



January 31, 2018

Via Email: swilson@haldimandcounty.on.ca

Please reply to St. Catharines office
Sara J. Premi
 905-688-8039 (Direct Line)
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Ms. Sheila Wilson
 Haldimand County
 45 Munsee Street N., P.O. Box 400
 Cayuga, ON N0A 1E0

Dear Ms. Wilson:

Re: Legal Services Request PECD-17-03 - Access to Pools

This response is further to the above-noted LSR which asks the following questions:

1. Can the County restrict access to County pools to residents only and not allow non-residents in?
2. Can the County allow free access to its pools and charge non-residents to enter?

Our response to the above-noted questions is found, in reverse order, below.

1. Can the County allow free access to its pools and charge non-residents to enter?

In our opinion, the answer to this question is yes.

The *Municipal Act* authorizes a municipality to impose fees or charges for persons for services or activities provided or done by or on behalf of it. Pursuant to this authority, Haldimand County has enacted By-law 1877-17, which is the County's User Fee By-law. The *Municipal Act* gives clear authority in respect of the imposition of fees and charges for services. Previously, the Act explicitly provided that a by-law could, in providing fees and charges that vary on any basis that the municipality deems appropriate, including whether the class of persons paying the fee is a resident or non-resident of the municipality. While this language has been removed, the broad by-law making authority in the *Municipal Act* remains.

In our opinion, this would be an appropriate differentiation in a user fee by-law.

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Please keep in mind that any user fee imposed would have to be done pursuant to the parameters of Section 391 of the *Municipal Act*. A user fee could not be imposed on non-residents for the purpose of or which would act as a deterrent to access to the pool.

2. Can the County restrict access to its pools to residents only and not allow non-residents to use the facilities?

In our opinion, the answer to this question is no.

There is no doubt that the *Municipal Act* provides a municipality with broad authority to provide any service or thing that the municipality considers necessary or desirable for the public. However, any municipal action is subject to the Canadian Charter of Rights and Freedoms, including Section 7. In our view, a by-law excluding non-residents from accessing a public pool could be subject to a challenge under Section 7, as the by-law would violate that individual's right to liberty through restricting an individual from having access to public places where others are free to go.

There is precedent in law for the proposition that while the government may restrict the use of government property for valid purposes, that is not an absolute right, and the government does not have complete discretion to treat its property as would a private citizen. The underlying principle in the law is that public property is different from private property and this supports the notion that the County cannot exclude non-residents from accessing its pools.

If you have any questions or concerns with respect to the above, or wish to discuss this correspondence, please do not hesitate to contact the undersigned.

Yours very truly

Sullivan Mahoney LLP

Per:

Sara J. Premi

SJP:bj