



**STAFF REPORT
ACTION REQUIRED
with Confidential
Attachment**

***Victoria University Act – Assessment Appeal of 131
Bloor Street West***

Date:	April 25, 2016
To:	Government Management Committee
From:	City Solicitor and Treasurer
Wards:	All
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege and pertains to litigation or potential litigation that affects the City.
Reference Number:	P:\2016\Internal Services\rev\gm16009rev (AFS22832)

SUMMARY

This report advises City Council on legislation that applies to 131 and 151 Bloor Street West and other properties owned by Victoria University that exempts portions of these properties from taxation even when they are not used and occupied by the university. This report recommends that City Council request that the province amend the *Victoria University Act* to bring its tax exemption provisions in line with the *Assessment Act* and other university acts. This report also highlights the impact the tax exemption provisions for Victoria University have on the assessments of 131 Bloor Street West and advises Council on assessment appeals of that property. The Confidential Attachment outlines a settlement proposal for the assessment appeals of 131 Bloor Street West.

RECOMMENDATIONS

The City Solicitor and the Treasurer recommend that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.

2. City Council authorize the public release of all or a portion of the confidential instructions in Confidential Attachment 1 once adopted by City Council at the discretion of the City Solicitor and direct that the remainder of Confidential Attachment 1, including all Appendices, remain confidential as it contains advice and information that is subject to solicitor-client privilege and pertains to litigation or potential litigation.
3. City Council authorize the Treasurer, in consultation with the City Solicitor, to request that the provincial government amend the *Victoria University Act* to make the tax exemption sections in that Act consistent with the tax exemption sections in the *Assessment Act* and the enabling legislation for other public universities in Toronto and Ontario.

Financial Impact

The financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information disclosed in Confidential Attachment 1.

DECISION HISTORY

At its meeting held August 25, 26, 27 and 28, 2014, City Council adopted item GM32.3 "Amendments to Chapter 767 of the Municipal Code, Taxation, Property Tax" which delegated to the Treasurer in consultation with the City Solicitor to participate in assessment appeals initiated by property owners and to settle such appeals. The staff report is available at: <http://www.toronto.ca/legdocs/mmis/2014/gm/bgrd/backgroundfile-71867.pdf>.

At its meeting held November 13, 14, 15 and 18, 2013, City Council adopted item GM25.6 "Agreement with the University of Toronto for Voluntary Payments Relating to its Revenue-Producing Properties" which extended an agreement between the City and the University of Toronto negotiated in 2005 with respect to voluntary payments by the University on its revenue-producing properties. The staff report is available at: <http://www.toronto.ca/legdocs/mmis/2013/gm/bgrd/backgroundfile-62001.pdf>

ISSUE BACKGROUND

The assessment appeals of 131 Bloor Street West highlight the justification and need for legislative change so there is consistent treatment of university properties in Ontario. Victoria University is one of the seven colleges that comprise the St. George campus of the University of Toronto. Land owned and leased by Victoria University is exempt from property tax. The tax exemption applies to land Victoria University owns even when the land is not occupied and used by the university. In contrast, the property tax exemption for public educational institutions in the *Assessment Act* and, for example, in the Acts

creating OCAD University, Ryerson University, and York University, is narrower and only applies to land occupied and used by the institution. Victoria's broader exemption from property tax results in lower tax revenues than the City would otherwise collect if the land were owned privately or owned by another public university or education institution.

Legislative Scheme

Under Ontario's *Assessment Act*, all property is subject to assessment and taxation except certain types of properties that are exempt from taxation. Public education institutions are one of the types of property that benefit from an exemption from taxation. A comparison of the legislated exemption provisions referred to in this Staff Report are set out below.

Table 1 – Public Education Institution Property Tax Exemptions

Legislation	Wording in the exemption section	Tax exemption applies to land not occupied by the university?
<i>Assessment Act</i>	Land <u>owned, used and occupied solely by a university</u> , college, community college or school as defined in the <i>Education Act</i> or land leased and occupied by any of them if the land would be <u>exempt from taxation</u> if it was occupied by the owner	No
<i>Victoria University Act</i>	The real and personal property <u>vested</u> in the Board and any lands and premises leased to or occupied by the Board <u>shall not be liable to taxation</u> for provincial, municipal or school purposes, and shall be exempt from every description of taxation [...] <u>the interest of every lessee</u> under a lease from the Board [...] shall be liable to taxation	Yes
<i>University of Toronto Act</i>	The property <u>vested</u> in the Governing Council and any lands leased to or occupied by the Governing Council <u>are not liable to taxation</u> for municipal or school purposes [...] <u>the interest of every lessee</u> under a lease from the Governing Council [...] is liable to taxation	Yes
<i>Ryerson University Act</i>	The real property <u>vested</u> in the University and any lands and premises leased to and occupied by the University shall be <u>exempt from taxes</u> for provincial, municipal and school purposes <u>so long as they are actually used and occupied</u> for the purposes of the University	No

<i>OCAD University Act</i>	Land <u>vested</u> in the University and land and premises leased to and occupied by the University are exempt from provincial and municipal taxes and development charges, <u>so long as the vested land or leased land and premises are actually used and occupied for the objects of the University</u>	No
<i>York University Act</i>	The property <u>vested</u> in the University and any lands and premises leased to and occupied by the University shall not be liable to taxation for provincial, municipal or school purposes, and shall be <u>exempt</u> from every description of taxation <u>so long as the same are actually used and occupied for the purposes of the University</u>	No

COMMENTS

Property Assessment

The Municipal Property Assessment Corporation (MPAC) assesses all real property in Ontario for property taxation. Real property is defined broadly in the *Assessment Act* and includes land and all buildings and structures on land. MPAC assesses a property's "current value" which means the amount of money the property would realize if "sold at arm's length by a willing seller to a willing buyer." MPAC returns the current value assessments (CVAs) on legislated valuation dates that apply for four tax years: the January 1, 2008 valuation date applied to tax years 2009 to 2012 and the January 1, 2012 valuation date applies to the tax years 2013 to 2016. MPAC also classifies property for tax purposes. A property's CVA and tax classification are the key components for calculating property taxes.

Assessment of 131 Bloor Street West

131 Bloor Street West is known as the Colonnade and is located on the south side of Bloor Street between Avenue Road and St. Thomas Street. This span of Bloor Street West between Yonge Street and Avenue Road is referred to as Toronto's 'mink mile' and forms part of the city's pre-eminent upscale shopping neighbourhood Yorkville. The Colonnade building is comprised of high-end retail/commercial space with multi-residential rental apartments.

Victoria University owns the land at 131 Bloor Street West and has entered into long term ground leases with Revenue Properties Company Limited ("Revenue Properties"). Pursuant to the long term ground lease Revenue Properties built and currently owns the Colonnade building which is on the leased lands. Victoria University does not occupy nor use any of the land subject to the lease.

MPAC determines a property's current value assessment on the basis of the property's highest and best use. A property's highest and best use is the use that is reasonably probable, legally permissible, financially feasible, and results in the highest return to the

property owner. MPAC's view is that the current use of 131 Bloor Street West is the property's highest and best use.

MPAC valued 131 Bloor using the income valuation approach which is appropriate for mixed use commercial and multi-residential income properties. The income approach applies a capitalization rate to the net operating income of a property to determine a value. Capitalization rates are derived from market sales of comparable income producing properties. To value 131 Bloor, MPAC relied on actual rents reported for the Colonnade building and data of fair market rents for comparable commercial and apartment properties.

Table 2 – 2008 Current Value Assessment of 131 Bloor Street West

2008 CVA	
Taxable building	\$65,084,000
Land exempt from property tax	\$64,600,000
Total	\$129,684,000

2008 CVA	
Commercial tax class	\$11,792,140
Office Building tax class	\$34,505,700
Multi-residential tax class	\$18,786,160
Land exempt from property tax	\$64,600,000
Total	\$129,684,000

Table 3 – 2012 Current Value Assessment of 131 Bloor Street West

2012 CVA	
Taxable building	\$71,322,501
Land exempt from property tax	\$70,782,499
Total	\$142,105,000

2012 CVA	
Commercial tax class	\$12,917,345
Office Building tax class	\$37,842,562
Multi-residential tax class	\$20,562,594
Land exempt from property tax	\$70,782,499
Total	\$142,105,000

The division of the CVA for 131 Bloor into taxable and exempt is the result of the broad tax exemption provision in the *Victoria University Act*. The tax exempt amounts are for the land owned by Victoria University and leased to Revenue Properties through the long term ground lease. The taxable amounts relate to the Colonnade building owned by Revenue Properties. If 131 Bloor were owned by another public university, and the same ground lease were entered into, the total CVA of the property would be subject to taxation. Similarly, if the land at 131 Bloor were privately owned, and occupied by the

Colonnade, there would be no tax exempt amount. Victoria University benefits from a tax exemption that most other universities in Ontario and Toronto do not have; its land is exempt from taxation **even when it does not occupy the land**. In addition, it is common in commercial real estate leasing that tenants are responsible for paying property taxes. Therefore, these benefits are likely being passed on to the lessee and their commercial tenants.

The additional taxes the City would have collected for 131 Bloor based on the property's returned CVA's if it were not owned by Victoria University clearly shows the unfairness of this tax exemption.

Table 4 – Estimated Additional Taxes if No Exempt Portion

Tax year	Estimated taxes (\$)
2009	1,824,854
2010	1,806,041
2011	1,783,152
2012	1,771,388
2013	1,724,767
2014	1,674,731
2015	1,628,238
Total	12,213,171

Proposal to Amend the *Victoria University Act*

Staff recommend requesting that the province amend the *Victoria University Act* so that its tax exemption is the same as the exemption that applies to public educational institutions in the *Assessment Act*. This amendment would also potentially level the property tax playing field among the commercial tenants of Toronto's most prestigious retail shopping district.

The unfair tax impact of Victoria's broad tax exemption is also seen in the additional taxes the City would have collected from 2013 to 2015 for certain other properties owned by Victoria University.

Table 5 – Other Tax Exempt Victoria University Properties

Victoria University property	Assessment roll number	Use of property as determined by MPAC	January 1, 2012 Returned CVA of exempt portion (\$)	Additional (2013 – 2015) taxes if no exempt portion (\$)
151 Bloor Street West ¹	1904 068 590 00300	Retail with offices	12,960,000	1,052,611
153 Bloor Street West	1904 068 590 00200	Large office building	11,259,790	840,527
8 St Thomas Street	1904 068 590 01600	Multi residential	3,737,000	242,378
110 Charles Street West	1904 068 590 02550	Large office building	7,485,000	579,892
			Total	2,715,409

¹ See footnotes 3 and 4 above. The taxes above are based on the returned CVA for 151 Bloor not the revised CVA resulting from the assessment appeals of this property.

The global management consulting firm McKinsey & Company occupies the building at 110 Charles Street West. Kingsett Capital is redeveloping Victoria's properties on St Thomas Street including 2 St Thomas into luxury residential condominium buildings. Once constructed and occupied, the assessment for this redeveloped property will be divided between the taxable residences and the exempt land.

The financial unfairness to the City and to the other public universities in Toronto from Victoria University's broad tax exemption is stark and should be fixed.

The recommendation in this report that the tax exemption sections in the *Victoria University Act* be amended to be consistent with the *Assessment Act* and the exemption sections in other public university acts² is consistent with the recommendation adopted by Council on November 13, 2013 in respect of the current tax exemption for the University of Toronto, which states:

City Council request the Minister of Finance and the Minister of Training, Colleges and Universities to review the legislation governing exemptions from taxation and the treatment of tenants occupying University lands that would otherwise be taxable to ensure that the assessment and taxation provisions are consistent, both within Toronto and across Ontario

Agreement with University of Toronto – *University of Toronto Act*

131 Bloor Street West is not a property included in the agreement approved by City Council in November 2013³ between the City and the University of Toronto whereby it makes voluntary payments for university-owned properties that are occupied by revenue generating non-university tenants. That agreement does not apply to any Victoria University properties. The City does not have a similar agreement for voluntary payments with Victoria University for its properties.

Assessment Appeal of 131 Bloor Street West

Under section 40 of the *Assessment Act*, any person may appeal a property's CVA. Revenue Properties has appealed the CVA for 131 Bloor Street West for the tax years 2013 to 2016 (January 1, 2012 CVA) and the tax years 2009 to 2012 (January 1, 2008

² The provisions governing the Universities of Guelph, Windsor, Ottawa, and Brock are similar to the other three public universities in Toronto in that tenants occupying university owned lands are taxed on the full assessed value and no portion is exempt from tax for the land owned by the university. By contrast, the *University of Western Ontario Act* and the *McMaster University Act* contain no specific provisions regarding exemptions or the treatment of university lands occupied by taxable entities. Staff have confirmed however, that in the case of McMaster University, taxable portions are returned on the assessment roll and billed for taxes directly, while in the case of the University of Western Ontario, all lands owned by the university are returned on the assessment roll as exempt from taxation, with the exception of certain portions of the university that are occupied by private research facilities that MPAC returns subject to taxation.

³ See Council report GM 25.6 adopted November 13, 2013.

CVA).⁴ The City is a statutory party to all assessment appeals. The City is considering a settlement proposal reached between Revenue Properties and MPAC that would resolve the appeals for 131 Bloor for tax years 2009 to 2016.

CONTACT

Casey Brendon, Director, Revenue Services, Tel: (416) 392-8065, Fax: (416) 696-3778,
E-mail cbrendo@toronto.ca

Angus MacKay, Lawyer, Legal Services, Tel: (416) 397-4019, Fax: (416) 397-5624,
E-mail amackay2@toronto.ca

Rodney Gill, Lawyer, Legal Services, Tel: (416) 392-8051, Fax: (416) 397-5624, E-mail
rgill@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

Mike St Amant
Treasurer

ATTACHMENTS

Confidential Attachment – Information on settlement proposal for 131 Bloor Street West assessment appeals.

⁴ 151 Bloor Street West is also owned by Victoria University and has a ground lease with GE Canada Real Estate Equity Holding Co. GE Canada appealed the CVA of 151 Bloor for 2009 to 2012 tax years. The assessment appeals of 151 Bloor Street West are on hold until the outcome of the settlement proposal for 131 Bloor Street West is known.