OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/01/2012-J

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the Municipal Government Act, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the *Act.*)

BETWEEN:

The Town of Okotoks, Complainant

- and -

Walmart Canada Corp 5708 (as represented by AEC International), Respondent

BEFORE:

T. Helgeson, Presiding Officer

A preliminary hearing was held on the 9th day of August, 2012 at the Okotoks Municipal Centre Council Chamber to consider a jurisdictional matter with respect to the validity of the complaint filed against the following property tax roll number:

Roll Number	**Address**
Roll Number 0058260	**500 201 Southridge Drive, Okotoks**

Appearing on behalf of the Complainant:
- P. Huskinson, Assessor

Appearing on behalf of the Respondent:
- A. Kiegler, Agent, AEC International

Attending for the ARB:
- L. Turnbull, ARB Clerk

Background:

Submissions of the Complainant

[1] At the commencement of the hearing, Mr. Paul Huskinson, assessor for the Complainant, proceeded with his submissions. Mr. Huskinson informed the Composite Assessment Review Board ("the Board") that the 2012 assessment notices had been

mailed on March 12, 2012, and that pursuant to section 311(1) of the *Municipal Government Act* ("the *Act*") advertisements had been placed in the local newspaper, the Okotoks Western Wheel, on March 7, notifying property owners that Assessment Notices would be mailed the week of March 12.

[2] Mr. Huskinson states that the *Act* is clear with respect to the requirements for filing a complaint, i.e., that the use of the word "must" in the legislation indicates a mandatory obligation and requirement for providing documents to the Assessment Review Board ("ARB"). Mr. Huskinson went on to inform the Board that the ARB had received an e-mail message from the Respondent at 4:28 p.m. on Friday, May 11, advising that a representative of the Respondent had attended at the Okotoks Municipal Centre prior to 4:00 p.m. on May 11, only to find that the doors were locked, and there was no-one at the reception area.

[3] Mr. Huskinson said that there are six video cameras in and around the building, that the video record had been reviewed, and it showed a staff member at the reception area after 4:00 p.m. and customers entering and exiting the building. Mr. Huskinson went on to inform the Board that even if the doors of the Municipal Centre had been closed and locked, there was an after-hours drop-box at the front entrance, and a doorbell at the rear entrance by which staff could be alerted that someone was outside the building.

[4] Section 467(2) of the *Act* was then cited by Mr. Huskinson, as follows:

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

Mr. Huskinson noted that the matter of late complaints had been before the Board previously, were found to be invalid and dismissed, and cited the decision in CARB – 0203 – 0001/2012.

Submissions of the Respondent

[5] Ms. Anna Kiegler appeared on behalf of the tax agent for the Respondent AEC International Inc. ("AEC"). Ms. Kiegler informed the Board that when she arrived at the Okotoks Municipal Centre a few minutes before 4:00 p.m. on Friday, May 11, 2012, she found the doors locked, the lights off, and no one at the counter, but she did notice someone leaving the building. Ms. Kiegler then phoned AEC and requested that a copy of the complaint be e-mailed immediately to the Okotoks ARB, along with a message informing the ARB that the cheque in payment for the filing of the complaint would be delivered first thing Monday morning.

[6] Ms. Kiegler told the Board that the e-mail with complaint documents attached was sent at 4:28 p.m. on May 11 to two e-mail addresses: *Phuskinson@okotoks.ca* and *arb@okotoks.ca*. At 8:30 a.m. on Monday, May 14, Ms. Kiegler arrived at the Okotoks Municipal Building to deliver the complaint in hardcopy and the cheque. Both the complaint documents and the cheque were accepted. Ms. Kiegler said that while she was at the Municipal Building, the receptionist told her that the doors of the Municipal Building had closed early on Friday, and that complaints could have been dropped off until Saturday by putting them in the drop-box.

[7] On Monday, May 14, Ms. Kiegler received an e-mail from Ms. Linda Turnbull, Municipal Secretary and ARB Clerk, confirming receipt of the e-mail and the complaint documents, and on May 23, Ms. Turnbull e-mailed Ms. Kiegler advising that a jurisdictional hearing would be scheduled.

[8] Ms. Kiegler submitted that there was no intent to abuse the process, but simply a series of unforeseen circumstances that led up to the filing of the complaint. Ms. Kiegler informed the Board that the procedures for preparation of appeals and the filing of complaints are administratively cumbersome, and differ with each municipality in Alberta, Ms. Kiegler went on to express her opinion that the complaint process has become overly complicated.

[9] Ms. Kiegler submitted that the slight delay in filing the complaint was a minor breach of the deadline that did not result in prejudice to the Respondent. It was simply a matter of being a few minutes late in filing on a Friday afternoon.

[10] Ms. Kiegler cited the decision in *Boardwalk Reit LLP* v. *Edmonton (City),* 2008 ABCA, noting that the removal of a party's right to complain is a drastic consequence of a minor defect, and went on to submit that reasonableness, fairness and natural justice should apply in the present case. In her closing submission, Ms. Kiegler said that the discretion of the ARB should not be used to render an appeal invalid on a technical basis.

Issues:

1. Was the complaint sent electronically to the Okotoks Municipal Centre at 4:28 p.m. on May 11, 2012, valid as filed?

2. Does an ARB have discretion to extend the time for filing a complaint?

3. What is the correct time period for filing a complaint after an assessment notice has been sent?

Legislative Authority:

[11] Several decisions of the MGB and ARBs were submitted during the hearing, as was the decision of the Alberta Court of Appeal in *Boardwalk Reit LLP* v. *Edmonton (City).* The MGB decision with the case name *Various Assessed Persons* v. *Calgary (City)* and MGB decision 105/09 deals with the requirement to file an issue statement pursuant to the *Assessment Complaints and Appeals Regulation*, a regulation that is no longer in effect. These decisions have no application to the present case.

[12] The decision in ARB 0830/2010 is a recent decision, but deals with the timing of disclosure of evidence, not the time for filing a complaint. The decision of the Alberta Court of Appeal in *Boardwalk Reit LLP* v. *Edmonton (City)* is with respect to exchange of information, not the filing of a complaint. Neither of these decisions is relevant to the present case.

[13] The only relevant decision, CARB – 0203-0001/2012, is a recent decision of the Lethbridge CARB. In that decision, the CARB found that the Composite Assessment Review Board does not have jurisdiction to extend the deadline for filing complaints. The case is on point, but the definitive case with respect to filing a complaint is a recent decision of the Court of Queen's Bench cited as *Edmonton (City)* v. *Assessment Review Board of the City of Edmonton*, 2012 ABQB 399. Commonly referred to as the *Wood* decision, it deals with a decision of the Assessment Review Board of the City of Edmonton, and in it Justice Hillier comments extensively on ss. 309(1)(c), 461(1) and 467(2) of the *Act.*

[14] The facts of the *Wood* case are as follows. On January 4, 2011, The City of Edmonton mailed the assessment notices to property owners, including Mr. Wood. Enclosed with the assessment notice was a complaint form, at the bottom of which was a notice in bold letters stating "Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee of $50.00 must be submitted no later than March 14 . . . "

[15] Mr. Wood mailed his complaint on March 8, and it was received 11 clear days later on Monday, March 21, 2011. In its decision, the Assessment Review Board held that Mr. Wood's intent was to file his complaint by the filing deadline, but was unable to do so due to circumstances beyond his control, and that to deny Mr. Wood a hearing would be a denial of natural justice.

[16] Justice Hillier had this to say about the decision of the ARB:

> 77. The ARB did not expressly consider the fact that Wood, latterly faced with a tight deadline, might have delivered the complaint by way of courier, personal delivery or electronic filing. He also might have mailed it by way of priority post, Xpresspost or

registered mail. All of these means of delivery would have provided him with more control by guaranteeing delivery within a certain time and enabling him to obtain delivery confirmation.

78. There was no evidence to the effect that Wood was precluded for any reason from delivering the complaint by one or more of these alternative means so as to ensure compliance with the instructions in the Notice. In the end, he chose a means of delivery which was not only uncertain in terms of timing, but which also left him with no documentation to support his argument that Canada Post could not possibly have taken 12 days to deliver the complaint.

79. I find that the ARB's conclusion was unreasonable. The ARB is required by the MGA to dismiss out of time complaints. The ARB concluded that a denial of natural justice would result from applying the statutory deadline to Wood's complaint. Wood had 69 days within which to file his complaint and chose to use the regular mail system several working days prior to the deadline. Even assuming the ARB might extend a deadline for reasons of natural justice in very exceptional cases, it unreasonably concluded that the circumstances in this case were beyond Wood's control so as to provide the ARB with discretion not to dismiss the complaint. (Emphasis added)

[17] In the result, Justice Hillier "cancelled" the decision of the ARB, saying that the ARB lacked authority "other than to dismiss the complaint under s. 467(2)."

[18] In the case at hand, there is conflicting evidence with respect to whether Ms. Kiegler was present at the Municipal Building a few minutes before 4:00 p.m. on Friday, May 11, 2012. Nevertheless, that the complaint documents and a copy of a cheque were e-mailed to both Mr. Huskinson and Ms. Turnbull at 4:28 p.m. on May 11th is not disputed. The question that arises is whether the delivery of a complaint by e-mail constitutes effective filing of a complaint.

[19] Because the date on the assessment notice did not stipulate that a complaint must be filed before 4:00 p.m. on May 11, the Respondent was at liberty to file the complaint until midnight on May 11. Also, since there was nothing in the assessment notice that stated that a complaint could be filed by placing it in the drop-box at the Municipal Centre after hours, the Board finds that filing the complaint by e-mail was a reasonable and effective way to meet the deadline. However, s. 2 of *the Matters Relating to Assessment Complaints* regulation ("*MRAC*") provides:

2(1) If a complaint is to be heard by an assessment review board, the complainant must

(a) complete and file with the clerk a complaint in the form set out in Schedule 1, and

> (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by council. (Emphasis added)
>
> (2) If a complainant does not comply with subsection (1)
>
> (a) the complaint is invalid, and
>
> (b) the assessment review board must dismiss the complaint.

[20] Obviously, sending a cheque by e-mail is effective only for the purpose of indicating that payment will be made at some time in the future, not at the time of filing the complaint, hence the filing of the complaint by e-mail, though timely, is not valid under s. 2(1)(a) of *MRAC*.

[21] As it happens, in the *Wood* case, Justice Hillier has something to say about the time period for filing a complaint, i.e.,

> 5. From the evidence as I will review shortly, two points deserve immediate notation:
>
> i) It is clear that Mr. Wood objected to his assessment, sought to discuss it, then mailed the complaint before the deadline and was unaware of any specific delay in postal delivery;
>
> ii) on the other hand, the City did all 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. (Emphasis added)

and further:

> 56. 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)

[22] Section 23 of the *Interpretation Act*, RSA 2000, c I-8, is as follows:

> 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.

[23] There is no evidence before the Board that the assessment notice was sent to the Respondent by other than regular mail. Nevertheless, before going any further, s. 284(3) of the *Act* must be addressed. Section 284(3) is a relatively new provision, and is set forth below:

> (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. (Emphasis added)

What does "mailed or otherwise delivered" mean? "Deliver" is defined in the *Canadian Oxford Dictionary*, 2nd ed as follows: "**a.** distribute (letters, parcels, ordered goods, etc.) to the addressee or the purchaser, **b.** hand over (delivered the boy safely to his teacher) . . .

[24] Clearly, "mailed or otherwise delivered" in s. 284(3) implies that the day the assessment notice or tax notice is deemed to be sent is the day it is *delivered* by mail or otherwise. If the legislature intended that an assessment notice or tax notice sent by mail was to be deemed to be received by the recipient on the day it was mailed, they could have stated that intention in plain language in s. 284(3). In *Wood*, Justice Hillier had this to say about sending and receiving documents:

> 67. The Court in *Calgary (City of) v Municipal Government Board*, 2004 ABQB 85, 353 AR 332 concluded that the term "sent" in the earlier wording of s. 309 to begin the appeal period meant sent and received. In support of this interpretation, the Court relied on the reasoning in *Switzer's Investments Ltd v Calgary (City)*, [1999] AJ No 1662, citing *Bowen v Council of City of Edmonton* (1977), 2 Alta LR (2d) 112, 3 AR 63 (CA) wherein a 30 day limitation period for appeal did not begin to run until the decision in writing was communicated to the affected party. 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. (Emphasis added)

[25] The case cited above by Justice Hillier, *Calgary (City of)* v. *Municipal Government Board*, 2004 ABQB 85, 353 AR 332, is generally referred to as the "Chow" case, after Mr. Louis Chow, the taxpayer whose property tax assessment complaint led to the

decision of the MGB. In the case, Justice A.G. Park dealt with a number of issues pertinent to this complaint.

[26] The facts of the Chow case are these. On July 19, 2002, a one-member panel of the MGB heard an appeal with respect to the decision of the Calgary ARB. The issue before the panel was the timeliness of Chow's complaint. In the decision, MGB Order 158/02, the MGB found in part 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 seven days for presumed receipt of the Assessment on mailing.
>
> The newspaper publication required 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 thirty day complaint period.

[27] The City of Calgary applied for judicial review, seeking to quash the MGB's decision. The application for judicial review came before Justice Park. In his decision, Justice Park summed up the MGB's decision in these words:

> [11] The MGB . . . decided that the 30-day period starts to run once that assessed person receives the assessment notice. In this case there was no evidence of receipt, the MGB applied section 23 of the Interpretation Act, being c. I-8 of the Revised Statutes of Alberta 2000, which deems receipt in 7 days from the date of mailing. The MGB decided that section 311 cannot operate to reduce the minimum 30 days to make a complaint.

The wording of s. 309(1)(c) was the same in 2002 as it is now, except for the time for filing a complaint (30 v. 60 days), and s. 311(1) and (2) are also the same as they were in 2002.

[28] In court, the City of Calgary argued that the reasoning of the MGB ignored the deeming provision in s. 311(2). The City argued that s. 311(2) stipulates that all assessed persons are deemed to have received their assessment notices as a result of the publication in a newspaper that the assessment notices have been sent. Justice Park had this to say regarding the City's argument:

> [66] However this argument misses one very essential point. That point makes it very important to note while section 311(2) deems receipt of the assessment as a result of a publication, section 311 does not deem receipt on the date of the publication.

> Section 311(2) clearly omits this very important consideration. Section 311(2) is a deemed presumption of service of the assessment notice.

[29] In finding that the decision of the MGB was not flawed, but clearly rational and in accordance with reason, the Court confirmed the MGB's reasoning in regard to 309(1)(c) of the *Act*, *i.e.,* that in s. 309(1)(c), the word "sent" means "sent and received," hence the (then) 30 day complaint period commenced on the date the assessment was received, and in the absence of proof or confirmation of receipt of an assessment, Mr. Chow would be entitled to rely on the presumption of receipt, i.e., 7 days after mailing as set out in s. 23 of the *Interpretation Act*.

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

The First Issue: For the reasons stated in paragraph [20], above, the complaint that was sent electronically is not valid.

The Second Issue: Although Justice Hillier stated that an ARB might have jurisdiction to extend the time for filing a complaint in very exceptional circumstances, there is nothing in the *Act* or regulations that gives an ARB the jurisdiction to do so.

The Third Issue: The correct time for filing a complaint after an assessment notice has been sent by regular mail in the Province of Alberta is 67 days from the date the assessment notice was mailed.

Board's Decision:

By virtue of s. 23 of the *Interpretation Act*, the Complainant had until midnight, May 18, 2012, to file its complaint. Accordingly, the complaint filed on May 14, 2012 was made within the proper time, and is a valid complaint.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 27th day of August, 2012.

T. Helgeson
Presiding Officer

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) 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.

470(2) 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).*

470(3) 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.*