Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint filed with the Composite Assessment Review Board as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the "*MGA*").

between:

HCR LP (CP Calgary) Inc. (as represented by Altus Group Ltd.), APPLICANT

and

City of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER: 201578770

LOCATION ADDRESS: 300 4000 4th Street SE

FILE NUMBER: 73695

This complaint was heard on the 3rd day of May, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

Mr. K. Reimer

Appeared on behalf of the Respondent:

Ms. M. Cario and Ms. K. Yeung

Background:

[1] On the 20th of March 2013, Mr. W.A. Paterson, General Chairman of the Calgary Assessment Review Board ("ARB"), wrote to Altus Group Ltd. ("Altus") informing them that their complaint with respect to the property at 300 4000 4th Street SE had been filed late. Section 461(1) of the *MGA* provides: *"A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than on the date shown on that notice".* The deadline for filing shown on the assessment notice was March 4th, but the complaint had arrived at the ARB by courier on March 5th, hence the complaint was found invalid pursuant to s. 467(2) of the Act.

[2] On the 5th of April 2013, Mr. R. Brazzell of Altus wrote to Mr. Paterson stating that the ARB's interpretation of s. 461(1) of the *MGA* did not take into account s. 23 of the *Interpretation Act* of Alberta. Pursuant to Mr. Brazzell's letter, a jurisdictional hearing was scheduled for the 3rd of May to determine whether s. 23 of the *Interpretation Act,* RSA 2000 c. I-8 applied. Section 23 deems service of a document sent by prepaid mail other than double registered or certified mail to be effected *"(a) 7 days from the date of mailing if the document is mailed in Alberta, or (b) subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada."* In this case, the assessment notice in question had been sent by prepaid mail other than double registered or certified mail to an address in Calgary. In this decision, mail other than double registered or certified mail will be referred to as "regular mail".

Issues:

[3] Does s. 23 of the *Interpretation Act* apply when an assessment notice or amended assessment notice is sent to the taxpayer by regular mail?

[4] If the answer to the first issue is "yes", is the complaint valid?

Submissions of the Applicant:

[5] The complaint deadline of 60 days must begin only when the assessment notice is received by the taxpayer. The date of mailing on the notices is January 3rd, 2013, therefore pursuant to s. 23 of the *Interpretation Act* the complaint deadline should be March 11, 2013, which is 67 days after the mailing of the notice to the taxpayer.

[6] This interpretation has been endorsed by the Alberta Court of Queen's Bench in *Calgary*

(City of) v. *Municipal Government Board*, 2004 ABQB 85, and by the decision of Hillier J. in *Edmonton (City)* v. *Assessment Review Board of Edmonton* , 2012 ABQB 399. Furthermore, the Composite Assessment Review Boards of Leduc (decision CARB 0200 01/2012) and Camrose (decision No. 1- CARB -2012-09-14) have found that s. 23 of the *Interpretation Act* applies.

[7] A duty of fairness is owed to the taxpayer, and the content of this duty includes notice of the assessment. For this reason, the deadline must be read as 60 days after the assessment notice is sent and *received.* In interpreting the *MGA*, the Court of Appeal stated in *Boardwalk REIT LLP* v. *Edmonton (City)*, 2008 ABCA 200 that: "*There is a parallel axiom of construction. Where an act can be construed more than one way, courts must reject any alternative which is manifestly absurd, or extremely harsh, unjust or capricious . . .*"

[8] It is submitted that to interpret the *MGA* as precluding an appeal when the notice of assessment has not been received is "manifestly absurd", "extremely harsh, unjust or capricious". To do so would be an absurdity, impose the largest possible penalty, and breach the duty of fairness owed to the Applicant. Furthermore, this view is consistent with s. 311(2) of the *MGA*, which deems receipt of the assessment, but as held in the decision cited as *Calgary (City of)* v. *Municipal Government Board,* 2004 ABQB 85, s. 311(2) does not deem *when* the notice was received. Furthermore, in the aforementioned decision, commonly referred to as the *"Chow"* decision after the taxpayer, Mr. Louis Chow, the issue of when a notice is received was decided. The Court determined that "sent" in s. 309(1)(c) of the *MGA* should be interpreted as "sent and received."

[9] The current wording of s. 309(1)(c) is consistent with the earlier wording considered in the *Chow* decision. In the earlier provision, the wording *"after the assessment notice or amended assessment notice is sent to the assessed person"* is identical to that in the current provision. In deciding that "sent" should be interpreted as "sent and received", the Court considered s. 311(2), which deems an assessed person to have received notice upon publication that the assessment notices have been sent. The Court found that s. 311(2) does not deem *when* the notice is received, and thus this section should be read in conjunction with s. 23 of the *Interpretation Act* to determine when notice is received. The court further found that there was no ambiguity in the *MGA* which could lead to doubt that "sent and received" was the correct interpretation, and that if there was any ambiguity, it should be resolved in favour of the taxpayer.

[10] In determining the standard of review, the Court was cognizant of the balance between protecting the rights of the taxpayer, and having complaints heard in a timely fashion. These are the same policy considerations that apply to the new assessment appeal scheme.

[11] In 2012, the issue of whether a complaint was filed by the deadline specified in s. 309(1)(c) was heard in an appeal to the Court of Queen's Bench in *Edmonton (City)* v. *Assessment Review Board of the City of Edmonton*, 2012 ABQB 399. This decision is generally referred to as the *Wood* decision after the taxpayer, Mr. Stephen Wood. In reaching his decision, Justice Hillier considered the current legislation, and confirmed the principle set out in *Chow*, the very principle upon which the Applicant in this matter is relying. It is noted that the case involved the City of Edmonton, and the City of Edmonton had set the complaint deadline as 67 days after the day of mailing. The issue of the date set by the municipality pursuant to s. 309(1)(c) was not in dispute. Instead, the parties disputed whether the complaint had been filed in accordance with s. 461.

[12] The assessment notices in *Wood* were mailed on January 4, 2011, with the deadline of March 14, 2011 appearing on the notice. The applicant mailed his complaint form on March 8, it was postmarked March 9, and stamped as being received on March 21, 2011. In paragraph 56,

the Court states: *"The deadline by which the complaint must be made is set by the municipality.* ***It must be prescribed in the assessment notice as a date 60 days after the deemed receipt of Notice*** *by the owner. There is no dispute that the March 14 deadline meets this requirement derived from s. 309(1); to that extent, I agree with the ARB that not much else turns on the interpretation of that particular section."* [emphasis added]

[13] The Court specifically stated that the date to be set by the municipality pursuant to s. 309(1)(c) must be 60 days after the deemed receipt of the assessment notice. Accordingly, in the present case the City of Calgary was required to set the complaint deadline of March 11th, 2013 for those notices mailed within Alberta, and March 18th, 2013 for those mailed outside Alberta.

[14] In the present matter, the complaint was filed prior to March 11, and was therefore filed prior to the deadline mandated by s. 309(1)(c). Both the City of Edmonton and the City of Calgary mailed assessment notices on January 3, but the City of Edmonton, consistent with *Wood,* set the complaint deadline as March 11, 2013.

[15] The Composite Assessment Review Boards of both the City of Leduc and the City of Camrose have accepted the Applicant's interpretation of s. 309(1)(c), also the *Chow* and *Wood* decisions that found "sent" means "sent and received". The Composite Assessment Review Boards have recognized that other rules of interpretation need to referenced when determining if a complaint was filed on time.

[16] The proper interpretation of s. 309(1)(c) is that the complaint deadline is 67 days after the assessment notice is sent to an address in Alberta, and 14 days when the assessment notice is sent to an address in another part of Canada. This interpretation is necessary to preserve the right to notice within the context of procedural fairness, and is consistent with s. 311 of the *MGA* and s. 23 of the *Interpretation Act.* Further to this, in the *Chow* decision the Court makes an express finding that "sent" necessarily means "sent and received", and that finding is confirmed in the *Wood* decision. The Composite Assessment Review Board in the present matter should find that the complaint was filed in time, and direct that the matter proceed to a hearing on the merits.

Submissions of the Respondent

[17] The annual 2013 Property Assessment Notice for the subject property was mailed to the assessed person on January 3, 2013. The final date by which a complaint must have been made on this assessment, in accordance with s. 309(1)(c) of the MGA, was March 04, 2013.

[18] In accordance with s. 461(1) and s. 467(2), it is the opinion of the Assessment Business Unit that the Assessment Review Board does not have jurisdiction to hear a complaint regarding the assessment of the subject property.

Board's Decision:

[19] In paragraph 5(ii) of the *Wood* decision, Hillier J. notes that the City of Edmonton did ". . . *all that it was required to do in setting the deadline to include the required sixty days plus the period for deemed mail delivery to property owners as set by the* Interpretation Act, RSA 2000, c I-8 *and giving notice that failure to meet the filing deadline would invalidate a complaint."* And further, at paragraph 67 the Court states, *"The reasoning that an appeal period cannot properly begin to run until receipt of the decision to be reviewed, or at minimum the 7 days deemed by s.*

23 of the Interpretation Act is entirely logical." The wording of the provisions of the *MGA* considered by the Court in *Wood* is the same as in the provisions that apply in this Composite Assessment Review Board decision.

[20] In the *Wood* case, Justice Hillier considered the decision of Park J. in the earlier *Chow* case. The facts from which the *Chow* case arose are these. On July 19, 2002, a one-member panel of the Municipal Government Board heard an appeal from a decision of the Calgary Assessment Review Board. At issue was the timeliness of Mr. Louis Chow's complaint. In MGB Order 158/02, the Municipal Government Board found as follows: "*Section 309(1)(c) of the* Act *directs that an assessment must set a date by which a complaint can be made, and such date must not be less than 30 days after the assessment notice is sent (and received). The March 4, 2002 date noted on the Assessments was incorrect as it did not allow the seven days for presumed receipt of the Assessment on mailing."* The Municipal Government Board also found that "*The newspaper publication by section 311 of the* Act *and the deeming provision for receipt cannot override the appeal rights specified in section 309(1)(c). The* Act *is clear that the date noted on an assessment must be a minimum of 30 days after the notice is sent (and received) and to incorporate a mailing period into that 30 days would have the effect of reducing the 30 day complaint period."*

[21] The City of Calgary made an application for judicial review seeking an Order quashing MGB Order 158/02, and that application came before Justice Park. In finding that the decision of the Municipal Government Board was not flawed, but clearly rational and in accordance with reason, the Court confirmed the Municipal Government Board's reasoning in regard to s. 309(1)(c) of the *MGA*, i.e., that "sent" means "sent and received". The Court's confirmation of the Municipal Government Board's decision meant the (then) 30 day complaint period commenced on the date the assessment was received, and in the absence of proof or confirmation of receipt, Mr. Chow was entitled to rely on the presumption of receipt set out in s. 23 of the *Interpretation Act*, i.e., 7 days in his case.

[22] In 2004 when the Chow case was decided, s. 301(c) of the *MGA* read as follows: *(c) the date by which a complaint must be made, which date must not be less than 30 days after the assessment notice or amended assessment notice is sent to the assessed person.* Presently, and as it was at the time of the decision in *Wood*, s. 309(1)(c) is as follows: *(c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person.* The difference between the two provisions is that in 2004, the deadline for filing an appeal set in the assessment notice could be 30 days or more, and now it is fixed at 60 days, no less, and no more.

[23] To sum up, in the *Chow* case, Park J. found that "sent" in s. 309(1)(c) meant "sent and received", and that the 30 day time period commenced on the date the assessment was received. In the *Wood* case, Hillier J. considered the *Chow* decision, found that not that much has changed, and stated: *"The reasoning that an appeal period cannot properly begin to run until receipt of the decision to be reviewed, or at minimum the 7 days deemed by s. 23 of the* Interpretation Act *is entirely logical."* Clearly, the Court is of the view that the 60 days in s. 309(1)(c) is an appeal period pure and simple, and therefore is not intended to include the time an assessment notice spends in the mail.

[24] There is a provision in the *MGA* that was enacted after the decision of Park J. in *Chow.* That provision is s. 284(3). Section 284(3) was in effect at the time the facts in the *Wood* decision were considered, but Hillier J. did not refer to it. Section 284(3) is as follows: *(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent to a person on the day the document is mailed or otherwise delivered.*

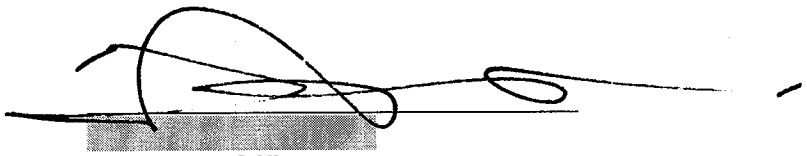
25] What is the meaning of "deemed to be sent to a person on the day the document is mailed or otherwise delivered"? Does it mean that an assessment notice or tax notice sent by mail is deemed to be received by the taxpayer on the day it was dropped in the mail box? That would be one *powerful* deem. Or does it mean simply that the notice is deemed to be sent on the day it was mailed, but has yet to be received?

[26] In *City of Leduc Board Order No. 0200 01/2012*, a one-member panel of the Composite Assessment Review Board considered s. 284(3), and stated that in view of the finding of the Court of Queen's Bench that "sent" in s. 309(1) means "sent and received", the words "mailed or otherwise delivered" in s. 284(3) must mean "postmarked and delivered." Further, the panel opined that if "sent" meant merely postmarked, the legislature could have said so clearly, as they did in s. 341 of the *MGA*: *"A tax payment that is sent by mail to a municipality is deemed to have been received by the municipality on the date of the postmark stamped on the envelope".*

[27] The one-member panel of the Calgary Composite Assessment Review Board writing this decision agrees with the reasoning in the Leduc Board Order, and finds that the words "mailed or otherwise delivered" in s. 284(3) do not mean that the 60 day period to make a complaint begins to run when the complaint is dropped in the mailbox. On the contrary; the decisions of the Court of Queen's Bench in *Chow* and *Wood* apply to the present case, as does s. 23 of the *Interpretation Act*. This panel finds that the correct deadline for filing the within complaint is 60 days plus 14 days, hence March 18th, 2013.

[28] As for the date of March 4th, 2013 as found in the assessment notice, Justice Hillier said in *Wood* that s. 309(1)(c) and s. 461(1) of the *MGA* are referring to the same step, and are to be read harmoniously. That means an invalid deadline on the assessment notice is of no effect. Further to this, s. 311(2), which deems all persons to have received their assessment notices as a result of publication in a newspaper, has no effect in this matter because it does not specify the date when the notices were received. The complaint was filed on March 5th, 2013, is therefore valid, and must proceed to a hearing on the merits.

DATED AT THE CITY OF CALGARY THIS 31st DAY OF May 2013.



Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Further Complainant Disclosure

3. R1 Respondent Disclosure

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.