IN THE MATTER OF A COMPLAINT filed with the City of Camrose (CARB) pursuant to Part1 1 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Altus Group, Agent, for Matrix (Camrose) GP Limited – Complainant

-and-

City of Camrose - Respondent

BEFORE:

Members:

J. Acker, Presiding Officer

A hearing was held on September 14, 2012 in the City of Camrose in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

Roll No.	744100
Legal Land Description	Lot 3A Block3 Plan 0927910
Assessment Year	2012

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] The Respondent published a prior notice in the local newspaper of its intention to mail out Assessment and Tax Notices to assessed property owners on May 18, 2012. Such notices were accordingly mailed that date stating "a complaint against an assessment to the Assessment Review Board must be submitted by July 17, 2012".

[2] The complaint in this matter was sent to the City of Camrose on July 18, 2012 at 08:42 AM by fax and was received by the Assessment Review Board Clerk that day. A mailed copy of the complaint was postmarked July 18, 2012 (although a post office stamped impression indicated July 17, 2012) and was received by the City of Camrose on July 20, 2012.

[3] This is an application by the Respondent to have declared that the Complaint is late and thus invalid.

ISSUE

[4] Did the Complainant file the Complaint Form within the time prescribed by the legislation?

Municipal Government Act

311 (1) Each municipality must publish in *one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.*

(2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

309(1) An assessment notice or an amended assessment notice must show the following:
(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;

461 (1) A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on that notice.

(2) On receiving a complaint, the designated officer referred to in section 455 must set a date, time and location for a hearing before an assessment review board in accordance with the regulations.

467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

284(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 on the day the document is mailed or otherwise delivered to that person.

Interpretation Act

23(1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address 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.

(2) Subsection (1) does not apply if

(a) the document is returned to the sender other than by the addressee, or

(b) the document was not received by the addressee, the proof of which lies on the addressee.

POSITION OF THE RESPONDENT

[5] The Respondent asserts that the Complainant failed to file its complaint within the 60 day period required by s. 309(1) of the Act. The Respondent further submits that the 60-day period in Section 309 cannot be extended because there is no provision in the Act allowing this period to be altered by a CARB.

[6] It was further argued that the current provision of 60 days is not intended to provide that a 60-day period runs from the receipt (deemed or otherwise) of the Notice of Assessment but rather is the period from which the Notice was sent.

[7] Given such interpretation, the Respondent submitted that circumstances were not present that would require resorting to the need to apply the Interpretation Act provision of s. 23.

POSITION OF THE COMPLAINANT

[8] The Complainant acknowledged that its complaint was sent on May 18, 2012 and received by the Respondent on July 18, 2012 which is 61 days after the Notice of Assessment was sent to the Complainant being the date of facsimile transmission and a copy by mailing. The date of mailing is deemed to be the date sent by s. 284(3) of the Act.

[9] This brings into question the need to establish the date the Notice of Assessment was sent since s. 309(l)(c) mandates that the notice must show the date by which a complaint may be made being a date 60 days after the notice is sent. The parties agree the date sent is May 18, 2012.

[10] The Complainant submits the question of whether the notice of assessment has been received is covered by the deeming provision of s. 311(1) and (2) of the Act which requires the publication in a local newspaper of the fact that notices have been sent. This results in there being a deemed receipt of the notice but does not stipulate when it is deemed to have been received.

[11] The Complainant submits that it is therefore necessary to determine when a notice is received and that by reason of the application of s. 23 of the *Interpretation Act,* the Notice of Assessment is deemed to have been received seven days after being sent. That application would result in the date deadline for filing as being July 24, 2012 or 67 days after being sent. The Complainant noted that recognition of receipt appears in s. 311 (2) deeming receipt by publication. The use of the words "otherwise delivered" in s. 284(3) of the Act are referred to by the Complainant as also supporting the concept that sent and receipt are independently contemplated by the legislation.

[12] The Complainant referred to the *Calgary (City of) v. MGB,* 2004 ABQB 85 *(Calgary) [Chow Decision]* case as authority for the conclusion that being sent means sent and received noting although it dealt with the legislation in force in 2004 that the amendments in 2010 result is the same usage of the word sent. The Complainant also suggested that the Alberta Court of Appeal in *Boardwalk REIT LLP v. Edmonton (City)* noted in paragraph [78] *" that when an Act can be construed in more than one way, courts must reject any alternative which is manifestly absurd, or extremely harsh, unjust, or capricious: ...."*

[13] Further, the court went on to say in paragraph [109] *"The operative provisions differ dramatically. Having a judge order compliance is very fair. But allowing irrevocable unilateral assessments with no recourse to any tribunal is the largest possible penalty in a taxation statute. Even the Income Tax Act has no general penalty so draconian."*

DECISION

[14] The complaint in this matter was filed within the period determined by the applicable legislation and is a valid complaint.

REASONS

[15] The question of the applicability of s. 27 of the *Interpretation Act* appears in the recent *Wood* (Leduc CARB Order No. 0200 01/2012*)* case in which Hillier J. notes in paragraph 5 that the City (of Edmonton) did all that it was required to do by setting the complaint deadline to mandate the 60 days plus the period of deemed mail delivery as provided by the *Interpretation Act.*

[16] Of the *Calgary* decision, Hillier J. said that "*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.*" *[Wood,* at para. 67].

[17] Section 284(3), which was enacted following the Calgary decision, shows that the legislature is concerned that assessment notices be received. There are two forms of sent: mailed or otherwise delivered. In the context of section 309(1) (c), mailing means postmarked and delivered. If a document is mailed, the provisions under the *Interpretation Act* determine a date of deemed receipt. If sent meant mailed which merely meant postmarked, the legislature could have said so: section 341 says that tax payments are deemed received on the date of the postmark stamped on the envelope. Hillier J. pointed out this distinction.

[18] If the legislature did not care about delivery of assessment notices, then it is reasonable to expect that "sent" would have been defined as "stamped with a postmark" or otherwise delivered. Section 284(3) thereby implicitly invokes the provisions under the *Interpretation Act* (section 23: "*If an enactment authorizes or requires a document to be sent, given or served by mail")* to determine a date of deemed receipt of assessment notices.

[19] In all other cases, section 284(3) determines that the date of sending is the date a document is delivered, and starts the 'clock' of when a document is sent under section 309(l)(c) on the very date of delivery.

[20] The Board notes that s. 311 (I) says a notice must be published that assessment notices have been sent. The notice published in this matter says that assessment notices will be sent on May 18, 2012. This further uncertainty about deemed receipt is resolved by the application of s.23(1) of the *Interpretation Act* which deems receipt on the *67ih* day of being sent.

[21] Section 309 and the *Interpretation Act* provides for predictable results: a municipality simply need provide 67 days for addresses in Alberta, and 74 days for addresses out of Alberta. The City of Edmonton had no trouble determining that the Edmonton-based assessed person in the *Wood* decision was entitled to 60 plus 7 days to make a complaint.

[22] In *Wood,* Hillier J. said that sections 309(l)(c) and 461(1) must be read harmoniously:

> [...] the choice and meanings of the words used in the phrase "the date by which a complaint must be *made,* which date must be 60 days after the assessment notice ... is *sent* to the assessed person" in s. 309(l)(c) are informed by the requirement ins. 461(1) that "a complaint *must be filed with the designated officer at the address shown* on the assessment... notice *not later than* the date shown on that notice" [emphasis added]. The reason for consistency in interpretation is that ss. 309(l)(c) and 461(1) in this context are referring to the same step. Since s. 461 (1) describes how the complaint is to be made, the two sections should harmonize to avoid absurd timing conflicts. *[Wood* at para 56].

[20] Section 461 (1) obviously presumes that the complaint date on an assessment notice is written in compliance with provincial legislation. If a municipality put a complaint date that were to be perhaps only 10 days after the notice were sent, would anyone seriously believe that that the legislature intended such a complaint date so obviously not in compliance with the legislation to be valid? Section 461(1) does not make an invalid complaint date valid. This was the implicit point of the *Calgary* decision: the Court said that an assessed person is deemed to have received a complaint seven days from the date of sending the assessment notice. The complaint date is put on assessment notices under section 309 so that assessed persons need not dig through legislation to know when assessment complaints are due. Hillier J.'s recent decision endorses this rule of deemed receipt in pointing out that the City of Edmonton did everything it could, in giving an amount of time to receive an assessment notice *[Wood* at para. 5].

[21] Although the value of the *Calgary* case is somewhat clouded by the fact that the legislation was amended after the decision was issued, it nevertheless discusses the apparent need and recognition of the need to have the concept of received considered in the resolution of the sending and receiving of important documents upon which rights are to be exercised.

[22] As well, in the *Wood* case the court did not have to consider at length the application of the *Interpretation Act* it did however pay passing acknowledgement of the importance of it and that it was recognized as being the required procedure of the municipality to apply it.

It is so ordered.

Dated at the City of Camrose in the Province of Alberta, this 18th day of September 2012.

J. Acker, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO. ITEM

C1. Evidence and Argument Package of the Complainant

R1. Evidence and Argument Package of the Respondent

APPENDIX 'B"

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

1. Kerry Reimer, Altus Group, agent for the owner
2. Travis Lanz, Assessor, City of Camrose