

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of a request for an award of costs against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

*The City of Calgary, COMPLAINANT*

and

*HMPS Properties Inc.; Clynch Prosthetic & Orthotic Laboratory Ltd.;  
Dilraj P. Investments Inc.; and 1089632 Alberta Ltd.,  
RESPONDENTS*

before:

*I. Weleschuk, PRESIDING OFFICER  
E. Reuther, MEMBER  
A. Wong, MEMBER*

This is a complaint to the Calgary Assessment Review Board in respect of costs requested by the Complainant with regard to property assessment complaints filed by the Assessment Advisory Group on behalf of the following properties entered in the 2011 Assessment Roll as follows:

<b>ROLL No.:</b>	<b>LOCATION ADDRESS:</b>	<b>ASSESSED PERSON/TAXPAYER</b>
067222901	1125 Kensington Rd NW	HMPS Properties Ltd.
042016493	4703 Bowness Rd NW	Clynch Prosthetic & Orthotic Laboratory Ltd.
201394764	4627 16 Ave NW	Dilraj P. Investments Inc.
200420644	728 Northmount Dr. NW	1089632 Alberta Ltd.

This complaint was heard on 9<sup>th</sup> day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *Tina Neal*
- *Garry Good*

Appeared on behalf of the Respondent:

- *Troy Howell*

**Procedural Matters:**

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The panel before the parties is the same panel that was to sit and hear the respective property assessment complaints on September 22 and 23, 2011. The parties did not have any objections to the panel representing the Board and constituted to hear the matter.

Since the issues were common to all four Roll Numbers, for efficiency, the Complainant suggested that they all be heard as one. The Respondent agreed this would be the most practical and efficient approach. The Board held one hearing to address all four Roll Numbers and will render one decision addressing each of the four Roll Numbers.

**Jurisdictional Matters:**

The Respondent raised a jurisdictional matter based on Section 4, Clause 3(f) of the Matters Relating to Assessment Complaints Regulation (MRAC). Based on this clause, the Respondent argued that the agent has the authority to withdraw the complaint at any time, therefore there are no grounds for a consideration of costs as requested by the Complainant. The Board reviewed this portion of MRAC, along with Section 52 (Costs), and concluded that Section 4-3(f), which is part of the agent authorization, gives the agent the authority to withdraw the complaint at any time on behalf of the assessed person or taxpayer. It does not invalidate Section 52 of MRAC which refers to the Board's ability to consider or grant costs. The hearing proceeded to hear the merits of the case.

**Issues:**

The Complainant raised the following issue:

1. Do the actions of the Respondent (Assessment Advisory Group) constitute a breach which warrants cost to be levied under Schedule 3 of MRAC?

The Respondent raised the following issue:

2. What is the legal standard with regard to withdrawing a complaint?

**Complainant's Requested Value:**

The Complainant requested the following costs, based on Schedule 3, Part 2 of MRAC, and presented on page 3 of Exhibit C1.

Roll No.	Prep for Hearing	First ½ day of hearing	Total
201394764	\$1,000	\$1,000	\$2,000
042016493	\$1,000	\$1,000	\$2,000
067222901	\$1,000	\$1,000	\$2,000
200420644	\$4,000	\$1,500	\$5,500
			\$11,500

**Board's Decision in Respect of Each Matter or Issue:**

The first three Roll Numbers were scheduled for a hearing in response to respective property assessment complaints filed on behalf of the respective taxpayers by the Assessment Advisory Group (AAG) on September 22, 2011. The last Roll Number was scheduled for a hearing on September 23, 2011. Prior to the hearing being commenced but at the appointed start time on each respective day, the Respondent (Assessment Advisory Group) withdrew the files.

1. Do the actions of the Respondent (Assessment Advisory Group) constitute a breach which warrants cost to be levied under Schedule 3 of MRAC?

The Complainant presented the following timeline of events that they felt were germane to this issue.

- MRAC allows for 42 days before a hearing for the complaint disclosure. A complaint disclosure package was received in accordance with MRAC for each of the four subject complaints.
- The City submitted their evidence in response to the complaints received on September 7 and 8, 2011 in accordance with MRAC. This provided fourteen days for AAG to review the evidence.
- The City was not given any advance notice that these files would be withdrawn until the respective day of the respective hearings, immediately before the hearings were to begin.

As a result of not receiving any notice prior to the City Assessor appearing at the hearing on the prescribed day and time to participate in the respective hearing(s), the City incurred costs that need not have been incurred. These costs included the cost to prepare the evidentiary package in response to each respective complaint, and the cost of administration to manage the paper flow required under MRAC. Furthermore, the City Assessors Department is involved in a number of hearings during this period, with a limited

number of resources and Assessors. Coordinating the scheduling of Assessors at hearings is a complex and costly activity. Withdrawal of these files prior to or shortly after the evidentiary packages were sent would have greatly reduced the cost the City incurred. Withdrawal of these files even a few days before the hearing would have also resulted in the City incurring less cost. The City indicated that City of Calgary Bylaw 25M-2010 which creates the Calgary Assessment Review Board, Section 12 provides guidance suggesting that ideally complaints should be withdrawn (with written authorization) three business days before the hearing is scheduled. For these reasons, the City requested cost as set out in the table above.

The City also presented examples of other similar situations and behaviour with this same Respondent. Apparently the Respondent had similarly withdrawn a number of files a few weeks earlier for the same reason as indicated for the subject files, but in those cases, the hearing had been convened and the complaints withdrawn as a preliminary matter. It was the City's contention that this constituted a pattern of behaviour.

The Respondent stated that the complaints were filed with the City in error. Because of a failure within their corporate communication and oversight processes, these four complaints were filed when they should not have been. The Respondent, Mr. Howell, is directly responsible for these files and discovered the error the afternoon before the respective hearing dates, therefore his first opportunity to withdraw the complainants was the morning of the hearing. This was an honest mistake and changes have been made to their internal processes to try and prevent any such future errors. These were not the only complaints filed in error, but the Respondent stated that they were few in number and certainly did not constitute a "pattern of behaviour". The Respondent, and specifically the taxpayers involved should not be penalized with costs because of an honest mistake.

The Respondent also stated that there is no direction given in MRAC or the Municipal Government Act that describes how withdrawal of complaints prior to a hearing is to occur, and certainly no timeframe is provided. Therefore the Respondent was not in "breach" of any law or regulation. The Respondent indicated that a lack of courtesy or etiquette does not constitute a "breach" nor cause to levy costs.

**Board's Decision:**

The only evidence before the Board and relevant to the matter at hand is with regard to the four subject complaints and their withdrawal. Therefore, the Board will not speak to the issue of whether the subject behaviour of the Respondent is a "pattern of behaviour". The City has an opportunity to apply for costs on any other complaint it deems warrants such an action, based on the circumstances of each complaint.

With regard to the merit of the request for costs, the Board is mindful of Section 52(1)(2) of the MRAC, which states:

*(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:*

- (a) Whether there was an abuse of the complaint process;*
- (b) Whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process.*

The Board acknowledges that neither the Municipal Government Act or any regulations thereunder specifically set out a process to formally withdraw a complaint. Therefore the test becomes what is considered an "abuse" of the complaint process. The Board considers an abuse as a deliberate or blatant action.

The evidence presented did not indicate that these actions on the part of the Respondent were deliberate or intentional. Rather, it appears that it was a lack of oversight on the part of the Respondent or a flaw in their management process that resulted in the complaints being filed in error.

With regard to waiting to withdraw the complaints on the day and time set to hear the matter, the Board acknowledges that the Respondent (Assessment Advisory Group) is an established company that provides assessment review services to various clients in the municipality. The individuals employed by the company are professionals and very familiar with the process and the staff at the Calgary Assessment Review Board.

The Board recognizes that errors do occur, and management processes are not infallible. That said, when an error is discovered, it would be reasonable to expect that the individual or agency to attempt to correct the error in a practical fashion. Based on the evidence presented, it would be reasonable to expect that the Respondent should have had the opportunity to identify the error some time prior to the day of the hearing. It would also be reasonable for a professional in this business to make a telephone call to the Assessment Review Board to notify them of a withdrawal when the error was discovered. A professional in the industry should recognize that other parties involved are devoting resources to respond to a complaint, and to schedule and provide appropriate individuals to appear at these hearings. If the process is to function effectively and efficiently, it is imperative that all parties involved (all stakeholders in the process) work with each other in a professional and business-like fashion. This goes beyond a matter of mere courtesy or etiquette, but to the integrity and efficiency of the system.

The Board believes that the Respondent should have been aware on September 22, 2010 that Roll Number 200420644 scheduled for September 23, 2011 was also going to be withdrawn, and had every opportunity to withdraw that file on September 22, 2011, along with the first three subject files. This was clearly an opportunity to withdraw this fourth

subject complaint, but this opportunity was not taken. The Board is prepared to give the Respondent the benefit of the doubt on the three subject complaints scheduled for September 22, 2011, but concludes that not withdrawing the fourth complaint until the morning of September 23, 2011 (when it was scheduled for a hearing) "crosses the line" and is an abuse of the process, whether deliberate or not.

Given the conclusion that an "abuse of the complaint process" has occurred with regard to Roll No. 200420644, the second part of the test is whether the Complainant (City) incurred additional costs as a result. In response to questions from the Board, the Complainant described the additional work and effort that was involved in preparing for and appearing at the hearings at the appointed time, but did not provide any quantification of these extra costs. In response to further questions from the Board, the Complainant stated that the costs requested are based on the values in Schedule 3 Part 2 of MRAC, and acknowledged that they are the maximum allowable.

The Board considered the submission that was filed by the Respondent for Roll Number 200420644 and concluded that the submission consisted of little substance, therefore the effort required of the City to respond to this submission was considerably less than the typical effort in response to a typical complaint filed by an agent representing a taxpayer. The Complainant (City) did not provide any quantification as to what additional costs were indeed incurred. The Board concludes that the cost awarded should be much less than the maximum allowed, and awards a cost of \$200 for the category "preparation for the hearing" on Roll Number 200420644.

The Board notes that the hearing for the subject file (Roll Number 200420644) did not formally commence, but that the Respondent indicated that he was withdrawing the files just before the hearing was to begin. All parties were present and prepared to proceed with the hearing, therefore the City did incur the additional cost of having an Assessor present. For this reason, the Board concludes costs for the category "first ½ day of hearing or portion thereof" as contained in Schedule 3 Part 2 of MRAC apply. The costs requested by the Complainant are the maximum allowed under MRAC, but no evidence was provided to show that the quantum requested was in fact the actual additional costs incurred. With the withdrawal of the file, the Assessor was able to return to other duties without much time spent at the hearing. The Board awards \$200 for this category.

In summary, the Board awards the following costs to the Complainant, payable by each respective taxpayer as set out in Section 52(5) of MRAC:

Roll No.	Prep for Hearing	First ½ day of hearing	Total
201394764	\$0	\$0	\$0
042016493	\$0	\$0	\$0
067222901	\$0	\$0	\$0
200420644	\$200	\$200	\$400.00

**2. What is the legal standard with regard to withdrawing a complaint?**

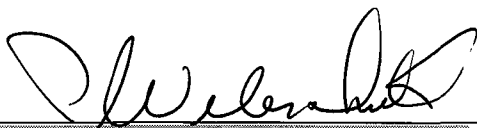
The Board notes that there is no defined standard or process regarding the withdrawal of a complaint. That said, as discussed above, there is an expectation that all parties, especially those with direct and considerable knowledge and experience in the process, will work toward maintaining an effective and efficient complaint process. It is the Board's expectation that parties make reasonable and timely efforts to notify the municipality's Assessment Review Board when a decision is made to withdraw a complaint. Where such actions are deemed not to have taken place, then the Board will consider costs.

The Board notes that the provision of awarding costs is in the Regulations specifically to act as a deterrent to parties that may abuse the complaint process, regardless of whether there is any malice or deliberate intent to do so. All parties involved have a vested interest to maintain an efficient and effective complaint process, and are expected to act in a professional and responsible manner. Mistakes happen, but when they are discovered, reasonable and timely efforts are expected to correct them.

**Board's Decision:**

The Board awards costs totalling \$400.00 with respect to Roll Number 200420644.

DATED AT THE CITY OF CALGARY THIS 31<sup>st</sup> DAY OF October 2011.



**Ivan Weleschuk**  
**Presiding Officer**

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. 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.*