COURT OF APPEAL FOR ONTARIO

CITATION: Stamford Kiwanis Non-Profit Homes Inc. v. Municipal Property Assessment Corporation, 2025 ONCA 450
DATE: 20250620
DOCKET: COA-24-CV-0543

Pepall, Roberts, Sossin, Wilson and Madsen JJ.A.

BETWEEN

Stamford Kiwanis Non-Profit Homes Inc.

Applicant/Appellant (Appellant)

and

Municipal Property Assessment Corporation and the Corporation of the City of Niagara Falls

Respondents/Respondents (Respondents)

Joe Jebreen and Scott McAnsh, for the appellant

Jeffrey E. Feiner and Ryan W.O. Chan, for the respondent Municipal Property Assessment Corporation

John O'Kane, for the respondent Corporation of the City of Niagara Falls

Heard: February 4, 2025

On appeal from the order of the Divisional Court (Justices Richard A. Lococo, Michael G. Emery, and Paul B. Schabas, concurring), dated December 8, 2023, with reasons reported at 2023 ONSC 6625 (Div. Ct.), affirming the judgment of Justice Michael Bordin of the Superior Court of Justice, dated November 29, 2022, with reasons reported at 2022 ONSC 6392.

Pepall J.A.:

Introduction

[1] The focus of this appeal is whether this court's decision in *Religious Hospitallers of St. Joseph Housing Corp. v. Regional Assessment Commissioner* (1998), 42 O.R. (3d) 532 (C.A.) should be overruled. That case interpreted s. 3(1)12 of the *Assessment Act*, R.S.O. 1990, c. A.31 (the "Act") and limited the parameters for eligibility for an exemption from municipal tax for a charitable, non-profit philanthropic corporation.

[2] The appellant, Stamford Kiwanis Non-Profit Homes Inc., is a charitable, non-profit philanthropic corporation that works with Niagara Regional Housing, a regional service manager under the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched.1, to provide affordable housing to low-income residents of the City of Niagara Falls. The appellant appeals from its unsuccessful application under s. 46 of the Act for a declaration under s. 3(1)12(iii) of the Act that three properties it owns in the City of Niagara Falls are statutorily exempt from municipal taxation.

[3] Section 3(1)12(iii) provides that:

> 3(1) All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:[1]

[1] The remainder of s. 3(1) consists of 29 clauses setting out exemptions available to specified types of institutions and organizations and certain categories of land uses.

…

12. Land owned, used and occupied by,

i. The Canadian Red Cross Society,

ii. The St. John Ambulance Association, or

iii. any charitable, non-profit philanthropic corporation organized for the relief of the poor if the corporation is supported in part by public funds.

[4] The respondents, Municipal Property Assessment Corporation ("MPAC") and the Corporation of the City of Niagara Falls (the "City"), concede that the three properties in issue constitute real property owned, used and occupied by the appellant and that the appellant is a charitable, non-profit philanthropic corporation supported in part by public funds. They also agree that the appellant relieves poverty and serves the poor. The only issue in dispute is whether the appellant is "organized" for the relief of the poor.

[5] In dismissing the appellant's application, both the application judge and the Divisional Court considered themselves bound by the interpretation of the requirements for an exemption as described in *Religious Hospitallers* and in particular, the need for an applicant for a tax exemption to establish that "by some form of endeavour", the applicant itself would provide for the relief of the poor.

[6] This court granted leave to appeal from the Divisional Court decision on May 17, 2024 and the Associate Chief Justice ordered that the appeal be heard by a five-judge panel.

[7] For the reasons that follow, I would allow the appeal.

Background Facts

[8] The appellant was incorporated in 1984. Its corporate objects include:

> (a) to acquire, construct, hold, supply, operate, manage and maintain housing accommodations and incidental facilities for the purpose of operating a non-profit housing project for lower income people, senior citizens, functionally handicapped persons or others with special needs.
>
> …
>
> (d) to raise money through subscriptions, memberships.

The appellant has provided affordable housing for low-income residents in the City of Niagara Falls since the 1980s. This is the appellant's only activity.

[9] The appellant owns three multi-unit residential properties that provide affordable housing to low-income residents of the City. The properties, located on Buckley Avenue (acquired in 1987), Ailanthus Avenue (acquired in 1994), and Barker Street (acquired in 2015), comprise 107 residential units, 94 of which are rented to low-income tenants who pay rent-geared-to-income ("RGI") or are otherwise paying affordable rent set below the market average. RGI is a system that limits the rent to what a tenant can reasonably afford. According to the appellant, the annual household income of all residents in the properties is $23,862. Canada Mortgage and Housing Corporation ("CMHC") assumed the mortgages for the Buckley Avenue property in 1998, Ailanthus in 2000 and Barker

in 2020. The Barker property is also financed in part by a private institutional lender.

[10] MPAC assessed the Buckley property as having a value of $2,894,000 with annual property taxes of $70,341.44 in 2021; the Ailanthus property at $3,244,000 with annual property taxes of $78,848.53 in 2021; and the Barker property at $2,348,000 with annual property taxes of $10,014.05 in 2021.

[11] In 2016, the appellant obtained a grant in the amount of $167,464 from the Ontario government's Social Housing Improvement Program for balcony restoration and roof replacement at the Buckley and Ailanthus properties respectively.

[12] Niagara Regional Housing provides funding to the appellant. This enables the appellant to offer RGI housing at the Buckley and Ailanthus properties. The March of Dimes provides care to some of the Ailanthus tenants and one of the units at Ailanthus is used rent-free by the March of Dimes for office and staff space. It provides full time care for tenants in 12 of the units and limited care to tenants in a number of other units. The Barker property has 30 units. It has no RGI tenants but 17 of the 30 units are affordable units with rents set below 80% of the CMHC Rental Market Report Guidelines. The remaining 13 units have market rents. Potential tenants of RGI units at the Buckley and Ailanthus properties must apply

to Niagara Regional Housing who conducts an income assessment. Financial need is the primary factor in the selection of tenants.

[13] The appellant has a board of directors whose members serve without remuneration or profit, direct the appellant in the conduct of its business, and typically meet monthly. The appellant's letters patent provide that on dissolution, after payment of debts and liabilities, the remaining property shall be distributed to charitable organizations that carry on their work solely in Canada. A for-profit property management company, Shabri Properties Limited, attends to the day-to-day property management of the properties pursuant to a management contract with the appellant. It was founded and previously owned by the current president of the appellant and it continues to employ his daughter. It provides corporate reporting, financial management, tenant administration and property maintenance services, and also acts as the appellant's corporate secretary.

Religious Hospitallers

[14] *Religious Hospitallers* involved a corporation that converted a hospital purchased from the Order of the Religious Hospitallers of St. Joseph of Cornwall (the "Order") into an apartment complex. The Order established the corporation. The corporation's sole undertaking was ownership of the property which consisted of 59 residential apartment units used to accommodate senior citizens. Twenty percent of the occupants paid market rent and the remainder paid RGI. Capital

funding was provided by a mortgage from the Order to the corporation. Operating income derived from rentals, parking and laundry charges. The Order was responsible for managing the complex and was paid an annual fee of $60,000 for those services. The provincial government, through the Ministry of Housing, would make up the shortfall between income and expenditures. In 1993, the Ministry paid $483,176 in that regard. This covered mortgage interest of $437,749, and the remainder represented property taxes and the management fee, amongst other things. Total expenditures in 1993 amounted to $664,296. Government subsidies paid for the financing of the purchase by the corporation from the Order.

[15] In 1996, the Divisional Court had ruled that the corporation was entitled to an exemption from municipal taxation. The Regional Assessment Commissioner and the corporation of the City of Cornwall were granted leave to appeal to this court which allowed the appeal.

[16] The language of the *Assessment Act* in issue in *Religious Hospitallers* is not identical to the Act in issue on this appeal; however, for our purposes, there was no material difference. McKinlay J.A. commenced her discussion by stating that the taxpayer had the onus of showing that it comes clearly within the exemption clause. She cited *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A.C. 531, at p. 551, for the proposition that “[t]here is no purpose in a Taxing Act but to raise money and … every exemption throws an additional burden on the

rest of the community": at p. 534. She stated that the corporation was clearly an incorporated institution and that it would be a "charitable" one if it was organized for the relief of the poor. She stated that the narrow issue to decide was whether the institution was "organized for the relief of the poor", or was a similar institution.[2] Three questions had to be answered: (i) were the corporate objects relevant or was it the actual operation of the corporation which should be considered; (ii) if the latter, was the corporation organized for the relief of the tenants; and (iii) did the evidence indicate that the tenants were poor?

[17] First, McKinlay J.A. concluded that the corporate objects of the corporation were of assistance but not conclusive. "It is the property for which exemption is claimed and its actual operation and administration which are of primary concern in determining whether the exemption criteria are met": at p. 537.

[18] Second, she considered whether the institution was organized for the relief of the tenants. She determined that it was not. She read those words as meaning that it would be the institution itself, "by some form of endeavour" of the corporation, which would provide the relief involved. She observed that the corporation did very little. It did no fundraising; it did not manage the operation --- this was done by the Order in return for an annual fee; and the purchase of the property was fully

[2] This latter provision was removed from the amended legislation in 1998.

financed by government funds. “From the outset, the actual operation and administration were organized so that the Housing Corporation has provided nothing which is for the relief of the tenants. The total cost is borne by a combination of the tenants themselves and government”: at p. 537. As such, the corporation was not “organized” for the relief of the tenants within the meaning of the exemption.

[19] Having reached that conclusion, she then commented on the portion of the exemption which states that the philanthropic corporation is to be “supported in part by public funds”. In this regard, she referred to the Supreme Court’s decision in *Stouffville (Village) (Assessment Commissioner) v. Mennonite Home Assn. of York County*, [1973] S.C.R. 189, where Spence J. appeared to limit the meaning of the words “public funds” to funds from a government source. She considered that given the nature and function of the institution that would be seeking exemption under the section, “supported by public funds” would mean that the organizations are supported by appeals to the public for funds to assist in their work. She thought it strange that a charitable institution relying in part on government funds for its operation could take advantage of the exemption but one providing all of its own funds through its members and appeals to the public could not.

[20] She stated that all the funds to operate the corporation in question came from the tenants and government sources and this compelled her to conclude that it was not the corporation that provided relief. She also observed that as the government made up any deficit of the corporation, the corporation had nothing to gain from an exemption. The only result of the applicant's litigation would be that the burden of the shortfall would shift from the province to the municipality which was never a party to the arrangement in the first place.

[21] Lastly, she was not prepared to conclude that the Divisional Court had erred in finding that the tenants were poor although it was unnecessary to decide this issue given that the corporation had not satisfied the "organized for the relief of" requirement.

Decisions Below

[22] Both the application judge and the Divisional Court considered that the case under appeal was on all fours with the conclusion reached in *Religious Hospitallers* with respect to the interpretation to be given to the words "organized for the relief of the poor". As such, they determined that they were bound by that decision.

[23] The application judge noted that except for one case which may have been following *Religious Hospitallers*, no case was provided to him that expressly followed the conclusions and distinctions drawn in *Religious Hospitallers* with respect to the meaning of "organized" and the requirement for "endeavour". "None

of the other authorities drawn to [the application judge]'s attention put so as fine a point on 'organized for the relief of the poor' as *Religious Hospitallers*": *Stamford Kiwanis Non-Profit Homes Inc. v. Municipal Property Assessment Corporation*, 2022 ONSC 6392, at para. 57.

[24] The application judge held that the appellant fell short of establishing the kind of endeavour that *Religious Hospitallers* indicated was required. He observed that the key aspects of *Religious Hospitallers* applied to the appellant's situation. The corporation "did very little"; it did not raise funds besides borrowing from a member and repaying them with interest; it outsourced the management of the operations for a fee; it used government funds to finance the purchase of the property and for mortgage payments;[3] and it relied on tenants and the government to cover the cost of its operations. The application judge acknowledged that the board of directors did some work, but nothing suggested that the board did anything beyond what a typical board would do.

[25] He went on to write at paras. 58-59:

> *Religious Hospitallers* does not make clear why engaging paid professionals to operate the Properties is better than employing a qualified entity to perform these services. It is not evident from the wording of the exemption that fundraising is required to qualify for the exemption. The

[3] The application judge appeared to acknowledge that the purchases of the properties were not fully government financed, but found that there was no cogent evidence as to the source of the funds for the non-financed portion of the purchases.

> exemption does not reference fundraising and only requires that the corporation be supported in part by public funds. The law has been clear for some time that public funds means government funding.
>
> However, *Religious Hospitallers* has never been overruled or overturned and this court is bound by the conclusion in *Religious Hospitallers*.

[26] Following the dictates of *Religious Hospitallers,* the application judge found that the appellant did not manage and maintain housing accommodations or raise money through subscriptions or memberships as its objects stated. The application judge found that the appellant "manage[d] on a very high level." He also found that there was no cogent evidence that the funds used by the appellant came from sources other than tenants and government funds and the appellant failed to establish that it fundraised or was supported by its members.

[27] He closed by stating at para. 68: "This court cannot distinguish the present case from *Religious Hospitallers* on the evidence before this court and is bound to follow *Religious Hospitallers*."

[28] The appellant appealed to the Divisional Court. There, Lococo J., writing for the majority, rejected the appellant's argument that the application judge erred by relying on *Religious Hospitallers*. The application judge had recognized that the court in *Religious Hospitallers* appropriately considered the exemption's legislative purpose. This is because, according to Lococo J., the court in *Religious Hospitallers* was aware that shifting the burden of the applicant's funding shortfall

from one level of government to another would not serve the legislative purpose of freeing up funds for the applicant's use to relieve poverty: *Stamford Kiwanis Non-Profit Homes Inc. v. Municipal Property Assessment Corp.*, 2023 ONSC 6625 (Div. Ct.), at paras. 64-65.

[29] Lococo J. also rejected the argument that the application judge erred by reading expansively the requirement in *Religious Hospitallers* for some kind of "endeavour". He held that nothing suggested *Religious Hospitallers* erred in considering "the activities the property owner undertook (which may fairly be characterized as some form of 'endeavour')" to determine whether the property owner was "organized" for the relief of the poor: at para. 71. He added that even if *Religious Hospitallers* was wrongly decided, this was not a case where he was entitled to ignore the binding decision of a higher court: see *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 44. He considered *Religious Hospitallers* to be indistinguishable on the facts.

[30] In concurring reasons of the Divisional Court, Schabas J. agreed that the appeal should be dismissed but expressed reservations about *Religious Hospitallers.* He stated that the result in the appeal from the application judge was "driven by an unsatisfactory state of the law": at para. 85. He was of the view that the decision should be revisited.

[31] He reasoned that the any “endeavour” requirement, and in particular the requirement for private funding, was not in the legislation and led to results driven by minor differences between “entities that are indeed organized for and provide relief to the poor”: at para. 86. Schabas J. pointed out that the appellant, as in *Religious Hospitallers*, owned and oversaw the provision of affordable housing. Its board of directors met monthly to ensure the achievement of its objects in providing affordable housing, contracted with a private company to manage its operations, and provided the property manager with advice and direction. The appellant carried on financial commitments, sought funding for renovation and repairs, and earned some moderate investment income. *Religious Hospitallers* appeared to be inconsistent with *Mennonite Home* and nothing indicated that the court in *Religious Hospitallers* considered the Supreme Court decision of *Québec (Communauté urbaine) v. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3 that had employed a dual-purpose interpretative approach to tax legislation. He viewed the “endeavour” requirement to be vague, with no clarity on where the line was to be drawn or on how much private funding was required. He nonetheless felt bound to follow *Religious Hospitallers.*

Positions of the Parties

[32] The appellant submits that *Religious Hospitallers* was wrongly decided and the advantages of overruling that decision outweigh the disadvantages. It argues

that the decision fails to apply *Mennonite Home*; fails to cite and apply both *Notre-Dame* and *City of London v. Byron Optimist Sports Complex Inc.* (1983), 23 M.P.L.R. 10 (Ont. C.A.); undermines legislative intent; and is vague, unworkable and anomalous. The decision rests on an unstable foundation that does not serve the interests of certainty and predictability and the advantages of overruling this precedent outweigh the disadvantages. In the alternative, the appellant invites this court to distinguish *Religious Hospitallers*, and in the further alternative, it submits that the *Religious Hospitallers* test is met. Accordingly, the appellant submits that the judgment of the application judge and the order of the Divisional Court should be set aside.

[33] The respondent MPAC submits that *Religious Hospitallers* was correctly decided, was consistent with *Mennonite Home* and legislative intent, is not vague and unworkable and should not be overruled. Moreover, *Byron Optimist* is distinguishable.

[34] The respondent City also submits that *Religious Hospitallers* should not be overruled. *Religious Hospitallers* gives meaning to the words “organized for the relief of the poor” as importing something more than simply being a conduit for government funding for below-market rental housing.

Overruling Precedents of the Court of Appeal

[35] Generally, this court follows its past decisions. This approach, embodied in the principle of *stare decisis* ("stand by things decided"), provides for certainty, predictability and consistency in the law. As stated in *R. v. Kirkpatrick*, 2022 SCC 33, 471 D.L.R. (4th) 440, at para. 183, *per* Côté, Brown and Rowe JJ., *stare decisis* promotes: (i) legal certainty and stability which allows people to plan and manage their affairs; (ii) the rule of law, such that people are subject to similar rules; and (iii) the legitimate and efficient exercise of judicial authority.

[36] Laskin J.A. introduced the topic of *stare decisis* in *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Company* (2005), 76 O.R. (3d) 161 (C.A.), leave to appeal refused, [2005] S.C.C.A. No. 388, at para. 118:

> Lord Denning once wrote, "The doctrine of precedent does not compel your Lordships to follow the wrong path until you fall over the edge of the cliff", to which Justice Brandeis might have replied: "It is usually more important that a rule of law be settled, than that it be settled right": see *Ostime v. Australian Mutual Provident Society*, [1960] A.C. 459 at 489 and *Di Santo v. Pennsylvania* 273 U.S. 267 at 270 (1927) respectively. These words, by two great jurists, capture the essence of the debate about *stare decisis*.

[37] Laskin J.A. distinguished the approach taken by the Supreme Court to overturning its jurisprudence from that taken by this court in considering its prior

decisions. In *Kirkpatrick*, the concurring Justices validated this distinction.[4] They wrote at para. 180:

> The tests for horizontal *stare decisis* at the trial and at the intermediate appellate level differ, reflecting the institutional roles of those courts. We will not deal with *stare decisis* in these contexts. We would note only that the tests differ because most trial decisions are appealable as of right to a Court of Appeal, whose responsibility is to correct legal errors made at first instance. Conversely, intermediate appellate courts are often the court of last resort. Courts of Appeal therefore need more room to depart from their past precedents than trial courts.

[38] The Supreme Court's recent jurisprudence has determined that it was proper for it to overturn its own precedents where the court rendering the decision failed to have regard to a binding authority or relevant statute ("*per incuriam*"); the decision has proven unworkable; or the decision's rationale has been eroded by significant societal or legal change: *Canada (Attorney General) v. Power*, 2024 SCC 26, 494 D.L.R. (4th) 191, at para. 98; *John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6, 500 D.L.R. (4th) 385, at paras. 33 and 164. See also *Kirkpatrick*, at para. 202, *per* Côté, Brown and Rowe JJ.

[39] In *David Polowin*, Laskin J.A. described this court's approach to departing from its own precedents. First the court asks whether the earlier decision was

[4] The majority did not comment on *stare decisis*.

correctly decided and if not, asks whether it should be overruled by weighing the advantages and disadvantages of correcting the error of the previous decision. The weighing exercise focuses on the nature of the error including the effect and future impact of either correcting or maintaining the error, the effect and impact on the parties and future litigants, and the integrity and administration of our justice system: at para. 127. See also *Toronto Standard Condominium Corporation No. 1628 v. Toronto Standard Condominium Corporation No. 1636*, 2020 ONCA 612, 454 D.L.R. (4th) 126, at para. 73.

[40] By extension, the considerations mentioned in *Kirkpatrick* may also be germane to the determination of whether a precedent in Ontario was wrongly decided and to the weighing of the advantages and disadvantages of correcting the error.

[41] To overrule a precedent from our own court:

(i) a five-judge panel must be appointed by the Chief Justice or Associate Chief Justice on application by a party or by our court's own initiative: "Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario", (March 1, 2017), at 13;

(ii) the panel so appointed must then determine whether the precedent was correctly decided;

(iii) if the panel determines that the precedent was wrongly decided, it must then weigh the advantages and disadvantages of correcting the error. *David Polowin*, at paras. 107, 127; *Toronto Standard Condominium*, at para. 73.

(iv) If satisfied that the precedent was wrongly decided and that the advantages of correcting the error reflected in the precedent outweigh the disadvantages, the panel may overrule the decision.

[42] In discussing this issue, I make one further tangential observation. It would be helpful as a matter of practice in this court, if counsel cited the leading authority on an issue rather than simply the most recent set of reasons containing a restatement of the law. The tendency to do the latter has emerged with the proliferation of easy access to case law. Legal principles deeply embedded in our jurisprudence are lost in the tangle of subsequent decisions that recite the principle unattached from binding authority. It would enhance both legal education and knowledge of the law if recourse were had to the case originally establishing a legal principle together with, if appropriate, a recent decision rather than just defaulting to the most recent pronouncements.

Discussion

[43] The central issue on this appeal is whether the exception found in s. 3(1)12(iii) of the Act was available to the appellant. To repeat, the appellant

urges this court to overrule *Religious Hospitallers*, adopt the test established by this court in *Byron Optimist*, and allow the appeal.

[44] In addressing this matter, I will first discuss whether *Religious Hospitallers* was wrongly decided. This will involve consideration of the appropriate approach to interpreting tax legislation such as the Act involved in this case and the statutory provision in issue in this appeal. I will then canvass the jurisprudence that has engaged with the interpretation or application of s. 3(1)12(iii), before discussing legislative intent and whether the approach adopted by *Religious Hospitallers* is vague and unworkable. Even if I conclude that the decision was wrongly decided, this does not automatically result in *Religious Hospitallers* being overruled. This is because *stare decisis* requires adherence to precedent even if this court disagrees with the underlying decision. If I decide that the case was wrongly decided, I must then engage in a weighing of the advantages and disadvantages associated with overturning the error encapsulated in that decision. *Religious Hospitallers* may be overruled only if the decision is considered to have been wrongly decided and the advantages of overruling it outweigh the disadvantages. Lastly, I will address the impact of that analysis on the appeal itself.

(a) Was *Religious Hospitallers* Wrongly Decided?

[45] The first question to address is whether *Religious Hospitallers* erred in its interpretation of s. 3(1)12(iii).

[46] In support of its submission that *Religious Hospitallers* was wrongly decided, the appellant advances four arguments. First, it asserts that the decision does not accord with the principles of interpretation of tax statutes. Second, it submits that the *Religious Hospitallers* panel did not advert to binding judicial authority and had it done so, it would have decided the case differently. This is described as the *per incuriam* exception to *stare decisis*. Third, it argues that *Religious Hospitallers* undermines legislative intent, and fourth, it contends that the decision is vague and unworkable.

[47] The respondents submit that *Religious Hospitallers* was correctly decided. The lack of specific reference to cases does not mean the court did not consider them and in any event, *Mennonite Home* was cited. The different results obtained in that case and *Religious Hospitallers* arose from the breadth of the activities undertaken. Moreover, consistent with *Religious Hospitallers*, in the case under appeal, the application judge found that the appellant did very little beyond finding and owning the properties and was fully funded by the tenants and the government, and there were no activities requiring the financial assistance of an exemption from property taxation. Refusal of an exemption was consistent with the purpose of the statute. Furthermore, the practical effect of granting an exemption here would be to shift the financial burden from Niagara Regional Housing to the respondent City.

[48] The respondent City adopts MPAC's submissions.

(i) Interpretation of Tax Legislation

[49] As a starting point, the appellant submits that *Religious Hospitallers* examined the request for an exemption through the wrong lens. Had the panel considered *Notre-Dame* and viewed the case through a dual-purpose lens, the appellant argues that it would have decided the case differently.

[50] MPAC and the City respond by arguing that the failure to mention *Notre-Dame* does not mean that the court in *Religious Hospitallers* ignored the dual-purpose interpretive principle. Not citing a case is insufficient to show that a different decision would have been reached.

[51] *Notre-Dame* involved the question of whether an institution devoted to low rental housing for elderly persons living under the poverty line could benefit from the tax exemption available under Quebec municipal tax legislation. This decision was released four years before *Religious Hospitallers*. In *Notre-Dame*, the Supreme Court described the evolution of the law on the interpretation of tax legislation in Canada. The purpose of tax legislation was no longer simply to raise funds to cover government expenditure but was also used for social and economic purposes: at pp. 15-16. Writing for the court, Gonthier J. cited *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536 and *Golden v. The Queen*, [1986] 1 S.C.R. 209 in support of this principle.

[52] In *Ottawa Salus Corp. v. Municipal Property Assessment Corp.* (2004), 69 O.R. (3d) 417 (C.A.), this court followed the approach described in *Notre-Dame* in the context of an appeal under s. 3(1)12 of the *Assessment Act*, noting that a general policy of raising funds could be subject to an additional policy of exempting social works: at p. 421, quoting *Golden*, at p. 18. The issue in the case was the interpretation to be given to "land owned, used and occupied by" found in s. 3(1)(12)(iii) of the Act.

[53] In that case, MacPherson J.A. wrote at p. 424 that the general purpose of the Act was to impose a property tax so that the Government could meet its expenditures. The purpose of the then 29 exemptions found in s. 3(1) was to allow specified types of organizations to spend more of their limited resources on attendant activities. In particular, the purpose of s. 3(1)12(iii), the clause at issue in this appeal, was to grant relief from property taxation to non-profit corporations "organized for the relief of the poor". The public interest in granting those organizations additional resources to relieve poverty outweighed the public interest in generating revenue through taxation of property. In light of the purpose, this court in *Salus* interpreted the word "occupied" generously and as not requiring actual or exclusive occupation by the charitable institution. Direct use of the property by the charity in furtherance of its objective of relieving the poor was sufficient.

[54] Turning to the legislation in issue on this appeal, of course "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": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at p. 41, quoting Elmer A. Driedger, *The Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26.

[55] The general purpose of the Act is evident from s. 3. All real property in Ontario is liable to assessment and taxation. This component of the Act clearly reflects a purpose of raising funds to cover government expenditures. Section 3(1) goes on to delineate exceptions to that objective. This includes subsection 12 which is in issue on this appeal and is entitled "Charitable Institutions". Under s. 3(1)12(iii), (a) the land must be "owned, used and occupied by" a "charitable, non-profit philanthropic corporation", (b) the corporation must be "organized for the relief of the poor", and (c) the corporation must in part be supported by "public funds".

[56] When the general purpose described in s. 3 of the Act is juxtaposed with the purpose encapsulated in the exception in s. 3(1)12(iii), clearly the Legislature has opted to grant tax relief to those corporations who meet the parameters of the subsection. The legislative purpose behind the exemption is to allocate funds

otherwise destined to defray government expenditures to alleviate the tax burden of charitable, non-profit philanthropic corporations that are relieving poverty thereby enabling their charitable, non-profit or philanthropic use of funds.

[57] In the appeal before this court, the application judge was of the view that the *Religious Hospitallers* must be taken to have contemplated the dual-purpose interpretation principles described in *Notre-Dame*. Moreover, he thought that McKinley J.A.'s comments were made in the context of who bore the burden of proof. In the Divisional Court, all three judges acknowledged that the Court of Appeal in *Religious Hospitallers* did not refer to *Notre-Dame* which had been decided four years earlier but disagreed on whether the court had considered the dual-purpose approach to interpretation of taxing statutes established in *Notre-Dame*.

[58] Certainly, *Religious Hospitallers* neither referred to *Notre-Dame* nor mentioned the dual-purpose approach adopted by the Supreme Court in that and its earlier decisions. While it is the case that McKinlay J.A. started by discussing onus, she went on to quote from the 1891 *Pemsel* decision from the U.K. on the sole purpose of a Taxing Act being to raise money. If she were applying a dual-purpose approach, it seems strange that she would include in her reasons an express quote from *Pemsel*, "[t]here is no purpose in a Taxing Act but to raise money". I am compelled to conclude that a dual-purpose interpretation as

mandated by the Supreme Court was not applied in *Religious Hospitallers.* The single-purpose approach in *Pemsel* would not have been quoted if the interpretation was being examined through more than a single-purpose lens. Furthermore, a more generous interpretation as in *Salus* would have placed weight on the social purpose embedded in the legislation. The statutory provision providing for an exemption had a dual purpose: to raise revenue and to advance the social benefit of assisting the poor. Undoubtedly the panel in *Religious Hospitallers* would be aware of the dual purpose but the failure to focus on the two purposes would limit the ambit of the inquiry. Recognition of a dual purpose would inform whether the limiting requirement of an endeavour was in keeping with the purpose of the provision.

[59] I would also note that the companion case of *Religious Hospitallers of St. Joseph of Cornwall Corp. v. Regional Assessment Commissioner* (1998), 42 O.R. (3d) 539 (C.A.) decided at the same time as *Religious Hospitallers* also made no reference to the Supreme Court's dual-purpose interpretive approach.

[60] That said, the lens through which *Religious Hospitallers* examined the Act is not determinative of the issue on this appeal. One must also ascertain whether there were other shortcomings in the *Religious Hospitallers* analysis or result that address whether it was correctly or wrongly decided.

(ii) Failure to Adhere to Precedents

[61] The appellant submits that in addition to failing to cite and apply *Notre-Dame*, *Religious Hospitallers* also failed to apply *Mennonite Home*. Although McKinlay J.A. referred to *Mennonite Home* to express the panel's disagreement with the Supreme Court's interpretation of the Act's phrase "public funds" as meaning funds from a government source, the appellant states that the holding in *Religious Hospitallers* is inconsistent with that of *Mennonite Home*.

[62] In *Mennonite Home*, the Mennonite Home Association purchased land and built and operated a home primarily for the care of the aged. The Ontario Department of Welfare contributed to the capital cost of the building and also made up deficiencies for the few residents who were unable to pay the monthly rate in full. The majority held that the land was owned by the institution, occupied for the purpose of the institution, and was solely devoted to that purpose. The Association was an incorporated institution that conducted its affairs on philanthropic principles and, according to the provisions of its charter, could not operate for profit or gain and was supported in part at least by public funds, those being government funds. Moreover, it operated for the relief of the poor. The Association was held to fall within the exemption. The dissenting judges disagreed with the majority's reasoning, both concluding that there was no proof that the applicant was supported in part by public funds.

[63] The respondents submit that the reasons for decision in *Religious Hospitallers* did refer to *Mennonite Home* and hence the panel considered and was aware of that decision. In addition, they argue that the facts are distinguishable from *Religious Hospitallers.* The Association managed its own operation and provided relief such as meals and other services whereas the applicant in *Religious Hospitallers* did not. This distinction, the respondents argue, was noted in *Residence* "*Joie de Vivre" Inc. v. Niagara Falls (City)* (1988), 41 M.P.L.R. 90 (Ont. Dist. Ct.) where the application judge differentiated between applicants simply providing independent residential units and those providing rooms with meals or housekeeping services: at pp. 95-96.

[64] Moreover, the respondents submit that *Mennonite Home* is distinguishable because it involved a different part of s. 3(1)12 of the Act, which at that time exempted "any similar incorporated institution conducted on philanthropic principles and not for the purpose of gain". Subsequent amendment had removed this part from the provision. In *Mennonite Home*, the purpose of the Association was to provide a home for the care and security of the aged rather than providing affordable housing to people with low incomes as in *Religious Hospitallers*. The Association maintained and operated a home and provided care and food to the aged whereas the Corporation in *Religious Hospitallers* did very little and the total cost was borne by the tenants and the government.

[65] These distinctions are not persuasive. *Religious Hospitallers* did refer to *Mennonite Home* but only for the purpose of disagreeing with the interpretation the Supreme Court gave to “public funds”. There was no explanation of how its facts differed or why a different result should ensue. *Mennonite Home* did involve the provision of care and food but as in *Religious Hospitallers*, these operations were funded by the tenants and government. Similarly, there is no meaningful difference between hiring employees as in *Mennonite Home* and contracting with a third-party manager as referenced in *Religious Hospitallers.* This does not inform whether a corporation is organized for the relief of the poor. There was no apparent private funding in *Mennonite Home* but this was not seen as a barrier to granting an exemption. In sum, it would appear that there is little distinction between *Religious Hospitallers* and the majority in *Mennonite Home* other than the result.

[66] That the Supreme Court was considering the unamended Act that spoke of a “similar incorporated institution” rather than an “incorporated charitable institution organized for the relief of the poor” is also of no moment. Moreover, the court in *Mennonite Home* said nothing about a corporate “endeavour”, a fact ignored by the court in *Religious Hospitallers*.

[67] The appellant also submits that *Religious Hospitallers* failed to cite or apply this court’s decision in *Byron Optimist* which applied a different test than that in *Religious Hospitallers.* There, this court stated at p. 11: “[w]hile the persons who

benefit need not be destitute, there must be an element of economic deprivation or need, the relief from which is a part of the purpose of the institution claiming the exemption." The sports complex in issue did not meet this requirement of economic deprivation or need and therefore the application was unsuccessful.

[68] There was no mention of any need for an endeavour as in *Religious Hospitallers*. *Religious Hospitallers* did not mention *Byron Optimist*, did not apply the test described in that decision, and introduced a new test incorporating the need for an endeavour. I agree with the appellant that had the court in *Religious Hospitallers* applied the dictates of *Byron Optimist* and *Mennonite Home*, it is unlikely that the same result would have ensued.

(iii) Legislative Intent

[69] As mentioned, the appellant submits that *Religious Hospitallers* misconstrued the legislative intent of the subsection of the Act and its interpretation undermines the legislative intent. I agree.

[70] The language of the subsection engaged by this appeal involves the words "organized for the relief of the poor if the corporation is supported in part by public funds". The interpretation to be given to the public funds component is dictated by the reasoning of the Supreme Court in *Mennonite Home* and refers to government funding. This leaves the interpretation to be given to the "organized for the relief of the poor" component of s.3(1)12(iii) read in the context of the provision and the Act

as a whole. The requirement of “some other endeavour” imported by *Religious Hospitallers* is not, and never has been, found in the wording or apparent purpose of the Act. Moreover, while not determinative, Angus Stevenson and Lesley Brown, eds, *Shorter Oxford English Dictionary*, 2nd ed. (New York: Oxford University Press, 2007) defines “organized” as: “Formed into a whole with interdependent parts; coordinated so as to form an orderly structure; systematically arranged.” This too does not imply any endeavour requirement.

[71] The part of s. 3(1)12(iii) at issue, “organized for the relief of the poor”, was introduced in 1946 by Bill 146, *An Act to Amend the Assessment Act*, 2nd Sess., 22nd Leg., Ontario (assented to 5 April 1946). Neither it nor its predecessor sheds any light on the interpretation to be given to the subsection. The legislative debates are silent on the subject. There is no suggestion of any endeavour requirement.

[72] The objects of the applicant in *Religious Hospitallers* disclosed that it contributed to the social purpose of relieving poverty. The facts of the case established that it operated to offer affordable housing to those in need — in essence to relieve poverty. Indeed, this is all that it did. These characteristics reflected the legislative intent of the legislation and support the argument that *Religious Hospitallers* was wrongly decided.

(iv) Vague and Unworkable

[73] Fourth, the appellant argues that the “endeavour” requirement is vague and hence unworkable. This is another basis identified by the Supreme Court in *Kirkpatrick* on which to overrule precedent. There, at para. 207, the court described an unworkable precedent as one that is unduly complex or difficult to practise. As Schabas J. stated at para. 97 of his concurring reasons in the Divisional Court:

> The vague requirement of “some form of endeavour” found in *Religious Hospitallers* leaves one wondering where the line is to be drawn, or why it must be drawn. If private sources of funding are required, as suggested by *Religious Hospitallers*, how much funding? If the housing corporation directly manages the building with its own employees, or volunteers, as appears to have been the case in *MacKay Homes*, rather than hiring a management company, is that an “endeavour” sufficient to gain the exemption? *Religious Hospitallers* provides no assistance, simply observing how “little” the corporation did in that case.

[74] In the decision under appeal, the majority and the concurring reasons disagreed on whether *Religious Hospitallers* should be read as interpreting endeavour as imposing a requirement that the institution seek or obtain private funding: see paras. 73, 86. In itself, this disagreement reflects the uncertainty and unworkability associated with the introduction of an endeavour requirement.

[75] All of the aforementioned four factors identify the shortcomings of *Religious Hospitallers.* For these reasons, I conclude that *Religious Hospitallers* was wrongly decided. However, having made that determination, I must still decide whether the

decision should be overruled. This engages a weighing of the advantages and disadvantages of correcting the error reflected in that precedent.

(b) The Weighing Exercise

[76] The appellant submits that *Religious Hospitallers* is an anomaly and an outlier in Ontario jurisprudence. As such, it rests on an unstable foundation that does not serve the interests of certainty and predictability. The appellant further submits that people have not governed their behaviour based on its holdings. Indeed, it states that the within appeal represents the first substantive application of *Religious Hospitallers*.

[77] The respondents assert that *Religious Hospitallers* should not be overruled. They advance certain advantages associated with upholding the decision. Apart from certainty and consistency in the law that arises from adherence to *Religious Hospitallers*, they maintain that a tax exemption for the appellant would result in a disentitlement of any tenants who may receive property tax credits under the *Taxation Act, 2007*, S.O. 2007, c. 11, Sched. A. The respondents argue that while a property tax exemption would reduce the appellant's operating expenses and increase its net operating revenue, it would also serve to reduce the actual income of the tenants due to the operation of the tax credit regime. In addition, the respondents argue that the exemption would simply shift the financial burden from Niagara Regional Housing to the City.

(i) Unstable Foundation

[78] In *Fernandes v. Araujo*, 2015 ONCA 571, 127 O.R. (3d) 115, at para. 47, this court stated that "decisions that rest on an unstable foundation tend to undermine the very values of certainty and predictability that *stare decisis* is meant to foster." The endeavour requirement was created by *Religious Hospitallers* divorced from any such requirement in the legislation. Moreover, cases have not tended to treat the decision as authoritative. As the application judge in this case stated at para. 57 of his reasons, "None of the other authorities drawn to this court's attention put so as (*sic*) fine a point on 'organized for the relief of the poor' as *Religious Hospitallers*." As noted by the appellant, very few cases have followed this aspect of *Religious Hospitallers.* Importantly, the decision has also never been affirmed by this court. It has only been cited once by this court but that was on the issue of public funds in *Causeway Foundation v. Ontario Property Assessment Corp., Region No. 3* (2004), 235 D.L.R. (4th) 754 (Ont. C.A.), at p. 760 ("*Causeway* (C.A.)").

[79] *Mackay Homes v. North Bay (City)* (2005), 6 M.P.L.R. (4th) 44 (Ont. S.C.) involved an applicant that was designed to be entirely charitable in nature and that provided low-cost rental housing for the assistance of the elderly. The application judge did not expressly mention *Religious Hospitallers* but in considering whether the applicant was organized for the relief of the poor, stated that this required that

the applicant undertake some form of endeavour to provide the relief. In addition, presumably drawing on *Byron Optimist*, there had to be an element of economic deprivation or need, the relief from which was part of the purpose of the institution claiming the exemption. The objects of the institution were, among others, to acquire land on which to construct low-cost rental housing on a non-profit basis at or below rents specified by CMHC. The applicant owned and operated the rental units. The project was financed and continued to be financed by the government. The directors of the institution served without fee or involvement of any kind. The application judge did not expressly address the endeavour requirement. He was satisfied that the applicant was a charitable non-profit philanthropic corporation organized for the relief of the poor and supported in part by public funds. As such, it was entitled to an exemption from taxation under the Act.

[80] *St. Catherines Seniors Apartments Phase Three Inc. v. Municipal Property Assessment Corporation*, 2015 ONSC 3896, 41 M.P.L.R. (5th) 98 also dealt with the ownership and operation of an apartment building for low-income seniors. The only contested issue in that case was whether the “poor” requirement of s. 3(1)12(iii) had been met. *Notre-Dame*, *Ottawa Salus*, *Mennonite Home* and *Byron Optimist* were all relied upon by the application judge but no mention was made of *Religious Hospitallers.* This may have been because the parties had

agreed that the only disputed issue was the ambit of the “poor” requirement. The exemption was granted.

[81] As noted by the appellant, the requirement of an “endeavour” from *Religious Hospitallers* has never been affirmed by this court and where the decision is cited, it is for other reasons such as the meaning to be attributed to public funds, the burden of proof, or corporate objects not being determinative: see e.g. *Causeway* (C.A.); *London Jewish Community Village v. The Municipal Property Assessment Corporation, Region 23 et al.*, 2020 ONSC 6794, at para. 19g; *Causeway Foundation v. Ontario Property Assessment Corp., Region No. 3*, 2002 CarswellOnt 2064 (S.C.), at para. 65. Based on the authorities provided by the parties, until the case under appeal, *Religious Hospitallers* had never been applied to deny an exemption where all parties had agreed that the charity was serving the poor.

[82] More recently in *The Chelsea Green Home Society v. MPAC, et al.* (1 August 2023), London, CV-16-00003013 (Ont. S.C.), the issue before the court was whether the applicant for exemption and the subject properties were “organized for the relief of the poor”. MPAC, who opposed the application, relied on *Religious Hospitallers* and the application judge’s decision in this appeal. The applicant, Chelsea Green, did no fundraising and had retained a third party to perform property management.

[83] Grace J. stated that he was unsettled by the approach *Religious Hospitallers* mandated. He too noted that *Religious Hospitallers* made no mention of *Notre-Dame* and had applied a narrow interpretation of the Act. He endorsed the views of the application judge in the case under appeal on the shortcomings of *Religious Hospitallers* and observed at para. 30:

> Chelsea Green's submission that the statutory exemption was read narrowly in *Hospitallers* has merit. Years earlier, the Supreme Court of Canada [in *Notre-Dame*] had rejected the argument that the exemptions in taxation statutes should be strictly interpreted. *Hospitallers* makes no mention of that decision.

[84] Left to his own devices, Grace J. would have focused on the stated objects of the applicant and whether its operations entailed offering affordable accommodation to those in financial need. He would not have considered the absence of fundraising and the retention of a professional property manager to be factors. However, in light of *Religious Hospitallers* and the similarity with the case under appeal, he felt compelled to dismiss the application.

[85] Lastly, again as mentioned, Schabas J. in the case under appeal concurred in the result but stated that it was driven by "an unsatisfactory state of the law" compelled by *Religious Hospitallers*.

[86] A review of the jurisprudence on s. 3(1)12(iii) supports the conclusion that *Religious Hospitallers* has largely been ignored as an authority for about 25 years, and the soundness of its holding has been questioned by lower courts. The

interpretation reached and its evident impact detract from the purpose encapsulated in the exemption provision. The objective is humanitarian in nature: to aid charitable, non-profit philanthropic corporations organized for — or put differently, aimed at — the relief of the poor. *Religious Hospitallers* impedes this objective through the introduction of a requirement divorced from both the text of the statute and its purpose. It is better to correct the error now with a view to providing clarity and consistency in the law.

(ii) Applicable Test

[87] The test that has been adopted by many decisions is that articulated in *Byron Optimist*, at p. 11: “there must be an element of economic deprivation or need, the relief from which is a part of the purpose of the institution claiming the exemption.” An applicant for an exemption must establish that it falls within the four corners of the exemption provision. This does not include “some form of endeavour”. Recognition must be given to an interpretation of the Act that is mindful of its dual purposes. As stated by MacPherson J.A. in *Salus*, at p. 424, “while there is a substantial public interest in the generation of revenue through the taxation of real property, in the context of real property covered by these exemptions, that public interest is outweighed by the public interest in giving relief from property taxation to certain organizations.”

[88] In *Canadian Centre for Torture Victims (Toronto) Inc. v. Regional Assessment Commissioner, Region No. 9* (1998), 36 O.R. (3d) 743 (Gen. Div.), the late Lax J. conducted a detailed review of the jurisprudence to determine whether the relief of poverty as part of the institutional purpose was sufficient or whether the institution claiming the exemption must have relieving poverty as its controlling or predominant purpose. She concluded that *Byron Optimist* represented the governing test and therefore a part purpose sufficed. In the case under appeal, it matters not as the entire purpose of the appellant is to relieve poverty.

[89] That said, an applicant would still have to establish that the primary use of the property for which the exemption is sought is to pursue relief of poverty. This is required by the "primary purpose" test set out in *Buenavista on the Rideau v. Ontario Regional Assessment Commissioner, Region No. 2* (1996), 28 O.R. (3d) 272 (Div. Ct.), at p. 276. As summarized in *The Diocese of Toronto Camps (Anglican Church of Canada) v. Municipal Property Assessment Corp.* (2004), 246 D.L.R. (4th) 170 (Ont. C.A.), at p. 174, this test requires "an objective determination of the principal purpose for which the land is used and occupied." See also *Fung Loy Kok Institute of Taoism v. Municipal Property Assessment Corporation*, 2024 ONCA 415, 171 O.R. (3d) 743, at paras. 34-35. This helps address the mischief associated with an applicant whose institutional pursuit satisfies the part purpose

test of *Byron Optimist* but who primarily uses the property in question for purposes unrelated to the relief of poverty. In other words, the *Byron Optimist* test and the primary purpose test complement each other in preserving revenue generation through property taxes while enabling the social purpose embodied in the exemption.

(iii) Financial Burden of an Exemption

[90] As mentioned, the respondents argue that the exemption found in s. 3(1)12(iii) shifts the financial burden from the province to the City. The burden of any exemption will by its nature fall on a municipality. This is not a basis on which to refuse to grant an exemption to a deserving applicant. Entitlement to an exemption should not depend on jurisdictional responsibility.

(iv) Tax Credit Argument

[91] Lastly, the issues relating to the *Taxation Act* and tax credits are raised for the first time on appeal by the City and MPAC. However, neither party sought leave to introduce any fresh evidence to assist in assessing this argument. To sustain this argument, the burden is on the respondents to establish that all the necessary facts are before the court.

[92] The respondents assert that no fresh evidence is necessary because tax credits arise under the *Taxation Act*. This outcome is far from clear based on the provisions relied upon by the respondents. Amongst other things, there is no

information or evidence on how the current level of occupancy cost compares to the statutory fixed caps and whether any municipal property tax reduction arising from an exemption would in fact affect any tax credits. There is no admissible evidence on the amount of any credits or that the tenants in the subject properties are actually receiving any credits. There is nothing in the evidence that supports the respondents' submissions. Under these circumstances, it would be inappropriate to entertain this argument.

(c) Conclusion

[93] Having reviewed the advantages and disadvantages of correcting the error in *Religious Hospitallers*, I am drawn to the conclusion that it should be overruled. In addition to being wrongly decided, the effect of the error is to undermine the laudable objective and intent of s. 3(1)12(iii) of the Act by limiting its ambit and introducing the foreign element of endeavour. As evident from subsequent jurisprudence, *Religious Hospitallers* has not brought certainty and consistency to the law and cases have not tended to treat the decision as authoritative. That said, as seen from recent decisions such as *Chelsea Green* and the case under appeal, it lacks interpretative clarity. As such, correcting the error would provide certainty in the future and enhance the integrity of our justice system.

Decision under Appeal

[94] Turning to the case under appeal, to qualify for an exemption under s. 3(1)12(iii) of the Act, an applicant must:

(i) own, use and occupy the land;

(ii) be a charitable, non-profit philanthropic corporation;

(iii) be organized for the relief of the poor. This means (a) the primary purpose or use of the subject property is relief of the poor, and (b) the corporation operates at least in part for the relief of the poor. The corporate objects may inform (a) and (b) but are not determinative. There must be an element of economic deprivation or need on the part of the corporation's intended beneficiaries; and

(iv) the applicant must be supported in part by public funds.

[95] As mentioned, it was conceded by the respondents that the appellant met all the requirements of s. 3(1)12(iii) subject to resolution of the meaning to be given to whether the appellant was "organized for the relief of the poor". There is no issue that this charitable, non-profit philanthropic organization is organized for and is in fact serving the poor. Since its inception, the appellant's only activity has been providing affordable housing to low-income residents of Niagara Falls. To fulfill that purpose, it located and acquired the properties, and built, owns, uses and occupies its three apartment buildings. It directs and advises the property manager with

whom it has contracted to manage the day-to-day operations at the properties. It has financial commitments and seeks grants and funding for renovations and repairs. It earns modest investment income. There is no need for any separate endeavour or evidence of private fundraising. The application judge made a finding that the tenants are poor and that the appellant serves the poor as intended by the legislation. Unquestionably, there is an element of economic deprivation or need, the relief from which is a part of the purpose of the appellant. Its activities have been funded in part by the government. It is the appellant who carries the ultimate responsibility for the undertaking. It meets the requirements of s. 3(1)12(iii) and fulfills the legislative purpose of providing relief to the poor. This interpretation supports, rather than detracts from, the laudable objective captured in the statutory provision. To quote Schabas J. in his concurring reasons in the Divisional Court at para. 89:

> Here, the applicant acquired and owns the properties. The corporation's Board meets monthly to ensure that its objective of providing affordable housing is achieved through the provision of approximately 100 housing units. It contracts with a private company to manage its operations and ensures that the private company complies with its contractual obligations. The Board provides advice and direction to the manager. It has financial commitments including mortgages and loans from the private sector. It seeks grants and funding for renovations and repairs, taking on long-term commitments to own, operate and maintain the properties. It earns some modest investment income. The funding for all of these obligations comes from public

> coffers and from rent, but the corporate applicant is the entity which is ultimately responsible for the enterprise, and it does nothing else. It is difficult to see, therefore, how it is not “organized” for the relief of the poor.

Disposition

[96] For all of these reasons, I would allow the appeal, set aside the judgment of the application judge and the order of the Divisional Court, and order that the following properties be exempt from municipal taxation for the 2021 tax year, pursuant to s. 3(1)12(iii) of the Act:

(i) 6015 Barker Street, Niagara Falls, Ontario, bearing assessment roll number 2725-070-005-00802-0000;

(ii) 6995 Ailanthus Avenue, Niagara Falls, Ontario, bearing assessment roll number 2725-080-003-00500-0000; and

(iii) 901 Buckley Avenue, Niagara Falls, Ontario, and bearing assessment roll number 2725-020-005-18000-0000.

In addition, all adjustments as necessary are to be made to the assessment rolls. This order neither precludes nor addresses any exemptions for future years. Although it is being overruled, this disposition does not affect the parties in *Religious Hospitallers* itself.

[97] As agreed, the respondents are to pay the appellant $7,500 in costs of the appeal and the leave to appeal motion. The costs below are reversed and the respondents are to pay the appellant $5,000 for each of the costs of the application

and of the proceeding before the Divisional Court. These amounts are inclusive of disbursements and applicable tax.

Released: June 20, 2025 “S.E.P.”

“S.E. Pepall J.A.”
“I agree. L.B. Roberts J.A.”
“I agree. Sossin J.A.”
“I agree. D.A. Wilson J.A.”
“I agree. L. Madsen J.A.”