

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.,**

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**SUPPLEMENTARY BRIEF OF AUTHORITIES OF THE CERTAIN CURZON  
PURCHASERS**

June 18, 2019

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**INDEX**

| <b>TAB</b> | <b>DESCRIPTION</b>   |
|------------|--|
| 1.         | Definition of "Levy," Cambridge English Dictionary (online, retrieved 2019/06/18)                                  |
| 2.         | Definition of "Levy," Black's Law Dictionary, 7 <sup>th</sup> Edition, page 919                                    |
| 3.         | Definition of "Levy," Words & Phrases Judicially Defined in Canadian Courts and Tribunals, Volume 5, pages 276-279 |
| 4.         | <i>Mississauga (City) v. Tradmor Investments Ltd.</i> , 1994 Canlii 10570 (ONSC)                                   |





Search English

Meaning of **levy** in English

≡ Contents



# levy

*noun* [C] • UK /'lev.i/ US /'lev.i/

- ★ **an amount of money, such as a tax, that you have to pay to a government or organization:**

*They **imposed** a five percent **levy on** alcohol.*

+ Thesaurus: synonyms and related words

# levy

*verb* [T] • UK /'lev.i/ US /'lev.i/

- ★ **(of a government or organization) to demand an amount of money, such as a tax, from a person or organization:**

*A new tax was **levied on** consumers of luxury goods.*

*The City Council can **levy a fine** of \$250 for a first offence.*

+ More examples

+ Thesaurus: synonyms and related words

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Search English



# levy

noun [C] • US /'lev-i/

- ★ **an amount of money, such as a tax, that you have to pay to a government or organization:**

*A levy was imposed on cotton imports.*

## > levy

verb [T] US /'lev-i/

*Taxes and fees levied on motorists would pay for the new highway.*

(Definition of "levy" from the **Cambridge Academic Content Dictionary** © Cambridge University Press)

## "levy" in Business English

# levy

noun [C] • UK /'levi/ US PLURAL levies FINANCE , TAX

- ★ **an amount of money, such as a tax, that has to be paid to a government or organization:**

*The financial authority is to impose a levy on every financial product sold.*

**be exempt from/pay a levy** *Social Security income that resides in a bank account is exempt from a levy.*

**abolish/end a levy** *The government plans to abolish a levy on equities trading.*

**Compare**  
**capital tax**

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Search English



★ **to officially ask for an amount of money, such as a tax, for a government or organization:**

*levy a tax on sth* The tax is levied on companies' energy use.

(Definition of "levy" from the **Cambridge Business English Dictionary** © Cambridge University Press)

### Translations of "levy"

in French



prélever, percevoir, levée...



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What is the pronunciation of levy?

**browse**

^ levitating  
levitation  
levity  
levodopa BETA  
levy  
lewd  
lewdly

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ment's rate of return. 3. The advantage obtained from using credit or borrowed funds rather than equity capital. 4. The ratio between a corporation's debt and its equity capital. — Also termed *leverage ratio*. 5. The effect of this ratio on common-stock prices.

**leverage, vb.** 1. To provide (a borrower or investor) with credit or funds to improve speculative ability and to seek a high rate of return. 2. To supplement (available capital) with credit or outside funds. 3. To fund (a company) with debt as well as shareholder equity. 4. *Antitrust*. To use power in one market to gain an unfair advantage in another market. 5. *Insurance*. To manipulate two coverages, as by an insurer withholding settlement of one claim to influence a claim arising under another source of coverage.

**leverage contract.** An agreement for the purchase or sale of a contract for the future delivery of a specified commodity, usu. silver, gold, or another precious metal, in a standard unit and quantity, for a particular price, with no right to a particular lot of the commodity. • A leverage contract operates much like a futures contract, except that there is no designated contract market for leverage contracts. The market sets the uniform terms of a futures contract. But in a leverage contract, the individual merchant sets the terms, does not guarantee a repurchase market, and does not guarantee to continue serving or acting as the broker for the purchaser. Leverage contracts are generally forbidden for agricultural commodities. 7 USCA § 23(a). Cf. FUTURES CONTRACT.

**leveraged buyout.** See BUYOUT.

**leveraged lease.** See LEASE.

**leveraged recapitalization.** See RECAPITALIZATION.

**leverage fund.** See *dual fund* under MUTUAL FUND.

**leverage ratio.** See LEVERAGE (4).

**leveraging up.** See *leveraged recapitalization* under RECAPITALIZATION.

**leviable** (lev-ee-ə-bəl), *adj.* 1. Able to be levied; assessable <the fine is leviable on each offense>. 2. Able to be levied upon; seizable in execution of a judgment <leviable goods>.

**levir** (lee-var), *n.* [Latin] *Roman law*. 1. A husband's brother. 2. A wife's brother-in-law.

**levis** (lee-vis), *adj.* [Latin] *Hist.* Light; trifling.

**levis culpa.** See CULPA.

**levis nota** (lee-vis noh-tə), *n.* [Latin] *Hist.* Slight mark or brand.

**levissima culpa.** See CULPA.

**levy** (lev-ee), *n.* 1. The imposition of a fine or tax; the fine or tax so imposed. — Also termed *tax levy*. 2. The enlistment of soldiers into the military; the soldiers so enlisted. 3. The legally sanctioned seizure and sale of property; the money obtained from such a sale. — Also termed (in sense 3) *levy of execution*.

**wrongful levy.** A levy on a third party's property that is not subject to a writ of execution.

**levy, vb.** 1. To impose or assess (a fine or a tax) by legal authority <levy a tax on gasoline>. 2. To enlist for service in the military <the troops were quickly levied>. 3. To declare or wage (a war) <the rival clans levied war against each other>. 4. To take or seize property in execution of a judgment <the judgment creditor may levy on the debtor's assets>.

**levy court.** See COURT.

**levy en masse.** A large conscription or mobilization of troops, esp. in response to a threatened invasion. — Also spelled *levée en masse*; *levy in mass*.

**levy of execution.** See LEVY (3).

**lewd, adj.** Obscene or indecent; tending to moral impurity or wantonness <lewd behavior>.

**lewd and lascivious cohabitation.** See *illicit cohabitation* under COHABITATION.

**lewd house.** See DISORDERLY HOUSE (2).

**lewdness.** Gross, wanton, and public indecency that is outlawed by many state statutes; a sexual act that the actor knows will likely be observed by someone who will be affronted or alarmed by it. Model Penal Code § 251.1 (1997). Cf. INDECENT EXPOSURE; OBSCENITY.



## LEVEL OF VALUES

### LEVEL OF VALUES

#### Supreme Court of Canada

♦ Section 4 [of the *Act Respecting the Assessment of Property for Taxation in Municipalities* in 1981 and 1982, S.M. 1980, c. 71] does not, of course, deal directly with the assessment produced under the *City of Winnipeg Act*, S.M. 1971, c. 105. It simply provides that "the same level of values as were used in assessing lands... for the year 1980" shall apply when making assessments for the years 1981 and 1982.

When governments elsewhere were faced with the need to provide a plateau or a maintenance of the status quo pending a revision or remodelling of the assessment procedures, more precise provisions were enacted which clearly froze the actual assessments.

... the Manitoba legislation does not amend, by express or by necessary inference, the pre-existing assessment legislation, either by the deletion from or the addition to such legislation of any specified provisions. Rather, certain specific directives relating to the preparation of assessments for specified future years have been superimposed upon the existing statutes. The amount of the assessed value is not in terms frozen; the new legislative program is aimed at the technique to be applied in determining the assessment. In short, the yardstick and not the assessment is frozen. Reduced to its bare essentials, s. 4(1), with respect to this appeal, simply specifies that the assessor shall, in preparing the new assessment of property in the City of Winnipeg, do so "at the same level of values as were used in assessing lands... for the year 1980".

(Municipal Law)

Morguard Properties Ltd. v. Winnipeg (City) (1984), 24 M.P.L.R. 219 at 232, [1984] 2 W.W.R. 97, 25 Man. R. (2d) 302, 3 D.L.R. (4th) 1, 50 N.R. 264, [1983] S.C.R. 493, 6 Admin. L.R. 206 the court per Estey J.

## LEVIED

See also LEVY.

### Alberta

♦ ... it is argued on behalf of the defendant that the money in question was not "levied" by the sheriff but was paid to him because of the order for removal and sale under which the goods were advertised for sale but not sold. It is said that "levy" includes both seizure and sale and that there having been no sale the money cannot be said to have been "levied."

This argument is unsound in my opinion. The money was not paid to the sheriff because of the

order for sale but by the compulsion of seizure and the means taken to realize the money was therefore "levied" within the meaning of *The Creditors' Relief Act* [R.S.A. 1972, c. 88], and there being another execution against the sheriff's hands against the property of the plaintiff, the sheriff must act under that statute in plain terms of which all priority among creditors by execution is abolished. If authority was needed reference may be made to *Mortimore v. Cragg* (1878) 3 C.P.D. 216... In that case Lord J.J. said:

A levy in its legal meaning seems to me to be where goods are seized and more is obtained by the compulsion of the seizure and does not necessarily comprise "sale" at all.

... and again this learned Judge says:

There is a "levy" when anything is obtained by the compulsion of seizure, although there is no sale.

(Creditors and Debtors)

Badiuk v. Moore, [1929] 3 W.W.R. 115 at 117 [1930] 1 D.L.R. 47 Alta. (Dist. Ct.) Ford J.

### Ontario

♦ Imposing a rate is an act of the council, and is not done through the collector or any other municipal officer; and "levied" must, therefore, be read as meaning "collected".

(Education Law)

Therriault v. Cochrane (Town) (1914), 30 O.L.R. 367 at 372, 15 D.L.R. 675 (C.A.) the court per Meredith C.J.O.

♦ Section 14 of the agreement [of purchase and sale] indicates that the vendor's proportionate amount of realty taxes shall be apportioned to the purchaser to closing. The section goes on to define, or clarify, the issue of realty taxes and says "realty taxes... shall be estimated by the vendor for the calendar year in which the action is completed and shall be adjustable at such sum has been paid by the vendor notwithstanding that the same may not by the of completion have been levied or paid..."

The word "levy", according to the *Macquarrie Webster 3rd New International Dictionary* means "to impose or collect (tax) by process or by authority." By that definition, therefore, it would appear that pursuant to the vendor is obligated to pay a proportionate amount of the actual taxes for the calendar year in which the transaction is completed when the municipal authority imposes those taxes provided the taxes are imposed within the calendar year in which the transaction is completed.

## LEVY

and does not necessarily comprise "sale" at all.

That observation was quoted by Ford, J. ... in *Badiuk v. Moore*, [1929] 3 W.W.R. 115 (Alta. T.D.) at p. 117... there is dictionary support for interpreting the word "levy" as connoting the taking of all the steps necessary to assess and collect the particular financial obligation in question... However, it does not follow that in every statute the word "levy" has such a broad meaning.

... I can see no reason for assigning different senses to the words "impose" and "levy" as used in the two sections.

(Municipal Law)

Chateau Developments Ltd. v. Edmonton (City) (1977), 7 A.R. 612 at 621, 622, 4 Alta. L.R. (2d) 19, 4 M.P.L.R. 25 (T.D.) McDonald J.

### Newfoundland

♦ To levy means to take all the necessary steps to enforce payment, that is, such steps as under the particular circumstances of the case would be reasonable and proper.

Each of the terms, levy, seizure and execution are synonymous in that each signifies the action of the sheriff in carrying out the duty imposed upon him, to seize and sell the property and satisfy the judgment with the money realized.

(Execution)

Bayview Estates Ltd., Re (1980), 28 Nfld. & P.E.I.R. 225 at 243, 244, 79 A.P.R. (Nfld. T.D.) Mahoney J.

### Nova Scotia

♦ Under Order 46, Rule 3, it is provided that "the sheriff to whom a writ of attachment is directed shall levy for the amount endorsed on the writ with \$120 for probable costs." And then the *Mines Act* [R.S.N.S. 1900, c. 18] provides for its registry as to bind the interest in the mine.

The word "levy" in the rule just cited is an elastic word. In the case of land, levying is effected under the provisions of the *Registry Act*, R.S.C. 137, by registry, and under the *Mines Act* there are provisions somewhat similar to those in the *Registry Act*. No manual seizure is or could be required as in the case of chattels. No one would dispute that a leasehold interest can be sold under execution: Mather on Execution, p. 93. Levying, except in respect to chattels, is carried out by registration under our statutes.

... the use of the word "levied" in para. 14 of the agreement, seems to have no other legitimate meaning except to anticipate a situation in which a tax for any given year may not have been levied at the date of completion.

(Land: Taxation)

South v. Building Assn. (1982), 25 R.P.R. 194 at 196, 198, 199 (Ont. Prov. Ct.) Valcourt Small J.

### Quebec

... make a "levy" under an execution there can be a seizure. Without a seizure there can be no levy: *Mortimore v. Cragg* (1878), 47 Q.B. 348...

(Execution)

... and Loan Co. v. Cook (1910), 3 Sask. L.R. 1212, 14 W.L.R. 727 (T.D.) Lamont J.

## LEVIES

### Western Territories

... the [Creditor's Relief Ordinance, S.W.T. 1898, c. 26] is describing a levy it already adds words to describe that of the levy is to be made. In section 3 (d) it says the words "levy a further amount upon the property of the debtor" - "further" is here used in reference to the levy mentioned in the disjunctive phrase in section 3 (a). Now to be a levy upon the property of the debtor must have been a previous "levy upon the property of the debtor," and the only previous mentioned is that in section 3 (a)...

(Mortgages and Bills of Sale)

... v. High River Trading Co. (1899), 4 L.R. 109 at 116 (N.W.T. C.A.) McGuire J. concurring with Scott J.

## LEVY

also EXECUTION; FEE; IMPOSE; REDEVELOPMENT LEVY; WATER-MAIN LEVY.

### Levy

... for the word "levy" [in the *Municipal Assessment Act*, R.S.A. 1970, c. 246, ss. (4), 242.1(8)], it has been defined by Brett, J. in *Mortimore v. Cragg* (1878), 3 C.P.D. 216, as follows:

A levy in its legal meaning seems to me to be where goods are seized and money is obtained by the compulsion of the seizure,

## LEVYING

### (Mines and Minerals)

Bank of Montreal v. Wallace (1906), 1 E.L.R. 228 at 229 (N.S. T.D.) Graham E.J.

### Ontario

◆ Clearly, the permit by-law sets out a rather straightforward formula to ascertain what the fee would be to obtain a building permit for the property. Nowhere in the permit by-law is there reference to the amount required pursuant to the conveyance by-law and/or the conveyance of the parkland. I found the permit by-law to be determinative of the issue of what is meant by the term "normal fee".

My finding is further supported by a review of the terms "fee" and "levy" in the Concise Oxford Dictionary, 7th ed. (Oxford: Clarendon Press, 1987). The word "fee" is defined as "a sum payable to a public officer for performing his function." In essence, "fees" are in relation to services rendered. A levy, on the other hand, is a tax, "appropriation by the State of a fixed proportion of all or some of the wealth on the country." I believe that the amount called for pursuant to the conveyance by-law fits squarely into the definition of a levy rather than a fee. There are no services rendered in relation to the conveyance by-law.

### (Municipal Law; Sale of Land; Taxation)

812069 Ontario Ltd. v. Bramalea Ltd. (1990), 13 R.P.R. (2d) 7 at 16 (Ont. Gen. Div.) Potts J.

◆ [In *Mortimore v. Cragg* (1878), 47 L.J.Q.B. 348 (U.K. C.A.), Brett L.J. said:]

A levy in its legal meaning seems to me to be where goods are seized and money is obtained by the compulsion of the seizure; and does not necessarily compromise sale at all. And again this judge says: -  
There is a levy when anything is obtained by the compulsion of seizure, although there is no sale.

It therefore follows that the sheriff in this case did not complete the levy [under s. 5(1) of the *Creditors' Relief Act*, R.S.O. 1950, c. 78] until the date on which he received the money as a result of the seizure ...

### (Creditors and Debtors)

Benjamin Moore & Co. v. Finnie (1954), [1955] 1 D.L.R. 557 at 559, [1954] O.W.N. 772 (Co. Ct.) Lang Co. Ct. J.

### Saskatchewan

◆ Plaintiff's counsel points out that the only proof of the plaintiff's poverty is based upon the

sheriff's return of nulla bona. He also directs attention to the fact that this return does not disclose it to be the sheriff's opinion that the circumstances are such that no interest of the plaintiff or his family will be served by the levy being withheld. He submits that there can be no such return without a levy and that in the absence of such an expression of opinion the return is invalid and inadmissible in proof of the plaintiff's poverty.

According to authority the term "levy" in such a statute implies a seizure of goods for the purpose of extracting payment: Stroud, 2nd ed., p. 1058. In practice it means a seizure: Bouvier, vol. 2, p. 194.

Hence ... the proper inference to be drawn from the sheriff's return of nulla bona is that he has searched for goods belonging to the plaintiff and exigible under the execution and found none. The return thus excludes the possibility of a levy. (Execution)

Chambers v. Louis, [1943] 1 W.W.R. 497 at 499, 500 (Sask. C.A.) Mackenzie J.A.

◆ The amount tendered by the plaintiffs, if accepted by the Sheriff, could not be said to be moneys "levied" by the Sheriff under the execution. Nor could it be said to be money made out of the property of the execution debtor. To make a "levy" under an execution there must be a seizure. Without a seizure there can be no levy: *Mortimore v. Cragg*, 47 L.J.Q.B. 348 (Execution)

Trust & Loan Co. v. Cook (1910), 14 W.L.R. 727 at 729, 3 Sask. L.R. 210 (T.D.) Lamont J.

## LEVYING

### Supreme Court of Canada

◆ The word "levying", the equivalent of "imposing", signifies the execution of legislative power which charges on person or property the obligation of or liability for a tax. (Taxation)

Vancouver (City) v. British Columbia Telephone Co., [1951] S.C.R. 3 at 6, [1950] 4 D.L.R. 289 Rand J. (Rinfret C.J.C. concurring)

## LEX CAUSAE

### Ontario

◆ The *lex causae* is the system of law found to be applicable under the conflict of laws rule of the forum ([J.G.] Castel, Canadian Conflict of Laws,

2d ed. (Toronto: Butterworths, 1986), at pp. 15-16).

### (Conflict of Laws)

243930 Alberta Ltd. v. Wickham (1990), 14 R.P.R. (2d) 95 at 98, 73 D.L.R. (4th) 474, 75 O.R. (2d) 289, 40 O.A.C. 367 (C.A.) Lacourcière J.A.

## LEX CRESCIT ET DEBET CRESCERE

### British Columbia

◆ To be generally reported as having been guilty at any time of either kind of conduct alluded to, would be to put the plaintiff out of the pale of society. I have not found any case of the kind in question here, but I do not think the law is unequal to the occasion, for, in my opinion, if one may coin a maxim, *lex crescit et debet crescere*. (Defamation)

W. v. A. (1908), 13 B.C.R. 333 at 337 (C.A.) Hunter C.J.A. (Irving J.A. concurring)

## LEX ET PARLIAMENTI CONSUETUDO

### Supreme Court of Canada

◆ The Law of Parliament is defined by Coke [4 Inst. 14] ... and Blackstone [1 Bl. Com. 163] ... thus:

As every Court of Justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs; so the High Court of parliament hath also its own peculiar law, call the *Lex et consuetudo Parliamenti*.

"This law", says May, in his treatise on the law, privileges, proceedings and usage of Parliament [3d Ed., p. 60].

It is admitted to be part of the unwritten law of the land, and as such, is only to be collected, according to the words of Sir Edward Coke, "Out of the rolls of Parliament and other records, and by precedents and continued experience."

### (Constitutional Law)

Landers v. Woodworth (1878), 2 S.C.R. 158 at 208 Henry J.

## LEX FORI

### Ontario

◆ As to the law, this court held in *Pelliccia v. Pelliccia* (1990), 24 R.F.L. (3d) 226 ... that

## LIABILITIES

◆ ... *lex fori* is the law of Ontario, where the legal proceedings were taken. (Conflict of Laws)

243930 Alberta Ltd. v. Wickham (1990), 14 R.P.R. (2d) 95 at 98, 73 D.L.R. (4th) 474, 75 O.R. (2d) 289, 40 O.A.C. 367 (C.A.) Lacourcière J.A.

## LEX PROSPICIT NON RESPICIT

### Ontario

◆ ... the presumption [of *lex prospicit non respicit*] as stated in 36 Hals., 3rd ed., p. 423, para. 644 [is]:

The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are *prima facie* prospective; and retrospective effect is not to be given to them unless, by express or necessary implication, it appears that this was the intention of the legislature. (Statutes)

Ozog v. Ontario (Registrar of Motor Vehicles) (1979), 102 D.L.R. (3d) 147 at 149, 26 O.R. (2d) 178, 3 M.V.R. 166, 11 C.R. (3d) 54, 49 C.C.C. (2d) 566 (H.C.) Hughes J.

## LIABILITIES

See also *ALL DEBTS AND LIABILITIES, PRESENT OR FUTURE; CEASES TO MEET HIS LIABILITIES; DEBTS; DEBTS AND LIABILITIES; OBLIGATIONS.*

### Supreme Court of Canada

◆ It is nihil ad rem that until a dividend is declared no action on behalf of a shareholder lies to enforce its payment, and from that point of view it can no doubt be said that a company incurs no liability until a dividend is declared by it ... For a purchaser of common stock ... undeclared but overdue dividends on its preference shares were certainly a liability of the company, in the sense that he could obtain no dividend on his common shares before the payment of all accrued dividends on the preference shares, whether in fact a dividend had or had not been declared. (Corporations)

Fairhall v. Butler, [1928] S.C.R. 369 at 374, [1928] 3 D.L.R. 161 the court per Mignault J.

### British Columbia



**Mississauga (City) v. Tradmor Investments Ltd., 1994 CanLII 10570 (ON SC)**

Date: 1994-07-15  
 File number: 102/94  
 Other citations: 19 OR (3d) 313 — 73 OAC 153 — [1994] OJ No 1567 (QL)  
 Citation: Mississauga (City) v. Tradmor Investments Ltd., 1994 CanLII 10570 (ON SC), <<http://canlii.ca/t/g14nc>>, retrieved on 2019-06-18

**Re Corporation of the City of Mississauga  
 and Tradmor Investments Limited  
 [Indexed as: Mississauga (City) v. Tradmor Investments Ltd.]**

**19 O.R. (3d) 313  
 [1994] O.J. No. 1567  
 Action No. 102/94**

**Ontario Court (General Division), Divisional Court,  
 McMurtry C.J.O.C., Montgomery and Carruthers JJ.  
 July 15, 1994**

Planning -- Development control -- Park levy -- Cash in lieu of conveyance of lands for park purposes required as condition of subdivision approval -- Cash in lieu of conveyance of lands for parks also required as condition of development -- Payment required as condition of subdivision approval credited toward payment required as condition of development -- Planning Act, R.S.O. 1990, c. P.13, ss. 42, 51.

Planning -- Subdivision control -- Park levy -- Cash in lieu of conveyance of lands for park purposes required as condition of subdivision approval -- Cash in lieu of conveyance of lands for parks also required as condition of development -- Payment required as condition of subdivision approval credited toward payment required as condition of development -- Planning Act, R.S.O. 1990, c. P.13, ss. 42, 51.

In January 1987, T Ltd. became the owner of lands in the City of Mississauga. The lands had received, on March 1, 1985, draft plan approval for a plan of subdivision. Under what is now s. 51 of the Planning Act, as a condition of the approval, lands for park purposes were to be conveyed to the city or the city could require the payment of money in lieu of accepting the conveyance. Under s. 51, the value of the land is determined as of the day before the day of the draft approval of the plan.

In March 1987, T Ltd. sold the lands, but it agreed to pay the lot levies. Under what is now s. 42 of the Planning Act, a municipality may impose as a condition of development that lands for park purposes be conveyed or that cash be paid in lieu thereof. Under s. 42, the value of the land is determined as of the day before the day of the issuance of the first building permit required for the development.

In July 1987, relying on an appraisal dated February 12, 1987, the property officer for the city determined that the cash payment for parks as a condition of subdivision approval calculated under s. 51 was \$73,000 and the cash payment for parks as a condition of development calculated under s. 42 was \$180,000, for which the payment under s. 51 would be credited. The city advised T Ltd. that \$180,000 was payable for park levies of which \$73,000 was payable upon registration of the plan and \$107,000 upon issuance of the building permit. T Ltd. was advised that there would be a reappraisal if payment was not made within one year.

In November 1988, the property officer reappraised the property and determined that the cash payment for parks calculated under s. 51 was \$194,000 and the cash payment for parks development calculated under s. 42 was \$428,000. T Ltd. paid but disputed the amount and applied to the Ontario Municipal Board for a determination of what amount should be paid. The board concluded that only s. 51 applied and fixed the amount at \$180,000. The city appealed and T Ltd. sought to cross-appeal.

Held, the proper assessment was \$428,000; accordingly, the appeal should be allowed and the cross-appeal dismissed.

There was a contradiction in the board's reasons. It said that only s. 51 applied, but its assessment was made under s. 42 using a 1987 calculation. Section 42 for development was the applicable section and applied even though the lands were subject to a plan of subdivision. Subsection 42(8) ensures that any payment made as a condition of the approval of the plan of subdivision is credited to the payment under s. 42. The proper assessment under s. 42 was \$428,750.

APPEAL and CROSS-APPEAL from a determination of the Ontario Municipal Board of payments required under what are now ss. 42 and 51 of the Planning Act, R.S.O. 1990, c. P.13.

Statutes referred to Planning Act, R.S.O. 1980, c. 379 Planning Act, 1983, S.O. 1983, c. 1, ss. 41, 50 Planning Act, R.S.O. 1990, c. P.13, ss. 41(1), 42(1), (6), (9), 51(1), (5)(a), (8), (9) Authorities referred to Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (Markham: Butterworths, 1992), pp. 545-46

Roger B. Campbell, for applicant.

Karl D. Jaffary, Q.C., for respondent.

The judgment of the court was delivered by

MONTGOMERY J.: -- This is an appeal by the City of Mississauga ("the City") from a decision of the Ontario Municipal Board, dated July 20, 1993. The board fixed the lot levies payable by Tradmor Investments Limited ("Tradmor") at \$180,000 as cash in lieu of parkland as required under s. 50 of the Planning Act, 1983, S.O. 1983, c. 1 (now s. 51, R.S.O. 1990, c. P.13). Tradmor seeks leave to cross-appeal and reduce the levy to \$73,000.

### The Issue

Did the board correctly interpret and apply what are now ss. 51 and 42 of the Planning Act in assessing cash in lieu of parkland payments?

### Background

The subject lands were granted draft plan approval March 1, 1985. Tradmor became the owner of the lands on January 20, 1987, purchasing the property for \$1,275,000. In March 1987, Tradmor sold the property for \$5,064,000. Tradmor was obliged at the time of sale to pay the lot levies. The purchaser, Vista Homes, was obliged to begin construction within nine months of the closing date.

By letter dated July 14, 1987, the City informed Tradmor that the sum of \$180,000 was payable for park levies of which \$73,000 was to be paid at the time of the registration of the plan and the remaining \$107,000 to be paid when the building permit was issued. This \$180,000 represented the 5 per cent cash payment in lieu of parkland dedication. That letter further included a caution in these words:

For your information it is the City's policy that if the cash-in-lieu of park land dedication is not paid within one year of Council's approval, a reappraisal is carried out which could result in a revised cash payment.

The park levy was based on an appraisal dated February 12, 1987, prepared by Anna Skakun, property officer. She made two determinations. First, the cash-in-lieu payment payable under s. 42, determined as of the day before the date of the first building permit issuance, was \$180,000. Second, the cash-in-lieu payment under s. 51, determined as of the day before the draft approval of the plan of subdivision, February 28, 1985, was \$73,000. Once credit for the \$73,000 payable under s. 51 was taken into account, the amount payable under s. 42 would be \$107,000.

A servicing agreement and the financial agreement on the lands were entered into on October 31, 1988, more than one year after council's approval. In keeping with its policy, the City reappraised the property on November 4, 1988. Again, the appraisal was conducted by Anna Skakun.

In that later appraisal, Ms. Skakun determined the s. 51 valuation -- still using the valuation date of February 28, 1985 -- would result in a levy of \$194,000. The s. 42 valuation was then determined, using a new date, and fixed at \$428,750. The City then required Tradmor to pay levies based on that second set of appraisals.

Tradmor paid the \$194,000 on December 21, 1988. At the hearing, they claimed this amount was paid under protest, although the board found no written evidence of either the existence of such protest or the lack of protest. On November 30, 1988, Tradmor forwarded a cheque for the remaining \$234,350.

The relevant portions of the Planning Act, R.S.O. 1990, follow:

42(1) As a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land be conveyed to the municipality for park or other public recreational purposes. . . .

(6) The council of a municipality may require the payment of money to the value of the land otherwise required to be conveyed under this section in lieu of such conveyance and for the purpose of determining the amount of the payment the value of the land shall be determined as of the day before the day of the issuance of the building permit in respect of the development or, where more than one building permit is required for the development, as of the day before the day of the issuance of the first permit, and where the owner and the municipality are unable to agree on the value, either party may apply to the Land Compensation Board to have the value determined and the Board shall, in accordance as nearly as may be with the provisions of the Expropriations Act, determine the value of the land. . . .

(9) In the event of a dispute between a municipality and an owner of land as to the amount of land or payment of money in lieu thereof that may subsequently be required, as mentioned in subsection (8), either party may apply to the Municipal Board and the Board shall make a final determination in the matter. . . .

51(1) An owner of land or the owner's agent duly authorized in writing may apply to the Minister for approval of a plan of subdivision of the land or part thereof.

(5) The Minister may impose such conditions to the approval of a plan of subdivision as in the Minister's opinion are reasonable, having regard to the nature of the development proposed for the subdivision and, in particular, but without restricting in any way whatsoever the generality of the foregoing, the Minister may impose as a condition,

(a) that land to an amount to be determined by the Minister but not exceeding in the case of a subdivision proposed for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes; . . .

(8) Where the Minister has imposed a condition under clause

(5)(a) requiring land to be conveyed to the municipality, the municipality may, in lieu of accepting such conveyance, require the payment of money by the owner of the land,

(a) to the value of the land otherwise required to be conveyed; or

(b) where the municipality would be entitled to require a conveyance under subsection (7), to the value of the land that would otherwise be required to be so conveyed.

(9) For the purpose of determining the amount of any payment required under subsection (8), the value of the land shall be determined as of

the day before the day of the draft approval of the plan and where the owner and the municipality are unable to agree on the value, either party may apply to the Land Compensation Board to have the value determined and the Board shall, in accordance as nearly as may be with the provisions of the Expropriations Act, determine the value of the land.

Also note s. 41(1) which provides:

41(1) In this section, "development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in clause (a) of paragraph 101 of section 210 of the Municipal Act or of sites for the location of three or more mobile homes as defined in subsection 46(1) of this Act.

The board concluded that only s. 51 applied and not s. 42.

There appears to be a contradiction in the board's reasoning. It found that s. 42 did not apply but made its assessment under s. 42.

The parties agree that, if 5 per cent of the raw land had been given to the City under s. 51, that would have ended the matter. They also agree that there is a set-off of monies paid under s. 51 against monies payable under s. 42, if indeed s. 42 is the section appropriate to the calculation of cash in lieu.

Section 42 deals with approved land as opposed to raw land. Everything is ready to go as far as building is concerned. For this reason, it is common sense that the assessment is higher under s. 42. It reflects the increased value resulting from development.

It further appears that the board erred in law in deciding that the amount of cash in lieu payable under s. 42 was \$392,838, when all of the evidence at the hearing was to the effect that the amount payable under s. 42 was at least \$428,750.

In my view, the board was wrong when it decided that s. 42 of the Planning Act and By-law 636-83 passed thereunder did not apply to the development of Tradmor lands. The language of s. 42 is clear and unambiguous. Section 42 applied to the "development" of the subject lands. By-law 636-83 provided:

"development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot;

This definition of "development" is in accordance with the definition set out in s. 40 of the Planning Act, 1983 [now s. 41].

By its language, s. 41 of the Planning Act, 1983 [now s. 42] clearly applied to the development of lands subject to a plan of subdivision. The application of s. 41 [now s. 42] was not limited by its language to situations where there was to be a redevelopment or increase in density. If such was the intention of the legislature, in the comprehensive overhaul of the Planning Act, R.S.O. 1980, c. 379, it could have easily so provided. Section 41(8) [now s. 42(8)] ensured that any payment made as a condition of the approval concerning a plan of subdivision would be included in determining the amount which could be required under s. 41:

41(8) Where land has been conveyed to a municipality for park or other public purposes or a payment of money in lieu of such conveyance has been received by the municipality pursuant to a condition imposed under this section or under section 50 or section 52 or under a predecessor of any of such sections, the conveyance or payment, as the case may be, shall be included in determining the amount of land or payment of money in lieu thereof that may subsequently be required under this section on the development, further development or redevelopment of the lands or part thereof in respect of which the original conveyance or payment was received.

The provisions contained in s. 50 [now s. 51] of the Planning Act, 1983 related to the approval of the subdivision of land and represented a distinct process. The right of a municipality to recover cash in lieu under s. 50(7) and (8) was dependent upon the Minister (or its delegate, or the Ontario Municipal Board under s. 50(15) or (17)) imposing a condition requiring that land be conveyed to a municipality as parkland. Section 41 allowed a municipality to recover as of right (upon the municipality passing a by-law) cash in lieu of parkland. The amount of the payment was based on the value of the land as of the day before the first building permit was to be issued.

The board fell into error by relying on the evidence of Mrs. Grundland as to the meaning and intent of the legislation. She was not an expert and her opinion should not have been received: Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (Markham: Butterworths, 1992), pp. 545-46.

I am of the opinion that the proper assessment of cash in lieu of parkland is \$428,700. There is no purpose to be served in remitting the case to the board. For the reasons given, it follows that the cross-appeal must fail.

Costs to be addressed by FAX.

Order accordingly.

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CANADIAN IMPERIAL BANK OF COMMERCE  
Applicant

- and -

URBANCORP (LESLIEVILLE) DEVELOPMENTS  
INC. et al.  
Respondents

Court File No. CV-16-11409-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY BRIEF OF AUTHORITIES**  
**OF THE CERTAIN CURZON PURCHASERS**

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