



CANADA – August 2022

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ONTARIO

Vacant Home Tax

In June 2022, City Council approved the implementation of the Vacant Home Tax in Hamilton. Starting in 2024, residential properties that have been unoccupied for six (6) months during the previous year will have to pay an additional tax.

The Vacant Home Tax is intended to encourage owners to rent out empty properties in order to increase the supply and affordability of housing in the city.

All residential property owners will be required to declare the status of their property during the previous year; if no declaration is made, the property will be deemed vacant and will be subject to the tax.

There may be some exceptions to the tax if a home is vacant for an extended period of time as a result of a specific circumstance. The City will consider the following list as possible exemptions:

- Vacancy due to renovations with appropriate building permits
- Vacancy due to the death of the owners
- Vacancy because the occupant was residing in a healthcare facility

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- Vacancy due to a court order prohibiting the owner from selling or renting the property
- A property transferred under a non-arms length sale in the previous year

A complete framework of the Vacant Home Tax program will be presented to City Council in January 2023.

Public Engagement

The City conducted a Vacant Home Tax online engagement survey from September 7 to 30, 2021. The goal of the survey was to collect feedback from interested stakeholders on the need to implement a tax on properties that are left vacant for a certain period of time, as well as possible issues to consider in implementing the tax.

BRITISH COLUMBIA

B.C. man's constitutional challenge to property tax law rejected

The B.C. Supreme Court has rejected an unusual constitutional challenge that sought to invalidate the law that governs the assessment of property values in the province.

The challenge to the Assessment Act came in the form of three "stated cases" arising from appeals to the Property Assessment Appeal Board by property owner Sheldon Goldberg.

The appeals involved three separate properties, located in Vancouver, New Westminster and Surrey, respectively. Each one ended with the appeal board confirming the assessed value after rejecting requests from Goldberg for an in-person hearing and for confirmation that board members had taken an oath of impartiality, independence and honesty.

In each case, the board determined that an in-person hearing was not necessary, and declined to take the kind of oath Goldberg requested.

Goldberg sought to appeal the three appeal decisions to the B.C. Supreme Court, which is allowed under the Assessment Act, but only on questions of law.

Such appeals, known as "stated cases," are prepared by the Property Assessment Appeal Board, but contain questions of law posed by the property owner seeking to appeal.

THE QUESTIONS

Each of the three stated cases included the same three questions for the court, summarized in Justice Margot L. Fleming's decision as follows:

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- Must or need the Property Assessment Review Panel and the Property Assessment Appeal Board take an oath or affirmation of independence and impartiality and honesty?
- Need the PAAB Chair (have) advised the panel hearing the case of the appellant's previous request to state a case?
- Was there a right to an in-person hearing where witnesses are cross examined on substantial discrepancies and accuracy and independence?

According to the court decision, Goldberg took issue with the requirement that the board bring the case.

"During oral submissions Mr. Goldberg asked that 'further points of law' be considered, handing up a document and complaining that the board 'decided for me what I think is relevant,'" Fleming's decision reads.

Most of these "further points of law," which Fleming listed in the decision, were not phrased as questions, and the board determined that they couldn't be phrased as such. For this reason, it opted not to include them in the stated cases.

"Where the board refuses to include a question in a stated case, an appellant's remedy is to seek judicial review of the refusal, which did not occur here," Fleming wrote. "Accordingly, I cannot and will not be considering questions other than the questions (from the stated case)."

Among the 15 items Goldberg sought to include that Fleming declined to consider were assertions that Property Assessment Review Panel and Property Assessment Appeal Board members should not vote, or should have to disclose for whom they voted. They should also have to disclose if they own property in the jurisdiction of the matter they're considering, he argued.

Goldberg also asserted that "anyone voting for (Surrey Mayor Doug) McCallum or (his party, the) Safe Surrey (Coalition)" should "be disqualified from sitting" on a panel reviewing his property assessment because he is "a non-resident elector in Surrey and did vote."

'ESSENTIALLY NO MERIT'

In addition to declining to weigh in on these matters, Fleming also declined to answer the questions from the stated cases.

"Regrettably, Mr. Goldberg's written and oral submissions, which he himself characterized as disorganized, were often, if not mostly, tangential," the judge wrote.

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"Clear throughout, however, was his view that the statutory scheme and the general and specific approach of the board does not accord with the demands of natural justice and procedural fairness. Mr. Goldberg's primary complaint was that assessors, panel members and members of the board exercise their powers and responsibilities without having taken an oath or affirmation of independence and impartiality, which in his view is crucial to their function. Underlying this and other complaints is a belief 'the system' works against the taxpayer."

In dismissing the questions, Fleming wrote that "there is essentially no merit" to the issues Goldberg raised.

NO PROSPECT OF 'GETTING TO THE MERITS'

The judge reached a similar conclusion about the constitutional challenge, in which Goldberg argued that the Assessment Act violates section 8 of the Charter of Rights and Freedoms, which protects against unreasonable search and seizure.

"Mr. Goldberg did not allege any search or seizure or address the need for a reasonable expectation of privacy," Fleming wrote. "Instead he referred to any requirement to show a breach, which I take to mean a search, as ridiculous, arguing he does not want assessors on his property at all and his challenge is to the statutory power that would allow this to occur."

Absent an actual example of a search, Fleming concluded, there could be no assessment of its reasonableness.

"The notice (of constitutional question), Mr. Goldberg's ongoing refusal to provide requested particulars, and his written and oral submissions make it clear there is no prospect of 'getting to the merits' in this case," the judge wrote. "I therefore dismiss his constitutional challenge."

QUEBEC

Questions about municipal assessment and property taxes

The value of residential properties listed on the municipal assessment roll of the agglomeration of Montreal will jump by 30% to 40% on average with the next roll in force in 2023, indicated The Press Thursday. Readers have expressed concern about the possible increase in their tax burden. The Press answers their questions.

Why would the value of my house increase by 40% if I didn't do any work?

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The municipal roll is supposed to reflect the market value of the properties on the reference date. In the case of the next roll 2023-2024-2025, the reference date is 1er July 2021. When we talk about an increase of 30 to 40% for residential properties of five units or less, this is an average value across the island. The exact increase in the value of each of the properties will not be known until September 14 when the roll is filed. On that date, an owner will be able to find out the precise increase that applies to his house or condo by consulting the Ville de Montréal website.

If my house is worth more, does that mean I can sell it for more? Conversely, if I am a buyer, do I have to accept that I will have to pay more?

Prepared by the city's assessment department, the assessment roll is a mass assessment that gives a portrait of the market value of properties on a specific date, namely the 1er July 2021. However, things have happened since July 2021. The overheating of the market marked by numerous overbids caused house prices to peak in March and April 2021. Since then, the rise in mortgage rates has pushed down the price. The median price of a house on the island of Montreal was \$707,500 last July; in April 2022 it was \$772,000 and in July 2021 the median price was \$700,000. In short, you will buy or sell a property based on its current market value. This price will probably not be identical to the value of the property entered on the municipal roll.

If the value of my house increases, does that mean that I will pay more taxes?

Not necessarily. The assessment is one thing, the tax assessment is another. The role makes it possible to establish the property tax base of a municipality, its ability to raise revenue by taxing properties. The tax rate does not depend on the assessment roll, but rather on the City's budget voted in the fall by the municipal councillors. In this regard, in recent years, Valérie Plante's administration has increased its revenues, and therefore property taxes, in the same order of magnitude as inflation, measured by the consumer price index (CPI), around by 2%. This year, the CPI exceeded 8% in June year-on-year. The Chamber of Commerce of Metropolitan Montreal urged the City to make a commitment not to raise taxes by more than 3% in 2023. The City of Montreal is to launch a forum this fall to find solutions to diversify its sources of revenues, which are more than 60% dependent on property taxes.

Are you telling me that even though the municipal value of my house will increase by 45% with the new roll, I will not pay more tax? I do not believe you.

Logically, an average increase in the values of a city's properties of 35%, for example, will be offset by a drop in the tax rate of the same order to keep the tax revenues of this same city more or less constant. However, a house that experiences an increase in value greater than this average of 35% will see its tax burden increase. On the other hand, the owner who sees his house appreciate by a lower percentage than the average for the agglomeration will

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benefit from a reduction in his tax burden. So in your case, if your house goes up 45% and the rest of the houses go up 35%, you will indeed pay more taxes than your neighbors. Sorry !

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