

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CORPORATION OF THE CITY OF CORNWALL

Plaintiff

and

MUNICIPAL PROPERTY ASSESSMENT CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

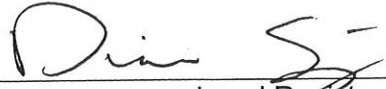
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 10, 2018 Issued by 
Local Registrar

Address of court office: Cornwall Courthouse
29 Second Street West
Cornwall, ON K6J 1G3

TO: Municipal Property Assessment Corporation
Head Office
1340 Pickering Parkway, Suite 101
Pickering ON L1V 0C4

CLAIM

1. The Plaintiff claims:

Total \$279,563

- (a) the sum of \$259,563.97, plus such additional amount to be determined in advance of trial, for negligence and negligent misrepresentation in the preparation of municipal property assessments;
- (b) the sum of \$20,000.00 for unjust enrichment, plus an amount to be determined in advance of trial, representing the amount by which the Plaintiff overpaid fees owing to the Defendant;
- (c) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding, plus all applicable taxes; and
- (f) such further and other relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff, the Corporation of the City of Cornwall (hereafter the "City"), is a municipal corporation incorporated pursuant to the provisions of the *Municipal Act*, 2001 (Ontario).

3. The Defendant, the Municipal Property Assessment Corporation (“MPAC”), was formed in 1997 by statute under the *Municipal Property Assessment Corporation Act* (“*MPAC Act*”). MPAC conducts assessments on behalf of municipalities for the purpose of the municipalities levying property taxes.

Municipal Tax Assessment in Ontario

4. MPAC is composed of members. Every municipality in Ontario, including the City, is a member of MPAC.

5. MPAC is mandated to prepare an assessment roll for each municipality. The *Assessment Act, 1990* provides that “all real property in Ontario is liable to assessment and taxation” and that “the assessment of land shall be based on its current value”.

6. Current Value in the *Assessment Act*, RSO 1990, c A.31 is defined as

“current value” means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm’s length by a willing seller to a willing buyer;

7. A Current Value for all real property in Ontario is assessed every four years. Should the Current Value be larger than the previous cycle’s assessed Current Value the difference is phased in with increases over the four year property tax assessment period.

8. For the taxation years 2013-2016, which form the subject-matter of this claim, the basis of the Current Value assessment of each property was the value as of January 1, 2012 (the “2012 CVA”).

9. Taxes are based on the assessed values for each year, with a portion of the taxes going to the municipality and the remainder going to the applicable school boards, being the educational portion.

10. The City is obligated to rely on the assessed values, as determined by MPAC, for the purposes of levying and collecting property taxes.

11. In preparing its budgets and making decisions about which costs to incur and which services to provide to residents within the municipality, the City relies upon the projected tax revenues that it will collect based on the assessment roll prepared by MPAC.

12. MPAC delivers a notice of assessment to each property (or address for service) stipulating the assessment, current value and classification of the property.

13. The owner of property may request reconsideration of the assessed value as determined by MPAC, may enter into a settlement with respect to the assessed value, or may appeal the assessment to the Assessment Review Board.

Fees Charged by MPAC

14. MPAC is obligated to charge each municipality for its services pursuant to a formula prescribed in the *MPAC Act*.

15. This formula results in each municipality bearing a proportion of the costs of MPAC, depending on the assessment value of all the properties in the municipality.

16. As a member of MPAC, the City makes contributions to MPAC each year, in exchange for MPAC performing assessments.

17. The City of Cornwall pays more than \$450,000 annually to MPAC, which is intended to represent Cornwall's proportional share of MPAC's costs pursuant to the prescribed formula in the *MPAC Act*.

The Distribution Centres Assessments

18. The damages suffered by the City relate to inaccurate assessments prepared by MPAC on three large distribution centres. These three distribution centres are state of the art, facilitating complex logistics operations for large corporations.

19. The municipal property taxes associated with these three distribution centres account for fully 10% of the City's entire municipal tax base for the period of 2013-2016.

20. These distributions centres are:

(a) Municipal address: 1501 Industrial Park Dr., Cornwall. Roll number: 0402 010 015 00507 0000. Owned by Walmart Canada Corp. This property was previously constructed by Target (the "Target DC").

(b) Municipal address: 2401 SCM Way, Cornwall. Roll number: 0402 010 014 01000 0000. Owned by Metrus Eastern Properties Limited, appealed by Walmart who has a lease on the property (the "Walmart DC").

(c) Municipal address: 1330 Optimum Drive, Cornwall. Roll number: 0402 010 015 00120 0000. Owned by Shoppers Realty Inc. (the "Shoppers DC").

21. Over the period of 2013-2016, approximately \$35 million in taxes were collected from these three distribution centre properties, based on MPAC's assessments. This tax revenue was split between the City (approximately \$23.9 million) and four school boards (approximately \$11.1 million), as prescribed by the *Education Act* and the *Assessment Act*.

22. All three distribution centres appealed their notices of assessment to the Assessment Review Board on the basis that the 2012 CVAs, as determined by MPAC, were incorrect and that the assessments were not equitable.

The Shoppers DC

23. In January 2017, the owner of the Shoppers DC, the City and MPAC entered into minutes of settlement which resolved the 2012 current value assessment of the Shoppers DC.

24. This settlement resulted in an Assessment Review Board Order dated January 27, 2017 reducing the 2012 CVA of the Shoppers DC from \$55,373,000.00 to \$44,000,000.00.

25. This settlement reflected an agreement by MPAC, the City and Shoppers Realty Inc. that the 2012 CVA was incorrect. The Assessment Review Board approved this agreement.

26. As a result of the reduction in the assessed value of the distribution centre, the settlement provided for a total tax refund of \$392,543.34 to Shoppers DC. The full refund was paid by the City, with the municipal portion accounting for \$259,563.67 of

the refund. The school board portion was compensated through adjustments to the school board transfers.

The Target DC and the Walmart DC

27. There are current appeals outstanding in relation to the 2012 CVAs for the Target DC (1501 Industrial Park Drive) and the Walmart DC (2401 SCM Way).

28. The 2012 CVA for the Target DC was \$118,731,000.00. The appellant is seeking a reduction in the 2012 CVA down to \$74,716,000.00.

29. In its response to the appellant's statement of issues in the Assessment Review Board proceedings, MPAC has already conceded a reduction in the CVA of the Target DC to \$111,658,000.00.

30. As a result of MPAC's revised position, there will necessarily be some amount refunded to the appellant arising from this appeal. The size of the refund will be determined based on the final revised 2012 CVA as determined by the Assessment Review Board or through settlement between the parties.

31. The 2012 CVA for the Walmart DC was \$97,866,000.00. The appellant in that proceeding is seeking a reduction in the 2012 CVA to \$49,951,000.00 for the Walmart DC.

32. The size of the potential refund for the Walmart DC will be determined based on the final revised 2012 CVA as determined by the Assessment Review Board or through settlement between the parties.

Negligence

33. MPAC provides municipal property tax assessments to the City through a tax roll, which MPAC knows the City relies upon in order for the City to calculate and send out their tax bills. MPAC owes the City a duty of care in part due to the close and direct relationship and one that is mandated by statute.

34. The standard of care owed is that which would be expected of an ordinary, reasonable and prudent assessor in the same circumstances. A reasonable assessor would ensure that the assessment included only relevant and accurate factors, particularly for a large state of the art distribution centre.

35. MPAC fell below the standard of care, including by incorporating incorrect factors into their assessment.

36. The City relied on MPAC's assessments which was detrimental to the City, such that it incurred damages as a result by overpaying for MPAC's services, issuing a substantial tax refund to the owner of the Shoppers DC, and a need to issue a future tax refund.

37. The issuance of the refund by the City for the Shoppers DC, and any future refunds that will be required to be paid by the City for the Target DC and the Walmart DC, were caused by MPAC's negligence in performing the original assessments.

Negligent Misrepresentation

38. MPAC provides municipal property tax assessments to the City through a tax roll, which MPAC knows the City relies upon in order for the City to calculate and send out their tax bills. This reflects a close and direct relationship and one that is mandated by statute.

39. MPAC and the City regularly meet to discuss the preparation of and assessments of all real property in the City.

40. MPAC made numerous representations to the City with respect to the reasonableness of the 2012 CVAs of the three distribution centres, including:

- (a) Regarding the Walmart DC and the Shoppers DC, Dillon Payne of MPAC specifically provided a comparison of the properties should they have been located elsewhere to demonstrate that the 2012 CVAs were reasonable; and
- (b) The City met with Joe Barbeito and Ron Billard of MPAC to ask MPAC specifically whether the 2012 CVAs for three distribution centres were strongly defensible assessed values, and MPAC specifically represented in oral discussions with the City that they had a strong case and that the assessed 2012 CVAs were correct for Cornwall's three distribution centres.
- (c) Subsequently, Maureen Adams of the City had telephone conversations with Joe Barbeito of MPAC specifically discussing whether the 2012 CVAs

for three distribution centres were strongly defensible assessed values, and MPAC continued to specifically represent in oral discussions with the City that they had a strong case and that the assessed 2012 CVAs were correct for Cornwall's three distribution centres.

- (d) Brad Maloney of the City also had telephone conversations with Joe Barbeito of MPAC specifically discussing whether the 2012 CVAs for three distribution centres were strongly defensible assessed values, and MPAC continued to specifically represent in oral discussions with the City that they had a strong case and that the assessed 2012 CVAs were correct for Cornwall's three distribution centres.

41. The above statements were untrue, inaccurate and misleading.

42. MPAC acted negligently in making these statements.

43. The City specifically discussed the three properties with MPAC to ensure that the 2012 CVAs were correct. MPAC assured the City that their assessments were reasonable. The City reasonably relied upon these representations.

44. The property tax collected from the three distribution centres accounted for ten percent of the City's tax revenue from 2013-2016. The tax revenue collected from the distribution centres was included in the City's capital and operating budgets.

45. While appeals of assessed values are contemplated by the *Assessment Act*, the three distribution centres are of particular importance to the City because they constitute

such a high proportion of the City's tax revenue. This was communicated to MPAC, and accordingly, additional diligence was assured to the City by MPAC.

46. The City relied on MPAC's negligent misrepresentations to its detriment as some of the tax revenues it collected and relied on in its budgeting has been and will be subject to a substantial tax refund.

47. The substantial tax refund will impact the City's capital and operating budgets which operated on the assumption that revenues collected could be dedicated to City capital projects and general operations.

Unjust Enrichment

48. Each municipality is required to pay MPAC for its assessment services, with the payment formula based on the total assessed value of all the properties in the municipality.

49. As a result of MPAC's errors with respect to the Current Values for the three distribution centres, the City has overpaid MPAC for its services, contrary to what MPAC is permitted to charge pursuant to the *MPAC Act*.

50. As a result of the overpayment, MPAC has been enriched and the City correspondingly deprived.

51. There is no juristic reason for this overpayment.

52. The City is entitled to damages for unjust enrichment by MPAC equivalent to the amount by which it has overpaid MPAC based on the inaccurate assessment of the three distribution centres.

53. The City proposes that this matter be tried in the City of Cornwall.

July 10, 2018

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Lawyers for the plaintiff

RCP-E 14A (June 9, 2014)