

November 8th, 2021

To: Mayor Gondek and Members of Council

From: John Mathias, General Chair, Calgary Assessment Review Board

Re: Administrative Inquiry – Assessment Reform

The City Clerk has brought the recent Administrative Inquiry respecting Assessment Reform to the attention of the Assessment Review Board (the ARB). The ARB is happy to provide Council with the following information to help address some of the questions set out in the Inquiry.

The ARB is an independent tribunal and has jurisdiction to hear complaints on certain assessment matters as provided by the *Municipal Government Act* (MGA). The ARB hears complaints in a fair and impartial manner and cannot favour either the complainant homeowner or business owner, or the respondent assessor who represents the Assessment Business Unit (ABU).

The ARB can provide information with respect to the hearing of assessment complaints and the issuing of decisions; however, it is independent of the ABU and is not involved in the preparation of assessments. The ABU appears as a party before the ARB when a complaint is filed with respect to an assessment. The ARB is therefore unable to respond to the questions presented in the Administrative Inquiry with respect to the preparation of assessments, the assessor's duties, or what information the assessor decides to submit to the complainant and the ARB in response to a complaint.

Jurisdiction of the ARB

The ARB is established by Council of the City of Calgary pursuant to Council's obligation under the MGA to establish a local assessment review board (LARB) to hear complaints on assessments of residential property with three or fewer dwellings or farm land, and a composite assessment review board (CARB) to hear complaints on any matter on an assessment notice for properties other than property within the jurisdiction of the LARB.

The ARB must comply with the legislative provisions set out in the MGA, the *Matters Relating to Assessment Complaints Regulation* (MRAC), the *Matters Relating to Assessment Taxation Regulation*, 2018, The City of Calgary Charter, and the Calgary Assessment Review Board Bylaw.

Complaints to the ARB are most frequently filed with respect to the assessment amount on the annual Assessment Notice issued by the ABU. The ARB has jurisdiction to review the assessment amount but has no jurisdiction to review the tax rate. A property owner's taxes are based on the assessed amount and the tax rate set by City Council as set out in the tax notices issued by the City of Calgary.



ARB Member Qualifications

The MGA requires Council to appoint at least three members to a LARB and two members to a CARB, where the presiding officer is a provincial member appointed to the Alberta Land and Property Rights Tribunal. The Calgary Assessment Review Board Bylaw prescribes a term of one year for each member's appointment, up to a maximum of 12 terms. ARB members are not City of Calgary employees.

MRAC states that an individual who is an assessor, is an employee of the municipality for which the assessment review board is established or is an agent, is ineligible and may not be a member of a panel of an assessment review board. In addition, it is the policy and practice of the Calgary ARB that members must not sit on a panel hearing a complaint with respect to a property within the member's own community, or in relation to which the member has any business or personal interest in the property, or with the property owner (*ARB 2019 Policies for Board Members*). The ARB will also not recommend an individual who is a former assessor to Council for appointment to the ARB until at least one year after termination of their employment as an assessor.

The current number of ARB members appointed by Council is 39. Members are individuals who are experienced in real estate, property appraisal, law, and assessment. Member biographies are available on the ARB website.

ARB members must successfully complete training prescribed by the Minister of Municipal Affairs to be qualified to sit on an assessment review board panel, and thereafter members must successfully complete prescribed refresher training every three years.

The ARB General Chair is responsible for managing performance and conduct of ARB members. The performance of each member is reviewed on an annual basis by the ARB General Chair to identify training and development needs, and to address areas of strength and areas where improvement is required.

The ARB Hearing Process

Hearings of the ARB are conducted in accordance with the principles of natural justice and procedural fairness to both parties. Rules with respect to submitting evidence to the other party and to the ARB are provided in MRAC, and *The City of Calgary Charter*. These regulations prescribe strict timelines for the disclosure of evidence by both a complainant and a respondent prior to an ARB hearing to ensure that both parties are aware of the other party's evidence and have an opportunity to respond to that evidence prior to the hearing. The ARB must not hear any evidence that is not disclosed in accordance with the regulated timelines. The specific dates by which each party must disclose its evidence, and instructions on how to disclose evidence, are communicated to the parties on a Notice of Hearing issued by the ARB for each hearing.



Evidence can be filed electronically by parties at any time of day through the ARB's ePortal and Evidence Disclosure Portal (EDP) systems, or it can be emailed, mailed or dropped off at the ARB office and at the ABU office.

The ARB is committed to providing meaningful access to justice for all Calgary business owners and homeowners who wish to participate in the assessment review process. The ARB currently offers three hearing options due to the pandemic restrictions: written, telephone conference and videoconference hearings. In 2022, in-person hearings will likely be available again as a fourth hearing option. The ARB website provides detailed information about the complaint and hearing process and provides answers to frequently asked questions with links to governing legislation, forms, and a guide to filing an assessment complaint and preparing for the hearing.

A witness appearing before the ARB may be examined under oath on anything relevant to a matter that is before the ARB (MGA s. 466), however it is not a legislated requirement that evidence must be provided under oath. As the evidence presented to the ARB is largely documentary and the credibility of witnesses giving oral testimony rarely arises, parties have not been required to present their evidence under oath at the ARB since at least 1999.

ARB processes and decisions are highly transparent and are accessible to the public. The ARB's Policies for Members, and its Procedural Rules are available through the ARB website. ARB hearings are open to the public, and decisions are issued in writing and are available on the ARB website. ARB decisions are also available on the CanLII website (www.canlii.org/en/ab/abcgyarb/). ARB decision data is also extensively available through The City's Open Data catalogue (https://data.calgary.ca/Government/Assessment-Review-Board-Complaints/myiv-ju9n).

The ARB's Policies for Board Members require a member to withdraw from a panel hearing a matter on which the member has a reasonable apprehension of bias or conflict of interest. A member must also disclose to the parties to a hearing any circumstances that may give rise to a perceived apprehension of bias or conflict of interest, and the member must withdraw from the hearing unless the parties have waived any objection to the member remaining on the panel. A party to a complaint may also object at any hearing to the composition of members hearing the complaint.

The MGA requires that the ARB must not make any change to an assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations, and the assessment of similar property or businesses in the same municipality. Although the ARB is not strictly bound by its prior decisions, it strives for consistency in its reasons and will accept copies of court decisions and prior ARB decisions from parties to a hearing anytime up to the end of the hearing.

Prior to 2010, a party challenging an ARB decision was required to appeal to the Municipal Government Board before seeking an appeal to the Court of Queen's Bench. In 2010, the MGA was revised to provide that a party may apply for judicial review of an ARB decision directly to



the Court of Queen's Bench, provided that the application is filed and served within 60 days of the date of the decision.

Mr. Howard Silver

The ARB is aware of the matters raised in the Administrative Inquiry with respect to Mr. Howard Silver's complaints against business tax assessments in 2014 and 2015; however, comments on specific assessment complaints or proceedings can only be made by the ARB through its written, published decisions. The ARB has worked constructively with stakeholders to implement the recommendations set out in The Heuristic Report to improve the assessment review process, and has previously informed Council about the significant progress it has made on that work (please see PFC2019-1274). The ARB remains committed to continually improving the assessment review process to ensure timely, fair and efficient assessment review for all Calgary business owners and homeowners.

I trust you will find the above information regarding the ARB, and its jurisdiction and hearing process to be helpful to your inquiry. I would be happy to provide any further information you request from the ARB with respect to these matters.

Yours truly,

John Mathias

General Chair, Calgary ARB