CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

IN THE JURISDICTIONAL MATTER OF A COMPLAINT filed with the Calgary Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

between:

The City of Calgary, APPLICANT

and

Altus Group, RESPONDENT

before:

J. Noonan, PRESIDING OFFICER

A hearing was held on May 10, 2010 in the City of Calgary in the Province of Alberta to consider jurisdictional matters about the assessments of the following property tax roll numbers:

Roll # 016208902 Address: 46 Crowfoot Circle NW

And twenty other roll numbers (see Attachment A), advanced as test cases for the issues described below.

Roll # 044183309 Address: 1520 16 Avenue NW

And five other roll numbers (see Attachment B), advanced as test cases where only the second issue applies.

Appeared on behalf of the Applicant:

- K. Hess, Team Leader, Tribunal and Data Management Services, City of Calgary, witness
- A. Cunningham, Counsel, City of Calgary

Appeared on behalf of the Respondent:

- R. Brazzell, Senior Director, Altus Group, witness

- J. Weber, Director, Altus Group, witness
- Friend, QC, Counsel to Altus Group

PART A: BACKGROUND

Parts of the Municipal Government Act dealing with property assessment and the assessment complaint process were revised, and the new provisions came into force January 1, 2010. As well, the *Assessment Complaints and Appeals Regulation*, AR 238/00 (ACAR) was replaced by a new and larger regulation, the Matters Relating to Assessment and Taxation Regulation, AR 310/09 (MRAC). MRAC introduced a standard Complaint form at Schedule 1 for use province-wide, and at Schedule 4 an Assessment Complaints Agent Authorization form (ACAA). Previously, each municipality devised its own Complaint form, and agent authorization was a private matter.

The property assessment complaint/appeal process has been streamlined to a single ARB hearing with the right to appeal to Court of Queen's Bench on matters of law or jurisdiction. The deadline for filing a complaint was expanded to 60 from 30 days, as were timelines for disclosure of evidence prior to a hearing. Sections 299 and 300 of the Act were expanded, regarding an assessed person's right to receive "sufficient information" to show how assessments were prepared. The Complaint form is a thorough document requiring the identification of matters under complaint (the same as identified at s 460 (5) of the *Act*) and detailing information the complainant must supply, again as identified at s 460 (7), but further requiring "identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues".

The City of Calgary is Applicant at this preliminary jurisdictional hearing involving 27 test cases but impacting some two thousand assessment complaints filed by Altus Group, the Respondent here. The Applicant requests the CARB to find these 27 complaints not valid by reason of deficiency.

OVERVIEW

The parties agree that more effort and detail are required of a taxpayer wishing to file a Complaint after changes to the Act and the new Regulation. The CARB was tasked to decide the status of a Complaint where an Agency Authorization form was not filed with the Complaint form, but after the Complaint deadline, and secondly the status of an imperfectly completed Complaint form.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. During the course of the hearing, the parties raised the following jurisdictional issues, which are addressed below.

- Preliminary issue 1 ACAA Form (Schedule 4)

Should a complaint be found invalid and thus dismissed where an agent files a complaint that is not accompanied by an Assessment Complaint Agency Authorization (ACAA) form?

Positions of the Parties

The Applicant submits the requirement for the completion of the agent form is mandatory. The ARB has no jurisdiction to extend the time period for the filing of the agent form and therefore if the agent form is not completed and filed with the complaint, the complaint is not "complete" as required by MRAC s 2 and the ARB must dismiss the complaint. Reference was drawn to Maxwell's text *The Interpretation of Statutes*: "*A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they related to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature...*". Here, the Act grants taxpayers the right to appeal assessments, and the regulation must be strictly followed. The Applicant also advanced the argument that since Altus had filed these appeals in its capacity as a taxpayer, not an authorized agent; if the complaint were to proceed then Altus should be restricted to advancing an argument that reflected their own interest as a taxpayer, not the position of the assessed person.

The Respondent, Altus Group, is an agent and expects remuneration for its work representing assessed parties. For these 21 test cases, the Respondent introduced in evidence a schedule showing the dates when the agency forms had been sent, predominantly in early March but extending to May 6, 2010. [Note: complaint filing deadline was March 5]. The Respondent noted that the new regime necessitated a lot more work in filing a complaint, and that the retrieval of signed authorization forms was sometimes problematic, particularly where for instance, the signing officer was not available. Nonetheless, it was not the filing of a form that created an agency agreement, such agreement having previously been established between the taxpayer and agent by contract. Dismissal of the complaint due to the failure to provide the ACAA form at the same time as filing of the complaint would be a disproportionate penalty and would offend the principles of natural justice and procedural fairness.

Decision and Reasons

As understood by this panel, the Applicant is advancing the argument that Schedule 4 is an integral part of the complaint document, Schedule 1, and without simultaneous filing the complaint should be found incomplete and thus dismissed. The CARB finds this argument lacking, and agrees with the Respondent's observation that to accept this view would be a triumph of form over substance. Accordingly, the complaints may proceed to hearing.

The Act is silent on agents and authorization forms; in the regulation an agent is defined at section 1(1)(b) and written authorization required in s 51. It is only at Schedule 1 Section 3 that the lives of taxpayers and their agents become miserable with the directive that an ACAA form

must accompany this complaint form.

In Part 1 of MRAC **Documents to be filed by complainant** mention is made of two essential requirements: filing with the clerk a complaint form and the payment of a fee. It is only on omission of either of these two criteria that an ARB must dismiss a complaint. While MRAC at s 51 introduces strong language prohibiting an agent from acting without an ACAA, there is no mention of precisely when the ACAA must be filed, nor is a penalty imposed. Schedule 1 at Section 6 notes that the filing fee must accompany the complaint form or the complaint will be invalid, and Section 7 includes an important notice that "**Complaints with an incomplete form, complaints submitted after the filing deadline or complaints without the required fee are invalid.**" To state the obvious, there is no mention that failure to have Schedule 4 accompany Schedule 1 shall result in an invalid complaint.

It is interesting to note s 462 of the *Act* where the designated officer, the clerk of the ARB, must provide the municipality a copy of the complaint and notify all parties of scheduling. There is no mention that the clerk must disclose to the municipality that an agent will attend an ARB hearing. Obviously such intelligence would be gleaned if, as here, the complaint form had been filed by an agent, or at the time of evidence disclosure 42 days in advance of the hearing. But if one were to conjure a situation where a complainant had filed his/her own complaint form, and assembled and disclosed evidence, and only then engaged an agent for representation at the hearing, would this constitute surprise? The primary purpose of the Act and regulation is to ensure the fair and efficient hearing of assessment complaints. Whether a complainant is represented by an agent, and when such agency was agreed, should have little influence on the preparation of the defense of an assessment.

The CARB accepts the Respondent's argument that an agency relationship is established by the contract between principal and agent, not by completing Schedule 4 or filing it.

Assessment appeals of the nature which the CARB anticipates, dealing with complex matters and involving substantial stakes, usually require a complainant to engage the services of an agent to properly advance complex evidence and argument. It should come as no surprise to a large municipality that complainants will be represented by experienced advocates, and the CARB sees no prejudice to the Applicant if the complaint form was filed by an agent. The CARB recognizes that agents conduct a business and are unlikely to advance a complaint without benefit of compensation.

- Preliminary issue 2 Incomplete Form

Should a complaint be found invalid and consequently dismissed where the complaint form has not been entirely or imperfectly filled out?

Positions of the Parties

The Applicant found fault with how the complaint form (MRAC Schedule 1) had been filled out, notably in Section 4 – Complaint Information and Section 5 – Reason(s) for Complaint.

In Section 4 a question is asked: If information was requested from the municipality pursuant to section 299 or 300 of the *Municipal Government Act*, was the information provided? The Respondent had checked the "No" box, but the Applicant maintains that this information had indeed been provided. To leave this response unchallenged might lead to difficulty at a merit hearing. The Respondent verified that some information had been provided, but not sufficient information to satisfy the requirements of s 299, and so it would be wrong to answer "Yes". Consequently, "No" had been checked. The Respondent observed that perhaps in future versions of the form, a "Some" checkbox might be appropriate.

The way in which Section 5 had been answered presented a host of problems for the Applicant, City. Specifically, it had not been identified what information on the assessment notice was incorrect and what the correct information was; there was improper distinction between issues and grounds, or issues without grounds or grounds without issues, or boilerplate language that was neither; and rather than identify a "Requested assessed value", the Respondent had instead countered with a "Preliminary Requested Amount". Further, there was no statement of contact or lack of contact between the parties as required under (a) or (b) at the end of Section 5. Contact between an assessed person and the assessment department is vital in that issues might be resolved without need or expense of a merit hearing.

Reference was again made to the quote from Maxwell's in regard to mandatory compliance with regulation. Counsel observed that it was not the Applicant's intent to instigate a wholesale mass rejection of assessment complaints, but rather to establish clarity under the new regime so that the assessment complaint process could move forward efficiently.

The Respondent submitted that the complaint forms had been properly completed and filed, did not dispute that the Section 5 information was required, and understood the difference between issues and grounds in support of issues. The Respondent drew attention to the responses to Section 5 for several roll numbers and outlined that the City's description of "boilerplate" was indeed common to all the complaints, there to preserve the right to Queen's Bench appeal. Following were points dealing with cap rate (incorrect and should be increased to 8.5%), rental rate, vacancy allowance, elements of obsolescence, effective age, classification, and equitable assessment. The final "ground" addressed Altus' use of a "Preliminary Requested Assessment", noting the requested amount was based on information contained in the Assessment Notice, preliminary observations, information from other sources and that the requested assessment could change. As to the lack of indication of consultation between the parties, Altus participates in the City's "Advanced Consultation Process" where, for example, the City advises which sales were analyzed for development of the sales comparison model. The City keeps records of attendance at these meetings, and so knows the extent of contact with assessors. The Complaint had been filed in compliance with the legislation, which must be interpreted in a fair, broad and liberal manner. To the extent that the ARB requires further information from the Complainant, natural justice and procedural fairness requires the ARB grant the Complainant reasonable opportunity to provide such further information. To accede to the Applicant's request that these complaints be found invalid would be a triumph of form over substance: gaps in information provided are no bar to an appeal. Reference was made to several court cases, including *Boardwalk v Edmonton, B3LF v Calgary, Royal Bank v Regina Board of Revision, Canadian Tire v Regina Board of Revision*, and the MGB Filgas decision.

Decision and Reasons

The CARB finds the complaint forms to have been filed in sufficient detail for the assessment department to appreciate the matters at issue and anticipate the case to be met. Where shortcomings exist, they are insufficient to conclude that the right of complaint should be lost. The complaints may proceed to hearing.

In regard to the question of information provided under a s 299/300 request, it was decided at the hearing that this was properly the province of a full panel deciding the merits of individual cases. The CARB notes that some information was supplied and that a box was checked.

Section 4 of the complaint form identifies the ten matters of potential complaint listed at s. 460(5) of the *Act* and Section 5 requires reasons for complaint, as per s. 460(7). Although the ARB may encounter cases where an assessment sub-class is in dispute, or whether a property is assessable or exempt from taxation, in the overwhelming majority of cases it is the quantum of assessment that is at issue. Section 5 requires that it be stated what information on an assessment notice is incorrect and what the correct information is, This can be an awkward question if a complainant wishes to argue a case of inequitable assessment, or if a complainant does not yet know the parameters used in a capitalized income approach. As such, an assessor and a panel might have to look at the specific issues and grounds identified to divine "what the correct information is".

Issues and grounds in their support are not new to the assessment complaint process, nor is the occasional controversy as to the differentiation between them. Here, perhaps a complaint could have been worded with greater precision: that the inputs utilized in the City's capitalized income approach resulted in a value in excess of market, and the grounds then listing that a cap rate was too low, a rental rate too high, etc. Nevertheless, the intent of the complaint is clear. As well, if there is any confusion or uncertainty, one would expect greater clarity with the production of the complainant's evidence a full 6 weeks prior to the actual hearing. The CARB employed similar reasoning with regard to the Respondent's "Preliminary Requested Amount". Both parties agree that the new complaint form requires greater effort than previously obtained, but to require the precise requested assessment be carved in stone, even with the benefit of an extended complaint deadline, strikes the CARB as a harsh reading of the Section 5 demands.

That no statement of discussions between the parties accompanies the complaint is regrettable, but not fatal. The Applicant's point that discussion may well resolve issues is appreciated, and indeed experienced parties now generally know that a panel will not entertain argument about the size of a lot: lot size is a fact, not an issue and is no more controversial and in need of a hearing than school support. However, in the real world where grey areas occur, resolution of issues might require some degree of negotiation, which requires an assessor have authority to negotiate. Such authority is likely to vary, and vary widely from one municipality to another. The CARB encourages the parties to observe the spirit and letter of the law, but to find that the lack of contact statement constitutes an incomplete form would seem a disproportionate penalty for a small sin.

The CARB concluded that substantial compliance is sufficient compliance. This conclusion is consistent with the case law presented. Here the complaints have met the s 460(7) requirements and whatever shortcomings might exist, they are not sufficient in the opinion of the CARB to derail the assessment complaint process.

PART C: PROCEDURAL OBSERVATIONS

A one-member CARB derives authority to hear and decide jurisdictional matters from MRAC s 36 (2) (c) and (d). MRAC s 39 (2) governs the simultaneous disclosure of evidence from the parties, subject to abridgement or expansion in s. 41; s. 40 covers what must not be heard.

MRAC Division 2 (ss. 36-41) is written from the point of view that the complainant is an assessed person and the respondent, the municipality. In the present case, the roles are reversed.

Also in the present case, the main evidence was properly exchanged in accordance with s 39, but the Respondent determined that the City's disclosure package raised a new issue (the ACAA form) that was not previously mentioned in the City's request for this jurisdictional hearing. Accordingly, the Respondent prepared additional submissions addressing the new issue and disclosed it three days (Thursday) before the Monday hearing. City counsel had not received this further evidence prior to the hearing, being out of town, but did not object to its introduction.

A number of interesting questions arise:

- While the regulation speaks to a prohibition regarding issues not identified on a complaint form, what of a new issue at a preliminary hearing?
- What is the propriety of new evidence addressing the new issue?

Mercifully, the parties did not tax the CARB to address these questions: their over-arching interest is to see the main issues resolved and clarity established. The CARB is pleased to sidestep these secondary concerns with the simple observation that some preliminary jurisdictional matters are not so simple. Perhaps future renditions of MRAC might address the problematic and short 7 day simultaneous disclosure period, particularly relating to matters of significance such as those addressed here.

PART D: FINAL DISPOSITION OF COMPLAINT

The complaints may proceed to hearing.

It is so ordered.

MAILED FROM THE CITY OF CALGARY THIS 15th DAY OF JUNE 2010.

for **J. Noonan**
Presiding Officer

CC: Owners

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM

1. Exhibit 1A – Applicant's Submission dealing with 21 roll numbers in the first part and 6 roll numbers in the second part.
   Interpretation Act and Case Law
2. Exhibit 2R – Altus Submission
   Volume 1 – 9 Tabs
   Volume 2 – 6 Tabs
3. Exhibit 3R – Reply to City Submission

APPENDIX "B"

ORAL PRESENTATIONS

ATTACHMENT A

Roll Numbers

068130194
032026726
032026718
049003106
067057521
379004906
201413192
201335072
177154804
175154806
112143706
087034914
068107408
068083609
067233007
067207704
067177303
067105700
031024706
032026601

ATTACHMENT B

Roll Numbers

048075204
065078404
175037001
200140994
379004906

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

(a) the complainant;

(b) an assessed person, other than the complainant, who is affected by the decision;

(c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;

(d) the assessor for a municipality referred to in clause (c).

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

(a) the assessment review board, and

(b) any other persons as the judge directs.