

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 06, 2023

CASE NO(S): OLT-22-004887

PROCEEDING COMMENCED UNDER subsection 323(8) of the *Municipal Act, 2001*,
S.O. 2001, c. 30.

Applicant:	Prince Edward County
Description:	Application to increase the County of Prince Edward's Annual Repayment Limit
Municipality/UT:	Prince Edward County
OLT Case No:	OLT-22-004887
OLT Lead Case No.	OLT-22-004887
OLT Case Name:	

Heard: April 28, 2023 by video hearing and
May 5, 2023 by written hearing

APPEARANCES:

Parties

The Corporation of the
County of Prince Edward

Representatives

Marcia Wallace
Amanda Carter

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

Purpose

[1] The Corporation of the County of Prince Edward (“PEC”) made an application to the Tribunal for certain exceptions to its Annual Repayment Limit (“ARL”) pursuant to s. 401(4)(c) of the *Municipal Act* and s. 2 of Ontario Regulation 403/02 (“O. Reg. 403/02”).

[2] A Case Management Conference (“CMC”) was held on April 28, 2023 with only PEC in attendance, represented by Marcia Wallace, Chief Administrative Officer and Amanda Carter, Director of Finance/Treasurer. No other persons expressed interest in the matter to the Tribunal’s Case Coordinator or attended the CMC.

[3] At the CMC, PEC provided a thorough overview of its request, following which the Tribunal directed that this application would proceed via written hearing. PEC agreed to provide further information as requested by the Tribunal, along with any further submissions that PEC wished to file, by May 5, 2023, after which a written Decision would be issued. Two of the documents requested by the Tribunal were received a few days later, at no fault of PEC, and are considered fully in this Decision.

Legislative Authority

[4] The Tribunal’s authority to issue a Decision on this application arises from the related provisions of the *Municipal Act* and O. Reg. 403/02.

[5] For municipal debt, s. 401 of the *Municipal Act* includes the following subsection (emphasis added):

- (4) The Lieutenant Governor in Council may make regulations prescribing debt and financial obligation limits for municipalities, including,
 - (a) defining the types of debt, financial obligation or liability to which the limit applies and prescribing the matters to be taken into account in calculating the limit;
 - (b) prescribing the amount to which the debts, financial obligations and liabilities under clause (a) shall be limited;
 - (c) requiring a municipality to apply for the approval of the Ontario Land Tribunal for each specific work or class of work, the amount of debt, financial obligation or liability for which, when added to the total amount of any outstanding debt, financial obligation or liability under clause (a), causes the limit under clause (b) to be exceeded;

[6] The regulations, noted in s. 401 above, include O. Reg. 403/02 which directs as follows (emphasis added):

2. A municipality shall use the most recent limit provided to it by the Ministry to determine whether Ontario Land Tribunal approval is required in respect of the following categories of debt or financial obligation:
 1. Long-term debt assumed by a municipality for which repayment will be required beyond the term for which the council was elected.
 2. Other financial commitments, liabilities and contractual obligations, for which payment may or will be required beyond the term for which the council was elected ...

Application

[7] The ARL sets the borrowing capacity of a municipality. By regulation, the Ministry of Municipal Affairs and Housing (“MMAH”) establishes that PEC is not permitted to incur debt for which the principal and interest payments exceed 25% of its annual “own source” revenue, being primarily from municipal taxation.

[8] PEC seeks approval to exclude from its ARL the following sources of debt:

- the portion of necessary infrastructure investments that will be financed by signed, up-front financing agreements with land development companies, as protected by letters of credit; and
- the portion of the capital cost for PEC’s planned long-term care facility committed to be paid, over 25 years, by the Ministry of Health and Long-Term Care (“MHLTC”) in the form of a construction grant.

[9] These exemptions would reduce PEC’s debt such that it remains below the 25% ARL. In both cases, PEC is asking to exempt only the portion of the capital costs of these services or facilities that will be paid by confirmed sources outside of the tax base. While PEC will remain liable for the entire debts incurred, the surety of these other sources is presented by PEC as a reasonable exception to effectively not constitute actual expense that must be paid through taxation revenue.

Findings

[10] On the reasonable and acceptable written and oral submissions of PEC, the Tribunal will grant the request.

[11] No concerns were raised from ratepayers or residents following PEC's public notice of this application. At the Tribunal's request, PEC sought confirmation of MMAH's position on this application. By letter dated May 8, 2023, the Assistant Deputy Minister confirmed that "The Ministry will not be taking a position in this matter."

[12] The debts to be incurred here arise from PEC's provision of necessary infrastructure and housing to meet the needs of pending development and long-term care, all for a growing population. These functions are within the legislated purview and mandate of the municipality.

[13] The exempted dollar amounts, that would not be included in PEC's calculated rate for ARL compliance, are all but guaranteed to be paid by outside sources, being: the development industry with accepted up-front financing agreements, backed by letters of credit; and annual funding from the MHLTC for its contribution to the new long-term care facility. In accordance with sound accounting principles, PEC will continue to account for total interest payable on these debts within its ARL limit.

[14] These exemptions will both enable PEC to comply with the ARL and leave room for PEC to consider other financial commitments involving potential debt for the delivery of essential municipal infrastructure.

[15] The Tribunal accepts, on the oral submissions and the written documentation of PEC, that the two requested exemptions from the ARL result in long-term debt and financial commitments for PEC requiring repayment beyond the current term of council, per s. 2.1 and 2.2 of O. Reg. 403/02. The Tribunal further accepts that these requested exemptions will enable PEC's consideration of other necessary, but deferred, capital projects which may result in its ARL approaching or reaching the 25% limit. Also noted,

is the absence of expressed concern from any person or Ministry.

[16] As an aside, the Tribunal notes that s. 4(4) of O. Reg. 403/02 appears to enable PEC to update its ARL without including debt for which the “Government of Ontario” has agreed to pay. This exception appears to align with PEC’s request related to MHLTC’s contribution to the long-term care facility. The Tribunal finds, at the least, that PEC’s request aligns with this exemption, and at the most, PEC’s request to the Tribunal for the long-term care facility may not be necessary. Either way, the Tribunal will grant the application.

[17] The Tribunal thanks PEC for the forthright, insightful and evidentiary filings and submissions of its representatives in support of this Decision.

ORDER

[18] The Tribunal Orders that the request of the Corporation of the County of Prince Edward, as summarized in paragraph [8] above, is granted such that those secured debts are exempt from inclusion in the calculation of its Annual Repayment Limit.

“S. Tousaw”

S. TOUSAW
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.