(c)(i)(B) of the *Vancouver Charter*, of the whole of the subject properties notwithstanding that the majority of the subject properties were actually occupied by third party tenants under leases subject to the *Residential Tenancy Act*?
2. Did the Property Assessment Appeal Board misapply the Court of Appeal decision in *Vancouver (City) v. Coast Foundation* and commit an error of law when it decided that the services provided by the Appellants to the third party tenants were sufficient to place the Appellants in "actual occupation", within the meaning of section 396(1)(c)(i)(B) of the *Vancouver Charter*, of the whole of the subject properties?
3. Did the Property Assessment Appeal Board commit an error of law when it decided that the subject properties were "wholly in use for charitable purposes", within the meaning of section 396(1)(c)(i)(B) of the *Vancouver Charter*, notwithstanding that the majority of the subject properties were used for residential purposes by third party tenants under leases subject to the *Residential Tenancy Act*?

Factual Background

[4] The facts stated by the Board are set out in paragraphs 1 to 12 of the Notice of Stated Case, and these facts must be accepted by the court. The court may not substitute its own view of the evidence for that of the Board.

[5] The Stated Case includes these facts:

1. The Respondents are charitable institutions that operate residential housing for low-income tenants with financial assistance from the provincial or federal housing agencies. The properties are leased to tenants or sub-tenants who live in the units (para. 2 Facts).
2. The issue before the Board was whether the Respondents were in "actual occupation" of the properties and whether the properties are "wholly in use for charitable purposes" within the meaning of s. 396(1)(c)(i) of the *Vancouver Charter* and therefore exempt from taxation (para. 3 Facts).
3. The occupiers of the residential units within the properties are tenants or sub-tenants of the Respondents where the tenants are granted leases that are subject to the *Residential Tenancy Act*, S.B.C. 2002, c. 78. Each property is operated by the Respondents under an operating agreement with a federal agency, Canada Mortgage and Housing Corporation ("CMHC"), and this agreement governs the use of the properties and the manner in which the units are rented to tenants. The operating agreements state that the Respondents, in exchange for federal

assistance for approved capital costs provided by CMHC, will lease units for stipulated rental rates to approved tenants at stipulated terms and within a stipulated operating budget. The Alma Blackwell, which has 46 units available for rent, has units that are subsidized from 30 to 10 percent less than market rent (para. 4).

4. The Board found that the Respondents provide services to their tenants beyond the normal purview of a landlord. The services are largely in identifying needs and referring tenants to appropriate social programs and fill a need of the tenants. The services are within the organizational mandate and structure of the Respondents and are provided to educate the tenants and to improve and maintain their quality of life. The Respondents have the structure in place to deal with the needs of the tenants. The Board found both Respondents provide services to the properties within the purpose and mandate of their original structure (para. 5).
5. The Board found the occupation of the Respondents is for their charitable purposes, which includes the provision and operation of low-income housing as well as provision of social services to the tenants (para. 6).
6. The Board found the Respondents are in "actual occupation" of the properties within the meaning of s. 396(1)(c)(i) of the *Vancouver Charter* (para. 7).
7. Both Mi Casa and Alma Blackwell constitute subsidized, low-income housing operated on a non-profit basis. The tenants live in the units for their residences. The provision and operation of low-income non-profit housing for persons in need is within the charitable purposes set out in the constitutions of the Respondents. The properties are operated for the purpose of providing housing for low-income tenants. The Board found the individual tenant's residential use is part of the charitable purpose of the properties, which is the provision and operation of residential low-income housing which necessarily involves a residential purpose.

The Board's Decision

[6] The Board recited that s. 396(1)(c)(i) of the *Vancouver Charter* provides an exemption from property tax to a property of which an incorporated charitable institution is the registered owner and is in "actual occupation" by the incorporated charitable institution and is "wholly in use for charitable purposes". The Board noted the Assessor's position to be that although the Respondents are incorporated charitable institutions and the registered owners of the properties, they are not in "actual occupation" because the tenants or sub-tenants living in the units are the actual occupiers and that the properties are not wholly in use for charitable purposes but are used for residential purposes by the tenant. The Board also noted the Assessor concedes that offices maintained by the Respondents in their respective buildings are occupied by the Respondents and wholly in use for their charitable purposes.

[7] Before the Board was an agreed statement of facts with supporting documents, the written submissions of the Respondents, the Assessor's written submissions, and the Respondents' response.

[8] The Board found that the occupiers of the residential units are tenants or sub-tenants of the Respondents under leases subject to the *Residential Tenancy Act*. Each property is operated by the Respondents under an operating agreement with a federal agency (CMHC) and this agreement governs the use of the properties and the manner in which the units are rented. The operating agreements provide that the Respondents, in exchange for federal assistance for approved capital costs provided by CMHC, will lease the units for stipulated rental rates to approved tenants at stipulated lease terms and within a stipulated operating budget.

[9] The Board set out the Respondents' submissions as follows: that the *Vancouver Charter* does not define "actual occupation" or "charitable purpose" as used in s. 396(1)(c) and that because of the wide range of charitable purposes the words are ambiguous and admit of more than one interpretation. Thus the Respondents submit that the interpretation of "actual occupation" should be informed by the context and purposes of the legislation which would include the actual occupation of the Respondents for their

charitable purposes. In support of this proposition the Respondents rely upon *R. v. Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27. It was also submitted by the Respondents that if the Board was in doubt, the Board should adopt the interpretation which favoured the Respondents as taxpayer and take a broad view of the legislation.

[10] The Board briefly noted the Assessor's position that merely providing subsidized housing is not sufficient to satisfy the requirements of s. 396(1)(c)(i). The Assessor submitted that the leases themselves are made subject to the *Residential Tenancy Act* which gives exclusive possession to the tenants. Thus the tenants and not the Respondents are in actual occupation and the fact that some sporadic services may be provided to the tenants by the Respondents is not enough to bring them within the exemption.

[11] In its decision the Board referred to the modern principles of statutory interpretation confirmed by the Supreme Court of Canada that:

"...the words of an *Act* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament.

(*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42).

[12] The Board also described the teleological approach in interpreting taxation statutes dealing with municipal tax exemptions:

A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach.

(*Weyerhaeuser Canada Ltd. v. British Columbia (Assessor of Area No. 23 – Kamloops*, [1998] B.C.J. No. 798 (S.C.) at para. 8).

[13] The Board did not find any uncertainty or ambiguity in s. 396(1)(c)(i) and found that while the words "actual occupation" and "wholly in use for charitable purposes" are not defined, they have been judicially interpreted. In considering the meaning of "actual occupation", the Board referred to the decision of this court and the Court of Appeal in *Vancouver (City) v. Coast Foundation Society (1974)*, [1990] B.C.J. No. 2508. There Callaghan J. said that:

...if the charitable organization in question is occupying the property, i.e., providing services to that site within the purposes and mandate of the organizational structure, ...

then the requirements of s. 396(1)(c)(i) are met. There the society provided "property and psychological maintenance" to the residents, but there were no on-site facilities or staff supplied. It was held there was no requirement that a staff member of the society be physically present in order for there to be "actual occupation" and that occupation by former psychiatric patients receiving assistance from the society was sufficient to establish actual occupation. It was noted by the Board that the residents in *Vancouver (City) v. Coast Foundation Society (1974)* entered into a licensing agreement (not a lease) which allowed the society to repossess the units at any time. The Court of Appeal upheld this decision and stated that the question is:

...whether the occupation of that person is actual rather than constructive, theoretical, or "legal" only, and whether it is the occupation of the Society for its charitable purposes, rather than occupation for the private or purely personal residential purposes of that person.

[14] The Board considered the Assessor's submission that in this case there are leases under the *Residential Tenancy Act* which gives exclusive possession. The Board found that the fact of possession was not determinative of the decision in *Vancouver (City) v. Coast Foundation Society (1974)* but rather the focus was on the range of services provided. The Board referred to the reasons of Callaghan J. that:

It is the uniqueness of the population group ... and the housing relationship which distinguishes this group from persons living in subsidized housing programs which do not have tax-free status.

The Board found that the court was not making a determination on subsidized housing or whether or not they should have tax-free status, but rather conveying the importance of the type of residents and the housing relationship. The Board then said:

[T]he test still remains whether or not the charitable organization is providing services to the property within the purpose and mandate of its organizational structure.

[15] The Board then set out the constitution of the Respondent, Entre Nous Femmes Housing Society, relating to mandate and purpose:

- (a) to acquire and operate one or more non-profit housing accommodations;
- (b) to improve and maintain the quality of life for single parents and their children;
- (c) to meet the crucial need of single parents for appropriate and affordable housing:
 - (i) promoting, developing and maintaining housing
 - (ii) collating and providing housing information.

and the Respondent, Red Door Housing Society and Property Assessment Appeal Board:

- (a) to acquire lands or buildings by purchase ... and to maintain and operate such lands or buildings on a non-profit basis for the purpose of province [sic] low cost housing to persons in need in British Columbia;
- (b) to educate its members and the public with respect to the housing needs of low income persons and families;
- (c) to educate its members and tenants regarding self-management and tenant control.

[16] The Board found that the services provided by the Respondents are beyond the normal purview of a landlord, in identifying needs and making referrals, and in so doing to give expression to the organizational mandate and structure of the Respondents' but also filling the needs of the tenants. The Board concluded that the occupation of the society was for its charitable purposes rather than occupation for the private or purely residential purposes of that person.

[17] In the result the Board found the Respondents in "actual occupation" of the properties for its charitable purposes which include the provision of social services.

[18] The Board then went on to consider whether the properties are "wholly in use for charitable purposes", the second requirement for exemption under s. 396(1)(c)(i). The Assessor submitted that the occupation of the properties is for the private and purely personal residential purposes of the tenant and not the charitable purposes of the Respondents.

[19] The Board considered the decision of the Court of Appeal in *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)* (1984), 57 B.C.L.R. 60 where it was held that it is the *exclusive* use of the property for *charitable* purposes that attracts the exemption. The court reviewed the constitution of the society which provided for several charitable purposes which included the construction of homes for patients and their families which was sufficient to bring the property within the exemption. The Board concluded that in determining whether or not the Respondents met the requirements of "wholly used for charitable purposes" it was necessary to look at the use of the premises and the objects of the charitable institutions. It was moved that both properties constitute subsidized low

income housing operated on a non-profit basis; the tenants live in the units; and the provision and operation of low-income non-profit housing for persons in need is within the scope of the charitable purposes set out in the constitutions.

[20] The Board accepted that the primary purpose of the units is as the private residences of the tenants, but the purpose of the entire property is for the provision of low-income non-profit housing. Thus the Board found the individual tenants' residential use is part of the charitable purpose of the properties, which is the provision and operation of residential low-income housing which necessarily includes a residential purpose. The property was found to be "wholly in use for charitable purposes".

Analysis

[21] Section 396(1)(c)(i) was considered by the Court of Appeal in *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)*, [1984] B.C.J. No. 5. There the court considered an appeal from the judgment of the Supreme Court which dismissed an appeal by way of Stated Case from a decision of the Assessment Appeal Board. The question on the Stated Case to the Supreme Court was this:

Did the Assessment Appeal Board err in law in failing to find that the subject property is exempt from taxation pursuant to Section 396(c)(i) of the *Vancouver Charter*, as real property owned and actually occupied by an incorporated charitable institution, and wholly in use for charitable purposes?

[22] The objects, or purposes, of the Appellant included:

To purchase, design, construct, renovate, furnish and operate a home for child patients suffering from life-threatening diseases and their families during periods of treatment at the Children's Hospital.

[23] The Assessment Appeal Board found that the Appellant's property is not exempt and that decision was upheld by this court.

[24] At paragraphs 7 and 8, Mr. Justice Macfarlane said this:

It is clear that the Appellant is a charitable institution which owns and occupies the property in question. To that extent the requirements of the Statutory Exemption Clause are met.

The question raised on this appeal is whether the property was in ... the taxation year in question, wholly in use for charitable purposes...

[25] At paragraph 13 Mr. Justice Macfarlane said this:

...[T]he property was wholly in use for one of several charitable purposes stated in the Constitution of the Appellant, which is a charitable institution; namely, for the design and renovation as a home for patients and their families. The property here was not in use for other than one of the stated charitable purposes; for instance, for a business purpose.

[26] The facts set forth in the judgment appealed from include the fact that the Appellant society was granted tax-exempt status as a registered charity by Revenue Canada; that the society took title to the subject property in 1982 and was occupying it in December 1982 when detailed architectural work for renovations were undertaken with the renovations following immediately thereafter. Mr. Justice Macfarlane finds (at paragraph 15) that:

[F]rom the date that the Society became the registered owner of the property through to the year end of 1982 and into 1983, the charitable objects were being actively undertaken.

[27] At paragraphs 14, 16 and following Mr. Justice Macfarlane says this:

14. I do not think that on the facts of this case a valid distinction can be made between property wholly held for charitable purposes and one wholly used for charitable purposes. The property here was not only being held for charitable purposes but the purposes were being actively pursued.

16. The exemption ... does not depend upon occupation by the patients, even though the principal purpose of the charity is to provide a place to be occupied by patients and their families. The occupation which is a basis for the exemption is occupation by the charitable institution ...

17. Actual use of the home for patients is not the basis of the exemption, as was the case in so many of the authorities cited to us. It is exclusive use for charitable purposes that attracts the exemption in this case.

18. "Wholly in use for charitable purposes in that context, in my opinion, includes actual design and construction activity leading to renovations to the property which are a necessary part of fulfilling the whole of the charitable intent and which directly facilitate the charitable objectives. Here that activity, that use of the property which was specified in the Constitution as a charitable purpose, was underway in the year in question.

[28] In the result leave to appeal was granted and the appeal was allowed.

[29] In *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)*, the society's purpose included "to...design, construct, renovate,...and operate a home for child patients suffering from life-threatening diseases...". In considering whether the property was wholly in use for charitable purposes, Mr. Justice Macfarlane found that a valid distinction could not be made between property held for charitable purposes and one wholly used for charitable purposes. In the result, it was the exclusive use for charitable purposes that attracted the exemption in this case.

[30] The Court of Appeal considered the application of s. 396(1)(c)(i) of the *Vancouver Charter in Vancouver (City) v. Coast Foundation Society (1974)*, [1991] B.C.J. No. 3232. There the City appealed the dismissal by Mr. Justice Callaghan of this court of an appeal by way of Stated Case from a decision of the Assessment Appeal Board that the property owned by the Respondent society and used by it to house people who have suffered psychiatric illness is exempt from taxation.

[31] There the question was whether the Respondent society was in actual occupation of the 17 strata units in 14 buildings around the city used by the society for that purpose. The purposes of the Respondent society as set out in the Stated Case by Mr. Justice Callaghan included:

(a) To provide for the care and welfare of low-income psychiatric patients and former psychiatric patients;

(b) To provide ... housing facilities for low-income psychiatric patients and former psychiatric patients
...

[32] On the facts before Mr. Justice Callaghan there was no dispute that the strata units are occupied by ex-psychiatric patients who are the target group serviced by the society, nor was there any suggestion that the society provided low-income housing to persons outside its mandate.

[33] At page 6 of his reasons, Mr. Justice Callaghan said this:

It would seem to me that the appropriate test should be the one articulated in *The Ronald McDonald House, supra*. Although the Court of Appeal was addressing the issue of occupancy in the context of the "charitable purposes" requirement of s. 396(1)(c)(i), the reasoning is equally applicable in this context. At p. 63, Macfarlane, J.A. stated:

The exemption, I should say, does not depend upon occupation by the patients, even though the principal purpose of the charity is to provide a place to be occupied by patients and their families.

The occupation which is a basis for the exemption is occupation by the charitable institution. It is conceded that the property was occupied by the charitable institution prior to 31st December 1982.

Mr. Justice Callaghan went on to say this:

Thus, if the charitable organization in question is occupying the property, i.e., providing services to that site within the purposes and mandate of the organizational structure, then the activity qualifies that site for the protection of s. 396(1)(c)(i). If the test suggested by the Appellant was adopted, the Society would merely need to have an on-site staff person present to qualify for the exemption, regardless of whether the activity fell within the mandate of the charitable organization's activities. As well, such a test would create arbitrary distinctions between and within population groups.

[34] Mr. Justice Callaghan dismissed the appeal from the decision of the Assessment Appeal Board that the society was "in actual occupation" and said this:

It is the uniqueness of the population group, i.e., highly functioning ex-psychiatric persons, and the housing relationship which distinguishes this group from persons living in subsidized housing programs which do not have taxfree status. The needs are different and the residential programs are appropriately designed to meet them.

[35] In dismissing the appeal, Mr. Justice Taylor observed at page 3 that:

Mr. Justice Callaghan held that since the organization was providing service to the premises within its mandate the activity there would qualify as actual occupation by the Society within the meaning of the section.

[36] In dismissing the appeal Mr. Justice Taylor said this at page 4:

...feel bound to say that the question whether or not a servant or other employee is actually present on a regular basis on each strata unit, or within the building of which the unit forms part, has, in my view, little relevance to the issue before us. It matters not, in my view, whether the person there is an officer, employee, regular member, or as here, client member of the Society, or any other representative.

The question, in my view, is whether the occupation of that person is actual rather than constructive, theoretical, or "legal" only, and whether it is the occupation of the Society for its charitable purposes, rather than occupation for the private or purely personal residential purposes of that person.

It seems to me there was evidence before the Board on which it was entitled to conclude that occupation of the Society's client members of these units was occupation by the Society which had them in its care, and that this constituted "actual occupation" by the Society for the purposes of s. 396(1)(c)(i) of the *Vancouver Charter*. I am of the view that the judge correctly answered the question before him on the Stated Case. I would dismiss the appeal.

Decision

[37] Both the Assessor and the City of Vancouver appeal the decision of the Property Assessment Appeal Board. The issues before the Board were whether the Respondents are in "actual occupation" of the properties and whether the properties are "wholly in use for charitable purposes". The facts relied upon by the Appellants include the fact that each of the strata units is leased to a tenant or sub-tenant, the lease is being subject to the *Residential Tenancy Act*, and that the Respondents operate under an agreement with CMHC which states that in exchange for federal assistance for capital costs provided by CMHC the Respondents will lease units for stipulated rental rates to approved tenants at stipulated lease terms. The leased units are subsidized from between 30 percent to 10 percent less than market. The Board found that the Respondents provide services beyond the normal purview of a landlord and that these services

include identifying tenants' needs and referring those tenants to appropriate social programs. Those services are within the organizational mandate and structure of the Respondents and are provided to educate tenants and to improve and maintain their quality of life. I am satisfied that applying the test in *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)* and in *Vancouver (City) v. Coast Foundation Society (1974)* the Respondents are in actual occupation of the subject properties and I do so by applying the purposive approach taken by the Court of Appeal in both *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)* and *Vancouver (City) v. Coast Foundation Society (1974)*. That is that the subject properties are held for charitable purposes and used for charitable purposes, and that there was evidence before the Board that the Respondents are in actual occupation. The Board found, and there was evidence before the Board to support the finding, that the individual tenants' residential use is part of the charitable purpose of the Respondents which is the provision and operation of residential low-income housing which necessarily involves a residential purpose. The manner in which the property is occupied (actual occupation by the charity) and used (wholly used for charitable purposes) are vital considerations and determinative of whether the property is exempt. The form of tenure (e.g., license or lease) and the use made by the licensee or tenant are neither vital to the issue nor determinative of the outcome.

[38] In the result, the questions stated by the Assessor in questions 1 to 8 are answered in the negative, and the questions stated by the City of Vancouver in questions 1 to 3 are answered in the negative.

[39] Costs will follow the event.

"The Honourable Mr. Justice Brooke"

CITY OF VANCOUVER

v.

**ENTRE NOUS FEMMES HOUSING SOCIETY,
RED DOOR HOUSING SOCIETY and
PROPERTY ASSESSMENT APPEAL BOARD**

v.

ASSESSOR OF AREA 09 – VANCOUVER SEA TO SKY REGION

BRITISH COLUMBIA COURT OF APPEAL (CA037025) Vancouver Registry

Before the HONOURABLE MR. JUSTICE LOW (in chambers)

Date and Place of Hearing: July 14, 2009, Vancouver, B.C.

P. Scheer for the Appellant
R. Anderson, Q.C. for the Respondents

Application for Leave to Appeal – Actual Occupation – Exemption

The City of Vancouver applied for leave to appeal on the question that the respondent societies leased the residential units in the buildings on the properties, on a subsidized basis, to low-income tenants on terms subject to the Residential Tenancy Act, R.S.B.C. 1996, c. 406. The City claimed that because that statute gave the occupant of each unit exclusive possession of the unit, the societies who own the properties cannot be said to be in actual occupation of them as required for them to benefit from the exemption in section 396(1)(c)(i) of the Vancouver Charter. The City argued that the chambers judge erred in holding that the Board did not misapply the law on the issue of actual possession as stated by the court in Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9), [1984] B.C.J. No. 5, and Vancouver (City) v. Coast Foundation Society (1974), (1992) 6 M.P.L.R. (2d) 311.

HELD: *Application for leave to appeal granted.*

- 1. The Court below did not deal with the question raised by the City. That question was whether the giving of exclusive possession by the society to non-members of the society under leases subject to the Residential Tenancy Act preclude a finding by the Board that the society is in occupation of the property so as to qualify it for tax exemption under section 396(1)(c)(i) of the Vancouver Charter.*
- 2. The Court also found that there is evidence that resolution of the issue will affect a substantial number of other properties.*

Reasons for Judgment

July 29, 2009

Reasons for Judgment of the Honourable Mr. Justice Low:

[1] This is an application brought by the City of Vancouver pursuant to s. 65(9) of the *Assessment Act*, R.S.B.C. 1996, c. 20 for leave to appeal an order made on the hearing of a Stated Case appeal brought under s. 65(1) from a decision of the Property Assessment Appeal Board. Two properties are affected. Each of the two respondent societies owns one of the properties.

[2] In reasons dated 21 December 2007, the Board determined that the two properties were exempt from property taxation under s. 396(1)(c)(i) of the *Vancouver Charter*, S.B.C. 1953, c. 55. The relevant portions of that section are:

396. (1) All real property in the city is liable to taxation subject to the following exemptions:

...

(c) Real property

(i) if

(A) an incorporated charitable institution is the registered owner or owner under agreement, either directly or through trustees, of the real property, and

(B) the real property is in actual occupation by the incorporated charitable institution and is wholly in use for charitable purposes;

[3] Under the section, there are four conditions for the exemption:

(1) the owner must be an incorporated charitable institution;

(2) the subject property must be registered in the name of the charitable institution;

(3) the owner must be in actual occupation of the property; and

(4) the property must be used wholly for a charitable purpose.

[4] Before the Board and before Mr. Justice Brooke in the Supreme Court of British Columbia, the City and the Assessor of Area #09 took the position that the properties in question did not come within either the third or fourth condition.

[5] Only the City seeks leave to appeal. It now confines the issue to the third condition. It says that the question is whether the respondent societies can claim the benefit of the exemption from taxation when they have leased the residential units in the buildings on the properties, on a subsidized basis, to low-income tenants on terms subject to the *Residential Tenancy Act*, R.S.B.C. 1996, c. 406. The City claims that because that statute gives the occupant of each unit exclusive possession of the unit, the societies who own the properties cannot be said to be in actual occupation of them as required for them to benefit from the exemption in s. 396(1)(c)(i) of the *Vancouver Charter*.

[6] The City wishes to argue that the chambers judge erred in holding that the Board did not misapply the law on the issue of actual possession as stated by this court in *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)*, [1984] B.C.J. No. 5, and *Vancouver (City) v. Coast Foundation Society (1974)*, (1992) 6 M.P.L.R. (2d) 311.

[7] Section 65(9) of the *Assessment Act* provides as follows: "An appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal."

[8] In *Weyerhaeuser Co. v. British Columbia (Assessor of Area #04 - Nanaimo Cowichan)*, 2008 BCCA 361, Bauman J. A. summarized the matters to be considered in determining an application for leave under s. 65(9):

[12] In assessment appeals, leave should only be granted where: (i) there is some prospect of the appeal succeeding on its merits; (ii) the appeal is on a question of law that has not been addressed by this Court, or a question of law on which lower court decisions are in conflict; (iii) the question of law affects a substantial number of assessments; and (iv) the question of law can be said to admit rationally of a different answer from that given below (*Royal Bank Realty v. British Columbia (Assessor of Area #10 - Burnaby/New Westminster)*, [1991] B.C.J. No. 4014 at para. 7 (C.A.) (Wallace J.A. in Chambers); *TSI Terminal Systems v. Assessor of Area #09 - Vancouver*, 2006 BCCA 186 at para. 10 (Smith J.A. in Chambers)).

[9] The chambers judge summarized the critical facts found in the Stated Case:

[5] The Stated Case includes these facts:

1. The Respondents are charitable institutions that operate residential housing for low-income tenants with financial assistance from the provincial or federal housing agencies. The properties are leased to tenants or sub-tenants who live in the units (para. 2 Facts).
2. The issue before the Board was whether the Respondents were in "actual occupation" of the properties and whether the properties are "wholly in use for charitable purposes" within the meaning of s. 396(1)(c)(i) of the *Vancouver Charter* and therefore exempt from taxation (para. 3 Facts).
3. The occupiers of the residential units within the properties are tenants or sub-tenants of the Respondents where the tenants are granted leases that are subject to the *Residential Tenancy Act*, S.B.C. 2002, c. 78. Each property is operated by the Respondents under an operating agreement with a federal agency, Canada Mortgage and Housing Corporation ("CMHC"), and this agreement governs the use of the properties and the manner in which the units are rented to tenants. The operating agreements state that the Respondents, in exchange for federal assistance for approved capital costs provided by CMHC, will lease units for stipulated rental rates to approved tenants at stipulated terms and within a stipulated operating budget. The Alma Blackwell, which has 46 units available for rent, has units that are subsidized from 30 to 10 percent less than market rent (para. 4).
4. The Board found that the Respondents provide services to their tenants beyond the normal purview of a landlord. The services are largely in identifying needs and referring tenants to appropriate social programs and fill a need of the tenants. The services are within the organizational mandate and structure of the Respondents and are provided to educate the tenants and to improve and maintain their quality of life. The Respondents have the structure in place to deal with the needs of the tenants. The Board found both Respondents provide services to the properties within the purpose and mandate of their original structure (para. 5).
5. The Board found the occupation of the Respondents is for their charitable purposes, which includes the provision and operation of low-income housing as well as provision of social services to the tenants (para. 6).
6. The Board found the Respondents are in "actual occupation" of the properties within the meaning of s. 396(1)(c)(i) of the *Vancouver Charter* (para. 7).
7. Both Mi Casa and Alma Blackwell constitute subsidized, low-income housing operated on a non-profit basis. The tenants live in the units for their residences. The provision and operation of low-income non-profit housing for persons in need is within the charitable purposes set out in the constitutions of the Respondents. The properties are operated for the purpose of providing housing for low-income tenants. The Board found the individual tenant's residential use is part of the charitable purpose of the properties, which is the provision and operation of residential low-income housing which necessarily involves a residential purpose.

[10] In its decision, the Board stated that the fact of possession was not determinative of the question of actual occupation. It looked to whether or not the charitable organization was providing services to the property within the purpose and mandate of its organizational structure. The chambers judge referred to the Board's consideration of the formal structure of the two respondent societies:

[15] The Board then set out the constitution of the Respondent, Entre Nous Femmes Housing Society, relating to mandate and purpose:

- (a) to acquire and operate one or more non-profit housing accommodations;
- (b) to improve and maintain the quality of life for single parents and their children;
- (c) to meet the crucial need of single parents for appropriate and affordable housing:
 - (i) promoting, developing and maintaining housing
 - (ii) collating and providing housing information.

and the Respondent, Red Door Housing Society and Property Assessment Appeal Board:

- (a) to acquire lands or buildings by purchase ... and to maintain and operate such lands or buildings on a non-profit basis for the purpose of province [sic] low cost housing to persons in need in British Columbia;
- (b) to educate its members and the public with respect to the housing needs of low income persons and families;
- (c) to educate its members and tenants regarding self-management and tenant control.

[16] The Board found that the services provided by the Respondents are beyond the normal purview of a landlord, in identifying needs and making referrals, and in so doing to give expression to the organizational mandate and structure of the Respondents' but also filling the needs of the tenants. The Board concluded that the occupation of the society was for its charitable purposes rather than occupation for the private or purely residential purposes of that person.

[17] In the result the Board found the Respondents in "actual occupation" of the properties for its charitable purposes which include the provision of social services.

[11] In the *Ronald McDonald House* case, the issue was whether the property in question was being occupied by the society for a charitable purpose during construction of the building before charitable services were being provided at the building. This court held that the building was then occupied for a charitable purpose because that purpose included "actual design and construction activity leading to renovations to the property which are a necessary part of fulfilling the whole of the charitable intent which directly facilitate the charitable objectives". That case assisted in resolution of the other issue before the Board and Brooke J., but I do not see that it has any application to the only remaining issue which is what amounts to actual occupation.

[12] In *Coast Foundation*, the issue was whether the society was in actual occupation of 17 strata units in 14 buildings around the city. In accordance with certain provisions in its constitution, the society used the units to house people suffering from psychiatric illnesses. Each resident was a "client member" of the society. In addition, each client member was entitled to reside in a unit under a licence agreement that was revocable by the society at will and without notice. The facts there were quite different from the facts in the present case.

[13] The chambers judge considered the two issues before him compendiously. He stated that he was applying *Ronald McDonald House* and *Coast Foundation* in concluding that the Board did not err in finding that the two societies in the present case came within the exemption in s. 396(1)(c)(i) of the *Vancouver Charter*. His conclusion is found in this part of para. 37:

... the subject properties are held for charitable purposes and used for charitable purposes, and that there was evidence before the Board that the Respondents are in actual occupation. The Board found, and there was evidence before the Board to support the finding, that the individual tenants' residential use is part of the charitable purpose of the Respondents which is the provision and operation of residential low-income housing which necessarily involves a residential purpose. The

manner in which the property is occupied (actual occupation by the charity) and used (wholly used for charitable purposes) are vital considerations and determinative of whether the property is exempt. The form of tenure (e.g., license or lease) and the use made by the licensee or tenant are neither vital to the issue nor determinative of the outcome.

[14] In my opinion, this court has not dealt with the question raised by the City. That question is: does the giving of exclusive possession by the society to non-members of the society under leases that are subject to the *Residential Tenancy Act* preclude in law a finding by the Board that the societies are nonetheless in actual occupation of the property so as to come within the exemption from taxation found in s. 396(1)(c)(i) of the *Vancouver Charter*? It is arguable that giving up exclusive possession amounts to giving up actual occupancy and therefore the structure employed here took the societies out of the exemption. I am bound to say that there is some prospect of this court reaching a different conclusion on this point than was reached by the Board and by the chambers judge. Although the City contends that the Board and the judge misinterpreted and misapplied the *Ronald McDonald House* and *Coast Foundation* cases, it seems to me that it is also arguable that neither of those cases is particularly helpful in determining the actual issue which, as a result, would then fall to be decided without reference to precedent directly on point.

[15] There is evidence that resolution of the issue will affect a substantial number of other properties. It seems to me that with homelessness being a serious social issue at the present time, those who seek to address it should know the property interest structure to employ in order to gain tax-exempt status.

[16] The application for leave to appeal is granted.

"The Honourable Mr. Justice Low"

SC 527Cont City of Vancouver v Entre Nous Femmes Housing Society et al

CITY OF VANCOUVER
v.
**ENTRE NOUS FEMMES HOUSING SOCIETY,
RED DOOR HOUSING SOCIETY and
PROPERTY ASSESSMENT APPEAL BOARD**

BRITISH COLUMBIA COURT OF APPEAL (CA037025) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE NEWBURY, and
the HONOURABLE MR. JUSTICE LOW, and
the HONOURABLE MADAM JUSTICE LEVINE
Date and Place of Hearing: April 28, 2010, Vancouver, B.C.

J.H. Shevchuk & C.B. Yep for the Appellant
R.S. Anderson, Q.C. for the Respondents

"actual occupation" – Section 396(1)(c)(i) of the Vancouver Charter

The Respondents are charitable institutions that operate residential housing for low-income tenants, with financial assistance from provincial or federal housing agencies. Entre Nous operates a 46-unit residential housing complex known as Alma Blackwell; Red Door operates a 22-unit residential housing complex known as Mi Casa. The occupiers of the units are tenants or sub-tenants of the housing societies.

The properties are operated under agreements with the Canada Mortgage and Housing Corporation, which provides financial assistance to the housing societies. The operating agreements govern the terms of use of the units, including rental rates and terms. They require the form of lease be acceptable to CMHC, and the leases under which the units are leased are subject to the Residential Tenancy Act, S.B.C. 2002, c. 78.

The Property Assessment Appeal Board ("the Board") decided that the properties occupied by the tenants were exempt from taxation as they were in "actual occupation" by the housing societies. The Board's decision was upheld by a BC Supreme Court justice on the hearing of a Stated Case. The City of Vancouver appealed, with leave, from the decision of the Supreme Court.

The appeal turned on the interpretation of the phrase "actual occupation" in the exemption provision, section 396(1)(c)(i) of the Vancouver Charter, S.B.C. 1953, c. 55.

HELD: Appeal Dismissed.

The decisions of the Board and the Supreme Court that the properties were exempt from property tax followed and applied the case of Coast Foundation Society (1974) v. Assessor of Area 09 – Vancouver. Applying the reasoning in Coast Foundation, this Court failed to see that the difference in the form of tenure applied to the tenants of the charitable owner in this case should lead to a different result with respect to the tax status of this property. It follows that the chambers judge made no error in answering all of the questions on the Stated Case in the negative. This Court dismissed the appeal.

Reasons for Judgment

May 25, 2010

Written Reasons by:

The Honourable Madam Justice Levine

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Low

Reasons for Judgment of the Honourable Madam Justice Levine:

Introduction

[1] The issue on this appeal is whether real properties owned by the Respondent housing societies are exempt from property tax. The Property Assessment Appeal Board decided that they were exempt, and the Board's decision was upheld by a BC Supreme Court justice on the hearing of a Stated Case. The City of Vancouver appeals, with leave, from the decision of the Supreme Court. The appeal turns on the interpretation of the phrase "actual occupation" in the exemption provision, s. 396(1)(c)(i), of the *Vancouver Charter*, S.B.C. 1953, c. 55.

[2] It is my opinion that neither the Board nor the chambers judge erred in law in concluding that the properties were exempt. It follows that I would dismiss the appeal.

Background

The Housing Societies and the Properties

[3] The Respondents are charitable institutions that operate residential housing for low-income tenants, with financial assistance from provincial or federal housing agencies. The provision and operation of low-income, non-profit housing for persons in need is within the charitable purposes set out in the constitutions of the housing societies.

[4] Entre Nous operates a 46-unit residential housing complex known as Alma Blackwell; Red Door operates a 22-unit residential housing complex known as Mi Casa. These properties are located in the City of Vancouver. The occupiers of the units are tenants or sub-tenants of the housing societies.

[5] The properties are operated under agreements with the Canada Mortgage and Housing Corporation, which provides financial assistance to the housing societies. The operating agreements govern the terms of use of the units, including rental rates and terms. They require the form of lease be acceptable to CMHC, and the leases under which the units are leased are subject to the *Residential Tenancy Act*, S.B.C. 2002, c. 78.

[6] The housing societies provide services to their tenants in the nature of identifying needs and referring tenants to social programs, services that are beyond the normal purview of a landlord but are within the organizational mandate of the housing societies.

[7] The housing societies maintain offices in their respective properties, which the City concedes are exempt from property tax.

The Exemption from Property Tax

[8] Section 396(1)(c)(i) of the *Vancouver Charter* exempts from property taxation real property owned by an incorporated charitable institution where “the real property is in actual occupation by the incorporated charitable institution and is wholly in use for charitable purposes”.

[9] The question on this appeal is whether the properties are in “actual occupation” by the housing societies. The City concedes that all other requirements of this exemption are met.

The History of the Proceedings

[10] The Board found the properties were exempt from property tax. Both the Assessor and the City appealed by way of Stated Case to the BC Supreme Court under s. 65(1) of the *Assessment Act*, R.S.B.C. 1996, c. 20. The chambers judge upheld the Board’s decision, from which only the City appealed. Section 65(9) of the *Act* provides for an appeal to this Court, with leave, “on a question of law”.

[11] Mr. Justice Low granted leave to appeal (2009 BCCA 341). He described the question raised by the City (at para. 14):

That question is: does the giving of exclusive possession by the society to non-members of the society under leases that are subject to the *Residential Tenancy Act* preclude in law a finding by the Board that the societies are nonetheless in actual occupation of the property so as to come within the exemption from taxation found in s. 396(1)(c)(i) of the *Vancouver Charter*?

The Decisions of the Board and the Chambers Judge

[12] The decisions of the Board and the chambers judge that the properties are exempt from property tax followed and applied the case of *Coast Foundation Society (1974) v. Assessor of Area #09 - Vancouver* (1990), (PAAB), upheld on appeal by way of Stated Case in *Vancouver (City) v. Coast Foundation Society (1974)* (1990), 2 M.P.L.R. (2d) 148, [1990] B.C.J. No. 2508 (S.C.), aff’d (1991), 6 M.P.L.R. (2d) 311, [1991] B.C.J. No. 3232 (C.A.).

[13] The Board summarized the facts and decisions in the *Coast Foundation* case (2007 PAAB 20070391 at paras. 13-14):

In *Coast Foundation, supra.*, the charitable organization or Society was a non-profit society incorporated to provide housing to former psychiatric patients. The Society owned strata units occupied by ex-psychiatric patients, the target group serviced by the Society. Services, for “property and psychological maintenance”, were provided to the residents, but because the residents can function in an independent setting, there were no on-site facilities or staff supplied by the Society or required by the residents. The residents entered into a licensing agreement (not a lease) which allowed the Society to repossess the units at any time, and the resident to be hospitalized when necessary with a minimum amount of delay. The residents paid rent in proportion to their earnings up to a maximum amount per unit. Any shortfall in income to the Society was made up by grants from the provincial and federal governments.

The B.C. Supreme Court in *Coast Foundation, supra.*, set out the test, for “actual occupation” namely “... if the charitable organization in question is occupying the property, i.e. providing services to that site within the purposes and mandate of the organizational structure”, the requirements of section

396(1)(c)(i) are met. The Court held that there was no requirement that a staff member of the Society be physically present in order for there to be “actual occupation”, but rather the occupation by the former psychiatric patients who were receiving assistance from the Society constituted actual occupation. The B.C. Court of Appeal, *supra.*, upheld this decision and determined that the question is “... whether the occupation of that person is actual, rather than constructive, theoretical, or ‘legal’ only, and whether it is the occupation of the Society for its charitable purposes, rather than occupation for the private or purely personal residential purposes of that person.”

[14] The Board rejected the Assessor’s argument that the fact that the residents of the units occupy them under leases, rather than licences, distinguished this case on the facts from *Coast Foundation* (at para. 15). It found that the focus in *Coast Foundation* was on the services provided to the residents, which defined the nature of the type of residents and the “housing relationship”. The Board found (at paras. 22-23) that the societies provide services to the properties that meet the needs of the tenants, are beyond the normal purview of a landlord, and are within the purpose and mandate of their organizational structure. It concluded (at paras. 24-25) that the occupation of the properties was for the charitable purposes of the societies “rather than occupation for the private or purely personal residential purposes of that person”, and the societies were in actual occupation of the properties.

[15] The chambers judge reviewed the decision of the Board, and noted the references to *Coast Foundation* and to *Ronald McDonald House TM Society of British Columbia v. Assessor Area No. 09* (1984), 57 B.C.L.R. 60 (C.A.), which dealt with the issue of whether property was “wholly used for charitable purposes” (not in issue on this appeal). He concluded (at para. 37):

I am satisfied that applying the test in *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)* and in *Vancouver (City) v. Coast Foundation Society (1974)* the respondents are in actual occupation of the subject properties and I do so by applying the purposive approach taken by the Court of Appeal in both *Ronald McDonald House (TM) Society of British Columbia v. British Columbia (Assessor of Area No. 9)* and *Vancouver (City) v. Coast Foundation Society (1974)*. That is that the subject properties are held for charitable purposes and used for charitable purposes, and that there was evidence before the Board that the respondents are in actual occupation. The Board found, and there was evidence before the Board to support the finding, that the individual tenants’ residential use is part of the charitable purpose of the respondents which is the provision and operation of residential low-income housing which necessarily involves a residential purpose. The manner in which the property is occupied (actual occupation by the charity) and used (wholly used for charitable purposes) are vital considerations and determinative of whether the property is exempt. The form of tenure (e.g., license or lease) and the use made by the licensee or tenant are neither vital to the issue nor determinative of the outcome.

[16] In the result, the chambers judge upheld the decision of the Board that the societies were in actual occupation of the properties, and were exempt from property tax under s. 396(1)(c)(i) of the *Vancouver Charter*.

Issues on Appeal

[17] The question raised on the appeal is whether the societies are in “actual occupation” of the properties.

[18] This issue was raised by both the Assessor and the City in several questions set out in the Stated Case, which the City referred to in its factum as the “Remaining Questions”. As all of the Remaining Questions, and all of the City’s grounds of appeal, turn on the question of whether the societies are in “actual occupation” of the properties, it is not necessary to set these out in full.

[19] The parties have also put in issue two preliminary questions: whether the question on appeal is a question of law, and the proper standard of review of the Board’s decision. Neither of these questions was addressed by the chambers judge.

Question of Law

[20] The City takes the position that the question of the meaning of the words “actual occupation” in s. 396(1)(c)(i) of the *Vancouver Charter* is a pure question of statutory interpretation, which is a question of law. In the alternative, it says that to the extent that the question involves the application of legal principles to a particular set of facts, and is therefore a question of mixed fact and law, because it is a general question that may have importance in the determination of future cases, it is a question of law: *Burlington Resources Canada Ltd. v. Peace River (Assessor of Area #27)*, 2005 BCCA 72 at paras. 24-27.

[21] The Respondents maintain that the question of whether the societies are in actual occupation of the properties involves the application of the legal principles developed in *Coast Foundation* to a particular factual context: units in properties owned by the societies which are leased, rather than licensed, to the residents. They acknowledge that the answer to this question may have importance beyond this particular case.

[22] I am prepared to proceed with this appeal on the basis that the question as stated by Low J.A. in granting leave is a question of mixed fact and law that meets the criteria for a “question of law” for the purpose of s. 65(9) of the *Act*, as described in *Burlington*.

Standard of Review

[23] The parties disagree on the proper standard of review of the Board’s decision.

[24] The City says that the standard of review is correctness for questions involving the interpretation of legislation and the effect of previous court decisions, citing *Burlington* (at paras. 32-34).

[25] The Respondents say that the analysis in *Burlington* has been superseded by this Court’s decision in *Weyerhaeuser Company Ltd. v. British Columbia (Assessor of Area No. 4 - Nanaimo Cowichan)*, 2010 BCCA 46. In *Weyerhaeuser*, the Court decided that reasonableness was the proper standard of review of the Board’s decision on an issue of the classification of lands for assessment purposes.

[26] I do not find it necessary to resolve this question. On this appeal, the sole question is whether the chambers judge erred in applying the principles developed in *Coast Foundation* on the facts of this case. The answer to that will be the same whether the standard of review of the Board’s decision is correctness or reasonableness.

Analysis

[27] The question before the Board and the chambers judge was whether the principles developed in *Coast Foundation* applied where the tenure of the occupants of the units was under a lease instead of a licence. Both concluded that the difference in the legal terms of the occupancy of the units by tenants who were there in fulfillment of the societies’ charitable purposes did not change the outcome.

[28] I agree. What this Court decided in *Coast Foundation* was that the society was in “actual occupation” of the properties by virtue of the occupation of the particular strata units by persons who were there not solely for their private or purely personal residential purposes, but were there because they embodied the society’s charitable mandate.

[29] Neither the Board nor the courts that decided or have considered *Coast Foundation* could have missed the obvious “plain meaning” of the words “actual occupation”, and that the residents or occupants of the units from time to time were actually, physically occupying them. Despite that fact, the consistent conclusion has been that the occupation of the units for the purposes of the charitable institutions was “actual occupation” for the purpose of the exemption.

[30] To similar effect is the decision of the Ontario Court of Appeal in *Ottawa Salus Corp. v. Municipal Property Assessment Corp.* (2004), 69 O.R. (3d) 417, 235 D.L.R. (4th) 743. In that case, a charity operated two apartment buildings in which it provided housing and services to mentally ill and unemployed persons. The tenants occupied the apartments under leases and the *Tenant Protection Act*, S.O. 1997, c. 24. The *Assessment Act*, R.S.O. 1990, c. A.31, s. 3(1), paragraph 12, provided an exemption from property tax for “Land owned, used and occupied by ... any charitable, non-profit philanthropic corporation organized for the relief of the poor”. Citing the BC Supreme Court decision in *Coast Foundation*, the Court of Appeal found (at paras. 26-27) that despite the acknowledged occupation of the residential units by the tenants, the charity also occupied the residential units in its buildings.

[31] Counsel for the City expressly stated, in response to a question from the Court, that the City does not take issue with the decision in *Coast Foundation*, and it did not seek the appointment of a five-justice division to reconsider it. Rather, the City seeks to distinguish *Coast Foundation* on the sole basis that the form of tenure of the occupants of the units is a lease, rather than a licence.

[32] The licence under which the tenants occupied the units in *Coast Foundation* allowed the society to evict the tenants without notice. Until their eviction, however, they continued to occupy the units “within the framework and spirit of the *Landlord and Tenant Act*”: (PAAB at 3). In this case, the landlord societies may only evict the tenants in accordance with the provisions of the *Residential Tenancy Act*, and until that occurs, the tenants have exclusive possession of the units.

[33] Applying the reasoning in *Coast Foundation*, I fail to see that this difference in the form of tenure should lead to a different result. Nor is there anything in the exempting provisions of the *Vancouver Charter* that addresses the form of tenure of tenants of charities that would make the principles of *Coast Foundation* inapplicable.

[34] Another factual difference from *Coast Foundation* is that in this case the societies own all of the properties in question, whereas in *Coast Foundation* the exemption was applied to 17 strata units in 14 separate buildings. Thus, the question here is slightly different: does the occupation by tenants of all of the units in the buildings wholly owned by the housing societies mean that, contrary to the principles developed in *Coast Foundation*, the housing societies are not in “actual occupation” of the properties? The answer is obvious: occupation of the units by tenants in fulfillment of the societies’ charitable purposes amounts to “actual occupation” of the properties by the housing societies, in accordance with *Coast Foundation*.

[35] There is no other basis on which to distinguish *Coast Foundation*, a decision that is binding on this Court.

[36] It follows that the chambers judge made no error in answering all of the questions on the Stated Case in the negative.

Conclusion

[37] I would dismiss the appeal.

“The Honourable Madam Justice Levine”

I Agree:

“The Honourable Madam Justice Newbury”

I Agree:

“The Honourable Mr. Justice Low”