



**Calgary Assessment Review Board**

**DECISION WITH REASONS**

In the matter of the complaint filed with the Composite Assessment Review Board as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the "Act").

**between:**

***J. W. L. Engineering Ltd. (as represented by B. Lovse and C. Lovse), COMPLAINANT***

**and**

***City of Calgary, RESPONDENT***

**before:**

***T. Helgeson, PRESIDING OFFICER***

***A. Zindler, MEMBER***

***R. Deschaine, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

**ROLL NUMBER: 100500669**

**LOCATION ADDRESS: 12 5080 12A Street SE**

**FILE NUMBER: 70371**

**ASSESSMENT: \$428,000**

This preliminary matter was heard on Thursday, the 27<sup>th</sup> of June, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *B. Lovse and C. Lovse*

Appeared on behalf of the Respondent:

- *T. Luchak*

**Procedural or Jurisdictional Matters:**

[1] Just as the Complainant's representatives commenced argument on behalf of the Complainant, the Respondent informed the Board that no disclosure of evidence or other documents was sent to the Respondent by the Complainant as required by s. 8(2)(a)(i) of Alberta Regulation 310/2009, the *Matters Relating to Assessment Complaints Regulation (MRAC)*. Section 8(2)(a)(i) of *MRAC* is as follows:

*(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

*(a) the complainant must, at least 42 days before the hearing date,*

*(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and . . .*

**Submission of the Complainant on Procedural or Jurisdictional Matters**

[2] The Complainant stated that on May 13, 2013 the Complaint's disclosure was faxed twice to the Assessment Review Board "care of the City Clerk's desk" in the belief that the Assessment Review Board and the City of Calgary Assessment business unit were linked. The Complainant confirmed its disclosure was not faxed to the Respondent on May 13, 2013.

[3] The Complainant requested an abridgement of time for filing disclosure. As an alternative, an adjournment of the hearing was requested.

**Submission of the Respondent on Procedural or Jurisdictional Matters**

[4] The Respondent submitted that the Notice of Hearing sent to the Complainant on the 5<sup>th</sup> of April, 2013 instructed the Complainant to file its disclosure with the Assessment

Review Board and the City of Calgary assessment business unit on or before the due date of May 15<sup>th</sup>, 2013.

[5] The Respondent further submitted that the Complainant's disclosure arrived late at the City of Calgary assessment business unit on the 13<sup>th</sup> of June, 2013, and that the Respondent would not consent to an abridgement of time for disclosure.

**Issues:**

[6] The Board found the determinant issues in this complaint to be as follows:

- (a) Is it available to the Board to grant an abridgement of time for filing the Complainant's disclosure pursuant to s. 10(3) of *MRAC*?
- (b) Do circumstances in this matter support an adjournment of the hearing?

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

*Abridgement of Time*

[7] Assessment Review Boards are separate and distinct from the municipalities from whose assessments they hear and adjudicate complaints, and that is why providing disclosure to only the Assessment Review Board does not meet the requirements of *MRAC*. Section 8(2)(a)(i) of *MRAC* requires that disclosure goes to each, the Respondent and the Composite Assessment Review Board.

[8] Failure to disclose is a serious matter, for s. 9(2) of *MRAC* provides as follows: *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.* Granting an abridgement of time for the purpose of allowing a complainant to circumvent the strict requirement of s. 8(2) of *MRAC* is also a serious matter. The conditions by which an abridgement of time may be granted are found in s. 10(3) of *MRAC*, which provides as follows:

*10(3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.*

[9] The Board notes that it was the Respondent who gave evidence that the Complainant's disclosure had arrived at the Calgary Assessment business unit on June 13, 2012. Had it not been for the Respondent, there would have been no evidence that the disclosure had ever arrived at the Assessment business unit, and there would be no time to abridge.

[10] As can be seen in s. 10(3), an abridgement of time for disclosure is contingent on the consent of the persons entitled to the "evidence or other documents". The "person" entitled to the "evidence or other documents" in this case is the City of Calgary, and since the assessor for the City of Calgary has stated he would not consent to an abridgement, it is not open to this Board to abridge the time for disclosure.

*Adjournment*

[11] Section 15 of *MRAC* deals with postponements and adjournments of hearings, as follows:

15(1) *Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.*

(2) *A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.*

(3) *Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.*

[12] In the view of this Board, "exceptional circumstances" in s. 15(1) of *MRAC* mean events or situations that are beyond the control of a party to a hearing before an assessment review board. Exceptional circumstances might include illness, injury accident, flood, fire or other supervening events that interfere with a party's ability to meet the requirements of a hearing before an assessment review board.

[13] In the present case, a simple error was made. The Notice of Hearing instructed the Complainant to file its disclosure with the Assessment Review Board and the City of Calgary assessment business unit on or before the due date, but that instruction was not followed. It is the view of this Board that an error is not the kind of circumstance that would justify the inconvenience and extra time that an adjournment would impose on the Respondent and this Board.

**Board's Decision:**

The failure of the Complainant to file disclosure with the City of Calgary assessment business unit as required by s. 8(2) of *MRAC* means that s. 9(2) applies. Section 9(2), as set forth in paragraph 8 above, is a mandatory provision, hence no evidence from the Complainant may be heard by this Board. The within complaint is therefore dismissed, and the assessment is confirmed at \$428,000.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF July  
2013.

  
Presiding Officer

**Exhibits:****R-1, Respondent's Assessment Brief**

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<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Jurisdictional	Information exchange (Types 1-6)	Evidence	Abridgment of time

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*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*