

# Municipal Law Bulletin

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Fasken Martineau DuMoulin LLP

## 2009 Property Tax Assessment Update:

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### Important Notice: new deadline for appeals to the Assessment Review Board: March 31, 2009.

It is critical to act now and file appeals of your property assessment because the new date is only weeks away, because it takes some time to prepare an appeal, and because this is the first province-wide assessment update in 3 years and your assessment may have changed markedly. In addition, changes to rules governing paralegals and owner representatives, and to Assessment Review Board (ARB) rules, have resulted in an appeal and hearing process that is more complex and courtlike. Consequently, it has become even more important to consult with and involve lawyers early in the appeal process. Although of paramount importance, the new deadline is only one of several important changes that take effect in 2009, other changes include:

- shift in the onus of proof;
- new deadlines for Requests for Reconsideration (“RfR”);
- new format to the Property Assessment Notice;
- updated assessed values;
- new phase-in for increased assessments;

- new notices of correction; and a
- redesigned property assessment information system.

### 1. Appeal to the Assessment Review Board

The final day for appeal to the ARB by owners of properties classified as residential, farm or managed is **90 days after the notice of the outcome of their RfR** is mailed by MPAC. Owners of commercial, industrial, or multi-unit residential properties must file their appeal to the ARB by **March 31, 2009** regardless of whether they first submit an RfR or submit an appeal to the ARB. That is, the filing of an RfR is an optional step for owners of properties in these classes: they can file an RfR before appealing to the ARB, **or** appeal directly to the ARB. Whether or not an RfR is filed, the deadline for ARB appeals for such owners is still March 31, 2009. Consequently, owners of commercial, industrial and multi-residential properties must carefully assess the appropriate appeal route (RfR first then ARB appeal, or ARB appeal directly) in light of their circumstances and issues of concern. We can use our expertise to assist with this analysis and in preparing effective and complete appeal documents.

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There have been changes to the *Law Society Act* regarding the requirements for persons who can act as a representative of an owner. Persons approved by the Law Society of Upper Canada to practice law or provide legal services in Ontario do not require letters of authorization from the property owner. However, persons who are not the owner of the property, nor approved by the Law Society, but who wish to act as a representative for the owner must supply a letter of authorization endorsed by the owner. In addition, the Paralegal Rules of Conduct generally forbid a paralegal from both acting as advocate and giving evidence (with exceptions respecting contrary provisions of law or the discretion of the tribunal). These rules state that “the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal” and that “a paralegal who appears as an advocate shall not testify before the tribunal [unless certain exceptions apply]”. These rule changes have made the appeal process more complex and courtlike and so require greater consultation with lawyers at the beginning of the process.

The onus of proof has now been reversed for disputes over value. Beginning in 2009 MPAC has the onus of proof regarding the accuracy of an assessed value; the traditional onus on the appellant applies to all other grounds for appeal. In addition, the ARB is now required to first determine the accurate current value of the property in question, and then reference the values of similar properties in the area to ensure fairness. It must adjust the assessment to make it equitable only if comparison results in reduction.

Although mechanisms have been introduced to eliminate capping on kinds of business properties (and thus more reflective of the property's CVA taxes), only a few properties have reached this state. Consequently most commercial and industrial properties are still capped and subject to clawbacks

on any tax reductions. Because of capping and clawbacks, ARB appeals often do not yield the desired benefit. However, high clawback rates have been declining in municipalities outside Toronto. We therefore recommend that an appeal be filed to preserve your right and opportunity to determine the impact of caps and/or clawbacks on potential reductions in a property's assessed value before making a determination as to whether to pursue the actual ARB appeal.

## 2. Request for Reconsideration (RfR)

For **all** property classes the new deadline for filing an **RfR** is **March 31, 2009**. This change is effective for the 2009 tax year; previously the deadline was December 31st. The move to an earlier date is intended to allow MPAC time to complete the RfR before an appeal is filed to the ARB. The deadline is later for supplementary, omitted, and amended assessments: within 90 days of mailing of notice of such assessments. In addition, if there is a delay in the return of the assessment roll, the deadline is 90 days after the return of the roll or March 31, whichever is later.

Starting in 2009, the filing of an RfR prior to appealing to the ARB is a **mandatory** first step for properties in the residential, farm or managed forest property classes. As noted above, the filing of an RfR is an **optional** step for owners of commercial, industrial and multi-residential properties: they can file an RfR before appealing to the ARB, **or** appeal directly to the ARB. It is important to note, however, that whether or not an RfR is filed, the deadline for ARB appeals for such owners is still March 31, 2009. Consequently, owners of commercial, industrial and multi-residential properties must consult with their lawyers and carefully assess whether an RfR should be filed in conjunction with an appeal.

The RfR form has been redesigned for 2009, to reflect the changes in the new notice, and MPAC will now include a standard disclosure package with every RfR acknowledgment letter. As part of the deadline changes, MPAC will now mail the results of the RfR to the property owner by September 30, unless all parties have agreed to a November 30 extension, or within 180 days of request being made where there was a supplementary/omitted/amended assessment.

MPAC prefers that applicants for an RfR use its form, but it is also possible to simply call or to write a letter that includes the necessary information. If, after review, an RfR will be filed, we recommend that the form be used together with a letter that sets out additional supporting information.

Please Note: If you did not make your RfR before the deadline because of extenuating circumstances, and an RfR is a pre-condition of appeal, the ARB can extend the deadline for making a RfR. In such a situation contact us immediately for assistance.

### **3. Notice of Assessment**

*The Property Assessment Notice 2008* for the 2009 – 2012 property tax years has been sent out for nearly 4.7 million properties, and you should have received yours by the third week of November, 2008. The Notice has been redesigned, and includes your property's classification, current assessed value (based on a January 1, 2008 valuation date), your 2005 assessment, and how much your assessment has changed since the last re-assessment for taxation years 2006 – 2008. If you haven't received it, or require a replacement copy, contact MPAC immediately at 1 866 296-MPAC (6722), Monday to Friday - 8 a.m. to 5 p.m. Note that the notice also includes a history of past adjustments, if any, made by MPAC (by a Request for Reconsideration, or the Assessment Review Board). Consequently, the 2005

value shown on the Notice may not necessarily be the same as the value that appeared on your last Notice.

### **4. Updated Assessed Value**

The last province-wide assessment update took place three years ago and was based on a January 1, 2005 valuation date. All classes of properties have had their assessed value updated to a January 1, 2008 valuation date. With respect to residential properties, MPAC has stated that "residential property values have increased by an average of approximately 20 per cent across Ontario since 2005, when the last assessment update was done. Because of the four-year phase-in, property taxpayers will see an average assessment increase of 5 per cent next year" (Carl Isenburg, President and Chief Administrative Officer of MPAC). This prediction appears to be true, with assessment increases ranging from a low of 3.4% in Ottawa, to 5.4% in Toronto, 5.5% in Windsor, 5.6% in Hamilton, and a high of 8.3% in Pembroke. Business properties have seen similar or greater increases in value.

### **5. Assessment Phase-in**

MPAC will now use a four-year assessment update cycle (instead of annual) and will phase-in assessment increases for residential, farm and forest properties; there is no phase-in for decreases, which are immediately applied. This new four-year assessment cycle is permanent, and will be repeated every four years, with the market value base year date being January 1st of the year prior to the first year of the cycle. Thus, for the current four year cycle the base market value is shown on the Notice as the January 1, 2008 property value. The amendments to the Assessment Act authorize the Minister to provide for phase-ins for other property

classes, no steps have been taken to implement phase-ins for business properties.

An **increase** in assessed value between 2005 and 2008 will be shown on the Notice in a “phased-in assessment” table. The table will show the increase phased-in equally over the next four-years – for example an increase of \$100,000 will result in an annual property assessment change of \$25,000 in each of 2009, 2010, 2011, and 2012. In 2012 your property will be assessed at its FULL Current Value Assessment—which is important to remember for any appeals (see below).

## 6. Correction Notices

Starting in 2009 MPAC may correct “any defect, error, omission or misstatement in any assessment and alter the roll accordingly”—despite the delivery of any notice. Errors in assessment and classification are corrected by an “Amended Notice” if the error results from incorrect factual information, and is not from a change in opinion of current value. Factual errors may be corrected at any time before the time fixed for the return of the assessment roll. The new correction power is not surprising given the numerous errors that continue to appear. Calculating the correct property tax, especially for business properties, has become highly complicated. Prudent business owners now realize that significant tax savings can be obtained from pursuing tax billing errors and not just from challenging valuations, and we are frequently engaged to correct such errors.

## 7. Property Assessment Information System

MPAC has redesigned its property information systems, and offers a mapping service through two (new) services: AboutMyProperty™ and propertyline™ (the username and password is on the

2008 Assessment Notice). Users of those MPAC services can view a map image for the subject property and the surrounding properties—very useful when ordering reports. Property taxpayers have access to a Property Profile Report for their own property and 24 Detailed Property Reports on similar properties, and there are now options to select properties of interest from a newly interactive map.

## Let Us Help

Tom Barlow, Neil Smiley and John Inglis would be pleased to assist you with an analysis of your property tax notice, with the identification of errors, with the preparation and filing of an RfR or appeal, with discussions with MPAC staff, and with appearances before the ARB. If you require our assistance, please provide us with a copy of your Property Assessment Notice(s) as early as possible such that we will be able to file an appeal as may be required to preserve your appeal rights.

For any further information please do not hesitate to contact:

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We also advise on all matters that fall under the Municipal Act (2001), City of Toronto Act, Planning Act, Building Code Act (1992), Development Charges Act, Expropriations Act, Ontario Heritage Act, Niagara Escarpment Planning and Development Act, and development related matters under the Environmental Assessment Act, Condominium Act, and Ontario Municipal Board Act.

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