

Walton International Group Inc. and 1664531 Ontario Inc. (applicants) v. Administrator, Farm Property Class Tax Rate Program, Ministry of Agriculture, Food and Rural Affairs (respondent)  
(382/11; 2012 ONSC 4172)

**Indexed As: Walton International Group Inc. et al. v. Farm Property Class Tax Rate Program et al.**

Court of Ontario  
Superior Court of Justice  
Divisional Court  
Aston, Sachs and Herman, JJ.  
July 23, 2012.

**Summary:**

The applicants appealed the assessment of numerous properties on the basis that they should have been assessed in the farm property class under s. 8(2) of O.Reg. 282/98 under the Assessment Act (Ont.). The Agriculture, Food and Rural Affairs Appeal Tribunal adjourned the appeal without a fixed date pending this court's determination on two stated questions. Those questions focussed on what forms of land ownership met the requirements of s. 8(2) of the Regulation.

The Ontario Divisional Court determined the issues.

**Real Property Tax - Topic 661**

Assessment - Owner - General - The applicants appealed the assessment of numerous properties on the basis that they should have been assessed in the farm property class under s. 8(2) of O.Reg. 282/98 under the Assessment Act (Ont.) - The Agriculture, Food and Rural Affairs Appeal Tribunal adjourned the appeal without a fixed date pending this court's determination on two stated questions - Those questions focussed on what forms of land ownership met the requirements of s. 8(2) of the Regulation - At issue was whether lands that were beneficially, but not legally, owned by Canadians, qualified for the farm property class - The Ontario Divisional Court held that “the answer to the first question lies in a consideration of the principles discussed, above, under the heading ‘Legislative Context’, in particular, the presumption of consistent expression and the presumption against tautology. These presumptions are particularly important when construing a taxation statute, where there is a need for precision and clarity in order to ensure consistency, predictability and fairness” - In the conclusion, the court held that “the phrase ‘land owned by’ in s. 8(2)3 of the Regulation as it relates to real property is restricted to legal ownership. It does not include both beneficial and legal ownership.”

**Statutes - Topic 522**

Interpretation - General principles - Taxing statutes - [See **Real Property Tax - Topic 661**].

**Cases Noticed:**

Placer Dome Canada Ltd. v. Ontario (Minister of Finance), [2006] 1 S.C.R. 715; 348

N.R. 148; 210 O.A.C. 342; 2006 SCC 20, refd to. [para. 26].  
Springhill (Town) v. McLeod, [1929] 1 D.L.R. 882 (N.S.C.A.), refd to. [para. 29].  
Slough Estates Canada Ltd. v. Regional Assessment Commissioner, Region No. 15 et al. (2000), 131 O.A.C. 125; 48 O.R.(3d) 84 (C.A.), refd to. [para. 34].  
Minister of National Revenue v. Canada Trustco Mortgage Co., [2005] 2 S.C.R. 601; 340 N.R. 1; 2005 SCC 54, refd to. [para. 45].  
Sawers v. City of Toronto, [1901] 2 O.R. 717 (C.A.), refd to. [para. 60].  
Leistikow v. Ritchot (Municipality), [1923] 1 W.W.R. 1101 (Man. C.A.), refd to. [para. 60].  
First Place, Hamilton v Hamilton (City) (1979), 12 R.P.R. 121 (Ont. H.C.J.), refd to. [para. 60].  
Carsons' Camp Ltd. v. Municipal Property Assessment Corp. et al. (2008), 232 O.A.C. 297 (C.A.), refd to. [para. 63].

**Statutes Noticed:**

Assessment Act Regulations (Ont.), O.Reg 282/98, sect. 8(2) [para. 16].

**Authors and Works Noticed:**

Sullivan on the Construction of Statutes (5th Ed. 2002), pp. 214, 215 [para. 48].  
Walker, Jack, and Grad, Jerry, Ontario Property Tax Assessment (1998), p. 2-6 [para. 30].

**Counsel:**

Jeff G. Cowan, for the applicants;  
Christopher P. Thompson and Kristopher Crawford-Dickinson, for the respondent.

This stated case was heard at Toronto, Ontario, on June 15, 2012, by Aston, Sachs and Herman, JJ., of the Ontario Divisional Court. The following decision of the Divisional Court was delivered by Herman, J., on July 23, 2012.

Order accordingly.

Editor: Anick Ouellette-Levesque

**Statutes - Topic 522**

Interpretation - General principles - Taxing statutes - The applicants appealed the assessment of numerous properties on the basis that they should have been assessed in the farm property class under s. 8(2) of O.Reg. 282/98 under the Assessment Act (Ont.) - The Agriculture, Food and Rural Affairs Appeal Tribunal adjourned the appeal without a fixed date pending this court's determination on two stated questions - Those questions focussed on what forms of land ownership met the requirements of s. 8(2) of the Regulation - At issue was whether lands that were beneficially, but not legally, owned by Canadians, qualified for the farm property class - The Ontario Divisional Court held that "the answer to the first question lies in a consideration of the principles discussed, above, under the heading 'Legislative Context', in particular, the presumption of consistent expression and the presumption against tautology. These presumptions are particularly

important when construing a taxation statute, where there is a need for precision and clarity in order to ensure consistency, predictability and fairness” - In the conclusion, the court held that “the phrase ‘land owned by’ in s. 8(2)3 of the Regulation as it relates to real property is restricted to legal ownership. It does not include both beneficial and legal ownership.”