



**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 MGA).

**between:**

***418125 Alberta Inc. (as represented by Altus Group Ltd.), Applicant***

**and**

***The City of Calgary, Respondent***

**before:**

***T. Helgeson, Presiding Officer***

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: 200847556**

**LOCATION ADDRESS: 2220 4818 Westwinds Drive NE**

**FILE NUMBER: 72408**

This complaint was heard on the 3<sup>rd</sup> day of May, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Mr. K. Reimer, Ms. L. Voechting*

Appeared on behalf of the Respondent:

- *Ms. M. Cario, Ms. K. Yeung*

**Background:**

[1] On the 20<sup>th</sup> of March 2013, Mr. W.A. Paterson, General Chairman of the Calgary Assessment Review Board ("ARB"), wrote to Altus Group Ltd. ("Altus") informing them that the ARB could not hear a complaint with respect to the property at 2220 4818 Westwinds Drive NE due to the fact that the complaint had not been filed in accordance with s. 5 of Schedule 1 of Alberta Regulation 310/2009, the *Matters Relating to Assessment Complaints Regulation* ("MRAC"). Schedule 1 is the mandated complaint form, and s. 5 of Schedule 1 contains issues that the complainant's grounds for complaint must respond to. Due to the small space provided for grounds for complaint in the complaint form, complainants usually include their grounds on a separate sheet of paper.

[2] At the request of Altus, a jurisdictional hearing was scheduled for May 3<sup>rd</sup>, 2013. The hearing took place before a one-member panel of the Composite Assessment Review Board pursuant to s. 454.1(2) of the *Municipal Government Act* ("MGA") and s. 30(2)(d) of MRAC. In this decision, the one-member panel of the Composite Assessment Review Board will be referred to as "the Board".

**Issue:**

[3] If an assessment complaint does not include grounds of complaint pursuant to Section 5 of Schedule 1 of MRAC, does a Composite Assessment Review Board have jurisdiction to validate the complaint.

[4] Were the grounds for complaint missing when the complaint form arrived at the office of the ARB for filing?

**Submissions of the Complainant:**

[5] The ARB says our reasons were not filed. At Altus, a manual complaint form is filled out, and we purposely set an internal deadline. We place the complaints in boxes and tape them up, but we leave one box open for last minute complaints. The grounds for complaint are not attached at that time. We check the documents, run the complaints through a scanner, then staple the documents.

[6] We check for loose paper. Ms. Voechting of our office delivered the last box of complaints to the ARB. It was a last minute filing. We are asking that the Board find our complaint validly filed, and a merit hearing scheduled. The March 4<sup>th</sup>, 2013 date that appears on

the lower right corner of the sheet with grounds of complaint, as shown at p. 31 of our written submission, indicates that the grounds for appeal were scanned. There is a typo in the address on p. 31. The address should be 2220, 4818 Westwinds NE. The ARB must have lost the page.

[7] A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it. Substance should be given precedence over form to the extent that it is consistent with the wording and objective of the statute. Only a reasonable doubt not resolved by the ordinary rules of statutory interpretation will be settled by recourse to the residual presumption in favour of the taxpayer. In considering interpretation of the *MGA*, the Court of Appeal stated in ***Boardwalk REIT LLP v. Edmonton (City)***, 2008 ABCA 200 at para. [78]: *"There is a parallel axiom of construction. When an Act can be construed more than one way, courts must reject any alternative which is manifestly absurd, or extremely harsh, unjust or capricious . . ."*

[8] We submit that to interpret the *MGA* as precluding a complaint when grounds for complaint were filed with the complaint is "manifestly absurd", "extremely harsh", "unjust or capricious". Further, it would be an absurdity, impose the largest possible penalty, and breach the duty of fairness owed to the Applicant.

[9] The test to be applied is substantial compliance, as set out by Justice Cote in the ***Boardwalk*** case. The Applicant has satisfied all of the criteria of substantial compliance. The Applicant did everything in its power to ensure that the ARB received all the documentation.

[10] In the ***Boardwalk*** case at para. 109, the Court of Appeal found that *"Having a judge order compliance is very fair. But allowing irrevocable assessments with no recourse to a tribunal is the largest possible penalty in a taxation statute. Even the Income Tax Act has no general penalty so draconian."* The Court also said that an automatic rigid bar to appeal from any gap in any answer would be an "absurd" interpretation of the *Act*, and leave the taxpayer at the assessor's mercy.

[11] In reaching its conclusions, the Court of Appeal considered whether the information not provided was actually needed by the municipality for its review of the assessments subject to the complaints. As stated at paragraph 185, a taxpayer's duty to make a reasonable effort to provide the information requested is *"limited to things which are of real importance as between these two parties."*

[12] In the present case, the Applicant provided all material needed by the ARB to hear the complaints. The error is with the ARB. As was the case in ***Boardwalk***, striking out the complaints in the present case as a penalty for the Applicant's alleged failure to provide an ACAA form at the time of filing certain complaints is *"disproportionate to the gravity of the fault of the defaulter and to the degree of harm to the opposing party."* [***Boardwalk***, *supra*, at para. [146]]. This is particularly so where good faith is shown in submitting the completed forms and paying the fees as required by the legislation.

[13] Natural justice and procedural fairness do not permit the ARB to dismiss the present complaints where the applicant has made a good faith effort to file the complaint forms as required by the legislation, and paid the prescribed fees by the complaint deadline.

[14] In ***B3LF Nominee Inc. represented by Altus Group v. City of Calgary***, [2009] A.M.G.B.O. DL105/09, the Municipal Government Board ("MGB") found that the denial of the

right to appeal an assessment due to a technical error (the fact that the appeal was filed 7 minutes late) was disproportionate to the gravity of the error. The MGB stated: *"The denial of the right to appeal is a very serious penalty, and in the absence of mischievous or repetitive behaviour the right to appeal should not be denied on a mere technical basis."*

[15] In ***Southland Park Inc. v. City of Calgary***, [2010] A.M.G.B.O. 004/10, where the taxpayer submitted its issue statement late, the MGB found that Calgary and the ARB were unreasonable in refusing to hear the assessment appeal as a result, and characterized Calgary's approach as combative.

[16] In consideration of the facts, principles of statutory interpretation and the administrative principles of natural justice and procedural fairness, the Applicant submits that the ARB cannot dismiss the within complaint upon a jurisdictional review due to any alleged failure on the part of the Applicant to provide the grounds. The error, if any, lies on the part of the ARB in misplacing the attached grounds. The applicant requests that the Board find that the complaint is valid.

### **Submissions of the Respondent**

[17] We received 1,600 complaints from Altus, all stapled together. We check the information twice, then enter the complaints into the computer system. We need the requested assessment value to enter a complaint into the system. The complaint forms are stapled together, and are not unstapled until scanning. If grounds for complaint are not attached, we set an internal deadline, and a box of complaints remains open for last minute complaints. If a complaint is submitted without grounds, we contact the complainant or the tax agent.

[18] We received the complaint in question an hour before closing on the last day for filing. We check complaints twice, and when satisfied everything is there, we check again. The document shown on p. 31 of the Complainant's submission was not there. Four complaint applications were included on the same cheque.

[19] The requested assessment value is needed to enter the complaint into the computer system. Before entering complaints into the computer system, we check the fee and check the forms. The forms were stapled, and we do not remove the staples until scanning the documents. We found the grounds for complaint for 2220 4818 Westwinds Drive NE were missing at the time of entry. We note that the address on the document at p. 31 of the Respondent's written submission that contains the grounds for complaint is incorrect. It is possible that it was taken out to be corrected by someone at Altus before it arrived at the ARB.

[20] We received this application at the last moment. We found the grounds for complaint missing at the time of entry.

### **Board's Decision**

#### *The First Issue:*

[21] The MGA provides that a person wishing to make a complaint about any assessment or tax must do so in accordance with s. 460. Section 460(7) provides: *A complainant must (a) indicate what information shown on an assessment notice or tax notice is incorrect, (b) explain in what respect that information is incorrect, (c) indicate what the correct information is, and (d)*

identify the requested value, if the complaint relates to an assessment. These requirements are reflected in Section 5 of Schedule 1, the Assessment Review Board Complaint form in MRAC.

[22] Section 467(2) of the MGA is as follows: *An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).* The requirement in s. 467(2) is a mandatory requirement, as shown by the word “must”.

[23] In **Edmonton (City) v. Assessment Review Board of the City of Edmonton**, 2012 ABQB 399, Justice Hillier of the Court of Queen’s Bench dealt with an application for judicial review. In paragraph 2 of his decision Justice Hillier described the case as follows: *“The City asserts that the ARB erred in law by purporting to direct the complaint to a hearing on the merits in the absence of authority to extend the deadline imposed pursuant to statute. It refers specifically to the mandatory language of ss. 309(1)(c), 461(1) and 467(2) of the MGA.”*

[24] The complaint was that of Mr. Stephen Richard Wood, by whose last name the case is generally known. The Court noted that Mr. Wood objected to his assessment, sought to discuss it, and mailed the complaint before the deadline. Even though the City of Edmonton, as described by the Court in paragraph 5 *“... did all that it was required to do by setting the deadline to include the required sixty days plus the period for deemed mail delivery to property owners as set by the Interpretation Act, RSA 2000, c I-8 and giving notice that failure to meet the filing deadline would invalidate a complaint”*, Mr. Wood’s complaint arrived five days late.

[25] The Edmonton ARB found for Mr. Wood. In the written decision, the ARB held that Wood’s intent was to file the complaint by the deadline but was prevented from doing so by circumstances beyond his control, and that to deny Wood a merit hearing would be a denial of natural justice.

[26] In reviewing the decision of the ARB, the Court in **Wood** described the primary issue before it in paragraph 35: *“Put simply, does the ARB have jurisdiction to exercise a discretion or power to conclude that a complaint is time compliant with legislation by weighing the actions and evidence of intent of a complainant? Does it have jurisdiction to decide to hear a complaint which was, on its face, made beyond the proper time set out in the statute?”*

[27] Counsel for the ARB urged the Court to apply a test of “substantial compliance”, as was applied in **Edmonton (City) v. Edmonton Composite Assessment Review Board**, 2012 ABQB 154, [2012] AJ No 224 [**Colliers**] in regard to sufficiency of the contents of complaints. In considering the **Colliers** case, Justice Hillier found at paragraph 71: *“Unlike the circumstances in the line of cases which Colliers follows, in the present case there was only one way to comply with the requirement for filing – it must have been received for that purpose by the prescribed date.”*

[28] At paragraph 73, the Court went on to speak of the **Boardwalk** case: *“Section 467(2) provides that the ARB must dismiss a complaint that was not made within the proper time. The consequence is unequivocal but is not ‘... manifestly absurd, or extremely harsh, unjust or capricious’”*.

[29] The Court dealt with the discretion of the ARB at paragraph 80, *“Regrettably, the ARB decision here does not explain how it reached the conclusion that it was empowered to exercise a discretion in these circumstances. The Court is required to supplement the decision in assessing sufficiency of reasons and I recognize the sympathetic concerns which may have led to the ARB’s decision. However, I am unable to fashion reasons that can withstand scrutiny so as to place the ARB’s decision within a range of possible outcomes. There is simply no support in the legislation, case law or facts which would assist or rationalize the conclusion reached by the ARB in conflict with prior decisions in this point.”*

[30] In his summary, Justice Hillier said at paragraph 82: *"The language chosen to invoke this time limit simply cannot support the exercise of an unexpressed discretion having full regard to the purpose of the legislation."* In the result, the Court "cancelled" the decision of the ARB and referred it back, explaining in paragraph 83: *"... there is nothing to be 'reheard' since the Court's direction is that the ARB lacks authority other than to dismiss the complaint under s. 467(2)."*

[31] In addition to the mandatory requirement to dismiss a complaint not made in time, s. 467(2) requires an assessment review board to dismiss a complaint that does not comply with s. 460(7). As mentioned in paragraph 21 above, s. 460(7) contains the same four issues for complaint that the Respondent alleges were not addressed in the Applicant's complaint form. This Composite Assessment Review Board is of the view that if, as found by Justice Hillier in **Wood**, there is nothing in s. 467(2) that would accord an ARB the discretion to extend the time for filing a complaint, neither is there discretion to allow a complaint to be filed that does not comply with s. 460(7). The Court's finding obviates a liberal interpretation of the section.

[32] As for substantial compliance as argued by Altus, this Board finds that due to the mandatory nature of s. 467(2), there can be no substantial compliance where a complainant fails completely to address the issues in s. 460(7).

#### *The Second Issue:*

[33] The Applicant says that before complaints are filed at the ARB, the complaints are checked, run through a scanner, then stapled. According to the Applicant, the complaint in question was placed in the last box of complaints to be filed at the last hour on the last day for filing.

[34] The Respondent says that when a complaint is received, it is checked twice before being entered into the computer system. Staples are not removed until the complaint is scanned. If a complaint is submitted without grounds, the complainant or tax agent is contacted. The Respondent says the grounds for complaint for 2220 4818 Westwinds Drive were found missing at the time of entry.

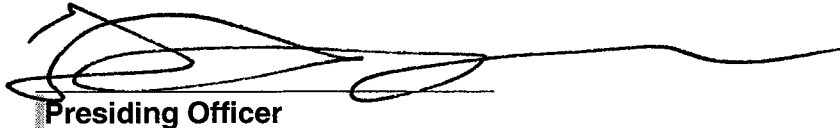
[35] Things must be moving along very quickly at the offices of Altus on the last day for filing complaints at the ARB, especially during the last few hours. When a deadline looms and there are complaints waiting to be filed, it seems to this Board there is an increased likelihood of errors occurring. An avalanche of complaints arriving at the ARB must be difficult to deal with as well, especially on the final day. Fortunately, it appears that incidents akin to the one under consideration occur very rarely. The Board notes that if the complaint in this matter had been filed earlier, the Respondent's staff might have been able to contact the Applicant about the grounds for complaint, and the matter resolved.

[36] Witnesses from both Parties were credible. There is no doubt each verily believes what he or she saw on that final day. In the result, there was nothing that would tip the balance of probabilities either way. The Board was left in doubt. "Doubt" is defined in the *Canadian Oxford Dictionary*, 2<sup>nd</sup> ed., as follows: "1 a feeling of uncertainty; an undecided state of mind (*be in doubt about; have no doubt that*) 2 (often foll. by *of, about*) an inclination to disbelieve (*have one's doubts about*). 3 an uncertain state of affairs. 4 a lack of full proof or clear indication (*benefit of the doubt*) . . ."

[37] It is the first part of the definition of doubt that describes the Board's state of mind in this case. The Board is unable to decide the issue stated in paragraph 4, *supra*. Where there is uncertainty, the benefit of the doubt must go to the taxpayer. The complaint is valid, and may

proceed to a hearing on the merits.

DATED AT THE CITY OF CALGARY THIS 7<sup>th</sup> DAY OF June 2013.



Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

*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.*

