

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Proceedings commenced at Owen Sound )

**B E T W E E N:**

**FISHERMAN'S COVE  
TENT & TRAILER PARK LTD.**

**Applicant**

- and -

**MUNICIPAL PROPERTY ASSESSMENT  
CORPORATION, & CORPORATION OF THE  
TOWNSHIP OF HURON-KINLOSS**

**Respondents**

*Proceeding under the Class Proceedings Act, 1992*

APPLICATION UNDER:

COURTS OF JUSTICE ACT, R.S.O. 1990 Chap. C. 43  
RULES OF CIVIL PROCEDURE, R.R.O  
CLASS PROCEEDINGS ACT, 1992, S.O. 1992, Chap. 6

**AMENDED NOTICE OF MOTION**  
**(WITHOUT NOTICE)**

The Applicant, Fisherman's Cove Tent & Trailer Park Ltd., will make a motion to the Court on Friday, the 22nd day of December, 2006 at 10:00 AM. or as soon after that time as the motion can be heard, at the Court House, 611 - 9<sup>th</sup> Avenue East, Owen Sound, ON, N4K 6Z4

**PROPOSED METHOD OF HEARING:**

- in writing under subrule 37.12.1(1) because it is made without notice  
 in writing as an opposed motion under subrule 37.12.1(4);  
 orally;

**THE MOTION IS FOR:**

- 1, An Order certifying this proceeding as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, Chap. 6,

2. An Order appointing the Applicant, Fisherman's Cove Tent & Trailer Park Ltd., as representative Applicant of the class proceeding, for and on behalf of the members of the following class, namely:

All Ontario private campground land owners whose lands have been assessed by MPAC in any municipality in Ontario for additional 'current value' assessment, and which lands have been subject to the levy of realty taxes thereon by their own respective municipalities, in any of the taxation years, 2004, 2005, and 2006, and will so be assessed and taxed for all subsequent years, for and in respect of the additional aggregate assessment partitioning value of certain categories of third party owned trailers only, located thereon, only seasonally occupied but exclusively used by such third party trailer owners, and in whose municipal jurisdictions the land owners carry on private campground operations on their own lands

3. An Order appointing the Respondent, Corporation of the Township of Huron-Kinloss, as representative Respondent of the class proceeding, for and on behalf of the members of the following class, namely:

All municipalities in Ontario, wherein are located the lands of private campground owners offering warm weather seasonal rentals of vacant campsites to the third party owners of recreational vehicle trailers, for the seasonal location thereon of such trailers for the exclusive personal occupation and use by such trailer owners, and against such lands of such land owners such municipalities have levied a realty tax for each of the taxation years, 2004, 2005, 2006 and will so impose and levy a realty tax for subsequent years, against the aggregate additional assessment partitioning separate value of each of certain categories of trailers located thereon, which additional separate value assessment of each such trailer was determined by the Respondent, Municipal Property Assessment Corporation, and was added to the overall base 'current value' assessment of such lands in each of those taxation years

4. An Order:

- a) describing the class of Applicants and also the class of Respondent Municipalities
- b) stating the names of the representative parties.
- c) stating the nature the nature of the claims asserted on behalf of the class of Applicants and on behalf of the class of Respondent Municipalities

- d) stating the relief sought by or from the class of Applicants and the relief sought from the class of Respondent Municipalities
- f) setting out the common issues for the class of Applicants and the common issues for the class of Respondent Municipalities
- g) specifying the manner in which class members of class of Applicants may opt out of the class and a date after which class members may not opt out, and specifying the manner in which class members of class of Respondent Municipalities may opt out of the class and a date after which class members may not opt out.

5. An Order adjourning this motion to a court date returnable on or before April 1, 2007

- a) to approve the form of the Notice otherwise required to be given to each member of the class of Applicants, and to each member of the Class of Respondent Municipalities, and
- b) to set out when and by what means Notice shall be given to each member of the class of Applicants and to each member of the class of Respondent Municipalities

6. An Order that a copy of the Order as may be made herein as entered, together with a copy of the Motion Record filed, and the Amended Notice of Motion, filed, shall be served upon the Respondent, Municipal Property Assessment Corporation, ("MPAC") by January 15<sup>th</sup>, 2007,

7. An Order that the Respondent, Municipal Property Assessment Corporation, forthwith after service of the Order upon it, and in any event by March 1<sup>st</sup>, 2007, deliver to this Court and the Solicitors for the Applicant the following information.

- a. A list containing the names and addresses of each Respondent Municipality in Ontario in which MPAC has added to the assessment of the current value of land in

each of the taxation years, 2004, 2005 and 2006, the 'assessment partitioning value of trailers' located on lands of private campground owners in each such Respondent Municipality.

- b. A list containing the names, addresses, roll numbers of each land owner in each Respondent Municipality in Ontario in respect of whose lands MPAC has added to the assessment of the current value of such lands in each of the taxation years, 2004, 2005 and 2006, the 'assessment partitioning value of trailers' located on such lands of each private campground owner in each such Respondent Municipality and the aggregate amount of such additional amount of assessment for each of those taxation years.

8. For such other order or relief that may otherwise seem just and appropriate to this Honourable Court.

**THE GROUNDS OF THE MOTION ARE:**

1. On October 2<sup>nd</sup>, 2006 Mr. Justice O'Connell of the Ontario Superior Court of Justice, in an Application commenced at Walkerton as No. 13/05, entitled '*Carsons' Camp Limited v. Municipal Property Assessment Corporation & Corporation of the Town of South Bruce Peninsula*' determined that the Respondent, *Municipal Property Assessment Corporation*, ("MPAC") did not have any lawful authority to assess any third party owned trailers located within the Sauble Beach, Ontario campgrounds owned and operated by the Applicant, *Carsons' Camp Limited*, ('Carsons Camp'), and that the 2004 assessment thereof was unlawful and ultra vires the competence of MPAC to so assess such trailers .
2. In that same decision the Court determined that the Respondent, *Corporation of the Town of South Bruce Peninsula*, ("Town"), did not have any lawful authority to impose and levy any realty tax upon any assessment value additionally added to the 'current value' assessment of the lands of Carsons Camp in respect to any third party owned trailers located within the

campgrounds owned by Carsons Camp, and that the 2004 imposition of a tax levy thereon on such additional 'current value' assessment in respect to such trailers was unlawful and ultra vires the competence of Town to impose and levy.

3. Both MPAC and the Town have each separately filed an appeal of that decision in the Court of Appeal of Ontario, respectively as No. C46147, (*MPAC*), and No. C146186, (*Town*).
4. The Applicant herein operates a large seasonal campground in the Township of Huron-Kinloss, in the County of Bruce, and has received and appealed to the Assessment Review Board, ( the "ARB"), the assessment amounts set out in *Notices of Assessment* for each of the taxation years, 2004, 2005 and 2006, and which have been sent each year by MPAC to the Applicant, and in particular, the Applicant objected to and appealed the addition to the base 'current value' of the Applicants underlying land, the aggregate of the separate additional value of certain types of trailers located within the Applicant's campgrounds.
5. Notwithstanding the fact that the first *Notice of Assessment* with an amended increase determined by MPAC as set out on an MPAC document entitled "*Assessment Partitioning Value for Trailers Only*", was sent to the Applicant in late 2003, and the fact that the Applicants objections were filed in early 2004 with the ARB with payment of the appropriate fees, and the fact that Carson's Camp Application was not commenced in Court until January 2005 and a final decision adverse to MPAC and the Town was rendered on October 2<sup>nd</sup>, 2006, the ARB has steadfastly refused to conduct any of the appeals made to it by the Applicant, so again refusing on November 24<sup>th</sup>, 2006.
6. The Applicant, being one of over 700 or more private campgrounds, located throughout the Province of Ontario, has paid the unlawful tax levies to the Town imposed upon the Applicant's lands by an unlawful assessments by MPAC which it has continuously appealed.
7. The Applicant has reluctantly been content to wait the outcome of the Appeal of the Carson's Camp decision to the Court of Appeal of Ontario, a decision in respect thereof which may

not be rendered to 2008, and all of the 700 or more campground owners in the Province must apparently pay such unlawful tax and unlawful assessment which continues in the interim until the Appeal is concluded, and if the Appeal is then favourable to those campground owners, they would only then be in a position to seek full reimbursement recovery of all unlawfully collected taxes, penalties if any paid and claim for pre-judgment interest thereon as well.

8. On Tuesday December 12<sup>th</sup>, 2006 the Ontario Private Campground Association, (“OPCA”) circulated an E-Mail communication letter to all of its members entitled:

**“RED ALERT - IMMEDIATE ACTION REQUIRED !”,**

in which e-mail letter the OPCA advised that its solicitor, Mr. Tim Bermingham, a Partner of the large Toronto law firm of Blake Cassels & Graydon LLP, had just advised the OPCA of the following:

***“ . . . it is critically important that your members (OPCA members) understand that the decision (Carson’s Camp v. MPAC and the Town of South Bruce Peninsula) has legal effect only between the parties to the proceedings. . . . It does not void assessments or change tax liabilities for any other campground.”***

***“ . . . assume that the appeal in Carsons Camp case is not decided until sometime in 2008. . . . Even if the appeal is unsuccessful, and the decision is upheld by the Court of Appeal, all campgrounds other than Carson’s Camp, will continue to be obligated to pay taxes on the trailers for which they have been assessed in 2006, 2007 and probably for part of 2008.”***

***“ . . . In order to have the right to reclaim taxes paid in 2006, an application to court must be commenced in the calendar year 2006 (i.e. before December 31, 2006) for each and every campground that might seek a refund of these taxes.”***

***“ . . . Naturally, it would be horribly wasteful for every campground to actually***

***have to litigate the same issues as are now before the Court of Appeal. It makes much more sense to wait to see what the outcome of the Carson's Camp Appeal is. However any campground that wants to claim back taxes in 2006 must, as noted above, commence an action before the end of the year."***

9. The OPCA then advised each of the members to whom its E-mail was circulated, as follows

***"With the above information in mind, campgrounds are advised to have their lawyers (independently or in co-operation with other campgrounds in your municipality) draw up a Statement of Claim or Notice of Application and have it served to your municipality by the end of the year."***

10. Since that E-mail communication by the OPCA there has been a scramble amongst most campground owners to obtain independent legal advice as to the opinion of Blake Cassels & Graydon LLP, and the necessity and merits of undertaking the legal steps suggested by that law firm and recommended by the OPCA.

11. The central issue to all campground owners is , if each such owner does not immediately commence an action against MPAC and their own municipality, will they lose any entitlement to recover any refund of taxes, penalties and interest thereon in respect of taxes levied against their lands in respect of certain types of trailers located on their lands even if Court of Appeal of Ontario may ultimately be also determine that such assessment by MPAC and realty tax imposition by their own municipality was unlawfully, not only for 2006 and later years, but for the prior years , 2004 and 2005.

12. The *Notice of Application* discloses that:

- a. There is a very real cause of action, evidenced in the decision of Justice O'Connell who found the assessment of trailers in campgrounds and the levying of a realty tax against the lands of the campground owners, was unlawful and ultra vires the competence of MPAC and the taxing municipality.

- b. There is an identifiable class of two or more persons, namely at least 700 Ontario campground owners, that would be represented by the representative Applicant herein, a campground owner. Similarly there is an identifiable class of two or more municipalities in Ontario in which all of the 700 or more Ontario Campgrounds would be located and which would be represented by the representative Respondent municipal corporation, Corporation of the Township of Huron-Kinloss.
  
- c. The relief claims sought in the *Notice of Application* are common to all Applicant class members, namely to every one of the owners of the 700 or more private campgrounds in Ontario. The anticipated responses to be made by the Respondent Municipality, Corporation of the Township of Huron-Kinloss, will be common to all Respondent members of the class of municipal corporations throughout Ontario in which all of the 700 or more Ontario Campgrounds would be located.
  
- d. As the issues are basically identical for every one of the 700 or more Ontario Campgrounds who wish to protect their right to seek refunds of any unlawful taxes, and penalties collected by each municipal tax collector and prejudgment interest thereon, collected on unlawful assessments by MPAC, the prospect of multiplicity of up to 700 separate actions risks, would result in an obscene waste of time and money by every campground owner, every effected municipal corporation, and all court staff in most Court Houses in Ontario between now and December 31<sup>st</sup>, 2006.

This Application to this Court, if certified as a class proceedings under the *Class Proceedings Act, 1992*, and the Appointment of the Applicant as representative Applicant is made for members of the Class, for all Ontario campground owners, and the appointment of the Township of Huron-Kinloss as representative Respondent is made for members of the Class, all municipalities in Ontario, would preserve the right of every campground owner in Ontario to argue the rights to recover any taxes, penalties and pre-judgment interest thereon, and every municipality in Ontario to argue against such refund, all in one consolidated Application class proceeding, to

be conducted for the benefit of all parties thereto, and only later in the event that the Court of Appeal of Ontario dismisses the appeal thereto by MPAC and the Town.

If so certified as a class proceedings, an orderly forward procedure would be established now, at overall vastly reduced costs and time, over the chaos of a disorganized and fractured court proceedings now being initiated by untold numbers of campground owners across the Province of Ontario, who are not familiar with the legal nuances of the main issues, and which proceedings would be commenced solely for preservation purposes for possible tax refunds.

- e. (i).1 The Representative Applicant has retained the same solicitors for Carsons Camp, who successfully brought the application before the Ontario Superior Court of Justice and who are most knowledgeable, and informed on all aspects of the issues in the appeal and in this Application, and which Applicant, armed with such legal guidance and assistance, is fairly and adequately able to represent the interests of all members of Applicants' class.
- (i).2 The Representative Respondent is a municipal corporation, and like any other of the numerous municipalities in the Respondent class, is anticipated to be fairly and adequately able to represent the interest of every municipal corporation throughout Ontario in which all of the 700 or more Ontario Campgrounds would be located.
- (ii).1 As most campground owners of the Applicant Class are members of the OPCA, and are on contact tourism lists maintained by municipalities, and upper tier governments, each Ontario campground owner can be easily and readily notified by E-mail, fax or mail within 7 days of any required notice being communicated.
- (ii).2 The intention of the Applicant, (if the action is certified and the

representative Applicant for a member class, and the representative municipal Respondent for a member class, is each so appointed), is to place the entire Application on hold by seeking an adjournment sine die after service upon the parties thereto, to a date no later than 30 days following the release of a decision in the Carsons' Camp appeal to the Court of Appeal of Ontario, without payment of any further application or motion fees.

- (iii) None of the two respective representatives to be appointed herein have any apparent interests in the common issues of this Application, that are in conflict with other members of each respective class.

13. (i) *Courts of Justice Act*, R.S.O 1990, chap. C.43 as amended and regulations thereunder  
(ii) *Class Proceedings Act, 1992*, S.O. 1992, Chap. 6 as amended

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Notice of Application herein, issued Dec. 19, 2006.
2. The Affidavit of Allen McArthur, sworn December 20<sup>th</sup>, 2006, and attachments thereto.
3. The Affidavit of Peter T. Fallis, sworn December 20<sup>th</sup>, 2006, and attachments thereto.
4. Such further and other material as the Applicant may advise and this Honourable Court may permit.

Date: 20th day of December, 2006

**FALLIS, FALLIS & McMILLAN**  
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FISHERMAN'S COVE  
TENT & TRAILER PARK LTD.

(Applicant)

MUNICIPAL PROPERTY ASSESSMENT CORPORATION et al

(Respondents)

Court File No. 06-378

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

(Proceedings Commenced at Owen Sound)

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED**

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(WITHOUT NOTICE)

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