**BOARD ORDER: MGB 112/02**

**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 2001 Assessment Review Board (ARB) of the City of Edmonton (City).

**BETWEEN:**

City of Edmonton - Appellant

- a n d -

Army & Navy Department Stores Ltd., represented by Newell Group,
A Division of Deloitte Touche LLP - Respondent

**BEFORE:**

C.S. Caithness, Presiding Officer
S. Cook, Member
T. Robert, Member

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta, on February 8, 2002.

This is an appeal to the Municipal Government Board (MGB) from a 2001 decision of the ARB of the City of Edmonton with respect to a property assessment entered in the assessment roll of the Respondent municipality as follows:

**Roll Number: 7097231**

**Total Assessment $1,032,000**

**BACKGROUND**

This appeal arises from a decision of the ARB on the Army & Navy Department Store located at 10411 - 82 Avenue. The ARB confirmed the assessment at $1,032,000. Subsequently, the Appellant (City) appealed the ARB's decision on the basis that the assessment is too low. At the outset of the MGB hearing, the Respondent (Army & Navy) raised the question as to whether the MGB can hear an appeal from the City to raise an assessment. This Order is in response to that question.

Owing to the fact that at the ARB the Army and Navy was the Complainant and now, before the MGB, it is the Respondent, this Order will refer to the Respondent as Army and Navy throughout. Owing to the fact that the City was the Respondent at the ARB and is now the Appellant before the MGB, this Order will refer to the Appellant as the City throughout.

The following are key dates and events impacting the deliberations of the MGB in this matter.

April 30, 2001

The City responded to the argument and evidence of the complaint filed by the Army and Navy that the assessment was too high by requesting an increase in the assessed value as shown on the assessment roll.

May 10, 2001

The ARB issued its decision confirming the assessment.

June 5, 2001

The City filed a written statement with the MGB requesting that the assessment be raised beyond the value on the assessment roll.

**ISSUES**

Does the MGB have the jurisdiction to raise an assessment on an appeal by the City on the basis that an assessment is too low where the ARB has confirmed the assessment? In order to decide this matter the MGB must resolve the following specific issues:

1. Does the lack of legislative authority for the assessor to complain about an assessment to the ARB prevent the assessor of the City from requesting an increase in the assessment?

2. Is section 305 of the Act the only remedy available to an assessor, in this case the assessor of the City, to increase an assessment?

3. As the use of section 305 is limited to the tax year, is a request for an increase in assessment also limited to the tax year?

4. What impact does the use of section 305 have once a complaint is filed?

5. Can an assessor, in this case the assessor for the City, request an increase in the original assessment on appeal of an ARB decision?

6. Is the ARB, and subsequently the MGB, limited to the issues contained in the issue statement filed by the complainant pursuant to the *Assessment and Complaints Regulation AR 238/2000* (ACAR)?

7. If an increase in the assessment can be considered at the ARB, was Army and Navy sufficiently aware of the request to increase the assessment in order to respond to the proposition of an increase?

8. Did the City properly file an appeal with the MGB indicating their intent to argue for an increase in the assessment before the MGB?

**LEGISLATION**

In deciding this appeal the MGB examined a multitude of sections in the Act and the Assessment and Complaints Regulation. In deciding the issue before the MGB it is necessary for the MGB to examine the process of the preparation of the assessment through the local complaint process up to and including the completion of the MGB appeal.

***Municipal Government Act***

Firstly, the MGB must look to the original process required to prepare an assessment. An assessment must be prepared annually, must reflect the characteristics and condition of the property at December 31, and must represent the value as of July 1 in the year prior to the year the tax is imposed.

*285 Unless Section 286 applies, each municipality must prepare annually an assessment for each property in the municipality, except the property listed in Section 298.*

In this specific case, the subject property is not subject to an exception.

*289(2) Each assessment must reflect*

*(a) the characteristics and physical condition of the property on December 31 of the year in which a tax is imposed under Part 10 I respect of the property, and*

*(b) the valuation standard set out in the regulation.*

***Matters Relating to Assessment & Taxation Regulation AR 289/99***

*10 Any assessment prepared in accordance with the Act must be an estimate of the value of the property on July 1 of the assessment year.*

An assessment roll is then prepared.

*302 Each municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality.*

If the assessor notices an error or an omission he can issue a correction to the roll**.**

*305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,*

*(a) the assessor may correct the assessment roll for the current year only, and*

*(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*

*(2) If it is discovered that no assessment has been prepared or adopted for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.*

*(3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.*

*(4) The date of every entry made on the assessment roll under this section must be shown on the roll.*

*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.*

This is the point at which a complaint can be initiated to the local assessment review board. The Act limits who can make a complaint to the ARB.

*460(1) A person wishing to make a complaint about any assessment or tax notice must do so in accordance with this section.*

*(3) A complaint may only be made by an assessed person or a taxpayer.*

Once a complaint is filed it becomes subject to the Assessment Complaints and Appeals Regulation AR 238/2000. The MGB must examine the process described in the regulation in some detail to determine if the regulation sets a limit on whether or not an assessment can be raised at this first hearing level, the ARB.

***Assessment Complaints and Appeals Regulation AR 238/2000***

The MGB examines this issue in the context that the subject property required the filing of an issue statement.

*3(1) If a complaint is to be heard by an assessment review board, the complainant must*

*(c) file an issue statement with the clerk of the assessment review board and with the assessor of the municipality at least 21 days before the hearing date of the complaint.*

*(2) An issue statement must be in the form set by the municipality and must*

*(b) set out in detail the grounds of complaint, the particular facts supporting each ground of complaint and the change to the assessment roll or tax roll that is requested by the complainant,*

*(c) include a statement that the complainant and the respondent have discussed the complaint, specifying the date and outcome of that discussion, including the details of any facts or issues agreed to by the parties,*

*(d) include a statement, if the complainant and the respondent have not discussed the complaint, specifying why no discussion was held, and … .*

During the process of disclosure the Complainant and the Respondent must exchange with each other their argument and evidence within required timelines.

*4(1) The complainant must at least 21 days before the hearing date of the complaint disclose to the respondent and the assessment review board the documentary evidence, a summary of the testimonial evidence and any written argument that the complainant intends to present at the hearing.*

*(2) The respondent must at least 7 days before the hearing date of the complaint disclose to the complainant and the assessment review board the documentary evidence, a summary of the testimonial evidence and any written argument that the respondent intends to present at the hearing.*

*(3) The complainant must at least 3 days before the hearing date of the complaint disclose to the respondent and the assessment review board the documentary evidence, a summary of the testimonial evidence and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under subsection (2).*

*(4) If the clerk of the assessment review board sends a notice of hearing to a complainant on a date that is less than 45 days before the hearing date, the complainant and the respondent are not required to comply with subsections (1) to (3) but must instead, within a reasonable time before the hearing date, disclose to each other and the assessment review board the nature of the*

*evidence that the person intends to present, in sufficient detail to allow the other person to respond to the evidence at the hearing.*

The ARB after hearing the appeal may make a change to the assessment.

***Matters Relating to Assessment & Taxation Regulation AR 289/99.***

*467(1) An assessment review board may make any of the following decisions:*
*(b) make a change with respect to any matter referred to in section 460(5); … .*

*460 (5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:*
*(c) an assessment … .*

Decisions of the ARB are subject to a 150-day timeline.

*468 The assessment review boards established by a council must make all decisions*
*(a) on complaints relating to property tax, within 150 days after the assessment notices are sent out by that municipality, ….*

The decision of the ARB must be recorded on the assessment roll.

*477 The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of an assessment review board.*

An appeal from the decision of the ARB rests with the MGB. After the decision of the ARB an appeal may be launched by any person to the MGB. The ability to appeal to the MGB is expanded from those who can file a complaint to the ARB.

*470(1) The decision of the assessment review board may be appealed to the Municipal Government Board:*
*(2) Any of the following may appeal the decision of an assessment review board:*
*(a) an assessed person*
*(b) a taxpayer*
*(c) an assessor*
*(d) a municipality, if the decision being appealed relates to property that is within the boundaries of that municipality.*

*488(1) The Board has jurisdiction*

*(c) to hear appeals from decisions of assessment review boards, … .*

In order to perfect an appeal to the MGB, a written statement must be filed with the MGB.

*491(1) Any matter that is to be dealt with by a hearing before the Board must be in the form of a written statement and must be filed with the administrator within the following periods:*

*(c) for an appeal from a decision of an assessment review board, not later than 30 days after the decision is sent to the complainant.*

At this point the MGB must examine the rules within ACAR to determine whether these rules provide any insight on the resolution of the issue before it.

ACAR limits the introduction of new issues before the MGB.

*8(1) Unless all parties to an appeal consent, the Municipal Government Board shall not, in an appeal, hear and decide an issue that is not disclosed in that matter's statement of issues heard.*
*(2) Notwithstanding subsection (1), the Municipal Government Board may on its own initiative hear and decide an issue that is not disclosed in that matter's statement of issues heard if, in the opinion of the Municipal Government Board, it is necessary for determining a question of law or a question of jurisdiction.*
*(3) The Municipal Government Board must allow a reasonable amount of time for the parties to prepare to address any new issues to be heard in an appeal under this section.*

As well, ACAR limits the introduction of new evidence and how new evidence can get before the MGB.

*9(1) Unless all parties to an appeal consent, the Municipal Government Board shall not, in an appeal, hear any evidence that was not heard by the assessment review board.*
*(2) Notwithstanding subsection (1), the Municipal Government Board*

*(a) must, in an appeal, hear evidence that was not heard by the assessment review board if*

*(i) the evidence is disclosed by the party raising it to the other party and the Municipal Government Board at least 30 days before the appeal is heard,*

*(ii) any related evidence is disclosed by the other party to the party that made the disclosure under subclause (i) and to the Municipal Government Board at least 14 days before the appeal is heard, and*

*(iii) any evidence in rebuttal to the disclosure made under subclause (ii) is disclosed by the party that made the disclosure under subclause (i) to the other party and to the Municipal Government Board at least 7 days before the appeal is heard,*

*and*

*(b) may on appeal hear any evidence necessary to decide an issue before it.*

ACAR defines issue statement and statement of issues heard as follows.

*1(1) In this Regulation,*
*(d) "issue statement" means the document referred to in section 3(2);*
*(e) "statement of issues heard" means the list referred to in section 6(2)( g).*

*6(2) A record of a hearing must include*
*(a) the complaint,*
*(b) the issue statement,*
*(c) all documentary evidence filed in the matter,*
*(d) a list of witnesses who give evidence at the hearing,*
*(e) a summary of all testimonial evidence given at the hearing,*
*(f) all written arguments presented at the hearing,*
*(g) a written list that is prepared at the end of the hearing that identifies those issues from the issue statement about which evidence was given or argument was made at the hearing, and*
*(h) any written reasons for the decisions of the assessment review board.*

*10(1) An assessment review board may at any time, by written order, abridge or expand the time specified in sections 3(1)(c) and 4(1), (2) and ( 3) for the doing of anything described in those sections in respect of a complaint.*
*(2) The Municipal Government Board may, by written order, abridge or expand the time specified in section 9(2) for the doing of anything described by that section in respect of an appeal.*

The MGB can make any decision that the ARB could have made.

*499(1) On concluding a hearing, the Board may make any of the following decisions:*
*(a) dismiss a complaint or an appeal that was not made within the proper time;*
*(d) make any decision that the assessment review board could have made, if the hearing relates to the decision of an assessment review board; … .*

The decision of the MGB must be recorded on the assessment roll.

*517 The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of the Board.*

## SUMMARY OF CITY OF EDMONTON'S (APPELLANT) POSITION

Owing to the request for a written decision, at the conclusion of the hearing the MGB instructed the parties to submit a written summary of their evidence and argument. The MGB has edited the City's summary and added evidence and argument from the hearing, where applicable, to fit within the context of this Order.

The City was represented by Deborah Fisher of the City's Law Branch. Ms. Fisher argued the City's position that the ARB has the jurisdiction to raise an assessment under appeal and, therefore, the MGB also has that jurisdiction. In support of her arguments, she questioned Mr. Nanda, an assessor for the City (the assessor).

### Need For Current/Correct Value

The assessor testified that in January 2001 he was assigned the appeal file for the subject property. When he reviewed the file, he discovered that there was an error in the assessment. The subject property is an older retail commercial property located on Whyte Avenue. He explained that under market value assessment, retail commercial properties are assessed using an income approach in order to arrive at their market value. The assessor discovered that the subject property had not been re-assessed under the income approach. Instead, its assessment was still based on a depreciated replacement cost methodology. When the assessor calculated the assessment using an income approach, he arrived at a market value assessment of $2,613,569. His determination was that the subject property's assessment of $1,032,000 was not market value and, therefore, was not correct. As well, the subject property's assessment was not fair and equitable, since it was based on a different methodology from that used for retail commercial properties (i.e. an income approach) and this different methodology resulted in a significantly lower assessment.

### Section 305 Remedy

The assessor testified that his practice is to correct the assessment roll and send an amended assessment notice for the increased assessment under section 305 of the Act when he discovers an error in an assessment. However, since this error was not discovered until after December 31, 2000, it was no longer possible to correct the assessment under section 305.

In answer to a question by a MGB panel member, Ms. Fisher stated that, in her view, the intent of the December 31 deadline is to ensure that there is finality to assessment and tax amounts. However, she added that this only applies when there is not an ongoing appeal. There is no finality until the appeal process is concluded. Ms. Fisher argued that since the role of the ARB and the MGB is to adjudicate on a correct, fair and equitable assessment, it would not be logical to restrict the MGB to confirming or

lowering an assessment, particularly when evidence and argument supporting the increase of an assessment is properly brought forward by one of the parties.

**Disclosure to Increase at ARB**

The assessor testified that as part of the submission to the ARB he requested that the ARB increase the assessment to $2,613,569 (rounded to $2,613,500). His arguments and evidence supporting this request were disclosed to the tax agent for Army and Navy in accordance with the deadline set out in section 4(2) of the ACAR.

Ms. Fisher pointed out that in its decision, the ARB confirmed the assessment at $1,032,000. She added that in its reasons, the ARB indicated that the evidence suggests that the assessment value is greater than the current assessment, but indicated that it did not have the jurisdiction to increase the assessment.

Ms. Fisher also stated that the ARB was of the opinion that the Assessment Department was aware of the change to the 2000 assessment early in the fall of 2000, and that there was plenty of time to make any necessary change or correction the Assessment Department felt necessary and send a corrected notice to the owner. However, she pointed out that the assessor testified that although the Notice of Hearing may have been sent to the City in the fall of 2000, the appeal file was only assigned to him personally in January of 2001. He also testified that there were over 7,000 complaints against the 2000 assessments, that the assessments are reviewed only after they are assigned to the assessor handling the appeal and that the appeal files are assigned in an orderly manner according to the hearing dates.

**ARB/MGB Authority to Increase an Assessment on Appeal**

Ms. Fisher argued that whether the ARB and the MGB can increase an assessment under appeal is not a new issue. The MGB has considered the jurisdiction of both the ARB and the MGB in this regard in its decision MGB 137/00, where it held that both the ARB and the MGB have the jurisdiction to raise an assessment.

She went on to argue that according to the Act, the MGB has the jurisdiction to make any decision that the ARB could have made:

*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; … .*

The jurisdiction of the ARB is outlined in section 467 of the Act. Section 467(1)(b) states:

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

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

Section 460(5) of the Act outlines what complaints to the ARB may be about. Section 460(5)(c) is relevant to this hearing:

*(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:*

*(c) an assessment; … .*

Ms. Fisher argued that when these sections of the Act are read together, it is clear that the ARB can make a change to the assessment. She added that the Act does not limit the ARB to reducing an assessment.

Ms. Fisher stated that in Board Order MGB 137/00, the property under appeal was a low-rise residential property. She went on to explain that, in that case, the property owner had failed to comply with a request for relevant rental information. As a result, the City had insufficient information to develop a model-derived assessment and an assessment for 1999 was prepared by factoring the 1998 assessment. During the appeal process, the relevant information was supplied to the City, and the City determined an assessment value under a modelled income approach. This assessment was higher than the assessment on the roll. Similarly to the case at hand, the City requested that the ARB increase the assessment. As was the case with the subject property, the ARB held that it did not have the jurisdiction to increase the assessment and, therefore, confirmed the assessment.

Ms. Fisher stated that upon the City's cross-appeal to the MGB, the MGB reviewed the jurisdiction of both the ARB and the MGB and determined that: "The Board has jurisdiction to lower or raise a property assessment that is under appeal". She added that, in that case, the MGB did, in fact, increase the assessment.

Ms. Fisher referenced page 13 of Board Order MGB 137/00 where in its reasons, the MGB reviewed the relevant sections of the Act. It held that:

> "When sections 467(1)(b) and 460(5)(c) are considered together, it is clear to the Board that the ARB can make a change to an assessment. The Act does not define "change" as only the lowering of assessment. In the Board's opinion "change" means either lowering or raising an assessment. Accordingly, the Board concludes that in this case, the ARB had jurisdiction to change the subject assessment and specifically to increase it. Because the ARB could have made the decision to increase the assessment, the Board has jurisdiction to hear this appeal

> pursuant to section 488(1)(c). Section 499(1)(d) empowers the Board to make a decision that the ARB could have made."

**Impact of Active Complaint/Appeal On Section 305 Correction**

Ms. Fisher noted that on the same page the MGB stated that the City was precluded from applying section 305 to raise an assessment, because the Appellant had filed a complaint with the ARB. Ms. Fisher pointed out that the Appellant has asserted that this statement is incorrect, that the City could have corrected the assessment under section 305. However, she argued that at the time of that appeal, once a complaint had been filed against an assessment, the ARB would not consider a corrected assessment. She added that at a scheduled hearing, the ARB would consider only the assessment that was on the original complaint form, regardless of whether a corrected assessment had been issued.

Ms. Fisher explained that subsequent to the issuance of Board Order MGB 137/00, the ARB changed its practice regarding amended assessment notices. Now, when an amended assessment notice has been issued after a complaint is filed, the ARB's position is that the original complaint is a nullity, and a new complaint must be filed on the amended assessment notice.

However, Ms. Fisher argued that in this respect a recent decision of the MGB, Order MGB 184/01 must be considered. MGB 184/01 addressed a situation where an amended assessment notice was issued and the ARB found that it did not have the jurisdiction to deal with the original complaint. Ms. Fisher pointed out that the MGB held that "The Revised Notice of Assessment issued by the City does not nullify the jurisdiction of the ARB to hear the original complaint filed with this tribunal by the Appellant".

In its reasons, the MGB states:

> "The MGB also notes that the assessor's right to reassess is discretionary in the statute. The MGB is of the view that this action must be suspended once a perfected complaint or appeal is before a tribunal and continues until it has been concluded by a decision of this body. To view otherwise leads to the potential abuse of process and the rights of natural justice as described in the scenarios above and in the subject case".

Ms. Fisher contends that in effect the MGB states in MGB 184/01 that the assessor cannot issue an amended or corrected assessment notice once a complaint has been filed, unless the Complainant withdraws its complaint.

Ms. Fisher stated that the City cannot simply issue a corrected notice after the decision of the ARB or MGB. She explained that the City is required under legislation to make any changes to its assessment

roll or tax roll, or both, that are necessary to reflect the decision of an ARB or the MGB and, therefore, could not then issue a corrected notice.

Ms. Fisher argued that the result of MGB 184/01 and sections 477 and 517 of the Act is that the only avenue that a municipality has to correct an assessment that is in error, when that assessment is under appeal, is to request that the ARB and/or MGB make that correction. In the present situation, Ms. Fisher noted that the assessor could not make the correction under Section 305 in any case, because the deadline of December 31 had already passed.

Ms. Fisher stated that the Appellant has asked that the MGB not consider MGB 137/00 because of what it perceives as "errors" in the decision. In particular, it points to the statement on page 2: "The Respondent then filed a complaint with the ARB to raise the assessment to $363,000, thus creating a cross complaint". The Appellant was correct in stating that in fact no Complaint Form was filed by the City. However, the City had indicated to the MGB that the request for raising the assessment, and the evidence and argument supporting this request, was made as part of its submission to the ARB. These materials were disclosed to the Complainant prior to the hearing in accordance with the Regulations in place at that time, which is also the case with respect to the subject property. In Ms. Fisher's view, this is what the MGB was referring to in its statement and the MGB was not under any misapprehension that an actual Complaint form had been filed by the City.

**Manitoba Legislation**

The City of Edmonton did not provide written rebuttal to the Respondent raising this specific argument.

**Legislative Ambiguity**

The City of Edmonton did not provide written rebuttal to the Respondent raising this specific argument.

**Impact of Withdrawal**

The City of Edmonton did not provide written rebuttal to the Respondent raising this specific argument.

**Summary**

In summary, Ms. Fisher stated that the subject property is an older income producing property. These types of properties are assessed on an income approach, not a depreciated replacement cost approach, as it is the most appropriate methodology for arriving at market value for income producing properties. In the present case, the assessor, in reviewing the assessment, determined that the assessment in place was incorrect, unfair and inequitable. Ms. Fisher argued that the assessor put forth this argument and evidence to the ARB, not as an abuse of the process, but as part of the process, given the ARB's role to determine a correct, fair and equitable assessment.

In conclusion, Ms. Fisher submitted that both the ARB and the MGB have the jurisdiction to raise the assessment.

**SUMMARY OF ARMY AND NAVY'S (RESPONDENT) POSITION**

Army and Navy also submitted a written summary of their evidence and argument. The MGB has edited the summary and added evidence and argument from the hearing, where applicable, to fit into the context of this Order.

The Respondent was represented by Mr. John Trelford of Deloitte Touche LLP. Mr. Trelford stated the Army and Navy's position that the City may not appeal an assessment decision to the MGB that was confirmed by the ARB.

**Assessor Restricted From Making A Complaint to ARB**

Mr. Trelford argued that section 460(3) indicates who may make a complaint to the ARB and that it is clear that the municipality cannot file a complaint against an assessment to the ARB. He added that

section 460(5) indicates what a complaint can be about. Section (5)(c) indicates that the complaint may be about an assessment, which is the case in the present circumstances. Mr. Trelford argued further that section 460(7) states that a complaint must explain why the complainant thinks that the information shown on an assessment or tax notice is incorrect. Therefore, it is only the complainant who sets the issues to be heard in a complaint and the municipality cannot file a complaint against an assessment to the ARB because they can never set the issues in the appeal process.

**ACAR Restrains ARB and MGB**

Mr. Trelford stated that ACAR also sets out what an appellant is required to do in order to have a complaint heard by the ARB. He argued that this is further support that only the complainant sets the issues to be heard at the hearing. He pointed out that an issue statement must "set out in detail the grounds of complaint, the particular facts supporting each ground of complaint and the change to the assessment roll or tax roll that is requested by the complainant".

Mr. Trelford argued that it is the Respondent's position that the ARB cannot hear any issues that were not part of the issue statement. He added that the purpose of the Regulation is to set out the grounds of a complaint prior to the hearing so that all concerned have a fair hearing. He contends that the whole process is unfair if the Respondent can change the issues seven days prior to the hearing when the complainant must give the Respondent 21 days prior to the hearing to review the issues and evidence. Mr. Trelford argued that the intent of the Regulation was to prevent ambushing at hearings and now that the Regulation is in place, the City is trying to ambush the Respondent in the present case. He stated that clearly the intent of the legislation was to have the issues set 21 days prior to the hearing and not allow them to change prior to the hearing. He questioned whether the process would allow a complainant to file a complaint based on a school support issue such as in section 460(5)(h), complete an issue statement on that basis and then seven days before the hearing change the issue to a high assessment issue. He submitted that it would not. The City would protest if the Appellant changed the issues after the issue statement had been filed and the ARB would not hear a new issue. Mr. Trelford contended that it is not reasonable to assume that the Regulation will allow the City to do exactly what the Appellant is prevented from doing.

Therefore, Mr. Trelford argued, given that the appellants set the issues to be heard by the ARB and the ARB cannot hear issues that are not in the issue statement, it follows that the ARB cannot increase an assessment that was appealed only on the basis that the assessment is too high.

Carrying this line of thinking further, Mr. Trelford pointed out that the Act also specifically sets out what decisions the MGB can make. He quoted section 499(1)(d) where it states that:

*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; … .*

Mr. Trelford argued that it follows that if the ARB cannot increase an assessment where the issue was that the assessment was too high, then the MGB cannot increase an assessment where the only original issue, set out in the issue statement, was that the assessment is too high.

**Section 305 Remedy**

Mr. Trelford argued that the City has alternative remedies to increase an assessment under the Act and where there is an error, the City does not need the ARB or MGB to increase property assessments for them. It has the power to correct errors under section 305(1) of the Act as follows:

*305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,*

*(a) the assessor may correct the assessment roll for the current year only, and*

*(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*

Mr. Trelford argued that the Act clearly does not give the assessor the right to change an assessment from the previous year. To ask the ARB or MGB to increase an assessment that could have been changed before December 31, Mr. Trelford argued, gives the City and the assessor a means to increase assessments after the deadline and contravenes the legislation.

**Impact of Active Complaint/Appeal on Section 305 Correction**

Mr. Trelford contests the City's statement that because the assessment was appealed that it could not send out a corrected notice. He argued that the City corrects assessments under complaint all the time. Furthermore, he stated that the City has also sent out corrected notices on properties that were under complaint and then attempted to have the complaint voided due to the corrected notice. Board Order MGB 184/01 is evidence of this fact. Mr. Trelford argued that the City stated that this decision states that they can no longer send out corrected notices on appealed properties. He feels the better interpretation is that the decision states that it is the MGB's "view" that this action must be suspended. He pointed out that the decision goes on to state:

> "Although the assessor has the option to initiate a revised assessment anytime during the year, it cannot nullify the complaint process."

Mr. Trelford argued that this is a clear indication that the assessor could have sent out a revised notice.

Mr. Trelford contests the City's use of Board Order MGB 137/00 to support its arguments. He stated that he has reviewed the document and errors are evident in the decision. They are as follows:

"1. Page 2, paragraph 3: *'The respondent then filed a complaint with the ARB to raise the assessment.'* This statement is in error. The City cannot file a complaint about an assessment to the ARB according to section 460 (3) of the MGA.

2. The City indicated that the assessment was in error. This is also an incorrect statement. The property had a factored assessment based on replacement cost. The fact that this value is lower than the modelled value is not an error but the difference between the two methods of assessment. There were a lot of low-rise apartments assessed using this same method. If they are lower than the modelled value it is not an error. The method of assessment was the City's choice. If they wanted all the properties on the same model it is their duty to do the required research prior to the assessments being generated.

3. Page 15, paragraphs 3 & 4: "In this case the City was precluded from applying section 305 to raise the assessment because the Appellant filed a complaint with the ARB to lower the subject's assessment.

'The only avenue open to the city to correct the assessment is via a complaint to the ARB pursuant to section 467(1)(b) resulting in a cross complaint.' This statement is also in error. The MGA does not preclude the city from applying section 305 when a property is appealed. Section 305 does not put any limitation on the assessor except that the correction must be completed prior to Dec. 31. In fact, all the recommendation/withdrawal forms used by the City have been changed based on section 305. The form's purpose is to prevent an appeal on the recommended assessment."

Mr. Trelford argues that either the MGB misunderstood the testimony or incorrect information was presented to it. Therefore, Board Order MGB 137/00 should not be considered owing to all the errors in information contained in the Order.

**Manitoba Legislation**

Mr. Trelford offered the following rebuttal legal argument:

"When considering the present request of the City of Edmonton to increase the assessment, guidance is provided by 79912 Manitoba Ltd. v. Winnipeg (City) Assessor a 1998 decision of the Court of Appeal of the Province of Manitoba.

Relevant Legislation

The legislative scheme, which was considered in the 79912 Manitoba decision, is very similar to that relevant to the current appeal. This legislative scheme of the Province of Manitoba was outlined in another decision of the Manitoba Court of Appeal, Orange Properties Ltd. v. Winnipeg (City).

Part 8 of the Municipal Assessment Act (Manitoba) deals with revisions and appeals.

- A Board of Revision is created consisting of not less than three members appointed by the appropriate municipal authority (sec. 35(1)).
- Both the aggrieved taxpayer and the assessor are specifically given the right to apply for revision of an assessment roll (sec. 42(1)). By virtue of the limits to secs. 13 and 14 this is the only method available for the City assessor or a taxpayer to amend the roll when there is a dispute as to the market value of the property.
- The application must be in writing and "state the grounds on which the application is based" (sec. 43(1)(c)).
- The hearings are in public.
- The Board of Revision has subpoena powers.
- Each party may testify and call witnesses, as may the Board of Revision itself.
- The assessor is obliged to attend the hearing (sec. 46(3)).
- At the request of either party, the Board of Revision may direct that the hearing or a part thereof be recorded.
- The burden of proof is on the assessor with respect to the amount of the assessed value (sec. 53(1)).
- The Board of Revision is empowered to dismiss the application or allow the application and direct a revision of the assessment roll "as the circumstances require and as the board or panel considers just and expedient" (sec. 54(1)). One significant caveat to these broad powers is that the Board of Revision may not change an assessed value where it bears a "fair and just relation to the assessed values of other assessable property" (sec. 54(3)).
- A party - either the assessor or a taxpayer - may then appeal an order of the Board of Revision to the Municipal Board with respect to the amount of an assessed value (sec. 56(2)).
- The scope of such an appeal is defined by sec. 56(4) as follows:
  - In an appeal to the Court of Queen's Bench or to the Municipal Board, a party is entitled to a full hearing on the issues that are the subject of the appeal, as if the issues were being heard for the first time.

- As with an appeal before the Board of Revision, the notice of appeal must "set out the grounds on which the appeal is made" (sec. 57(2.1)(c)), and the burden of proof remains on the assessor with respect to the amount of the assessed value.
- The powers given to the Municipal Board are identical to those of the Board of Revision except at this level an award of costs may be made. The Municipal Board can only change the assessed value if it does not bear "a fair and just relation to the assessed values of other assessable property. (sec. 60(2)).

The specific issue for consideration in the 79912 Manitoba case was whether or not the City of Winnipeg "can seek an increase in the assessment at the Board of Revision level, or at the Municipal Board level, in response to a ratepayer's appeal without the assessor filing an application for revision or a notice of appeal.

Effectively, this is precisely the issue under consideration in this appeal. The Manitoba legislation contemplates the initiation of a request to reduce an assessment by way of an application for the revision of the assessment, while in Alberta, the Act provides for such revisions by way of the filing of a complaint. The substance of these provisions is identical. In both cases, the opportunity to seek an amendment to the assessment is lost if the specific legislated appeal provisions are not followed.

It is, of course, the position of the complainant that as the City is precluded from filing a complaint, and in fact did not file a complaint, there is no jurisdiction for the MGB to increase the assessment.

Referring to the language of section 54(1) of the Municipal Assessment Act (Manitoba), the City claimed that the Board of Revision "now has authority to confirm the assessment or 'change the assessment' by increasing or decreasing the assessed value. … The only limitation is that the revision of the assessment roll is to be "as the circumstances require and as the board or panel consider just and expedient."

While ostensibly the legislation provided that the only limitation was whether or not the change to the assessment was "just and expedient", the Court found that procedural safeguards suggested additional restrictions.

In particular, the procedures for applying for a revision to the Board of Revision and the procedures for a further appeal to the Municipal Board remain intact. These procedures were designed to guarantee procedural fairness including protection from a demand by the assessor, without prior notice, for an increase in the assessment.

The Court then reviewed these procedural safeguards before concluding that the board lacked jurisdiction to increase an assessment.

The first step in the process is the application for the revision. Section 42(1) (Manitoba) states that the application may be made by the property owner "or the assessor." Section 42(1) does not contemplate the prospect of a revision in the absence of an application.

Section 43(1) specifies the requirements of the application, including a statement of the "grounds on which the application is based." Section 43(2) states that the Board of Revision shall not consider an application that does not comply with ss. (1). These provisions, when considered together, do not contemplate the prospect of a revision in the absence of stated grounds in a completed application.

Section 44(1) imposes upon the secretary of the Board of Revision to give notice of the time, date, and place of the intended hearing to the contesting parties, which includes sending a copy of the completed application. Section 44(1) does not contemplate the prospect of a revision in the absence of prior notification of what is to be in issue at the hearing.

Section 46(1) allows the Board of Revision, providing appropriate notice has been given, to hear and decide upon the application in the absence of the applying party. Section 46(1) does not contemplate the prospect of increasing the assessment at that hearing in the absence of, and with no notice of such a prospect to, the applying party.

Section 54(1) is the provision which allows the Board of Revision to confirm or change the assessment, but only where the Board considers it "just" to do so. It would hardly seem "just," in the context of the earlier provisions, to increase an assessment without the mandated statutory procedures being followed.

Moreover, Section 54(1) is immediately followed by ss. (2), which states that the Board "shall not exercise a power under subsection (1) except as a result of an application". It would seem abundantly clear that in the absence of an application by the assessor, the Board of Revision is not free to make an upward change.

The court later noted in paragraph 32 the requirement in the legislation that “any change be ‘just’ and in the context of the whole of the statute, that imports the notion of procedural fairness.” A similar safe guard is provided to taxpayers in Alberta as section 467(2) of the Act which provides that “An assessment review board must not alter any assessment that is fair and equitable … .”

The Manitoba Court of Appeal reached the following conclusion in paragraphs 35 and 37 of its decision.

> "The appellant Valley Gardens Apartments Ltd. (Valley Gardens) applied for a downward revision of the assessed value of the property for 1997. There was no cross application by the assessor. At the hearing, however, the assessor requested an increase in the assessed value, which was granted by the Board of Revision. Valley Gardens then appealed to the Municipal Board. There was no cross-appeal by the assessor. The Municipal Board confirmed the assessment as adjusted upward by the Board of Revision. In my view, the Board of Revision had no right to increase the assessment in view of the fact that there was no application for an upward revision before the tribunal. None of the procedures which would have served notice upon Valley Gardens that the hearing might result in an upward revision had been followed. As a consequence, the confirmation of the assessment by the Municipal Board was also in error … . By way of an aside, I would observe that it may be that a case can be made in support of the submission that in some situations the capacity of the assessor to bring new or more relevant information before the Board of Revision or the Municipal Board is too restricted. If that be so, the remedy lies with the Legislature, not the Court."

In the present circumstances there are, of course, even greater obstacles for the City of Edmonton than were faced by the City of Winnipeg. The Municipal Assessment Act of Manitoba specifically provides in section 42(1) that "the assessor may make application for the revision of an assessment roll with respect to amount of an assessed value … ." In contrast, no such right is afforded the assessor in the City of Edmonton. In the Province of Alberta, the Act allows that assessors only change assessments based on sections 305(1) and 314(2), and both must be completed prior to December 31 of the tax year.

**Legislative Ambiguity**

It is the position of Army and Navy that the legislation clearly precludes the City of Edmonton from seeking to increase an assessment. If, however, the MGB should find that there is some ambiguity in the relevant provisions, it should be noted that in such circumstances the MGB should still find in favour of Army and Navy.

Dealing specifically with the position of the Alberta Court of Appeal on the interpretation of taxing legislation and having regard to the jurisdiction of the MGB the decision in Alberta (Minister of Municipal Affairs) v. Municipal Government Board (Alta.) et. al. (2000) 271 A.R. 161 is of assistance. This case dealt with the application of section 295(4) of the Act, which deprives a ratepayer of the right of appeal for failure to provide certain information, and at page 164 the Court noted the overriding requirement for fairness in administrative decisions.

It appears to Army and Navy 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. See generally, Cardinal v. Kent Institution, [1985] 2 S.C.R. 643, 63 N.R. 353, 653, where it is said that "[t]here is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not a legislative nature and which affects the rights, privileges or interests of an individual."

Two basic principles emerge from these decisions, first clear and express language is required in order 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.

The first of these principles was endorsed by the MGB in the Royal Canadian Legion, Forest Lawn 275 Branch v. Calgary (City) Board Order MGB 175/00 where at page 8 the MGB made the following comments "The Board understands that it is fairly settled law, that a substantive right cannot be taken away unless there is express and clear language to that effect."

The second of these two principles has been unequivocally accepted by the MGB as found on page 9 of its decision in McKenzie Meadows Golf Course v. Calgary (City) Board Order: MGB 022/01 "if a tribunal is faced with two reasonable interpretations, it should choose the interpretation favouring the taxpayer."

At page 11 of Robinson v. City of Lethbridge MGB 056/01 the MGB also refers to this fundamental consideration when interpreting taxing legislation "In this case, where there are two reasonable interpretations as to the meaning, the benefit must weigh in favour of the taxpayer."

The City has referred to the decision of the MGB in Rockwell Investments Ltd. v. The City of Edmonton, Board Order MGB 184/01 and in particular to a passage in which the MGB discusses the right of the assessor to reassess. Two observations immediately arise: first, the comment by the MGB regarding the suspension of the right to reassess is peripheral to the decision and accordingly not the position of the MGB regarding this issue; and secondly, the MGB in this same Order made the following statement and one which was a critical component of its ultimate finding "Although the assessor has the option to initiate a revised assessment anytime during the year, it cannot nullify the complaint process to the ARB or appeal to the MGB, once a complaint or appeal has been filed with this body or the ARB by the Appellant."

Finally, it should be noted that this Order also contains on page 6 a reference to Forbes Chevrolet Oldsmobile v. Dartmouth (City) (1996) N.S.J. No. 58 where the Nova Scotia Court of Appeal noted in paragraph 12 that where more than one reasonable interpretation was possible that must operate to the benefit of the taxpayer.

In view of Army and Navy, this is the correct interpretation. If it is not, it is at least a reasonable interpretation. So is that of the trial judge. Two reasonable but contradictory interpretations of a statutory provision suggest ambiguity. Ambiguity in the interpretation of a statute must be decided in favour of the taxpayer.

**The Impact of Withdrawal**

The Forbes Chevrolet case contains a discussion of a number of additional issues that warrant consideration. In this case, the appellant taxpayers had filed appeals of three assessments - all of which were withdrawn prior to merit hearings. The court noted in paragraph 11 the inherent right of the appellant to withdraw its appeal.

Generally speaking, a person who commences a proceeding cannot be compelled to pursue it to a conclusion. In the absence of provisions to the contrary, a right to withdraw or abandon an appeal may be inferred from the right to bring an appeal. This appears to be consistent with Section 68(5), which deems an appeal to be abandoned if no notice of dissatisfaction is filed when an alteration has been made. Once the appeal is withdrawn upon proper notice, it would follow that the notice of appeal would have no further legal effect. Again, in the absence of provisions to the contrary, it would become a nullity as of the date of withdrawal. The Director, therefore, would not be entitled to exercise the powers granted under section 68 after the notice of appeal is withdrawn.

There can be no disputing that the Appellant initiated the present complaint and so the Appellant is accordingly entitled to withdraw its complaint. If the interpretation of the Act advanced by the City were correct and the ARB is entitled to increase an assessment, any complainant concerned about the potential for an increased assessment could, immediately upon notice of the intention of the City to request an increase in the assessment, simply withdraw its complaint. The drafters of this legislation surely could not have intended this sort of gamesmanship, which would result from the interpretation advanced by the City.

Mr. Trelford argued that the City also admitted that had the complaint been withdrawn prior to the ARB hearing the City would not be able to ask for an increase to this assessment. As a result this appeal to the MGB is punitive in that it punishes the property owner for believing that the original assessment was too high.

**Summary**

In concluding, Mr. Trelford stated that the City's appeal is a waste of everyone's time and requested the costs associated with this hearing. He argued that as the MGB may award costs as set out in the section 501 of the Act, taxpayers should not bear the cost of the City's frivolous experiments.

## FINDINGS

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 Appendices B and C attached, the MGB finds the general law and facts in the matter to be as follows:

1. The assessor may request an ARB to increase an assessment beyond the value stated on the assessment roll providing proper notice is given to the complainant property owner.

2. Section 305 is a process to enable an assessor to make a change to an assessment, but is independent of the complaint and appeal process.

3. An ARB has authority to make a change to an assessment.

4. The ARB authority to make a change to an assessment includes a decrease or an increase of an assessment.

5. The ARB must consider the issues filed by the complainant property owner and the response of the respondent assessor.

6. The ARB is not limited to the issues contained within the issue statement filed by the complainant property owner.

7. At the time of the preparation for the ARB hearing, the response of the City assessor to the disclosed issues of the complainant property owner may include a request to increase the assessment beyond that then currently on the assessment roll.

8. The respondent assessor may appeal a decision of the ARB to the MGB by filing a written statement to increase the assessment beyond that then shown on the assessment roll.

9. The MGB is limited, subject to certain exclusions, to the "issues heard at the ARB" not the issues contained in the "issues statement" filed at the ARB by the complainant.

10. A complaint about an assessment to the ARB initiates the discussion of a "change to the assessment" at the ARB and the MGB.

In this specific case the MGB finds as follows:

1. Prior to the ARB hearing, the City informed Army and Navy of the intent to request, before the ARB, an increase of the assessment.

2. The City properly filed a written statement with the MGB requesting an increase to the assessment.

3. The ARB and the MGB have the authority to determine a change to the assessment, which can be a decrease or an increase in the assessment.

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 issues (increase and decrease) related to the assessed value of the subject property are to be scheduled for a hearing. The administration of the MGB is directed to schedule a hearing and to set dates for disclosure and exchange of evidence for the subject property.

It is so ordered.

## REASONS

### Correct, Fair and Equitable Assessment

In order to set the context for its rationale in this decision, the MGB accepts the overriding principle that assessments must be current, correct, fair and equitable as stated in the legislation and in numerous Court decisions. The MGB draws this principle from sections in the Act which require an annual assessment (Section 302); the need for the assessment to represent the characteristics and physical condition at the end of the assessment year (Section 298); the valuation date of July 1 of the assessment year (Regulation 289/99); the ability of the assessor to correct the assessment in the assessment year only (Section 305); the fact that the regulations require the assessment to be based on market value for the subject property; that an assessment based on market value must reflect typical market conditions for similar property; and the restraint on the MGB not to adjust an assessment which is fair and equitable. These sections of the Act combined with current case law related to property taxation suggest that the assessment must be current, correct, fair and equitable with the proviso that where fairness and equity conflict with correctness the taxpayer shall be entitled to the benefit of the lower. In this case, neither the City nor Army and Navy convinced the MGB that these overriding principles should be ignored or that specific sections of the Act preclude these fundamental principles.

### Definition of Change to An Assessment

The MGB rejects Army and Navy's argument that the issue of the assessment being too low, if not raised at the ARB level, cannot be considered at the MGB. A complaint to the ARB can be about several administrative and procedural matters as well as about "an assessment". With respect to an assessment, the ARB can "make a change to an assessment". Under the Act, the MGB can make any decision the ARB could have made. The MGB finds that the Act does not limit the change the ARB, and subsequently the MGB, can make, specifically to the lowering of an assessment.

The MGB examined the wording of the *Municipal Taxation Act*, the predecessor to the Act, which stated that a person making a complaint could allege that the assessment was too high or too low. The Act does not use the words too high or too low but rather uses the words "make a complaint about an

assessment" and "make a change to an assessment". It appears the legislators purposely left out the words high and low. To interpret change to mean only confirm or lower an assessment would not achieve the intent of the Act, that is, current, correct, fair and equitable assessments. The MGB applies a plain meaning to the term "change". "Change" can mean an increase or a decrease.

In this case, it appears the ARB felt that the assessment of the subject property was too low, but confirmed the assessment as it found it had no jurisdiction to raise it. The MGB finds that the ARB has the authority to make a change to an assessment, i.e. either upwards or downwards. Therefore, in these circumstances it could have raised the assessment on the subject property.

**Impact of Lack of Ability of the Respondent Assessor to File a Complaint to the ARB and Impact of ACAR**

The MGB acknowledges that the Act does not provide for the filing of a complaint with the ARB by the assessing municipality. This is in contrast to the MGB, where the assessing municipality can clearly file an appeal with the MGB. Army and Navy argues that since the Act does not allow the City to file a complaint with the ARB, ACAR dictates that it is the complainant who sets the issues to be dealt with at the hearing and as the complainant did not argue that the assessment is too low, it therefore, cannot be considered at the ARB hearing.

The MGB finds that there is no corresponding section 8 of the Manitoba Municipal Assessment Act which applies to the MGB that applies to the ARB. Therefore, the ARB is not limited only to those issues filed by the complainant. This does not imply that the complainant can at any time introduce new issues. The MGB concludes that the ARB must not only consider the issues filed by the complainant but it must consider the response of the respondent assessor. The ARB then must compile the "statement of issues heard" which is both the issues filed by the complainant and the response of the assessor.

The MGB finds that ACAR, with certain exceptions, clearly limits the issues to be heard at the MGB level to those issues contained in the statement of issues heard by the ARB (section 8 of ACAR). The definition of the "statement of issues heard" is broadly defined by ACAR as the record of the ARB which includes the complaint, the issue statement, all documentary evidence, summary of testimonial evidence, all written arguments, and evidence given on the filed issue statement. No mention is made of argument or evidence pertaining only to the lowering of assessments. The Respondent has asked the MGB to provide the same meaning to "statement of issues heard" as the definition of "issue statement". The MGB cannot accept this proposition since both terms have clearly different defined meanings in ACAR.

Even if one accepted that the definition of the "statement of issues heard" limits the MGB's jurisdiction, there is no similar section in ACAR that in any way limits the issues to be heard at the ARB level. The

MGB looks to the Act to provide direction on this argument. Section 467 states an ARB can make a change on several matters referred to in section 460(5). The MGB takes the view the matter before the ARB is the assessment. In the context of the other sections of the Act already referred to in these reasons, the issue is what the current, correct, fair and equitable assessment should be. The MGB does not accept Army and Navy's argument that ACAR and the filing of the issue statements can narrow the issue before the ARB or the MGB to only that of an assessment being too high.

Notwithstanding that conclusion, the MGB finds that the issue of an assessment being too high is essentially a sub-issue of the issue that there is something wrong with the assessment. ACAR provides timelines for filing by complainants of issue statements and evidence, the response to the complainant filing by the assessment authority, and a rebuttal to that response. To preclude the assessment authority from responding to an argument that an assessment is too high with the opposite argument that it is too low would be restrictive, unfair and more importantly limit the ability of the ARB or MGB to achieve the fundamental principles of a current, correct, fair and equitable assessment. Thus, the reason for the provision of an opportunity for the complainant to provide a rebuttal to the response by the assessment authority.

In this case, the MGB finds that the assessing authority, the City, did provide Army and Navy with notice of its intent to request an increase to the assessment beyond that currently on the roll. Notice was given in response to the Army and Navy's issue statement and the initial filing and disclosure of evidence. Therefore, the MGB can see no breach of natural justice or specifically any attempt by the Appellant to ambush the Respondent.

As stated, the MGB finds that the general theme in the Act in relation to market value assessments is that of current and correct, as well as fairness and equity. Therefore, the ARB and the MGB, as stewards of the assessments, have a responsibility to ensure that these principles are applied evenly. If either board finds that an assessment is incorrectly high or unfair in relation to similar properties then it must, in order to ensure that a taxpayer is not treated unfairly, lower the assessment. Conversely when faced with a situation where it finds an assessment is too low, to ensure that a single taxpayer is not treated preferentially and, therefore, others unfairly, it must raise the assessment to the proper level, with the proviso that fairness and equity in relation to similar properties is maintained. All this is assuming that the necessary procedural steps are followed to bring complaints and appeals properly before the Boards. In other words, the proper disclosure and exchange rules with respect to each party's position must have been followed to ensure that the proceeding is fair and each party is fully aware of the other's case. In the present circumstances, the MGB is satisfied that procedure has been correctly followed. The City did send its argument and evidence with respect to the assessment being too low to the complainant prior to the ARB hearing as required under ACAR.

**Section 305**

The MGB, in considering section 305 of the Act, looks at the total scheme contained in the Act and concludes that the complaint and appeal process, and the section 305 process, are two separate and distinct processes. Section 305 is an independent process to allow for corrections to the assessment roll within the assessment year. A corrected notice is still subject to the possibility of a property owner filing a complaint to the ARB. The complaint and appeal process are separate processes to adjudicate a dispute on the assessment value. The complaint and appeal process can be initiated at the time of the original notice or at the time a corrected notice is sent.

Army and Navy argued that the only way an assessor could increase an assessment is to use section 305 and argued further that this is the same as the case in Manitoba where an assessor can only increase an assessment by application to that board. The MGB finds that the intent of Section 305 is to allow assessment authorities to correct errors discovered on the assessment roll whether they are of an administrative nature or to do with a change in an assessment. Section 305 is not limited to upward changes in an assessment. In fact, in practice, often an assessment is lowered through the use of an amended assessment notice pursuant to section 305. In the present circumstances it may have been preferable to the Respondent for the City to use section 305 to issue an amended assessment notice prior to the end of the year. However, the City explained that the assessor was unaware of an error in the assessment until the file came to his attention in January of this year, precluding him from issuing an amended assessment notice. The MGB accepts the City's argument in this matter. In this case the appeal period, as in many other cases, will go beyond the end of the taxation year.

**Status of Section 305 When Appeal In Progress**

The City argued further that the City's interpretation of previous MGB Orders was that Section 305 was not to be used by an assessment authority once a complaint has been filed on a particular property. The MGB wishes to clarify its view on this point. The MGB finds that it is not the intention of the legislation that section 305 be used to frustrate the appeal process. An assessor cannot nullify the rights of a property owner who has properly filed a complaint on the original notice. The intent of the previous MGB Orders was clearly to make this statement. In those cases, the respondent assessor argued that the property owner lost the right of appeal because he/she did not file a complaint against the amended notice. The MGB does not interpret sections 305 and 309 as being limiting in the way the City had requested. The MGB has interpreted sections 305 and 309 to mean that a property owner may file a complaint at either point, in response to the original notice OR in response to the amended notice. Once filed, the complaint is a valid complaint and cannot on the unilateral action of the respondent assessor be invalidated. This does not imply that section 305 cannot be used; it is a matter of how it is used.

Clearly when there is no complaint or appeal filed, section 305 can be used at anytime during the current year, meaning prior to December 31 of the year in which the tax is imposed. Because of

sections 477 and 517 requiring a municipality to make changes to the roll necessary to reflect the decisions of the ARB and MGB, section 305 cannot be used after the decision of either board is issued to nullify the effect of these decisions. For properties under complaint or appeal, an assessor could issue a section 305 notice, however, it would not change the roll, and it would only provide a formal notice to the property owner that the assessor intends to request a change to the assessment during the complaint or appeal proceedings. During a complaint or appeal it is the eventual decision of the ARB or MGB pursuant to section 477 or 517 that changes the assessment roll. The MGB is of the view that this interpretation provides a reasonable and fair interpretation where the two independent processes cross paths and intersect with each other.

Whether the legislators envisioned complaints extending beyond the end of the year is not clear. However, probably due to the sheer number of complaints in recent years, many complaints do not get resolved prior to the end of the year. If a complaint or appeal has been filed, when the matter eventually comes before the ARB or the MGB it is what appears on the roll that is under appeal prior to the filing of the complaint or appeal. As stated above, a section 305 correction during a complaint or an appeal serves only to put the property owner on notice that a change is going to be requested. In the case where an appeal has been heard but the decision has not been rendered, the MGB cautions that it would not look favourably upon an amended notice that was intended to nullify a decision of the ARB or the MGB.

Army and Navy argued in its rebuttal that the drafters of the legislation did not intend that taxpayers, in order to avoid an increase in their assessments, would have to withdraw their complaints after being notified in a response to an issue statement that the municipality intended to seek an increase in the assessment. The MGB finds this is not the case. If the situation described by Army and Navy occurred prior to the end of the year, section 305 of the Act still allows an assessor to issue revised notices prior to December 31 of the year in which the tax is imposed. As stated above, the legislators may not have envisioned complaints extending beyond that date, however, many complaints do not get resolved prior to the end of the year. It must be remembered that even if the appeal goes beyond the end of the year it is still dealing with the proper value within the year under appeal and not the following year.

The MGB wishes to clarify the status of a section 305 notice to increase an assessment when a complaint or appeal is filed. The MGB concludes that the Section 305 notice is clear notice to the property owner that it intends to raise the assessment. The starting point for a complaint is the value on the assessment roll at the time the complaint was filed. Since the ARB can consider a change to the assessment the section 305 notice brings to the complaint table the consideration of increasing the assessment. Just as the property owner has rights, so does the respondent municipality. Both have rights to a current, correct, fair and equitable assessment. The complaint and appeal process is not a one-way street as suggested by the Respondent. If a valid complaint is filed on the original assessment notice, it must be heard.

If during the time of the complaint or appeal a section 305 notice is issued to raise the assessment, then that increase is squarely before the relevant complaint/appeal body. That appeal body has the authority to make a change to increase or decrease. If the property owner decides to withdraw his complaint, then the section 305 correction is on the roll and the property owner can, within the required legislated time, file a complaint against that notice. This interpretation insures that both party's rights are fully protected.

**Natural Justice/ Procedural Fairness and Filing of A Written Statement With The MGB**

During the process of the complaint before the ARB, the respondent assessor must respect the principles of natural justice. Specifically, the respondent assessor must give reasonable and fair notice that they intend to argue an increase in the assessment. This can be done by the issuance of a section 305 notice or in rebuttal to the disclosure of the Complainant. This process is not to issue a threat to a property owner who registers a complaint or appeal but is available to the assessor to establish a current, correct, fair and equitable assessment. Use of proceedings in the absence of supporting evidence would be interpreted to be an abuse and as such may attract appropriate consequences.

In the case of a matter before the MGB, an argument to increase the assessment must be clearly filed as a written statement before the MGB as required by section 491 of the Act. The Act indicates that "any matter" to be heard by the MGB must be in the form of a written statement. The MGB further observes that "any matter" is not defined as just a decrease to the assessment.

In this specific case, the City filed an appeal in the form of a "written statement" pursuant to section 491. Therefore, Army and Navy has been given notice of the intent to argue for an increase to the assessment. The notice from the assessor to the property owner to raise the assessment prior to the ARB hearing and the filing of a written statement with the MGB follows the fundamentals of natural justice "of knowing the case to be met" as cited by the parties in the related case law. The MGB sees no evidence of ambush as the Army and Navy had sufficient and reasonable time to respond at both points in the process.

**Case Law and Manitoba Legislation**

With respect to the Manitoba legislation and cases referred to by the Respondent, the MGB finds that they are not on point to the present circumstances. If anything, they tend to support the City's arguments in this appeal. In Manitoba there exists no section 305 allowing assessors to issue revised notices. Assessments can only be raised upon application by the assessor. As well, the Manitoba legislation places the onus for proving the correctness fairness and equity of an assessment on the assessor. There is no such legislative direction in Alberta.

The cases cited by the Army and Navy relate to circumstances where a complainant was not notified and, therefore, was unprepared to argue an assessor's intention to seek an increase in an assessment. In Alberta, ACAR was developed for the purpose of preventing such ambushing by either the complainant/appellant or the respondent. In the present case, as stated above, the MGB is satisfied that ACAR was complied with properly. Army and Navy's argument also makes reference to several MGB Orders that essentially say where there is ambiguity the interpretation should be in favour of the taxpayer. In the present appeal, the MGB finds no ambiguity in interpretation. The Act clearly states that the ARB and, therefore, the MGB can "make a change to an assessment" with no restrictions that the change must be downwards.

**Summary**

The MGB determined that the direction in the Alberta Legislation is to ensure there is a current, correct, fair and equitable assessment for each assessable property. A fair application of the Act and the Regulations places accountability on all parties.

This decision does not imply that the MGB has concluded that in the present circumstances an increase is warranted. The evidence and argument to do with the amount of the assessment is yet to be heard and decided by the MGB.

Mr. Trelford asked the MGB to consider the issue of costs to be charged against the City. However, he offered no argument on the issue of costs except to say "the City's appeal is a waste of everyone's time" and "Taxpayers should not bear the cost of the City's frivolous experiments." Given the MGB's findings in this matter, the MGB denies the application for costs and directs the administration to schedule a hearing to deal with the assessed value of the property.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 12th day of July 2002.

MUNICIPAL GOVERNMENT BOARD

(SGD.) S. Cook, Member

**APPENDIX "A"**

APPEARANCES

| NAME | CAPACITY |
|---|---|
| Mr. John Trelford | Deloite Touche LLP, Agent for the Respondents |
| Deborah Fisher | City of Edmonton Law Department, Solicitor for the Respondent |
| Swan Nanda | City of Edmonton Assessor |

**APPENDIX "B"**

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

| NO. | ITEM |
|---|---|
| Exhibit 1-R | Respondents' submission |
| Exhibit 2-R | Edmonton Assessment Review Board Issue Statement |
| Exhibit 3-A | Appellants' submission |
| Exhibit 4-R | March 1, 2001 Notice of Hearing |

**APPENDIX "C"**

DOCUMENTS RECEIVED AFTER THE HEARING AND CONSIDERED BY THE MGB:

| NO. | ITEM |
|---|---|
| Exhibit 5-A | Appellants' written summary |
| Exhibit 6-R | Respondent's written summary |
| Exhibit 7-R | Respondent's written rebuttal |