

September 19, 2013

BY HAND DELIVERY

Mr. M. Rick O'Connor
Deputy City Clerk, City Solicitor
City of Ottawa
Legal Services
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Dear Mr. O'Connor:

Re: Complaint Pursuant to Section 257.85 of the *Education Act*

We are the solicitors for Ottawa Community Ice Partners (“OCIP”), a not-for profit corporation operators of a new recreational complex, currently under construction in Ottawa East (“Sensplex East”). The Sensplex East will be located in Shefford Park, adjacent to the existing J.B. Potvin Arena (“Existing Arena”), which will be integrated into the new Sensplex East facility.

We write to you today in the nature of a complaint by OCIP pursuant to section 257.85 of the *Education Act*, to the effect that there was an error in the application of the Education Development Charge by-laws of the following school boards levied and paid on the building permit application for the Sensplex East:

- a. Ottawa Carleton Separate School Board;
- b. Ottawa Carleton District School Board;
- c. Conseil des écoles publiques de l’Est de l’Ontario; and,
- d. Conseil des écoles catholiques du Centre-Est.

Reasons for the Complaint

Description of Project

Further to the RFP issued by the City of Ottawa (“City”) in mid 2012, the non-profit corporation OCIP was selected as the preferred proponent and entered into a P3 Project with the City to build Sensplex East. The new Sensplex East facility will include the Existing Arena, 3 new NHL sized ice surfaces, dressing room facilities, food and beverage facilities (including concession stand and full service restaurant), lobby and common space to be a community area and to host tournaments, new

office headquarters for the Ottawa District Hockey Association, and space for complementary tenants.

Background on the Terms and Conditions of the Municipal Capital Facilities Agreement and Ownership of the Lands

The Sensplex East facility project is a P3 project of OCIP and the City, designed to enable the City to provide municipal facilities and services to the community. As was done with the Sensplex West in Kanata in 2004 (which was also built as a P3 project with OCIP and the City), the City entered into a Municipal Capital Facility Agreement (“MCFA”) with OCIP to designate the Sensplex East facility and lands as a municipal capital facility. The City owns and will continue to own the land on which the new Sensplex East facility will be built, and has leased to OCIP the land necessary for the Existing Arena as well as the new facility in order to provide the municipal service. At the end of the 30 year P3 term, the lease will end, the Sensplex East facility (as built, operated and maintained by OCIP) will be transferred to the City, and the City will continue to own the lands, as well as operate the Sensplex East facility. The intent of the project is that the City eventually own and operate the Sensplex East facility and continue its use as a municipal service.

EDC were never levied on the construction of the Sensplex West. The Sensplex East project is identical in nature and purpose to the Sensplex West project.

Exemption under the Education Act

The *Education Act* and the Development Charges By-law of each of the affected Boards provide that EDC shall not apply to lands that are owned and are used for the purpose of a municipality. In this case, the P3 Agreement, together with the Municipal Capital Facility By-law and Agreement demonstrate exactly that. Specifically,

1. The land is owned by the City, OCIP is simply leasing it to provide a municipal service;
2. The Existing Arena is owned by the City, OCIP is simply leasing it to provide a municipal service; and,
3. The Sensplex East, as with the Sensplex West, is effectively owned by the City pursuant to the terms of the Municipal Capital Facility Agreement, all beneficial rights of ownership effectively remain with the City and the facility is providing a municipal service throughout the term of the Agreement.

Notice of all of this was provided to each of the Boards, together with MPAC and the Minister of Education by the City of Ottawa by letter dated January 11, 2013, from the City Clerk. In order to meet tight time frames, the EDC was paid at the time of permit issuance. The Education Development Charges were paid on July 2, 2013, so we remain within the ninety (90) days prescribed by the Education Act.

We would ask that the EDC be waived pursuant to the Act, and refunded to our client. Alternatively, we suggest that the amount of the Education Development Charge ("EDC") was incorrectly determined.

Notice may be given to the complainant at our address indicated above in care of the undersigned.

Yours very truly,



Michael S. Polowin

MSP:abh

cc: Toni Marcon-Stewart
Ian Baxter
Carolyn Bois
Pierre Tetrault
Client
Cynthia Elderkin

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