BOARD ORDER: MGB 022/03

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL from a decision of the 2002 Assessment Review Board (ARB) of the City of Calgary.

BETWEEN:

Ramada Hotels/Debra's Hotels et al. represented by Deloitte & Touche - Appellant

- a n d -

City of Calgary - Respondent

BEFORE:

H. Kim, Presiding Officer
R. Scotnicki, Member
S. M. Gordon, Member

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on December 2, 2002.

This is an appeal to the Municipal Government Board (MGB) from decisions of the 2002 ARB of the City of Calgary as to whether there had been timely filing of complaints by the Appellant respecting property and business assessments in the Respondent municipality as follows:

Roll No.	Address	Assessment
Property Assessments		
472 51144 3	**617 Tuscany Springs Boulevard NW**	**$268,000**
472 51146 8	**650 Tuscany Springs Boulevard NW**	**$3,330,000**
472 51002 3	**56 Tusslewood Heights NW**	**$586,500**
472 51142 7	**679 Tuscany Springs Boulevard NW**	**$391,500**
472 12400 7	**555 Tuscany Springs Boulevard NW**	**$768,000**
130 03140 4	**9919 Fairmount Drive SE**	**$6,330,000**
118 00500 8	**9724 52 Street SE**	**$1,770,000**
019 00310 2	**5353Y Crowchild Trail NW**	**$4,580,000**

Business Assessments

068 22970 7 0010	**303 9 Avenue SE**	**$265,856**
068 05430 3 0011	**205 5 Avenue SW**	**$944,604**
068 05429 5 0410	**255 5 Avenue SW**	**$906,813**
067 04750 6 0040	**300-715 5 Avenue SW**	**$99,255**

PRELIMINARY MATTER

Transcripts

The Respondent had contacted the Secretariat before the commencement of the hearing regarding the issue of responsibility for the cost of a copy of the transcript for the Appellant. At the hearing, it was agreed that the Respondent would bear the costs of the transcripts for themselves and for the MGB (three copies). The Appellant was to be notified if and when the transcript was ready and would obtain a copy at their expense. Accordingly, in this particular case, the Appellant agreed to pay for his own transcript. The MGB acknowledges that the practice varied in this specific case from s. 10.3 of the Procedure Guide, that indicates the party requesting the transcript will provide copies to the other party and the MGB**.**

BACKGROUND

This matter comes before the MGB as an appeal from the ARB's preliminary decision to dismiss the complaints filed by the Appellant. The ARB concluded in a preliminary hearing that the Appellant's complaints were received after the filing deadline and were therefore dismissed. The parties did not adduce evidence or present arguments pertaining to the valuation of the subject properties and subject premises respectively and no decision was rendered by the ARB concerning the assessment of the property and premises.

Prior to the MGB hearing, the parties were advised of the following MGB decisions MGB 056/01 and MGB 033/01 as well as the MGB website for a search of more recent decisions which deal with the matter of time calculation, and late filing.

The following are the key dates and events.

Business Assessment Notices

The Respondent published notices in The Calgary Herald and The Calgary Sun on January 21, 2002 that the anticipated date of mailing of the business assessment notices was January 25, 2002. These notices stated that complaints must be postmarked and received on or before February 25.

The Respondent mailed the business assessment notices on January 25, 2002.

The Respondent published notices in The Calgary Herald and The Calgary Sun on January 25, 2002 that the business assessment notices had been mailed on January 25, 2002. These notices stated that complaints must be postmarked and received on or before February 25.

Property Assessment Notices

The Respondent published notices in The Calgary Herald and The Calgary Sun on January 28, 2002 that the anticipated date of mailing of the property assessment notices was February 1, 2002. These notices stated that complaints must be postmarked and received on or before March 4.

The Respondent mailed the property assessments on February 1, 2002.

The Respondent published notices in The Calgary Herald and The Calgary Sun on February 1, 2002 that the property assessment notices had been mailed. These notices stated that complaints must be postmarked and received on or before March 4.

Further Notices

In addition to the notices mentioned above, the Respondent also published in The Calgary Herald on February 20, 22, 23, 28, 2002 and March 2, 2002, and The Calgary Sun on February 19, 24, 28, and March 03, 2002 respectively, an advertisement entitled "When should I review my assessment?" The "designated complaint period" was noted to be February 1 to March 4, 2002. The advertisement concluded by stating "Inquiries that are made after March 4 (the final date of complaint) will be considered for your 2003 assessment notice."

The Appellant filed the business assessment complaints at the ARB on March 4, 2002 and the property assessment complaints at the ARB on March 11, 2002.

The ARB concluded that the "… subject complaints were not filed in time, and therefore not entitled to hearings."

The Appellant then appealed the decisions of the ARB to the MGB.

ISSUES

The MGB finds the jurisdictional issues to be as follows:

1. Does time for filing complaints run from the date of mailing of notices of assessment or does it commence on the date of the deemed receipt of the notices?
   (a) Should the term "sent" in s. 309(1)(c) of the Act be interpreted as "sent" or "sent and received?"

2. On what date were the assessment notices mailed to the Appellant?

3. What was the final date by which complaints could have been filed by the Appellant?

4. Does newspaper publication giving notice that the assessment notices have been mailed affect the final date by which a complaint must be filed to the ARB?

5. Did the return date on the assessment notices sent to the Appellant comply with the complaint period prescribed by the Act?

6. Did the Appellant file the complaints to the ARB on or before the date prescribed by the Act?

7. What is the impact of prior MGB decisions on the current appeals?

8. Does the MGB have jurisdiction to hear and decide on the matter or matters giving rise to the Appellant's complaints on the assessed value of the subject properties and premises respectively, before the ARB has heard and decided such matters?

LEGISLATION

Municipal Government Act

The provisions of the Act that were considered by the MGB are as follows.

Section 303 of the Act requires that certain information be delineated on the assessment roll.

303 The assessment roll must show, for each assessed property, the following:
- *(a) a description sufficient to identify the location of the property;*
- *(b) the name and mailing address of the assessed person;*
- *(c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;*

(d) if the property is an improvement, a description showing the type of improvement;
(e) the assessment;
(f) the assessment class or classes;
(g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 156 of the School Act;
(h) if the property is exempt from taxation under Part 10, a notation of that fact;
(i) any other information considered appropriate by the municipality.

Section 309(1) of the Act outlines the required contents of an assessment notice. Specifically, the notice must state the date it is sent to the assessed owner, as well as the date by which a complaint must be filed. The date on the assessment notice must not be less than 30 days from the time that the notice was sent to the assessed owner.

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 not be less than 30 days after the assessment notice or amended assessment notice is sent to the assessed person; . . .

Section 311 of the Act requires municipalities to notify the public that assessment notices have been sent. This section states that the publication of this notice results in all assessed owners being deemed to have received the assessment notice.

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 to have received their assessment notices as a result of the publication referred to in subsection (1).

Section 461(1) of the Act specifies that a complaint to the ARB must be filed no later than the date shown on the assessment notice.

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.

Section 467(1) of the Act requires an ARB to dismiss a complaint that is filed late. In order to determine if the subject complaint was late, the MGB must determine if and when the notice was sent to the assessed owner, if the final filing date was 30 days after the sending of the notice and when the assessed owner filed the complaint.

467(1) An assessment review board may make any of the following decisions:

(a) dismiss a complaint that was not made within the proper time or that does not comply with section 460(7);

(b) make a change with respect to any matter referred to in section 460(5);

(c) decide that no change to an assessment roll or tax roll is required.

(2) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration assessments of similar property or businesses in the same municipality.

Section 499(1)(d) allows the MGB the authority to make any decision that the ARB could have made on the matter before it.

499(1) On concluding a hearing, the Board may make any of the following decisions:

(d) make any decision that the assessment review board could have made, if the hearing relates to the decision of an assessment review board; … .

Alberta Regulation 238/2000, Assessment Complaints and Appeals Regulation

The parties may pursue consent to bypass the ARB.

11 In any matter to which Part 1 applies, the Municipal Government Board, instead of an assessment review board, may hear and decide at first instance any complaint or supplementary complaint if

(a) the parties to the complaint or supplementary complaint consent to a hearing by the Municipal Government Board, and

(b) the assessment review board, on application by the parties to the complaint or supplementary complaint,

(i) is satisfied that the complaint or supplementary complaint should be heard by the Municipal Government Board due to time considerations, the complexity of the issues or other compelling reasons, and

(ii) directs that the complaint or supplementary complaint be heard by the Municipal Government Board.

The Interpretation Act

The provisions of the *Interpretation Act* considered by the MGB are as follows.

Section 3 speaks to the extent of the application of the *Interpretation Act*.

3(1) This Act applies to the interpretation of every enactment except to the extent that a contrary intention appears in this Act or the enactment.
(2) The provisions of this Act apply to the interpretation of this Act except to the extent that a contrary intention appears in this Act.
(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable to it and not inconsistent with this Act.

Section 10 pertains to the interpretation of an enactment.

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

Section 22 provides assistance when holidays intervene in events and when certain phrases such as "at least" or "not less than" are referred to in legislation.

22(1) If in an enactment the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.
(2) If in an enactment the time limited for registration or filing of an instrument, or for the doing of anything, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.
(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.

Section 23(1) outlines the dates on which a service is presumed to be effected when an item is mailed according to certain conditions. The section also sets the burden of proof regarding both the sending or mailing and receipt. Section 23 was numbered as section 22.1 prior to amendments to the *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 … .*

SUMMARY OF APPELLANT'S POSITION

Time for Filing of Complaints and Interpretation of "Sent" in 309(1)(c)

The Appellant submitted that the word "sent" means "sent and received." The Appellant believes that "… Section 311(2) [deeming section] cannot abridge the 30 day appeal period and cannot serve to terminate appeal rights for Section 309(1)(c), which provides the 30-day appeal period." The Appellant argued that the "overriding issue" is that the deeming s. 311(2) has to be read in conjunction with s. 309(1)(c).

Accordingly, the Appellant applied the provisions of s. 309(1)(c), that a complainant has 30 days from the time that the notice is sent and based on the word "sent" meaning "sent and received," the Appellant invoked the provisions of the *Interpretation Act* (IA), which provides that the time period in Alberta for receipt of mail is seven days. Applying this calculation, and noting that the time period elapsed on a Sunday in the case of both the property and business assessment complaints respectively, the Appellant then, again under the direction of the IA, figured that the business complaints were due on March 4, 2002, and the property complaints were due March 11, 2002. The Appellant submitted calendars, which are summarized below. MGB note: The number of appeals (12) before the MGB was reduced from those complaints (38) before the ARB. In other words, the number of complaints (38) itemized in Exhibit 1A, Tab A (38) and the number (38) referred to in Exhibit 1A, Tab B – the calendars, were not all taken forward by the Appellant to the MGB, where as previously mentioned, the number of appeals totalled 12.

The Appellant did not offer any evidence regarding actual receipt of the assessment notices. Instead, the Appellant calculated the deemed assessment notice receipt for both business and property complaints seven days after the date that they were mailed. The count for the actual 30 days started the next day after the deemed receipt for the business and property complaints respectively as figured by the Appellant in the calendars summarized below.

January, 2002						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	4
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25 2002 Business Assessment Notices Mailed	26
27	28	29	30	31		

February, 2002						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2

					2002 Property assessment notices mailed – Deemed receipt of business notices	(Business) start counting 30 days
3	4	5	6	7	8 Deemed receipt of property notices	9 (Property) start counting 30 days
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25 2002 Deadline for business complaints as per assessment notices	26	27	28		

March, 2002						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	1
3	4 2002 Final date for business complaints 2002 Business assessment complaints x6 2002 Deadline for property complaints as per assessment notices	5	6	7	8	9
10	11 2002 Property assessment complaints x32 2002 Final	12	13	14	15	16

	date for Property Complaints 2002 Final date for business complaints out of province					
17	18 2002 Final date for property complaints out of province	19	20	21	22	23

Regarding the premise that the word "sent" equates to the words "sent and received," the Appellant contended that the "line of authority" described by the MGB in MGB 033/01, and followed in MGB 056/01, MGB 123/02, MGB 069/02, MGB 158/02 amended by Board Order MGB 161/02, and MGB 083/01 which dealt with "sent" in a different context, that of the appeal period between the ARB and the MGB, emanates from three Alberta court decisions.

Accordingly, in support of this position, the three Alberta court decisions submitted by the Appellant commenced with Bowen v. Council of the City of Edmonton [1977] 2 Alta. L.R. (2d), a decision of the Alberta Court of Appeal. In the Bowen case, the Development Appeal Board of the City of Edmonton had "reconsidered" their earlier decision in the same day concerning the development of a social club and decided, finally, to allow the appeal, to allow the Edmonton Firefighters' Social Club application. The decision of the Development Appeal Board was made on December 11, 1975, but it was not issued in writing until January 12, 1976.

Under s. 146 (2) of *The Planning Act*, R.S.A. 1970, c 276, the Court of Appeal noted:

> "Leave to appeal shall be obtained from a judge of the Appellate Division upon application made within 30 days after the making of the order or decision … ."

The Court further stated that:

> "If in fact the application was not made within 30 days after the Board had made the decision sought to be appealed from, there would be no jurisdiction to grant leave and this Division would be obliged to vacate the leave to appeal. … It is contended that the impugned decision

> was in law made on December 11 and that the computation of the 30 day period commenced on that date. I am unable to accept that contention. …"

The Development Appeal Board had a responsibility to "render" its decision under 128 of the Act "… in writing to the appellant within 60 days from the date on which the hearing is held."

The Court of Appeal commented that:

> "The duty to render a decision in writing to the "appellant" is imperative, and I am of the opinion that it is not rendered until the writing is communicated … ."

The latter statement was considered "key" in the opinion of the Appellant. The statement by the Court of Appeal that, "A right to apply for leave to appeal from a decision is illusory if it can be lost before a party knows what the decision is and how he is affected by it" was highlighted by the Appellant.

The Appellant next referenced Switzer's Investment Ltd. v. The City of Calgary and Municipal Government Board, Action No. 9801-15673, a March 15, 1999 decision of the Alberta Court of Queen's Bench. In this application for judicial review of a decision of the MGB, one of the issues was whether or not the Applicant was barred from bringing an application for judicial review because the "… application was filed more than six months from the date of the decision." Madam Justice Romaine wrote:

> "The issue becomes, therefore, whether the requirement of s. 503 of the Municipal Government Act that the Board must "send" its decision to interested parties implies a requirement that the Board's decision is not complete for the purpose of Rule 753.11 limitation period until it is received by the affected party who seeks judicial review."

Rule 753.11 of the Alberta Rules of Court reads as follows: "Where the relief sought is an order to set aside a decision or act, the application for judicial review shall be served and filed within six months after the decision or act to which it relates."

The Appellant observed that "Later on at page 4 of the decision the Court found that despite the absence of any language in the legislation that required communication of the decision, such obligation was mandatory" and the Appellant quoted from the decision, which in part, stated:

> "… it follows that the time limitation on a right to judicial review should commence to run from the time the decision is received by the party seeking judicial review, at least in those cases where there is a requirement to notify interested parties."

The Appellant submitted another Alberta Court of Queen's Bench decision, Edmonton City v. L.A. Ventures Inc. [1999] A.J. No. 996, that again involved the timeliness of an application for judicial review of an MGB decision. The question there as enumerated by the Court was "… whether the limitation period runs from the date of the Board's Decision or the date of receipt of the decision." The Court concluded that: "A plain reading of Rule 753.11 in conjunction with the Board's obligation to communicate its decision, leads me to conclude that the Rule 753.11 limitation period runs from the time of receipt of the Board's decision by the person seeking relief under the rule." The Appellant emphasized that these three Court cases illustrate that "sent" means "sent and received."

Quoting from MGB 056/01, an appeal with similar time issues, and adhering to the structure of the analysis undertaken by the MGB in that particular case, the Appellant explained in the written submission:

> "The Application of interpretation of the relevant legislation by the MGB makes the exercise in the present case a simple one. Sent means sent and received and receipt occurs 7 days after mailing. The appellants have 30 days after receipt of the notice to file their complaint. As all the complaints were filed within the 30 day appeal period they are valid complaints."

In response to the selection of dictionary definitions submitted by the Respondent regarding "sent" meaning only conveyed, not received; in contrast, the Appellant included a case, Mah v. British Columbia, [1996] B.C.J. No.7, DRS 96-03832. There, the British Columbia Supreme Court examined a decision of the Assessment Appeal Board of B.C. The Board decided that the property was a hotel, and was excluded from being classified as a residence or multifamily residence as argued by Mr. Mah. The Court upheld the decision of the Board, and the Appellant quoted from the decision:

> "Neither the Act nor the regulations contain a definition of hotel. I was referred by counsel to several dictionary definitions and definitions of hotel under other provincial statutes. Reasons of the Board indicate they also considered these resources. Dictionary definitions encompass a wide range of meaning and tend to be unhelpful without specific context."

The Appellant argued that their cases provide a meaning of sent in the context of assessment legislation whereas dictionary definitions provided by the Respondent do not offer a similar context.

Specifically regarding the dictionary definitions offered by the Respondent, the Appellant observed that The Shorter Oxford English Dictionary contained a comment that "send" also meant "3 To cause (a person) to be carried or conducted to a destination …" and " 4. To cause (a thing) to be conveyed or transmitted by an intermediary to another person." These definitions, it was emphasized by the Appellant also conveyed the notion of delivery. Referring to The Canadian Dictionary, the Appellant

undertook a similar exercise, underlining the concept of receipt and concentrated on "send in 1. To cause to arrive or to be delivered to the recipient."

Newspaper Publication

The Appellant explained verbally that the following issue (among others) was excerpted from MGB 069/02, and in the written submission, the query was presented: "Does the deemed receipt of assessment notices under Section 311(2) of the Act preclude a finding of actual or presumed receipt beyond the date mentioned in the assessment notice?"

The Appellant argued in the written submission that:

> "… since the information published in the newspapers did not include the information required to be included on the assessment roll pursuant to s 303 of the Municipal Government Act, these newspaper publications do not meet the requirements of an assessment notice provided in section 309 (1) of the Municipal Government Act, and that accordingly, the notice of the mailing of the property assessment notices in the newspapers is not publication of the property assessment notices."

In addition, the Appellant approvingly quoted from MGB 123/02, which stated that, "… while section 311 does deem receipt to occur, it does not stipulate the date on which it occurs." The Appellant also quoted MGB decision 056/01, supporting the contention of the Appellant, that since the word "sent" means "sent and received" s. 311(2) deeming receipt only occurs if the advertisement occurs seven days after mailing.

In the summary of the Appellant, it was noted that the Respondent had observed that there was a rebuttable presumption in s. 311(2) i.e., that a complainant could come forward and offer an explanation to a board that he had not received the notice, and the Appellant interpreted this to mean that there was no definitive date.

Regarding the presumption against tautology discussed by the Respondent, (which presumes that the legislature does not use meaningless words, that is meaning is ascribed to every word in a statute referring to Dreidger on the Construction of Statutes); the Appellant argued that the MGB has found meaning for sections 309(1)(c) and 311(2). The Appellant used MGB decision MGB 058/02 amended by 161/02, which quoted MGB decision 069/02 to support his contention. The Appellant also referred to Dreidger, and quoted from it, noting that the presumption can be easily revoked. In addition, the Appellant quoted from Dreidger's work that "… the legislature may have wished to be redundant".

The Appellant referred directly to the assessment notices published in the newspapers and observed that although the year 2002 was not mentioned, the City expects taxpayers to follow precise directions, yet does not adhere to them themselves.

Statutory Interpretation and the Effect upon the Rights of the Taxpayer

The Appellant observed that the MGB has been reluctant to remove the right to proceed to a merit hearing. The Appellant supported this premise by referring to the Mission Statement of the MGB. In addition, the Appellant quoted several MGB decisions and the Supreme Court of Canada who wrote in Ref: Quebec (Communaute Urbaine) v. Corp. Notre-Dame de Bon-Secours [1994] 3 S.C.R. 3 (Bon-Secours), that "Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute." The Appellant believes that this approach is consistent with s. 10 of the IA, which deals with the remedial nature of an enactment. The Appellant wrote: "The overriding consideration is ensure uniformity or fairness and equity in assessments – it is not to deny owners the right to merit hearings."

The Appellant underlined the need for procedural fairness in administrative decisions referring to an Alberta case among others submitted, Alberta (Minister of Municipal Affairs) v. Municipal Government Board (Alta.) et al. (2000) 271 A.R. 161, a case that dealt with the application of s. 295 of the Act and the loss of appeal if certain information considered to be necessary is not provided. In that case, the Court of Appeal considered the rationale of the Supreme Court: "It appears to us that Chief Justice Lamer's widely respected dictum that "if the prohibitory words of the statute are clear, our inquiry is ended" is subject to the proviso of procedural fairness in matters of taxation."

The Appellant emphasized two basic principles that emerge from both Court and MGB decisions. In the written submission, it was noted "... first clear and express language is required to impose burdens in taxing legislation and second, where there are two reasonable interpretations the one more favourable to the taxpayer is to be applied." Based on cases, the Appellant considered that it was easy for the legislature to impose a tax in clear and unequivocal language and when one wants to construct a legislative scheme to provide notice or cut off appeal rights, it can be done clearly and concisely. Although the Appellant did not believe that there was any vagueness or ambiguity in the provisions under discussion, if there was, because there is the possibility of more than one interpretation, any doubt should be resolved in favour of the taxpayer. Among many decisions referred to, the Appellant quoted Morguard Properties Ltd. et al. v. Winnipeg, [1984] 2 W.W.R. 97, decision of the Supreme Court of Canada, "Truncation of such rights may be legislatively unintended or even accidental, but the courts must look for express language in the statute before concluding that these rights have been reduced."

Regarding the appeals at hand, the Appellant wrote that "Upon consideration of the applicable statutory interpretation principles it is clear that the MGB has correctly interpreted the relevant statutory scheme in allowing taxpayers 30 days from receipt of notices of assessment to file complaints."

Implied Exception Rule (generalia specialibus non derogant)

In response to the submission of the Respondent, concerning this rule, that if there are two pieces of legislation in conflict, here, the general one, the IA cedes to the specific, the Act, the Appellant argued against this interpretation and referred to the presentation of the Respondent, quoting Dreidger, regarding the implied exception rule:

> "In less obvious cases, the courts must examine the legislation in relation to the facts and issues of the particular case. Legislation that is general relation to some facts or issues may be specific in relation to others."

The Appellant argued that the IA could be considered the "special legislation" or that section 309(1)(c) is the special provision because it sets a date of at least 30 days for the complainant to decide whether or not to complain. The Appellant noted that s. 311(2) does not contain a reference to a specific date. The Appellant added that if there were two "reasonable" interpretations, a construct which does suggest ambiguity, that the one favouring the taxpayer should be exercised by the MGB.

Regarding s. 3(1) of the IA, which says that that Act applies unless a contrary intention appears in the impugned act, in the summary of the Appellant, it was noted that that there is no contrary intention in the Act to remove the application of the IA, and, more specifically, the application of the extra seven days, s 23(1)(a) of the IA.

The Appellant argued that the contrary intention referred to in s. 3(1) of the IA requires "… something explicit, it has to be express. … there is nothing that takes section 3(1) outside of the exercise here today."

The Impact of Previous MGB Board Orders on the Present Appeals

The Appellant underscored both in written and oral testimony the argument that the MGB has already ruled on fact situations similar to the appeals at hand. The Appellant referred to the sections in the MGB Procedure Guide dealing with rehearings, ss. 12.2.1.(f) and (g) and interpreted them as meaning if an MGB decision emerges which is inconsistent with previous MGB hearings, that that may be a sufficient reason to grant a rehearing. The Appellant believes that this procedure is consistent with the MGB's desire for consistency. The Appellant argued that the Respondent did not offer any new evidence or legal precedent to justify the reversal of the MGB on its previous decisions with a similar

fact situation. In his written submission, the Appellant entitled this subsection "Circumstances Where Prior Board Orders Should be Binding." To substantiate his claim that the MGB has indeed decided on these matters, the Appellant, as indicated in this Summary, referred to numerous Board Orders. The Appellant also referenced an Ontario court case, Ontario (Regional Assessment Commissioner, Region No. 09, v. 674951 Ontario Ltd., [1999] O.J. No. 3774, extracting the principle that when a matter has been dealt with and the evidence has not changed, that it is an abuse of process to continue to re-litigate. In his written submission, the Appellant observed, "The integrity of the assessment appeal process requires consistency in decision-making … ."

Appellant's Request

The Appellant asked the MGB for the following order:

> "In the circumstances an Order of this Board should provide that the decisions of the ARB to dismiss the complaints be reversed and the ARB be directed by this Board pursuant to section 499(3) of the Act to hear and decide the quantum of assessment on the subject properties within 90 days of this Order."

SUMMARY OF RESPONDENT'S POSITION

Time for Filing of Complaints and Interpretation of "Sent" in 309(1)(c)

The Respondent prefaced the discussion of "sent" by remarking that the IA does not apply in this particular case, because of the "… clear provisions …" of the Act. If the IA did apply, the Respondent agreed that the complaints under appeal would have been filed on time. However, the Respondent re-emphasized the IA does not apply and that the extra seven days supplied by the IA does not fit the scheme of the Act. The Respondent did not offer any evidence to rebut the deemed receipt time of seven days of the business and property assessment notices as argued by the Appellant. The Respondent did note that "We have no evidence whatsoever that these assessment notices were not received."

Further, the Respondent noted s. 3(1) of the IA which states that "this act applies to the interpretation of every enactment except to the extent that a contrary intention appears in this act or the enactment." The Respondent described the IA as "fill-in-the-blanks legislation," and in this case it was argued does not apply. The Respondent offered that s. 3(1) of the IA indicates that the intention of the legislature in the specific legislation, the Act, has to be examined to determine if the IA is excluded. While the Appellant had indicated that a contrary intention would have to be quite evident to exclude the IA, s. 3, the Respondent observed that very few pieces of legislation have such specific exclusionary clauses.

The Respondent argued that the meaning of the word "sent" in s. 309(1)(c) does not include the concept of "sent and received". In support of this argument, excerpts from Driedger on the Construction of Statutes, 3rd edition, by Ruth Sullivan were provided. The Respondent addressed the "ordinary meaning rule" and quoted from the text:

> "It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails … . The "ordinary meaning" of a text is the meaning that is understood by a competent user of language upon reading the words in their immediate context. The immediate context of words in a statute generally consists of the section or subsection in which the words appear … . It is the first impression meaning gleaned by a competent reader based on the information that is immediately to hand. This understanding reflects the actual experience of readers, who normally do not read the whole of a text before forming an impression of the meaning of the individual sentences that comprise it."

The Respondent submitted that the ordinary competent reader would understand that the word sent means "… putting the letter in the mailbox … and that a competent reader would not read into the word 'sent' 'receipt by the sender.'" The Respondent further argued that sending and receiving are "… two separate acts."

To substantiate the concept that the word "sent" only means the act of, for example, putting a letter in the mailbox, the Respondent again referred to Driedger to illustrate that the dictionary definitions of the word "sent" are to be used "… as a tool in determining what the ordinary meaning is.''

> "The chief virtue of a dictionary definition is that it fixes the outer limits of ordinary meaning. It offers a more or less complete characterization of ordinary meaning. It offers a more or less complete characterization of the conventional ways in which a word or expression is used by literate and informed persons within a linguistic community."

The Respondent offered three dictionary meanings of the word "sent." The first from The Shorter Oxford English Dictionary, emphasized by the Respondent, stated: "4. To cause (a thing) to be conveyed or transmitted by an intermediary to another person or place." The second, Canadian Dictionary of the English Language, spoke of "send in" as "1. to cause to arrive or to be delivered to the recipient." The third reference, The Canadian Oxford Dictionary, defined "send off 1" as to "get (a letter, parcel, etc.) dispatched."

The Respondent underscored the point that these dictionary definitions define the word "sent" as "conveying" or "sending out."

The Respondent then examined the legislation, following Driedger's second rule of the "ordinary meaning rule" that the courts must "… consider the purpose and scheme of the legislation … ." In particular, the Respondent referred to the word "sent" in the context of the deeming provision, s. 311(2) and s. 461(1) which deals with the situation that the complaint "… must be filed … not later than the date shown on that notice" (assessment or tax notice). The Respondent stressed that mandatory language was used in both 461(1) "must," and that in 311(2) the word "sent" is used as opposed to the word "received." The Respondent further contended that in s. 309 of the Act the legislature could have written, "30 days after receipt of the assessment notice." Instead the word "sent" was used.

Finally, the Respondent invoked the third part of the scheme of Dreidger in the ordinary meaning rule that "… the court may adopt an interpretation in which the ordinary meaning is modified or rejected … ." However, in this particular case, the Respondent submitted that it is "… clear from Dreidger that you have to first of all find that the ordinary meaning would offend the purposes of the legislature when you're doing your section 2 analysis." The Respondent posits that that is not the situation here and indicated that "… there is no basis to impute to the word "sent" an interpretation which the ordinary competent reader would not on first impression believe … ."

The Respondent argued that the facts distinguished the Appellant's three court cases, Bowen, Switzer and L.A. Ventures. The Appellant presented these cases as support for the proposition that sent meant "sent" and received."

Regarding Bowen, the Respondent emphasized that the word "rendered", not "sent" was used in a different piece of legislation, *The Planning Act*. The Respondent further noted that the Court decided that the decision was not "rendered" until the writing was communicated to the agent of Mrs. Bowen. As mentioned earlier by the Appellant, in Bowen, the Development Appeal Board at first denied the appeal from the social club who wanted to expand their premises and then after private discussion, reversed their earlier decision. The Respondent contrasted that situation with the one here by noting that in the appeals at hand, newspaper publications contained the information that the assessment notices are being mailed.

Regarding Switzer, the Respondent commented that the issue there was "… when does a six-month time limit to file a judicial review on a Board decision start to run?" The Respondent concentrated on the words "… after the decision or act to which it relates." The Respondent's interpretation was that it made "… complete sense …" for the Board (sic) to find there was ambiguity as the date of the decision was unknown so therefore it was unknown when the deadline started to run. The Respondent again stressed the presence of the newspaper publications in these appeals, alerting taxpayers to the mailing of the notices.

In the L.A. Ventures case, another case involving an application for judicial review, the Respondent contrasted that case with the appeals before the MGB by explaining that even though the word "sent" did mean "sent and received" that a different section of the Act was being examined and again the Respondent explained that an Appellant might not even have known when the deadline started to tender an application for judicial review.

The Respondent concluded by underlining the difference between the appeals at hand and the three court cases by emphasizing that in the latter cases, that "… people who have rights to appeal who had no way of knowing what the restrictions on them were, because they didn't know when the decision came out". In response to a question from the MGB, the Respondent further emphasized the contrast between the three cases and the appeals at hand by noting that the advance newspaper publications advising that the assessment notices were to be mailed was beyond what the City was mandated to do.

Regarding the Mah case, referred to by the Appellant, the Respondent explained the parallel between the Court's interpretation of "hotel" and the City's interpretation of "sent" in that both analyses dealt with the reasonable person and their interpretation of the various words. The Appellant then quoted the Mah decision "Words of the statute which are precise and unambiguous are to be construed in their ordinary sense."

The Respondent submitted Board Order MGB 125/00 in which an application of an Appellant to extend the time for filing of a complaint at the ARB was rejected.

In response to a question from the MGB regarding the consequences to the City of having an appeal deadline that is 37 days from the date of mailing, the Appellant did not "… think that's up to the City" and emphasized that the City "… has to act with the strictures of the Municipal Government Act. … ." In the opinion of the Respondent, the Act is clear that the 30 days runs from the date that the document is "sent" – "sent" meaning dispatched. Accordingly, the Respondent did not believe that it was "… open to the City whatsoever to say, "Too bad, you know, we're going to add an extra seven days onto that," as they believe that sent means sent and not sent and received. In a further response to the same question, the Respondent advised that the MGB "… would have to ask the Assessment Department, " and explained that she was there on the instructions of the Assessment Department "… and the consequences are significant enough that I'm here." The Respondent further emphasized that they believed that their position was correct, their interpretation of the Act was correct, that the legislature intended to be clear on its deadlines, and that "… to impute an additional meaning to the word "send" by bringing in the IA is not correct." In addition, the Respondent also emphasized that they had a right to defend the decision of the ARB and their own position.

Newspaper Publication

The Respondent referred the MGB to the copies of the newspaper publications contained in the ARB exhibits, assuming that the MGB had them at hand, so to speak. As per the Chairman's undertaking, the MGB did obtain a copy of them subsequent to the hearing.

In s. 311(2) of the Act, the deeming provision, the Respondent asserted that their position is that the word "deemed" creates a rebuttable presumption "… that the assessment notice has been received on the date of publication." The Respondent explained that the 30-day notice, in s. 309(1)(c), starts "… running as of the date of publication of the notice." The Respondent interpreted the concept of rebuttable to mean that if a taxpayer provided evidence accepted by a board that the notice was not received then the rights of the taxpayer would not be lost. In response to a question from the MGB, the Respondent stressed that the taxpayer is deemed to have received the notice, regardless of the times.

The Respondent provided two cases, Gray v. Kerslake (1957) 11 D.L.R. (2d) 225 (S.C.C.) and Hopper v. Municipal District of Foothills (Municipal District), [1976] 6 W.W.R. 610 (Alta. C.A.) and it was explained that they were to illustrate whether a presumption is rebuttable or not. The Respondent posited the idea that there was a way around s. 311(2), that being the taxpayer appearing before a board and arguing that he or she did not receive their assessment and receiving a new deadline from the MGB. In these appeals, the Respondent noted that there was no argument that the assessment notices were not received.

The Respondent provided an excerpt from Dreidger regarding the presumption against tautology. To quote Dreidger:

> "It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose."

The Respondent then collated this presumption with s. 311(2) of the Act and believes that that section means that you are presumed to receive the notice when the publication is published. Otherwise, the Respondent argued the provision would be "meaningless."

While, in response to a question from the MGB, the Respondent agreed regarding 311(2), that it would have been clearer if the section read, "All assessed persons are deemed to have received their notices on the date of publication," it was argued the very presence of this section indicates that it has meaning. The Respondent again invoked the presumption against tautology.

The Respondent also submitted a case, Assessor of the City of Edmonton et al. v. Alberta Assessment Appeal Board et al. (1989), 42 M.P.L.R. 10 (Q.B.), in support of the position that proper notice had been given.

Statutory Interpretation and the Effect Upon the Rights of the Taxpayer

The Respondent commented on the Bon-Secours case and commented that it is "… good law." The Respondent noted that the Supreme Court examined how the Courts traditionally had interpreted tax legislation that there had been a strict interpretation and that this had changed. The Respondent quoted from the head note that now "… interpretation of tax legislation is subject to the ordinary rules of interpretation… ." The Respondent went on to note that a panel must examine what the legislature intended – the teleological approach or in her own words, the purposive approach. Further, describing the approach of the Supreme Court, the Respondent noted and quoted as follows.

> "Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer."

The Respondent agreed with the Appellant that if there was ambiguity, it should be resolved in favour of the taxpayer, but argued that there was no ambiguity in the legislation under discussion.

Implied Exception Rule (generalia specialibus non derogant)

The Respondent again referred to Dreidger:

> "Where two provisions are in conflict and one of them deals specifically with the matter in question while the other is of general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general … ."

The Respondent commented that the IA is the general legislation – "… fill-in-the-gaps legislation" and that the Act is the special legislation. According to the Respondent, only if ambiguity emerges from the special legislation, in this case the Act, is it necessary to resort to the general legislation. Of course, the Respondent did not concede that there was any ambiguity in these sections. In support of this contention, the Respondent referred to s. 3(1) of the IA which states that it applies to the "… interpretation of every enactment except to the extent that a contrary intention appears in this Act or the enactment." The Respondent explained that the legislature underscored the need for certainty, in particular the Respondent isolated s. 311(2), the deeming provision, which ties in with s. 309, the 30 days and "sent" and s. 461(1). The Respondent in these sections stressed the use of mandatory language.

The Respondent argued that there was no need to resort to the IA as the Act was clear. The Respondent submitted Regina v. Greenwood, (1992), 7 O.R. (3d) 1 (C.A.), a case where it was found

that there was a conflict between two acts, the *Canada Evidence Act* and the *Criminal Code*. The Court of Appeal of Ontario found that with regard to the sections under discussion, the *Canada Evidence Act* was the specific legislation that provided the exception to the general, the *Criminal Code*.

The Impact of Previous MGB Board Orders on the Present Appeals

The Respondent argued that previous MGB Board Orders were not binding. The only decisions that the Respondent referred to that it believed were binding were Court of Appeal decisions on the Court of Queen's Bench. The Respondent did concede that MGB decisions may be persuasive.

Despite the four Board Orders particularly promoted by the Appellant, it was contended that the position of the Respondent was correct and that to resort to the IA for the meaning of "sent" was not correct. In these decisions, the Respondent believed that the MGB's interpretation was incorrect. The Respondent agreed with a member of the MGB that it would amount to 'fettering of discretion" if the MGB did not listen to the Respondent because other boards had made decisions that the MGB at hand must follow. The Respondent contended that in previous MGB decisions "… there is no indication in those decisions that the rules of statutory interpretation were ever addressed and certainly no indication that they were ever argued."

Regarding the Appellant's contention that the Respondent has not proven that any harm would result if the appeals proceeded to a merit hearing, the Respondent did not believe that issue was before the MGB. It was contended that the Respondent was entitled to defend the decision of the ARB.

Further, the Respondent argued that the Ontario case, Ontario Regional Assessment Commissioner, mentioned by the Appellant, concentrated on totally different legislation and totally different facts: the continuance of an assessment by an assessor despite a number of decisions from the Ontario Municipal Board.

Respondent's Request

The Respondent explained that she was there to defend the decisions of the ARB. Confirmation of the ARB decisions by the MGB was requested.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows:

1. Section 23 of the IA applies in the absence of evidence of receipt of the assessment notices.

2. The time for filing complaints commences on the date of the deemed receipt of the assessment notices.
   (a) The word "sent" in s. 309(1) (a) of the Act should be interpreted as "sent and received."

3. The business assessment notices were mailed on January 25, 2002 and the property assessment notices were mailed on February 1, 2002.

4. The final date that complaints could have been filed regarding the business assessment notices was March 4, 2002; the final date for the property assessment notices was March 11, 2002.

5. An assessed person must be provided with a minimum of 30 days to file a complaint to the ARB.

6. The dates for filing of the assessment complaints on the assessment notices were different than those presented in the complaint period in the Act.

7. The subject complaints were filed within 30 days of the sending of the assessment notice.

8. MGB decisions are provided in accordance with the Act. They are not binding.

9. The matters giving rise to the complaints about the assessed values of the subject properties and subject premises remain before the ARB.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

The appeals in respect to the assessments are allowed. The Appellant filed their complaints within the time limits prescribed by the Act.

As the complaints were filed within the time limits prescribed by the Act, the complaints are properly before the ARB. Since the complaints are properly before the ARB, the MGB, pursuant to section 499(3) of the Act, adds the following terms and conditions to this decision:

1. The ARB is directed to hear and decide the quantum of assessment on the subject properties and subject premises within 90 days of this Order.

2. If the ARB fails to hear and decide these matters within 90 days of the date of this Order, a application may be made by either party to the MGB to accept jurisdiction to hear and decide on the quantum of the assessment.

3. If the ARB fails to hear and decide on these matters within the 90 days of the date of this Order, the MGB on its own motion, pursuant to section 504, may review its decision not to deal with the quantum of assessment, may determine that no action by the ARB is a decision and may proceed to deal with this matter.

4. The parties may pursue consent to bypass the ARB pursuant to section 11 of the A.R. 238/2000 being the *Assessment Complaints and Appeals Regulation*.

It is so ordered.

REASONS

Introduction

The MGB, in coming to its decision, gave careful consideration to all the facts and arguments put forward by the Respondent. Special attention was paid to the case law submitted by the Respondent, the definitions, concepts of legislative interpretation, the types of newspaper notices issued by the Respondent and the specific historical events and facts of this case. The specific facts of this case, the Respondent's interpretation of the word "sent", the implication of the newspaper advertisements and the inter-relationship of the Act and the IA did not convince the MGB of the Respondent's position. To the contrary, the arguments of the Appellant and the Respondent have convinced the MGB that the approach to these matters as reasoned as follows is correct.

Section 309 (1) (c) – "sent"

There seemed to be agreement that the assessment notices were indeed mailed on January 25, 2002 (business) and February 1, 2002 (property).

The question then arises about the interpretation of the word "sent" – does it mean "sent and received" or merely dispatched? In other words, does the time period to launch an appeal run from when the assessment notice was put in the mail or when the assessed person receives it?

The MGB found the court decisions, Bowen, Switzer and L.A. Ventures, submitted by the Appellant, most persuasive in determining the meaning of "sent." The MGB acknowledges that the three aforementioned decisions did pertain to different fact situations. However, the principle enunciated in Bowen that "A right to apply for leave to appeal from a decision is illusory if it can be lost before a party knows what the decision is and how he is affected by it" is paramount in the appeals before the MGB. How can an assessed person know to complain if he or she lives in ignorance about the "decision" of the City of Calgary Assessment Department with regard to not only the particulars of the assessment notice itself, but also the effect of those particulars within the decision making process itself?

The rationale in Bowen was also followed in Switzer, an appeal that dealt with an application for judicial review of a MGB decision. The Court in the Switzer case decided that regarding s. 503 of the Act, the appeal period commenced when the Appellant received the decision. In L.A. Ventures, the Court was confronted with a similar fact situation. To quote Perras J.: "Put simply, the question for determination is whether the limitation period runs from the date of the Board's decision or the date of receipt of the decision." The principles from the Bowen and Switzer cases were acknowledged to be precedent in the L.A. Ventures case, and, again to quote Perras J.: "A party must have knowledge of the decision in order to formulate a basis for its appeal or judicial review … ."

To reiterate, the MGB notes that the fact situations are different in the three court cases from the appeals before us. However, if one extracts the concept of a party requiring knowledge of a "decision" from those cases and applies it to the present appeals, the principle that an assessment notice must be received in order to formulate a decision whether or not to launch a complaint about one or more those items that must appear on the assessment roll, s. 303 of the Act, is a transparent and logical continuation of the concept of notice. Accordingly, the MGB accepts the principle that "sent," means "sent and received."

Integration of the *Interpretation Act* with "sent and received"

There was no evidence of receipt of the assessment notices offered by the Appellant, other than the deemed receipt. The Respondent did not offer any rebuttal evidence. In the absence of evidence of receipt, the MGB concluded that the IA, s. 23 applies to this particular situation. Accordingly, the MGB added seven days as per s. 23 of the IA to ensure that the Appellant had at least 30 days for consideration of the assessment notices.

Section 309(1)(c) – "…not less than 30 days…"

The "ordinary meaning rule" promoted by the Respondent has to be applied within the context of the Act. In s. 309(1)(c), the language is mandatory – "… the date *must* not be less than 30 days…" (italics added) after the notice is sent, and in our interpretation received, for a property or business owner to complain. In short, there is a requirement, and indeed, the MGB believes a legislative intention, that the municipality must provide to this person at least 30 days for consideration of their assessment notice. Indeed, the wording implies that a municipality could even provide in excess of 30 days for such consideration.

It is the MGB's decision that an ordinary competent reader would extract the fact that the municipality would have to give him or her "… not less than 30 days …" to perform this exercise. The MGB also noted that under the subheading, "Interpretation based on ordinary meaning is not objective," in Dreidger's work, that, "More importantly perhaps, because of the pervasive vagueness of language, the ordinary meaning will rarely, if ever, be sufficiently clear to dictate the outcome of a case." Certainly, in these appeals, as indicated earlier, the MGB was assisted by the principles enunciated in the Bowen, Switzer, and L.A. Ventures decisions regarding receipt.

The MGB also took note of the provision in the IA, s. 10, referred to by the Appellant, that "An enactment shall be construed as being remedial, and shall be given the fair, large and liberal interpretation that best ensures the attainment of its objects." Clearly, the object of section 309 is to give a party, and, in this case, the Appellant at least 30 days to decide to file the complaint**.**

While the dictionary definitions provided by the Respondent provided support to their contention that "sent" meant "dispatched" or "conveyed," the Appellant did successfully rebut the those meanings by locating other definitions that indicated that, for example, "send," particularly, "send in" means "to cause to arrive or to be delivered to the recipient."

The MGB was also assisted by the Mah case offered by the Appellant. There, the word "hotel" as in the situation at hand regarding "sent" was not defined in the Act or the regulations. The Court did not find the dictionary definitions overly helpful without "specific context." In the appeals at hand, we have the specific context of legislation, which could be said to be of a "taxing" nature, and the legislature's intention to provide the assessed person with a certain number of days, stated to be "not less than 30 days." This then, in the opinion of the MGB dovetails with Dreidger's second rule of the "ordinary meaning rule" that the purpose and scheme of the legislation must be examined.

The MGB agrees with the Respondent that there are significant consequences as to the interpretation of the word sent. While it may not be "open" to the Respondent based on their definition of the word sent to add the seven days, if the IA is applied, to accommodate the concept of receipt in this particular

case, the MGB, as is clear from our reasons, has read s. 309(1)(c) to mean sent and received. The consequences of not allowing receipt time in this particular case would negate the whole idea of providing at least 30 days for consideration of the assessment notices by the potential complainant.

Section 311(2)

What is the purpose of this section of the Act? The MGB believes that the purpose of s. 311(2), the "deeming section" is to prevent a party from arguing that their assessment is invalid if they did not receive an assessment notice. Accordingly, in this interpretation, s 311(2) does not initiate the appeal period running from when the notices were placed in the mail. The wording in s. 311(2) is not sufficiently specific to trigger the minimum 30-day period from the date of mailing of the assessment notice. In addition, s. 311 does not operate to clearly alter the notion that the assessed person is entitled to a minimum of 30 days to appeal. After all, there is no date referred to in s. 311(2) that would negate or override the specific reference to "… not less than 30 days …" in s. 309(1)(c).

The Respondent argued that s. 311(2) contained a rebuttable presumption that the assessment notice has been received on the date of publication. The Respondent offered various scenarios whereby the assessed person could appear before a board and argue that he or she had not received his assessment notice. In the appeals at hand, the Appellant offered no evidence regarding receipt, instead a deemed receipt date was invoked as per the IA, s. 23. If it was construed that there was a rebuttable presumption operating here, it could be argued that the Appellant, through an absence of evidence, has successfully rebutted the presumption.

The Respondent offered two cases, Gray v. Kerslake and Hopper v. Foothills in support of the rebuttable presumption concept. The MGB took note of the quotation in Gray v. Kerslake where the Court construed the word deemed as "… until the contrary is proved."

Likewise in Hopper v. Foothills, the Court decided to invoke the notion that deeming contains rebuttable presumption. The MGB found it interesting despite very specific language in the deeming section of then *Expropriation Act*, 1974, (Alta.), c 27, s. 51 … (a) "the document may be served upon the person by registered mail, and (b) the document shall be deemed to be served on the *date it is so mailed*." (italics added) - language that is not present in the deeming section of 311(2) – that Court found that the method of service with regard to Mr. Hopper was inadequate.

The MGB also noted that the City on its own has attempted to clarify these sections under discussion in the Act because in the notices or advertisements, published in the newspapers, the word "sent" is not used, instead, "Notice is hereby given that The City of Calgary *mailed* the …" (italics added). In the absence of receipt, the potential mischief contemplated by not providing the assessed person with the seven days under the IA in terms of "sent" meaning "sent and received" is resolved by providing the

minimum standard of 30 days for the assessed person to consider their assessment notice in s. 309(1)(c). In short, the MGB does not believe that s. 311(2) was meant to abbreviate the time in s. 309(1)(c).

The MGB examined carefully the two types of newspaper advertisements published by the Respondent, which are different from many other municipalities. The first notice is a notice to the public that the assessment notices will be mailed out as of a certain date and the second notice states the notices were actually mailed out. For example, the first notice regarding business assessment notices was in the newspapers on January 21, 2002 and the second was on January 25, 2002 a period of four days lapsing between notices. Although the MGB applauds the Respondent for being proactive the MGB cannot accept that these notices can modify the deemed receipt of seven days provided for in the IA.

Further discussing the concept of a rebuttable presumption, the Respondent offered various scenarios whereby a complainant could appear before a board and argue that he had not received his assessment notice. The MGB also posits the notion that s. 311 acts to prevent a party who offers no evidence from arguing after some protracted time that they did not receive their assessment notice and that the complaint is still a valid one.

The MGB also looks to section 311(1) to give meaning to s. 311(2). Section 311(1) states " Each municipality must … a notice that the assessment notices have been sent". The structure of the last part of the section implies the notices have been sent and as a result of the meaning of the word sent being "sent and received" Section 311(1) qualifies when the newspaper publication in section 311(2) can be applied.

No Contrary Intention in the Act/IA Applicable

Both parties referred extensively to the IA. The Respondent argued that it was unnecessary to refer to the IA because there was a contrary intention in the Act – the deeming section, s. 311(2). The Appellant contended that the IA provided a scheme for the determining when the assessment notices were received, ss. 22 and 23 of the IA. The MGB rejected the arguments of the Respondent and accepted those of the Appellant because, given the silence regarding the deeming receipt as of a certain date in s. 311(2), the MGB did not find the silence to be an indication of a contrary intention. In short, the MGB did not believe that the wording in s. 311(2) was sufficiently specific to create a contrary intention. The type of language required by the MGB to be persuasive of a contrary intention would have to specifically diminish the minimum 30 days stated in s. 309(1)(c). The Respondent even conceded that the section lacked clarity.

Section 303

The Appellant argued that, as the notices in the newspapers did not contain the information mandated in s. 303 of the Act, the notices in the newspapers did not constitute publication of the property assessment notices. The MGB observed that s. 311(1) refers to the publication of a notice which results in all assessed persons being deemed to have received their assessment notices, and this section does not demand that the information on the assessment roll be replicated in the general notice. However, the MGB also noted that it would not be possible for a property owner to start the decision process of determining whether or not he or she should or should not file a complaint since there are no details in the newspaper advertisements. Accordingly, the MGB was convinced by the argument of the Appellant that the general newspaper advertisement is insufficient to initiate the decision process since the advertisement is not the assessment notice.

Relationship of Sections 309(1)(c), 311 and 303 of the Act

In the analysis of the MGB, the starting point in dissecting the relationship of these three sections is the minimum 30-day deliberation period, s. 309(1)(c). It is a specific time period that is not contradicted or undermined by any other section of the Act. The MGB concluded that "sent" means "sent and received." This adheres to the rationale elucidated in Bowen and followed in Switzer and L.A. Ventures. This case law and a purposive approach to the legislation demonstrates to the MGB that the legislature intended to protect an Appellant's right to complain and have "… not less than 30 days …" to consider and exercise that right.

In this particular case, the minimum 30-day deliberation period is initiated after the seven day deemed receipt period extracted from the IA, s. 23. The Appellant provided no evidence of receipt of the assessment notices to assist the MGB; the Respondent noted that if the IA applied – it was vehemently argued that it did not -- then the dates offered by the Appellant would be correct. The MGB was left with a void – in the absence of evidence of receipt of the assessment notices – the MGB concluded that s. 23 of the IA applies.

Following s. 311(1) of the Act, notices both anticipating and confirming that the assessment notices had been *mailed* were published. The deeming section, s. 311(2) deemed that all assessed persons were to have received their notices as a result of the publication. There is silence on the date of receipt. The MGB agrees with the Respondent that it would have been "clearer … ." However, again, given the absence of specificity regarding the wording in s. 311 (2), the MGB concluded that the wording of s. 311(2) is not sufficiently specific to start the time period from the mailing of the notice. While the newspaper publications do operate to prevent a party from arguing that the assessment is invalid if they did not receive a notice, they do not contain sufficient information, as enumerated in s. 303, to allow a person to consider what, if any, complaint action should be taken. As in the trilogy of Alberta cases, Bowen, Switzer, and L.A. Ventures, the party requires a "decision" or in the appeals at hand, an

assessment notice that it could be argued contains a decision about an assessment amount, among other details.

Accordingly, following the above reasoning, the following dates advocated by the Appellant have been accepted as follows.

Calculation of Time Related to the Specific Case

Accordingly, regarding the appeals before the MGB, the following dates tendered by the Appellant in the calendars in his written submission are accepted. These dates are as follows:

- January 25, 2002 – Business Assessment Notices Mailed
- February 1, 2002 – Deemed Receipt of Business Notices
- February 2, 2002 – Commence counting 30 days for Business Notices
- March 4, 2002 – Final Date for Business Complaints
- February 1, 2002 – Property Notices Mailed
- February 8, 2002 – Deemed Receipt of Property Notices
- February 9, 2002 – Commence Counting 30 days for Property Notices
- March 11, 2002 – Final Date for Property Complaints

The MGB was assisted in their computation of the timelines by the IA ss 22(1), and 22(3) that indicate that if the deadline falls on a holiday, here a Sunday, regarding business and property complaints, then the next day that is not a holiday, a Monday, becomes the deadline. In addition, s. 22(3) of the IA advises that if there is a reference in an enactment, in our appeals s. 309(1)(c) of the Act, that speaks about clear days and also contains phrases such as "at least" or "not less than" then, the dates on which the events happen are to be excluded from the calculation.

Application of the IA to s. 461(1) of the Act

The MGB did note the Respondent's reference to 461(1) of the Act that a complaint must be filed with the ARB not later than the date shown on the assessment notice. The MGB refers to MGB 122/02: "Before section 461(1) can even arise, an assessment notice must be issued in accordance with section 309(1)(c). To comply with the legislation, the final date by which a complaint must be filed to the ARB is calculated by adding 30 days to the date an assessment notice is deemed to be received." In these appeals, the addition of the 30 days to the deemed receipt date results in the deadline for complaints being received on March 4, 2002 (business) and March 11, 2002 (property). As previously mentioned, the ARB did receive the complaints on those dates respectively, and they were on time.

Regarding MGB 125/00 referred to by the Respondent the MGB observed there, that even presuming that "sent" equated to "sent and received," the Appellant was clearly beyond even that time period as his application was weeks outside the deadline.

The Respondent invoked the presumption against tautology (presumption that the legislature ascribes meaning to every word in the statute). In this case, as indicated, the MGB believes that interpreting "sent" as "sent and received" results in a clear solution with the assistance of the IA. This view of the two statutes results in a harmonious relationship which would best meet the objects of the Act to provide for a defined time for notice and filing of appeals with a reasonable consideration for the sending and receiving of the notice.

The MGB did not attach any relevance to the omission of the year 2002 with regard to dates in some of the advertisements placed by the City of Calgary in The Calgary Herald and The Calgary Sun. Although the advertisements would have been more complete had the reference to 2002 appeared, nevertheless a reasonable person would read in 2002.

Statutory Interpretation and the Effect Upon the Rights of the Taxpayer

Although the MGB has accepted in this case interpreting sent in the context of section 309 (1) (c) means sent and received and it is very clear, it did examine the proposition of ambiguity.

The MGB did note the Bon-Secours case – the Supreme Court of Canada explained that "The issue in this case is whether the appellant, an institution devoted to the welfare of elderly persons living underneath poverty line, may benefit from the tax exemption provided for in s … ." The MGB agrees that tax legislation is subject to the ordinary rules of interpretation, the purpose of the legislation has to be examined, and if there is a reasonable doubt not explained by the ordinary rules of interpretation, that the reasonable doubt will be resolved in favour of the taxpayer.

Using the purposive approach, the MGB has determined that the legislature intended to provide the assessed person with at least 30 days to consider their assessment notice. The MGB has used what it believes to be the ordinary rules of construction to reach this conclusion. If there is ambiguity here the benefit must weigh, as previously mentioned, in favour of the taxpayer and protecting his right of complaint. In these particular appeals, the MGB has no hesitation in directing merit hearings be held. The MGB would note though that each appeal that comes before the MGB must be considered on its own facts, evidence and argument.

Implied Exception Rule (generalia specialibus non derogant)

The MGB would agree with the Respondent that the Act in this regard constitutes the specific legislation. The MGB agrees though with the Appellant that the most specific provision is that of s. 309(1)(c) and the reference to not less than 30 days. This then would be specific when contrasted with s. 311(2) where the silence concerning the date that the assessment notices are deemed to be received, as a result of the newspaper publications, needs to be filled in with some sort of reference to specific receipt periods.

Regarding the submission of the Appellant of Regina v. Greenwood, where the Ontario Court of Appeal found that with regard to certain provisions, the *Canada Evidence Act* was the specific legislation that provided the exception to the general, the *Criminal Code*, the MGB was unable to find that there was an exception as per the IA, s. 3(1) contained in s. 311(2) of the Act. There was no date there to provide a contrary intention to prevent the application of the IA. The MGB found that the only certainty in the impugned sections was that the assessed person should have at least 30 days to consider their assessment notice. The IA, through its sections dealing with service, ss 22 and 23, provides certainty by effecting service under quite specific precursors. Owing to absence of evidence of receipt, it is necessary to resort to, as the Respondent termed it, "fill-in-the-blanks," legislation – the IA. As the Appellant noted in his extraction of one the comments from the Dreidger work, submitted by the Respondent, "Legislation that is general in relation to some facts or issues may be specific in relation to others."

The Impact of Previous MGB Board Orders on the Present Appeals

The MGB agrees with the Respondent that previous orders are not binding. They may, however, provide an indication of the analysis of the MGB given certain facts regarding certain issues, which explains the direction of the MGB in ensuring that MGB decisions are brought to the attention of parties. The MGB did note the Appellant's reference to the Procedure Guide and the sections on rehearing, section 12.2.1.f) and g) to indicate that the MGB tries to strive for consistency.

The Respondent is certainly entitled to defend their position and the decision of the ARB before the MGB. The MGB heard and examined the Respondent's arguments concerning statutory interpretation, as previously indicated throughout the reasons of the MGB, however, it is the opinion of the MGB that the Appellant successfully distinguished those arguments and interpretation. Of course, the Appellant is equally entitled to appeal a decision of the ARB.

As to the Ontario case, Ontario Regional Assessment Commissioner, submitted by the Appellant, which, in essence dealt with an abuse of process, it did not appear to have any relevance to the appeals at hand.

That being written, the MGB did hear and consider all the evidence of each party and found in favour of the Appellant.

Hearing of the Quantum of the Assessments

As stated in the agreed to background of this case, the Calgary ARB only decided on a preliminary issue related to timeliness of filing. The ARB did not hear any evidence or argument on the matter of the quantum of the assessments. As a result, the matter of the quantum still remains before the ARB. Section 499(1) of the Act read in conjunction with the *Assessment Complaints and Appeals Regulation (AR 238/2000)* (ACAR) provides direction that there are two levels of appeal during which the subject matters must be heard at first instance by the ARB. ACAR only contemplates a bypass of the first level of appeal under very specific circumstances set out in section 11 of ACAR. As a result of this decision, if required, a scheme has been organized in which this matter may arrive before the MGB should it be necessary for the MGB to deal with the quantum of the appeals.

Summary

The careful and extensive consideration and analysis of the MGB, it is hoped, have explained the reasons for our decision in a transparent fashion.

The case law, particularly the three Alberta cases submitted by the Appellant, Bowen, Switzer and L.A. Ventures, convinced the MGB that a potential complainant could not react if he or she is unaware of the specifics of the assessment notice. Therefore, the idea of sent is also inclusive of the concept of received. Owing to the absence of evidence in these particular appeals regarding receipt, the MGB applied s. 23 of the IA that provided seven days for receipt.

The most specific reference to time, "not less than 30 days" in s. 309(1)(c) is an indication to the MGB that the legislature considered that that should be the minimum time period accorded for consideration to an assessed person. As such, the specific mention of time in s. 309(1)(c) would seem to prevail over s. 311(2) that is silent regarding its relationship to the 30 days minimum in s. 309(1)(c). The purpose of s. 311(2) is to prevent a party from arguing that the assessment is invalid if he or she did not receive an assessment notice. Accordingly, it does not operate to start the complaint period running from when the assessment notices were deposited in the mail as stated in the newspaper advertisement.

In s. 311(2) the absence of a reference to a specific time should not be construed to operate as a contrary intention. To be convincing, as revealing a contrary intention, the language of s. 311(2) would have to be more specific than it is written at present. Again, the reference to not less than 30 days in s. 309(1)(c) is specific. It even contemplates more than 30 days, which to the MGB, is again illustrative of the intention of the legislature to provide for a minimum time period that can be exceeded, if necessary.

The newspaper advertisements published by the Respondent, both the warning notice that the assessment notices were to be mailed and the notice that they had been mailed; in the opinion of the MGB do not suffice to limit the minimum 30 day notice. As previously noted, the MGB does commend the City of Calgary for the additional warning notice, but again, it is our opinion that it does not serve to limit the 30 days. In this particular instance, the IA and the Act work together to allow seven days to allow for receipt of the assessment notice and at least 30 days for consideration of it. The marriage of these two statutes in this case provides defined time periods and certainty without abrogating the minimum 30-day time period. If there is any ambiguity, and the MGB examined that proposition, it should, as per the Bon-Secours case, be resolved in favour of the taxpayer.

Accordingly, in the opinion of the MGB, in this particular case, the complaints were received by the ARB on time, admittedly on the last day(s) possible to be on time in this analysis: March 4, 2002, for the Business Complaints and March 11, 2002 for the Property Complaints. As such, they are valid complaints, and it is anticipated will proceed to merit hearings before the ARB.

It is so ordered.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 13th day of February 2003.

MUNICIPAL GOVERNMENT BOARD

(SGD.) S.M. Gordon, Member

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Robert D. Brazzell	Senior Legal Counsel, Deloitte & Touche LLP, for the Appellant
Jan Goresht	Property Tax Services, Deloitte & Touche, for the Appellant
Irene E. MacEachern	Barrister & Solicitor, Law Department, The City of Calgary
Brian A Ballantyne	Student-At-Law, Law Department, The City of Calgary

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Written Submission of the Appellant
2A	Excerpt from MGB Procedure Guide
3R	Written Submission of the Respondent

DOCUMENTS RECEIVED SUBSEQUENT TO THE HEARING AND CONSIDERED BY THE MGB

2002 Assessment Review Board Summary of Exhibits

Transcript of Proceedings at Preliminary Hearing by Premier Reporting