**COMPOSSITE ASSESSMENT REVIEW BOARD**

**BETWEEN:**

**La Societe franco-canadienne de Calgary**
**Complainant**

**-and-**
**Foothill County Assessor**
**Respondent**

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**Rebuttal Brief of the Complainant**
**La Societe franco-canadienne de Calgary**
**Roll Number: 2004257520**
**Hearing Date: November 5th, 2024**

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INTRODUCTION

1. This appeal arose when the Assessor, without notice or justification, increased the Property's assessment to nearly 200% from that of the 2022 assessment. The principal cause of this increase was the decision by the County to add over 40 privately owned travel trailers parked at the Property to the roll as improvements. The Property has been operated as a campground with travel trailers for over 50 years. It was only in the 2023 tax year that the County added travel trailers to the roll.

2. The Assessor's submissions fail to present a justified explanation for why these trailers are assessable. Furthermore, the Assessor fails to consider the severe land use constraints in the assessment of land value.

3. With respect to the SFCC's claim for a charitable exemption, the Assessor takes an excessively narrow approach to the interpretation of charitable exemption provisions found in the *MGA* and *COPTER.* For the reasons to follow, such an interpretation is contrary to judicial guidance and the purpose of the provisions. Instead, the evidence continues to show that the Property is used in connection with a purpose outlined in the MGA and COPTER and is not restricted in its access to the general public.

THE PROPERTY QUALIFIES FOR A CHARITABLE EXEMPTION

4. The crux of the Assessor's argument with respect to a charitable exemption is that the use of Property is restricted. The Assessor's interpretation is that "the only restriction imposed on the members may be requirement to fill out an application and pay a minor fee". The essence of the Assessor's position is that any restriction, no matter how reasonable, would preclude a non-profit from receiving tax relief under *COPTER*.

5. With respect, the Assessor's interpretation is unduly restrictive and contrary to the remedial purpose of *COPTER* and *MGA*. A purposive interpretation of this provision must consider section 7 in line with the purpose of the *MGA* and *COPTER* to provide tax exemptions to non-profit organizations who own and operate property which is used in connection with a charitable or benevolent purpose outlined in the *MGA* or *COPTER*. The requirement for a purposive approach was summarized by the Supreme Court of Canada *Rizzo*:

> ... 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.
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> ***Rizzo & Rizzo Shoes Ltd. (Re),* (1998] 1 SCR 27, 154 DLR (4th) 193, at para 21; [TAB 1 RBOA]**

An interpretation that takes into account the full context of legislation, its purpose and its possible consequences, along with any relevant interpretive aids, is superior to one that looks to a limited context and ignores, or purports to ignore, all other considerations.

*Rizzo* at para 27

6. The Supreme Court of Canada set the following approach to the interpretation of tax legislation:
    a. The interpretation of tax legislation should follow the ordinary rules of interpretation;
    b. 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;
    c. The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions;
    d. Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute;
    e. Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.

***Quebec (Communaute urbaine) v Corp. Notre-Dame de Bon-Secours*, (1994] 3 SCR 3, at para 25; 171 NR 161 [TAB 2 RBOA]**

7. It is also a well-established principle of interpretation that a regulation such as *COPTER* is subservient to the enabling legislation. *COPTER* cannot be interpreted to defeat, undermine or act as an amendment to the provisions of the *MGA*. This principle was stated in the context of assessment regulations by the Alberta Court of Appeal in *Strathcona*:

"A regulation must remain within the confines of its statute; it cannot amend it…"
***Strathcona (County) v. Alberta Assessment Appeal Board*, 1995 ABCA 165 at para. 15**
**[TAB 3 RBOA]**

8. The formalistic approach to the question of an exemption employed by the Assessor is doing just that—it interprets *COPTER* in such a manner as to supersede the legislative purpose of *MGA* to provide tax relief for properties owned by non-profits who seek to use that property for a beneficial purpose for the general public, by suggesting that even reasonable restrictions on membership would preclude exemption on the basis of section 7.

9. Similar issues are found in the Assessor's interpretation of section 16(2), where the Assessor appears to suggest that the Property is restricted more than 30% of the time it is in use. The Assessor is not entirely clear how the Property is restricted in use.

10. In any event, the site is in use for members of the general public 100% of the time it is in use. Property serves no other purpose than to provide a community, recreational and gathering space for people to speak French in a community setting. The evidence clearly suggests as much. The rebuttal statement of John Fournet explains that members of the SFCC, guests, family, friends and acquaintances are able to access the site at their leisure. While the park remains private property and access is controlled accordingly for safety and liability reasons, the use of the Property is exclusively used by members of the general public.

11. The Court of King's Bench in *McDonald v Edmonton (City)*, 2023 ABKB 615 has provided further guidance on how this provision should be interpreted. In that case, Justice Fraser was considering a judicial review application of a decision of the CARB to refuse a charitable exemption application for social housing. In the CARB decision, the board found, in part, that the property did not comply with section 7 because individual leases meant tenants had exclusive use of the units and that the requirement to pay rent to be more than a minor fee, fell under the ambit of restricting people from "using the property on any basis."

12. Justice Fraser found the board's interpretation of restricting access on any basis to be unreasonable, noting that it was "too broad". Instead, Justice Fraser noted that there are "reasonable restrictions" over and above the narrow list of permitted restrictions found in Section 7. For example, Justice Fraser noted that non-profit daycares quite reasonably restrict access to the property, even though this would technically constitute restricting use. Justice Fraser reasoned that:

> In order for any property to operate effectively, there must be some restrictions on its use. Some areas may be required to have limited access for reasons other than safety or liability. A property may not want people from the next building coming into use the microwave, lunchroom and bathroom. This is certainly a reasonable restriction, but hard to categorize as one required for safety or liability reasons.
>
> […]
>
> It is difficult to imagine any building that provides individual housing units that does not also restrict access. It would be ridiculous to provide people an apartment, but then allow anyone access at any time. […]
>
> ***McDonald v Edmonton (City)*, 2023 ABKB 615 para. 17 to 20 [TAB 4 RBOA]**

13. As such, while the wording of section 7 states that individuals cannot be "restricted from using the property on any basis", this is not to be taken so literally that reasonable restrictions to access end up precluding a chartable exemption for an otherwise legitimate purpose. The same applies to membership. While section 7(2)(a) states that membership cannot be restricted "on any basis", an interpretation so broad as to reject reasonable restrictions on membership should be rejected as per the guidance of Justice Fraser.

14. For example, it would be absurd to suggest that the legislature intended that a society which required a criminal background check for membership would be precluded exemption from property tax under section 7 simply because a clean background check is a "restriction". In the case of SFCC, one of the main goals of the organization is the promotion of the French language along with other benevolent purposes. It is worth repeating that the definition of "linguistic organization" found in section 13(d) of *COPTER* is to mean "an organization formed for the purpose of promoting the use of English or French in Alberta." It stands to reason that English and French language ability is a reasonable restriction for membership

in a linguistic organization. A linguistic organization would struggle to promote either French or English in Alberta if its members were themselves unable to speak these languages.

15. This requirement is also no different than any other non-profit, or charitable organization which requires its members to speak English. The ability to communicate in an official language is a reasonable restriction on membership and is employed in a multitude of not-for profit organizations that require its members to be able to actively communicate its goals and objectives. As such, the Assessor's assertion that basic language ability is a clear restriction to the parcel does not bear scrutiny under a purposive interpretation of these provisions.

16. Furthermore, while some French language ability is required for membership to SFCC, it is not a requirement to access the Property, and there are many users of the site are not French speakers.

17. When read purposively, section 7 is intended to ensure that exemptions are applied only when the property is being used to promote a charitable and benevolent purpose where members of the public are able to benefit while precluding an exemption for nonprofits who use property, such as country clubs or winter clubs, where only a wealthy few can benefit from the property, something the legislature evidently wanted to avoid.

18. Justice Bielby's guidance in interpreting the phrase "general public" in *Ukrainian Youth* is also instructive on this question. There, a charitable exemption was refused by the City of Edmonton in part because people of Ukrainian ethnicity were the primary users of the property. On appeal to the MGB, the board accepted the City's argument that the general public was excluded from the property because it was primarily used by members of the Ukrainian community. The City attempted to argue that because the site was primarily used by members of "the same ethnic background", that it was not open to the general public.

19. Justice Bielby held that "general public" was not to be read so as to suggest that every member of the general public was required to benefit equally:

> The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply; indeed the City did not try to defend such a definition.
>
> ***Ukrainian Youth* at para. 29 [TAB 3 BOA]**

20. Justice Bielby's reasoning can also apply to site restrictions, whereby simply because the Property is not a public property such as a public park, or that some users such as members of the SFCC use the site more than others, does not mean the site is restricted within the context of the meaning of general public.

21. With respect to the actual times the site is available to the public, the Complainant's evidence is clear that during the season in which the site is permitted to be used as per the bylaw, the site is available to the general public 100% of the time. General public in this case, includes members of SFCC, their friends, family acquaintances, and any other visitors to the park during the open season. It is certainly not akin to that of an elite winter club, where access is limited solely to members who pay high membership fees.

**THE LAND VALUE REMAINS OVERASSESSED**

22. The Assessor's submissions with respect to land value fail in its entirety to consider the restrictive land use, particularly with respect to the environmental, economic and legal restrictions imposed on the property. The land remains effectively scrub land, unable to be used for agriculture, residential or any other purpose due to being located in a flood plain. Such restrictions must be accounted for in the assessment. Please refer to the Rebuttal Report.

**TRAVEL TRAILERS ARE IMPROPERALY ASSESSED AS IMPROVEMENTS**

23. The Assessor justifies the assessment of the privately owner travel trailers on the Property on the basis that they have access to a power outlet. On this basis, all privately owned travel trailers on the Property were added to the assessment in 2023 and now constitute well over half of the assessed value at Property

24. The Assessor relies on some of the few reported decisions where assessment tribunals have interpreted section 298(1)(bb). In particular, the Assessor relies on a series of decisions by

the MGB over the joint appeals of bare land condominium units located at the Riverside RV park in Sundre. The Assessor suggests that these cases support a general proposition that merely connecting a travel trailer to an electric outlet at a property makes the trailer an assessable improvement under the *MGA.*

25. There are important distinctions between the facts at issue in these cases. First, the Riverside appeals involved travel trailers located on bare land condominium lots whereby the owners of the trailers also owned small bare land condominium parcels in the trailer park upon which the trailers were situated. These lots were all serviced by sewer, water, and electrical services where each owner had separate accounts with the utility provider. This is not the case with the Property, where SFCC does not own the travel trailers, and the owners of the trailers do not have separate service contracts with utility providers.

26. Second, in two of the three decisions, the MGB found that the analysis of whether a travel trailer was assessable as per the 298(1)(bb) involved an inquiry into whether the travel trailer was being used akin to mobile homes. In *Jaeger v Sundre* the board noted the underlying purpose of the MGA was to distinguish between temporary, recreational use of travel trailers, and those which are used akin to mobile homes:

> In interpreting the degree of connectedness required for the exemption to be lost, the MGB believes that one must again look at the purpose of the provision. Travel trailers (by definition and in reality) are used to provide accommodation for vacation use. […] <u>They may plug in the electrical cord from their trailer to an available receptacle to provide power for nighttime lighting. In the winter they may plug their block heater into a residential outlet to protect the motor from freezing. None of these temporary uses of utilities indicate a degree of connectedness of the type that would make the trailer in question sufficiently analogous to other types of mobile home for the purposes of municipal assessment.</u>
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> ***Jaeger v Sundre (Town)*** **MGB 024/05 at para. 59 [TAB 5 RBOA]**

27. The next appeal involving the Riverside RV park was the *Taverner v Sundre* decision which involved the joint appeal of 67 bare land condo owners whose trailers had been assessed. As with the *Jaeger* decision, the MGB considered 298(1)(bb) within the purpose and rationale of the *MGA* whereby the legislature only intended travel trailers that "had become like residences" to be assessed. In considering the 298(1)(bb) in this context, the

board found that the utility connections were not sufficiently permanent to consider the trailer's connected to public utilities and were therefore not assessable.

***Taverner v Sundre*** **MGB 123/05 [TAB 6 RBOA]**

28. The final decision was *Various Owners v Town of Sundre*, which was relied on by the Assessor in this case. In that case, the determinative fact noted by the board was the relationship between the utility provider and the owners of the lots:

> "The MGB accepts the Respondent's evidence that each owner had their own account with EPCOR, and that EPCOR supplied the units with electricity throughout the year. Accordingly, the MGB finds that all of the trailers under appeal were connected to electricity.
>
> ***Various Owners v Town of Sundre*** **MGB 109/07 [TAB 7 RBOA]**

29. Again, all of these appeals involved bare land condominiums. The sites were designed and built for the owners of the sites to park their trailers and remain at the lots for long periods of time. There was potable water, sewer connections, and they had independent electricity contracts. This can be contrasted with the subject property where all the travel trailers are independently owned, on temporary leases, and with electricity connection provided by the SFCC.

30. With respect to attached or connected to structures, the Assessor provides pictures of travel trailers parked next to structures and asserts that the travel trailers are therefore "attached or connected". The structures, while adjacent to the travel trailers, are not connected or attached. They are accessed by stepping from the trailer onto the structures through the trailer's door.

31. At paragraph 65 of the *Jaeger* MGB decision, the Board was satisfied by the oral evidence of the appellant that a veranda was two inches away from the trailer, "and therefore not attached or connected. The photographs presented by both parties identify a structure in very close proximity to the trailer but whether it is attached or not cannot be determined."

32. The facts are no different than the structures located near some of trailers at the Property. They are adjacent, but not attached to the structures.

**THE ASSESSMENT IS INEQUITABLE**

33. The Assessor asserts that mere connection to a public utility is sufficient to render a travel trailer assessable, with no consideration given to permanency, and even whether the trailers are owned by the property owner. This is the justification given for a close to 1 million dollar increase in the assessment of the Property. However, it is evident that in at least two other private RV/ campground sites in Foothills County, the Foothills Assessment Department does not assess travel trailers notwithstanding that these sites have access to public utilities for trailers parked at sites.

34. In the 2023 assessment notices for Nature's Hideaway and Riverbend Campground, no travel trailers were assessed. Both these campgrounds actively advertise that lots include full access to utilities, including electricity. It is also worth noting that no sheds, decks or verandas are included in the assessment of the Riverbend site even though these structures are present on the property and in many cases adjacent to the travel trailers.

35. In the context of taxation, it is an accepted principle of property taxation that taxing authorities must deal even-handedly with all taxpayers in a municipality and that all taxpayers within a class be treated in the same way.

***C & C Holdings Inc. v British Columbia (Assessor of Area No 4 - Nanaimo-Cowichan)*, 2003 BCSC 230, at para 17 [TAB 8 RBOA]**

**See also: *Jonas v Gilbert (1881),* 5 SCR 356, at pp 6-7**

**36.** The LPRT recently summarized as much in the recent *Fort Hills* decision in the context of Designated Industrial Properties, citing the Alberta Court of Appeal in *Strathcona, supra.*:

> …The requirement for equitable assessment generally implies that owners of similar properties are entitled to similar treatment. […] However, even in the regulated context, different treatment of similar properties must be supported by clear legislated direction.

***Fort Hills Energy Corp. v Provincial Assessor*, 2024 ABLPRT 149 at para. 53 [TAB 9 RBOA]**

**37.** While the Assessor identifies the basis upon which the County believes they were justified in adding privately owner travel trailers to the roll, such an approach is inequitable in

relation to other campgrounds. It is neither fair, nor equitable for SFCC to be subjected to significant tax liability, on trailers they do not even own, while privately owned travel trailers on nearly identical properties are not assessed. On this basis alone, the assessment of travel trailers on the Property should be reduced to $0.

**CONCLUSION**

38. In conclusion, SFCC repeats its position that the property is exempt from taxation under the charitable exemption provisions of the *MGA* and *COPTER.* The most applicable provision is that it is used in connection with a linguistic organization. In the alternative, the travel trailers are non-assessable and the land value remains over assessed.