

The Ontario college land disposition process and limitations when encumbering real property

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2025 has marked a significant financial strain on Ontario colleges due to a combination of factors, such as federally imposed restrictions on international student intakes, frozen domestic tuition and rising costs. Many colleges have cut programs and laid off workers. To assist with financial difficulties, Ontario colleges may need to consider certain revenue generating opportunities related to their real property, such as selling or leasing college property.

Considerations

Ontario colleges typically own real estate in the name of the college itself (*i.e.* it is not held by a Provincial Ministry or retained as “Crown Land”) but each college’s situation is unique, and it would be prudent to have a title search performed to confirm the ownership.

Ontario colleges are crown corporations and, as such, are afforded certain benefits. These include exemptions from certain municipally imposed requirements on typical private landowners, including:

- Exemption from property taxes;
- Exemption from development charges; and
- Ability to subdivide lands without complying with section 50 of the [*Planning Act*](#).

However, there are a variety of legislatively imposed obligations on real property held by Ontario colleges. Two obligations that this bulletin will outline are (1) requirements on dispossessing land acquired through provincial support and (2) limitations on encumbering college real property.

The college land disposition process

An Ontario college’s authority to dispose of real property depends on whether the property qualifies as “Government property”. The relevant legislation excludes colleges of applied arts and technology (established under the [*Ontario Colleges of Applied Arts and Technology Act, 2002*](#)) from the definitions of both “Government” and “Crown

agency.”¹ As a result, property owned by a college is not Government property unless the Province retains a property interest, which may be determined on a case-by-case basis, including a review of title to the property and the facts associated with the Province’s role in the acquisition of the property.

Where the property does constitute Government property (*i.e.*, the Province retains an interest), the relevant legislation establishes that a disposition will require: (i) independent evidence that the sale is at “fair value,” or, if sold below market or otherwise not in accordance with the Tangible Capital Assets Policy, development of a business case and Treasury Board/Management Board of Cabinet approval; and (ii) approval of the Government of Ontario by way of an Order in Council.²

However, where the property is not “Government property”, an Order in Council is not required. In those cases, the disposition will typically require a resolution of the college’s Board of Governors. In certain situations, a further bar may need to be cleared.

Section 4(1) of the *Ontario Colleges of Applied Arts and Technology Act, 2002* authorizes the Minister of Colleges, Universities, Research Excellence and Security (the Minister) to issue binding policy directives. A 2003 policy directive entitled [Proceeds from Sale or Encumbrance of College Property](#) (the Directive) governs how proceeds from such sales may be used. Where the property was originally transferred by the Province or purchased with direct provincial funding, the Directive requires a college to obtain the Minister’s written approval to use proceeds from the property sale or lease for specific capital initiatives.

There is also a [2003 non-binding resource](#) which is related to the purchase or disposition of college property. This resource was designed “to assist college boards with suggested best practices to consider when purchasing, leasing, or selling property.” A college should take into consideration the legal risks and liabilities as well as the long-term needs of the institution before selling, leasing or purchasing property.

In sum, depending on the property’s origin, a college seeking to dispose of real property will likely require:

1. Independent evidence that the sale is at “fair value”;
2. A formal resolution of the college Board of Governors;
3. Order in Council approval only if the property is Government property (*i.e.*, provincially funded or transferred); and
4. The Minister’s written approval to use the proceeds from the sale, where applicable under the Directive.

Additionally, the college should confirm there are no other approval triggers (e.g., grant/program agreements, mortgages or trust indentures, donor conditions, or long-term lease arrangements) that might impose conditions on the disposition itself.

Further fact-specific details would need to be provided to determine whether the disposition requirements noted above would apply to a particular lease or other grant. For example, a long-term lease of property by the college to a third party, particularly if it was not tied to the college’s educational purposes, would likely be considered a disposition. Conversely, a short-term lease of space that is incidental to

the college's educational purposes (e.g. leasing to a food vendor in a building's food services area) would most likely not be deemed a disposition.

Limitations on encumbering college real property

There are limitations on Ontario colleges when encumbering real property. These come from the [2003 policy directive](#) entitled "Banking, Investments and Borrowing" which establishes banking, investment and borrowing requirements for all Ontario colleges. Importantly, as set out by this policy directive "[a] college is solely responsible for the financial obligations created by taking out a loan, mortgage or other debt or entering into any investments and financial agreements" and any written agreements for bank loans are to expressly provide that liability with respect to the borrower or counterparty is limited to the college.

The "Banking, Investments and Borrowing" policy directive was [revised in 2009](#) to state that every college entering into a financial obligation that requires approval under section 28 of the *Financial Administration Act* must comply with the [2009 Operating Procedure](#). The Operating Procedure sets out more specific details on the restrictions and conditions on college banking, investments and borrowing requirements, including the process for colleges requesting approvals under section 28 and for requesting long-term financing from the Ontario Financing Authority. This includes providing specific information to the Minister at least 90 days prior to the date the Minister's approval is required.

In sum, a college encumbering its real property (obtained with provincial support) will likely require:

1. Seeking Minister approval in writing at least 90 days in advance;
2. Independent evidence that the encumbrance is at "fair value";
3. A formal resolution of the college Board of Governors;
4. Order in Council approval, only if the encumbered property constitutes Government property; and
5. The Minister's approval to utilize the proceeds from the encumbrance, where required under the Directive.

With respect to mortgages, there is an additional requirement under section 28 of *the Financial Administration Act*. Unless exempted through the exercise of Ministerial discretion, the Minister's approval in writing is required to enter into such a transaction. If the transaction is entered into contrary to section 28 it is not binding or enforceable against any ministry or public entity unless the Minister declares in writing that the legislation does not apply to the transaction and can impose other terms and conditions that apply in relation to the declaration.

Conclusion

There are different ways that Ontario colleges could utilize their property to ease financial strain. However, these often have specific requirements which must be accounted and planned for.

BLG can work with you to advise on strategies to dispose of real property and strategically plan for your future.

Footnotes

¹ Section 1 of the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Sched. 32, adopts the definition of “Government property” from the *Ministry of Infrastructure Act, 2011*, S.O. 2011, c. 9, Sched. 27. Under subsection 1.1(1) of the *Ministry of Infrastructure Act*, “land or interests in land, and fixtures or interests in fixtures installed or placed in or used in connection with the land, are Government property if they belong to the Government.”

² See *Ministry of Infrastructure Act, 2011*, S.O. 2011, c. 9, Sched. 27, s. 9(5).

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