

The Court of Queen's Bench Interprets ACAR – Part I

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In *City of Calgary v. Municipal Government Board, Gaspar Szenter Holdings et al*, (unreported) the Court of Queens Bench upheld the MGB's decision interpreting s. 3 (role of the clerk of the ARB) and s. 10 (expand time to file the issue statement) of the *Assessment Complaints and Appeals Regulation* (ACAR). The Court also provided direction with regard to how the 21 day period to file an issue statement should be counted, and commented on the purpose of ACAR. As this is the first decision from the Court regarding ACAR, we have prepared a more detailed commentary in three parts. This week's commentary is Part 1 and Part 2 will follow in a future Clipboard edition.

Pursuant to section 3(1)(c) of ACAR, issue statements were required to be filed with the ARB Clerk "not later than 21 days prior to the hearing date." The ARB Clerk believed that the issue statements were not filed in time, and the ARB held a jurisdictional hearing to determine whether the issue statements were late. For one property however, the ARB Clerk issued a letter stating that one property would not be included in the jurisdictional hearing because the Agent Authorization form was not received in time. The Clerk confirmed that the complaint against that one property was dismissed.

At the jurisdictional hearing, the ARB dismissed the complaints on the basis that the property owners failed to file the issue statements in time. The property owners appealed this decision to the MGB. At the MGB the City of Calgary took the position that the MGB did not have jurisdiction to hear an appeal involving ss. 3 and 10 of ACAR. The City said that the determination of whether an issue statement was filed in time is administrative in nature which is performed by the ARB clerk, and therefore can not be a decision of the ARB leaving no appeal to the MGB. The City further argued that while the ARB has authority under s. 10(1) to extend the time for filing an issue statement, the MGB does not have the same authority.

The MGB held in MGB 127/07 that section 3(4) ACAR does not give an ARB clerk the authority to declare a complaint invalid, and it is the ARB who is provided with that authority. The MGB reasoned that it was not procedurally fair for the Clerk to make decisions regarding the rights of complainants. With regard to the use of s. 10 ACAR, the MGB held that because s. 499(1)(c) provides that the MGB can make any decision the ARB can make, either Board can determine whether s. 10 discretion should be invoked.

The MGB exercised discretion under s. 10 and directed the ARB to convene a hearing to hear the merits of the appeal failing which the MGB would deal with the matters. Part 2 will review the Court's decision on Judicial Review.

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