

Presentation to the  
Regional Public Works  
Committee at its  
Meeting on  
December 3, 2024  
on behalf of  
1218691 Ontario Inc.

Re: Hauled Sewage Rate Review

**SULLIVAN | MAHONEY**<sup>LLP</sup>  
LAWYERS

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**Municipal Act, 2001**  
**S.O. 2001, CHAPTER 25**

## **PART XII FEES AND CHARGES**

### **Definitions**

**390** In this Part,

“by-law” includes a resolution for the purpose of a local board; (“règlement municipal”)

“fee or charge” means, in relation to a municipality, a fee or charge imposed by the municipality under sections 9, 10 and 11 and, in relation to a local board, a fee or charge imposed by the local board under subsection 391 (1.1); (“droits ou redevances”)

“local board” includes any prescribed body performing a public function and a school board but, for the purpose of passing by-laws imposing fees or charges under this Part, does not include a school board or hospital board; (“conseil local”)

“person” includes a municipality and a local board and the Crown. (“personne”) 2001, c. 25, s. 390; 2006, c. 32, Sched. A, s. 162.

### **Section Amendments with date in force (d/m/y)**

2006, c. 32, Sched. A, s. 162 - 01/01/2007

**By-laws re: fees and charges**

**391** (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons,

(a) for services or activities provided or done by or on behalf of it;

(b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and

(c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

**Restriction, fees and charges**

**394 (1)** No fee or charge by-law shall impose a fee or charge that is based on, is in respect of or is computed by reference to,

(a) the income of a person, however it is earned or received, except that a municipality or local board may exempt, in whole or in part, any class of persons from all or part of a fee or charge on the basis of inability to pay;

(b) the use, purchase or consumption by a person of property other than property belonging to or under the control of the municipality or local board that passes the by-law;

(c) the use, consumption or purchase by a person of a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the by-law;

(d) the benefit received by a person from a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the by-law; or

(e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources. 2001, c. 25, s. 394 (1); 2006, c. 32, Sched. A, s. 166.

**Municipal Act,  
2001**

**ONTARIO**  
**REGULATION**  
**584/06 FEES AND  
CHARGES**

**Consolidation Period:** From April 1, 2024 to the [e-Laws currency date](#).

Last amendment: [112/24](#).

Legislative History: [227/22](#), [112/24](#).

*This is the English version of a bilingual regulation.*

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**Capital costs**

2. (1) A municipality and a local board do not have power under the Act to impose fees or charges to obtain revenue to pay capital costs, if as a result of development charges by-laws or front-ending agreements under the *Development Charges Act, 1997* or a predecessor of that Act that was passed or entered into before the imposition of the fees or charges, payments have been, will be or could be made to the municipality or local board to pay those costs. O. Reg. 584/06, s. 2 (1).

(2) For the purpose of subsection (1),

“capital costs” has the same meaning as it has in the *Development Charges Act, 1997*

“payments” do not include amounts the municipality or local board has refunded or is required to refund under the *Development Charges Act, 1997*. O. Reg. 584/06, s. 2 (2).

**CASE LAW**



**Greater Toronto Apartment Assn. v. Toronto (City)**

Ontario Judgments

Ontario Superior Court of Justice

T.R. Lederer J.

Heard: June 25-26, 2012.

Judgment: August 10, 2012.

Court File Nos. CV-09-379099, CV-10-406007

**[2012] O.J. No. 3866** | 2012 ONSC 4448

27. Counsel for 373041 Ontario Limited goes on to argue that, in any event, the fee charged does not fit within the terms of the legislation and, on that basis, should not be allowed to stand. As we have seen, the *City of Toronto Act, 2006* authorizes the imposition of fees for services provided by the City. The fee is to be directed to a specific purpose. Counsel says there is more than this in the relationship between the service provided and the fee collected. In making this submission, reliance was placed on *Eurig Estate (Re)*.<sup>18</sup> The case considered the fees required to be paid in order to obtain letters probate. The *Administration of Justice Act* provided that the Lieutenant Governor in Council may make regulations requiring the payment of "fees in respect of proceedings in any court" and prescribing the amounts to be paid<sup>19</sup>. Section 2 of O. Reg. 293/92 outlined a schedule of fees set according to the value of the estate (*ad valorem* fees) which had to be paid in order to obtain a grant of probate. An application was made for an order that letters probate be issued without payment of the probate fee and for a declaration that the regulation which required that payment was unlawful. The Supreme Court of Canada applied the criteria found in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* and went on to identify the nexus between the quantum charged and the cost of the service provided as a factor that generally distinguishes a fee from a tax. A nexus must exist between the quantum charged and the cost of the service in order for a levy to be constitutionally valid.<sup>20</sup> Otherwise, the charge is a tax. In *Eurig Estate (Re)*, the court found that there was no nexus, that the fee was a tax and that it was not constitutionally valid.

## 1736095 Ontario Ltd. v. Waterloo (City)

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court - Hamilton, Ontario

G.P. DiTomaso, A.L. Harvison Young and M.G. Ellies JJ.

Heard: June 2, 2015.

Judgment: October 22, 2015.

Divisional Court File No.: DC-13-514

[2015] O.J. No. 5462 | 2015 ONSC 6541 | 2015 Carswell Ont 16126 | 260 A.C.W.S. (3d) 380 | 340 A.C. 290 | 46 M.P.L.R. (5th) 1

45. In determining whether a levy is a tax or a fee, the courts have applied a five-part test. A levy will be found to be a tax where:

- (a) it is enforceable by law;
- (b) it is imposed under the authority of the legislature;
- (c) it is levied by a public body;
- (d) it is intended for a public purpose; and,
- (e) there is no nexus between the charge and the cost of providing the service or program to those subject to the license fee.<sup>15</sup>

# **CONSULTANT'S REPORT**

**Niagara Region**

# **Hauled Sewage Rate Review**

## **Final Report**

Wednesday, June 19, 2024

Project No. T001748A

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## 7 Conclusions and Recommendations

Hauled sewage takes up capacity at the wastewater treatment plants and increases their operation and maintenance (O&M) costs. Although the volume of hauled sewage received is small relative to the overall volume of wastewater treated at the plants, hauled sewage typically has significantly greater pollutant concentrations than wastewater.

CIMA+ completed a review of the Region's hauled sewage rate. As part of the review, other municipalities were surveyed.

All municipalities surveyed charge for hauled sewage. Like other municipalities, the Region applies a single rate per unit volume to hauled sewage regardless of the type and strength of the waste.

The Region's rate is significantly lower than that charged by other municipalities (by a factor of 2).

The Region's current rate does not allocate any funds toward capital cost rate recovery.

CIMA's recommendation is that the current rate applied by the Region is not leading to full cost recovery. CIMA's recommendation is to include the O&M and capital cost rates related to treating hauled sewage in the hauled sewage rate.

It is difficult to quantify the operation and maintenance costs associated with hauled sewage. It is understood, however, that hauled sewage results in significant organic and solids loading to the plants relative to regular wastewater.

Different methods to estimate the O&M Cost Rate associated with hauled sewage were compared. Various methods allocating cost in proportion to the strength/pollutant concentration of the hauled sewage discharge were considered.

The capital cost rate related to the treatment of hauled sewage was estimated in proportion of the loading/relative strength of the hauled sewage relative to domestic sewage. This was used to express the hauled sewage in terms of residential unit equivalents which were then applied a wastewater development charge.

The methodology outlined in this report does not account for the capital cost rate related to the asset management (rehabilitation and replacement) of plant assets associated with the treatment of hauled sewage. This cost is very difficult to attribute to hauled sewage.

Different approaches to setting hauled sewage rates were evaluated based on their ability to achieve full cost recovery, their fairness, consistency with the volume equivalency rate and industrial surcharge rates and practicality/simplicity of implementation. All approaches considered recognize that the rates should allow the Region to recover both capital and O&M cost rates related to the treatment of hauled sewage.

Due to its simplicity for enforcement and billing, it is recommended that the Region continue to use a single rate regardless of the type of discharge.

To achieve full cost recovery, the single rate would have to be increased from \$46/1,000 imp gal to \$252/1,000 imp gal. This value would mean that the Region would go from having the lowest rate of all municipalities surveyed, to the highest.

Implementing such a high rate would likely be impractical and would likely face significant political resistance. A potentially more palatable approach would be gradually increase the rate so it matches the average rate charged among the municipalities surveyed (\$90/1,000 imp gal). A review of the rates should be carried out every five years to assess changes in operating and capital cost rates.

Given the significant increase that would be required, a phased implementation approach is recommended. A possible approach would be as follows:

**Table 9: Annual percentage growth rate calculation**

Year	Recommended Rate Increase	Rate (\$/1,000 imp. gal)
1	19%	55
2	16%	64
3	14%	72
4	12%	81
5	11%	90

The Region should allocate the revenue recovered through the hauled sewage rates to both their operating and capital budgets in a 50:50 split.

An annual administrative fee should also be applied to the various hauling companies on a per card/vehicle basis.