

**CASE COMMENTARY**  
**COURT OF APPEAL DIRECTS THE MGB TO RE-HEAR EXEMPTION APPEAL**

Prepared by Carol Zukiwski  
Reynolds Mirth Richards & Farmer LLP

The Court of Appeal recently upheld the Queen's Bench decision that the MGB erred in its interpretation of the phrase "held by". The property before the MGB was Vista Village, an assisted living seniors care facility located in the Town of Pincher Creek and owned by the Good Samaritan Society. Before the MGB the Society argued that the property was exempt from taxation pursuant to a number of different sections under the MGA, including s. 362(1)(g.1) [property held by a health authority], s. 362(1)(h) [nursing home], s. 362(1)(m) [held by a foundation under the *Senior Citizens Housing Act*], s. 362(1)(n)(iii) [charitable or benevolent purpose], and s. 362(1)(n)(iv) [lodge accommodation as defined in the *Alberta Housing Act*].

The Board in MGB 069/05 held that Vista Village was exempt pursuant to s. 362(1)(g.1) [property held by a health authority] and did not address the other exemption sections. The argument centered on the meaning of "held by" in s. 362(1)(g.1). The Board accepted the prevailing Queen's Bench authority that "held by" is broader than ownership, and that property can be held by owing it, leasing it or by physically controlling it. The Health Authority did not own or lease Vista Village. However the Board found that Vista Village was "held by" the Health Authority because the Health Authority had a "sufficient degree of control" as a result of a contract with the Society. The contract contained terms for funding, construction of the facility and admission of seniors to the facility.

On judicial review, Justice Sanderman of the Court of Queen's Bench quashed the Board's order because the Board erred in finding "physical control" of the property was created by the contract between the Good Samaritan Society and the Health Authority.

The Society appealed to the Court of Appeal. Even though the Court of Appeal used a less strict standard of review than Justice Sanderman, they still upheld his decision to quash Board Order MGB 069/05 and send the appeal back for re-hearing. The Court of Appeal said "*The MGB failed to draw any distinction between the word control and physical control. It cannot be said on any reasonable interpretation of the relationship between the Health Region and Vista Village, including a review of their agreement, that the Health Region is in physical control over the property. If the MGB's decision was intended to expand the definition beyond the requirement for physical control, it ought to have said so and given reasons why it was entitled to do so. We do note however, the section is clear: the control must relate to the physical property itself.*"

Given the interest generated in this case as a result of the number of assisted care facilities throughout Alberta, we will continue to report further developments. Copies of the court decisions can be obtained by clicking on [www.rmrf.com](http://www.rmrf.com) and then by choosing the heading Assessment Articles.

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