

No. 0701-04629

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

CITY OF CALGARY

Plaintiff/Applicant

- and -

MUNICIPAL GOVERNMENT BOARD, GASPAR SZENTER HOLDINGS,
GRANADA APARTMENTS, CALGARY CHINATOWN DEVELOPMENT
FOUNDATION, MP HOLDINGS, RANDAL HOUSE,
106836 DEVELOPMENTS & DORSETT SQUARE APARTM.; REP.
RICKARD REALTY ADVISORS and WILSON LAYCRAFT

Defendants/Respondents

REASONS FOR JUDGMENT OF THE HONOURABLE
MADAM JUSTICE NATION

THE COURT: All right, I heard this
application on October 25th and I told you I would
be giving an oral decision today. I am doing it on
the basis so you can get the decision, know the
result. If any of you are ordering a transcript, I
will just let you know that I am going to review the
right to just review in terms of wordage, but not
content obviously and I have to apologize, but I
will have to read into the record certain
legislative provisions this morning because

1 otherwise the typist will not pick them up.

2 This judicial review relates to a decision of
3 the Municipal Government Board labelled 127/06. The
4 City of Calgary asks that this court review that
5 decision, which directs that the assessment review
6 board hear an appeal filed on behalf of seven roll
7 numbers.

8 Briefly outlining the facts, the facts are best
9 set out in detail on pages four and five of the
10 M-G-B Order 127/06. In a very summary form,
11 taxation notices were sent out, complaints were
12 filed by a group of tax payers and notices of
13 hearings before the assessment review board, which I
14 will refer to as the A-R-B, issued. The contentious
15 issue is around whether the tax payers filed their
16 issue statements by the deadline and the effect of
17 this and whether the A-R-B was correct in deciding
18 at the April 15th jurisdictional hearing, that the
19 applicants did not have a right to have their
20 appeals heard. As a result of an appeal of the
21 A-R-B decision to the M-G-B, decision 127/06 allowed
22 the tax payers a right to a hearing.

23 Now, talking about the standard of review, the
24 first issue that must be decided at any -- in any
25 judicial review, is the standard of review. The
26 Pushpanathan case sets out the four factors that
27 must be considered, deciding the appropriate level

1 of review. The level of review ranges from patently
2 unreasonable at one end of the spectrum to
3 correctness at the other. The factors as they
4 relate to the sections in this act specifically
5 dealing with property assessment and the M-G-A Act
6 have all been extensively examined at the Queen's
7 Bench level, noticeably by Ross, J. in the Boardwalk
8 Reit case; Brooker, J. in the Calgary v. Northland
9 case; and Park, J. in the City of Calgary v. M-G-B
10 and Louis Chow case; and at the Court of Appeal
11 level in the Alliance Pipeline case. I am not going
12 to repeat many of the things that were said about
13 that analysis, but I am going to go briefly through
14 the analysis looking at each of the four factors.

15 First the presence of a privative clause.

16 Section 506 of the act indicates that there is no
17 appeal. This is a weak privative clause indicating
18 moderate deference. Two, expertise. The M-G-B has
19 expertise in the area of property assessment and
20 appeals. As aptly pointed out in both the Telus and
21 Calgary v. Northland case, the M-G-B has to
22 administer the statutory scheme. This would accord
23 deference from the mid to higher end of the
24 spectrum. In this case where the issue revolves
25 around compliance with statutory rules, I concur
26 with Ross, J. in the Boardwalk Reit discussion where
27 she indicated that issues related to the loss of

1 rights, with attendant, concerns about fairness and
2 notice are familiar issues to the court. Thus, this
3 would suggest moderate deference to the board.
4 Three, the purpose of legislation. The purpose of
5 the Municipal Government Act is to supervise the
6 scheme for the fair and equitable assessment of
7 Alberta real property for taxation. This does
8 involve a balancing between different constituents;
9 the government, the property owner and the public.
10 Here the questions deals not only with statutory
11 interpretation, but also how the scheme is
12 administered, for example the clerks run the A-R-B
13 process on a day-to-day basis, where deadlines are
14 missed, notices sent out and notices of hearings
15 set. This would suggest a need for a higher
16 deference to the board's decision. Four, for the
17 nature of the problem. The problem is one of the
18 interpretation of a regulation and the jurisdiction
19 of the A-R-B and the M-G-B as applied to the fact
20 circumstances of this case. Some factual
21 determinations are necessary in relation to the
22 second question. This is largely an interpretation
23 of the law and its application to the facts, which
24 is a question of mixed law and fact, which indicates
25 a moderate deference.

26 Looking at these factors, my conclusion as to
27 the standard of review is that a pragmatic and

1 functional analysis would support the standard of
2 reasonableness in the review. This balances a look
3 at the weak privative clause and the board's
4 expertise as suggesting a less to moderate degree
5 deference; the purpose of the legislation, a higher
6 level of deference; and the nature of the question,
7 a moderate degree of deference.

8 Now, talking about the standard of
9 reasonableness. This suggests that when the
10 standard of reasonableness is applied, the court
11 must consider whether the reasons of the tribunal
12 stand up to a somewhat probing examination. It is
13 not what the court looking at the facts thinks the
14 correct decision would be, but rather whether, after
15 a probing examination, there is no line of analysis
16 within the given reasons that could reasonably lead
17 the tribunal from the evidence before it to the
18 conclusion so that the court should interfere.

19 So, then looking at the first question and I
20 have defined it as this, does the Municipal
21 Government Board have jurisdiction to hear an appeal
22 from a decision of the clerk of the assessment
23 review board. The complainants filed their
24 complaints with the A-R-B on January 18th and
25 hearing notices for an April 25th hearing were sent
26 by the A-R-B on March 4th. The hearing notices
27 indicated that the deadline for issue statements was

1 April 4th. On April 7th, the A-R-B sent a letter to
2 the applicants indicating that the issue statements
3 had not been filed in accordance with Section 3(3)
4 of the A-C-A-R and that a request for a
5 jurisdictional hearing must be submitted by April
6 21st. The complainants sought a jurisdictional
7 hearing, which took place before the A-R-B on April
8 15th. The only reasons provided by the A-R-B come
9 in the form of its notice of decision dated May 4,
10 which states, "Assessment complaint denied. No
11 jurisdiction." It appears the A-R-B concluded that
12 because the clerk had concluded that the
13 complainants had not complied with Section 3(3) of
14 the A-C-A-R, it did not have jurisdiction to hear
15 the matter. The relevant portions of Section 3 of
16 the A-C-A-R provide,

17
18 "3(1) If a complaint is to be heard
19 by an assessment review board, the
20 complainant must
21 (a) file the complaint in accordance
22 with the Act...
23 (c) file an issue statement with the
24 clerk of the assessment review board
25 and with the assessor of the
26 municipality at least 21 days before
27 the hearing date of the complaint."

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2

Section 3(3) states,

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"If the clerk of the assessment

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review board sends a notice of

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hearing to a complainant on a date

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that is less than 45 days before the

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hearing date, the complainant is not

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required to comply with

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subsection (1) (c)."

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12

Section 3(4) reads,

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"Subject to subsection (3), if a

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complainant does not comply with

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subsection (1), the complaint is

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invalid and the assessment review

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board must not hear the matter and

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the clerk of the assessment review

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board must so notify the

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complainant."

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Section 3(5) states,

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"If a complainant who files an issue

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statement does not comply with

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subsection (2), the clerk of the

1 assessment review board may refuse to
2 file the issue statement."

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And Section 3(6) is,

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"A complainant may appeal a refusal
under subsection (5) to an assessment
review board within 14 days of being
notified of the refusal."

Also relevant is Section 10 of the A-C-A-R, an
assessment review board has the authority to abridge
or expand the time periods set out in Section 3 and
Section 10(1) reads,

"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."

Section 10(2),

"The Municipal Government Board may,
by written order, abridge or expand

1 the time specified in section 9(2)
2 for the doing of anything described
3 by that section in respect of an
4 appeal."

5
6 There are three other relevant provisions of
7 the M-G-A and they are as follows. Section 470(1)
8 reads, "The decision of an assessment review board
9 may be appealed to the Municipal Government Board."
10 Section 488(1) reads, "The Board has jurisdiction",
11 and the relevant subsection is (c), "to hear appeals
12 from decisions of assessment review boards". And
13 499(1) states, "On concluding a hearing, the Board
14 may make any of the following decisions", the
15 relevant portion is (d), "make any decision that the
16 assessment review board could have made, if the
17 hearing relates to the decision of an assessment
18 review board".

19 The City contends that the M-G-B did not have
20 jurisdiction to hear the appeal because the clerk's
21 determination that a complaint is invalid under
22 Section 3(4) of the A-C-A-R is not a decision of the
23 A-R-B. What is problematic about this assertion is
24 that the A-R-B did hold a jurisdictional hearing on
25 April 15th and issued a decision dated May 4.
26 Taking the May 4th decision together with the City's
27 submissions, a more accurate description of the

1 City's position is that neither the A-R-B nor the
2 M-G-B have jurisdiction to hear an appeal from the
3 decision of the clerk pursuant to Section 3(4) of
4 A-C-A-R and that the A-R-B's decision dated May 4th
5 was correct. In any event, the key to the City's
6 argument is that the decision of the clerk that the
7 complaints were invalid is not a decision of the
8 A-R-B that can be appealed either to the A-R-B
9 jurisdictional panel or from there to the M-G-B.
10 The City submits that Section 3(4) of A-C-A-R was
11 designed to allow the A-R-B to deal with the
12 enormous volume of complaints received each year and
13 allows for efficiency in the system by processing
14 late complaints. Taking that as the purpose of the
15 legislative scheme, the City submits that the only
16 conclusion consistent with this purpose is that
17 where the requirements of Section 3(3) are not met
18 by the complainant and the clerk exercises authority
19 to declare the complaint invalid under Section 3(4),
20 the matter cannot be heard by the A-R-B. There is,
21 therefore, no hearing and there is, therefore, no
22 decision of the A-R-B to be appealed to the M-G-B.
23 The City further contends that on the plain wording
24 of Section 10 of A-C-A-R, it is only the A-R-B that
25 has jurisdiction to expand the time specified in
26 Section 3(1)(c) because the specific nature of
27 Section 3 of A-C-A-R takes precedence over the

1 general sections in the M-G-A, specifically,
2 Section 499(1)(d), which allows the M-G-B to make
3 any decision that the assessment review board could
4 make if the hearing relates to the decision of the
5 assessment review board.

6 I do not accept the City's characterization of
7 the purpose of A-C-A-R. Obviously procedural
8 regulations such as those found at Section 3 of
9 A-C-A-R are intended in part to provide an efficient
10 mechanism for resolving complaints, but the primary
11 purpose of such legislation is to provide access to
12 the tribunal and procedures that accord with natural
13 justice. Broadly speaking, the purpose of A-C-A-R
14 and the relevant provisions of the M-G-B is to
15 provide complainants with a hearing. The narrow
16 purpose of Section 3 of A-C-A-R is to ensure that
17 the A-R-B does not proceed with a hearing in the
18 absence of adequate disclosure. The clerk of the
19 assessment review board clearly has the power to
20 declare a complaint invalid, but when that power is
21 exercised, a complainant must have an avenue whereby
22 that decision can be reviewed or reconsidered.

23 A similar situation was considered by the
24 Saskatchewan Court of Appeal in Prince Albert (City)
25 v. Riocan Holdings Ltd. [2004] S.J. No. 337 (C.A.)
26 2004 SKCA 7, In that case, the secretary of the
27 Prince Albert board of revision declined to put a

1 tax payer's appeal before the board because of
2 deficiencies in the notice of appeal. The
3 municipality contended that the decision of the
4 secretary was not a decision of the board of
5 revision subject to appeal. The Saskatchewan Court
6 of Appeal disagreed and I quote from paragraph 17,
7

8 "The other possible interpretation of
9 the above mentioned sections of the
10 Act is that the position of secretary
11 is not a statutory office separate
12 from that of the board, and that the
13 powers given to the secretary by the
14 Act, when exercised, are acts of the
15 board. This is logical, as everything
16 the secretary is empowered to do is
17 done on behalf of the board. This
18 interpretation is consistent with the
19 words of the relevant sections and
20 makes the impugned decision subject
21 to appeal, just as if it were a
22 decision made by a panel of the
23 board."

24
25 I agree with that dicta and with the decision of the
26 M-G-B that the clerk's determination that the
27 complaints were invalid constitutes a decision for

1 the purpose of Section 470 of the Municipal
2 Government Act.

3 The decision of the M-G-B in this regard was
4 not only reasonable, it was correct.

5 I note, however, that the board order 127/06
6 went further and set out a procedure by which the
7 A-R-B must consider decisions made by the clerk of
8 the board under A-C-A-R. Specifically, the M-G-B
9 held that the appropriate procedure in the event
10 that the clerk declares a complaint invalid under
11 A-C-A-R is for the clerk to set the matter down for
12 an automatic jurisdictional hearing in every case.
13 With respect, I do not believe that it was necessary
14 for the M-G-B to set out procedures that the A-R-B
15 must follow nor was it within the scope of the
16 M-G-B's power under Section 470 for it to do so.
17 The complainant's attempted to appeal the decision
18 of the clerk to the A-R-B, which held that it did
19 not have the jurisdiction to hear the appeal because
20 the complainants had not complied with Section 3(3)
21 of A-C-A-R. In this regard the A-R-B was in error
22 and should have considered the appeal with regard to
23 its discretion to abridge or expand the time period
24 specified in 3(3). It was an adequate procedure for
25 the A-R-B to require the complainant to apply for a
26 jurisdictional hearing before the A-R-B where the
27 A-R-B could be given the opportunity to exercise its

1 discretion under Section 10 of the A-C-A-R or to
2 consider the basis for the clerk's determination of
3 invalidity. That procedure is mindful both of the
4 efficient resolution of complaints and the scope of
5 the powers of the A-R-B. The decision of the M-G-B
6 to allow the appeal was reasonable on the basis that
7 A-R-B erred in concluding it did not have
8 jurisdiction to hear the appeal from the decision of
9 the clerk, but the portion of the M-G-B's decision
10 that allows or that purports to dictate procedure to
11 the A-R-B does not survive review on the
12 reasonableness standard as the M-G-B does not
13 possess the statutory authority to dictate procedure
14 to the A-R-B.

15 The City further submits that the M-G-B does
16 not have jurisdiction to make an order to extend the
17 time period set out in Section 3(3) pursuant to
18 Section 10 of the A-C-A-R. The City points out that
19 under Section 10(2) of A-C-A-R, the M-G-B may
20 abridge or expand the time specified in Section 9(2)
21 of A-C-A-R, but the M-G-B is not included in
22 Section 10, which grants the A-R-B the discretion to
23 extend the time periods set out in Section 3(3).
24 The City submits that the powers extended to the
25 A-R-B under Section 10(1) are specific and limited
26 to the A-R-B and take precedence over the more
27 general provisions of the M-G-A, specifically

1 Section 499(1)(d), which permits the M-G-B to make
2 any decision the A-R-B could have made.

3 In my view, the City's submission is not
4 consistent with the statutory scheme as a whole,
5 which envisions a two tiered decision-making
6 process. The M-G-B is a specialized tribunal with
7 considerable expertise. I agree with the M-G-B that
8 the two tiered appeal system is apparent in
9 Section 470(1), Section 488(1)(c) and
10 Section 499(1)(d) of the M-G-A and there is no
11 specified limitation on the types of decisions that
12 the M-G-B may make. All decisions of the A-R-B are
13 subject to review by the M-G-B and it is clear from
14 the language of Section 499(1)(d) that the M-G-B may
15 make any decision without limitation that the A-R-B
16 may have made. This includes the decision under
17 Section 10 of A-C-A-R to extend the time limits
18 imposed by Section 3(3).

19 Now, going to the second issue, did the
20 Municipal Government Board err in determining that
21 the A-R-B notices were not issued in sufficient time
22 for the applicants to comply with Section 3(1)(c) of
23 A-C-A-R. The M-G-B concluded that the issue
24 statements were not required because notice of the
25 A-R-B hearing was not received within 45 days of the
26 hearing date. The M-G-B relied on Section 23(1)(a)
27 and Section 23(1)(b) of the Interpretation Act, RSA

1 2000, C. I-8 which provides that service is presumed
2 to be effective seven days from the date of mailing,
3 if the document was mailed in Alberta to an address
4 in Alberta or 14 days if the document is mailed to
5 an address outside of Alberta. The board further
6 interpreted Section 22(3) of the Act to mean that
7 the date the notice is mailed as well as the date of
8 the hearing is not to be included in the computation
9 of time. Applying Section 22(3), the board
10 concluded that all of the notices, but in particular
11 the notice in respect of the Stern property, were
12 not served within the time period by Section 3(1)(c)
13 of A-C-A-R. The notices were dated March 4, the
14 hearing was scheduled for April 25th. Not counting
15 March 4th and April 25th, the board concluded that
16 the A-R-B gave only 44 days notice of the hearing
17 and no issue statement was required. The City
18 submits that the board erred in apply Section 22(3)
19 of the Interpretation Act and that the applicable
20 section of the act is Section 22(7), which provides
21 that if an enactment provides that anything is to be
22 done within a time from after, from, of or before a
23 specified date, the time does not include that date.
24 The City contends that applying Section 22(7) alone,
25 the computation of time means that March 4th is not
26 included, but April 25th is and 45 days notice were
27 given.

1 As I stated earlier, the standard of
2 reasonableness as described in the Supreme Court of
3 Canada in the Law Society of New Brunswick v. Ryan
4 [2003] 1 S.C.R. 247 at paragraph 55 indicates that,
5 "A decision will be unreasonable only if there is no
6 line of analysis within the given reasons that could
7 reasonably lead the tribunal from the evidence
8 before it to the conclusion at which it arrived."
9 Iacobucci, J. held at paragraph 47 that the decision
10 must stand up to, "a somewhat probing examination."

11 The M-G-B appears to have concluded that the
12 language utilized in Section 3(3) of A-C-A-R, which
13 provides that if the clerk sends the notice to a
14 complainant on a date that is less than 45 days
15 before the hearing date, an issue statement will not
16 be required, was sufficient to bring it within the
17 application of Section 22(3) of the Interpretation
18 Act, which applies to enactments that reference
19 clear days or uses the language "at least" or "not
20 less than" a number of days between to events. The
21 submission by the City in this regard is not without
22 merit. It is possible that Section 3(3) of A-C-A-R
23 is better described as an enactment providing that
24 something is to be done within a time after, of or
25 before a specified as per Section 22(7) of the
26 Interpretation Act. But the appropriate test on
27 judicial review on a standard of reasonableness is

1 whether there is no line of analysis that could have
2 lead the tribunal from the evidence before it to the
3 conclusion at which it arrived. The M-G-B is
4 entitled to some deference and it is clear from the
5 reasons of the M-G-B that it engaged in a thorough
6 consideration of this issue. The M-G-B concluded
7 that the use of the words "less than 45 days before
8 the hearing" was sufficient to bring the enactment
9 within the scope of Section 22(3). This is not an
10 unreasonable interpretation as there is a line of
11 analysis that could reasonably have brought the M-G-
12 B to this result.

13 So, for the foregoing reasons, the application
14 for judicial review of M-G-B order 127/06 is denied.
15 As all parties have agreed, if the result of this
16 judicial review was that the owners had a right to
17 have their appeal heard, the hearing shall be before
18 the M-G-B as opposed to the A-R-B and so I direct
19 that, that is the case.

20 So, that is my decision. I apologize for
21 having to read all that detail into the record, but
22 as I indicated when I heard this, you will get your
23 decision much faster than if it has to be done in
24 writing. So, I trust that is clear to you and it
25 gives the respondents, I guess, the result they
26 wanted. It does give some clarification to the City
27 of certain procedural aspects at least that they

1 were concerned about.

2 MS. GOSSELIN: Thank you, My Lady.

3 MR. LAYCRAFT: My Lady, with respect to
4 costs, I'm obviously substituting for Mr. Ludwig
5 here. He advises me that the normal practice with
6 the City is for the parties to come up with a
7 reasonable solution. Could we leave it that costs
8 may be spoken to if the lawyers aren't able to work
9 it out?

10 THE COURT: That is all right?

11 MS. GOSSELIN: That's agreeable with the
12 City, yes.

13 THE COURT: All right, and that is fine.
14 You can come back and speak to me if you are not
15 able to decide the costs.

16 MS. GOSSELIN: Thank you.

17 THE COURT: Thank you.

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20 PROCEEDINGS CONCLUDED
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1 Delivered orally in the Court of Queen's Bench,
2 Courthouse, Calgary, Alberta, on the 19th day of
3 November, 2007.

4

5 L. Gosselin, Ms.
6 For the Plaintiff/Applicant

7

8 J. Laycraft, Esq.
9 For the Defendants/Respondents

10

11

12 L. Jensen
13 Court Clerk

14

15 dlb
16 Date December 20, 2007

17

18 Certificate of Record

19 I, Lesley Jensen, certify that this recording is a
20 record of the oral evidence of the proceedings in
21 the Court of Queen's Bench, held in courtroom 1503,
22 at Calgary, Alberta, and I was in charge of the
23 sound-recording machine.

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