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BARRISTERS

Reynolds Mirth Richards & Farmer LLP

SOLICITORS



ALBERTA ASSESSOR'S ASSOCIATION

FALL SYMPOSIUM, LETHBRIDGE 2011

CURRENT LEGAL ISSUES

Speaker: Carol M. Zukiwski



THANK YOU TO THE
ASSOCIATION FOR THE
INVITATION TO SPEAK AND BE A
PART OF THE SYMPOSIUM



Outline

1. Park Model/Travel Trailer – is it assessable?
2. What's the status of invalid complaint form decisions?
3. Who's the assessed person? Who's the agent?
4. Section 295 / Section 294
5. Costs
6. Leave to Appeal – What is a question of law?
7. Time for Questions



PART 1

- Park Model/Travel Trailer
 - Is it Assessable?
 - What is it?



Let's Look at a Fact Situation





Example

- 12-14' wide
- Up to 50' long
- No hitch or wheels
- Set on pilings or blocking
- Completely skirted
- Deck attached





Example

- No tail lights
- No brake lights
- No clearance lights
- No license plates
- Most units on bare land condos are connected to power, water and septic line

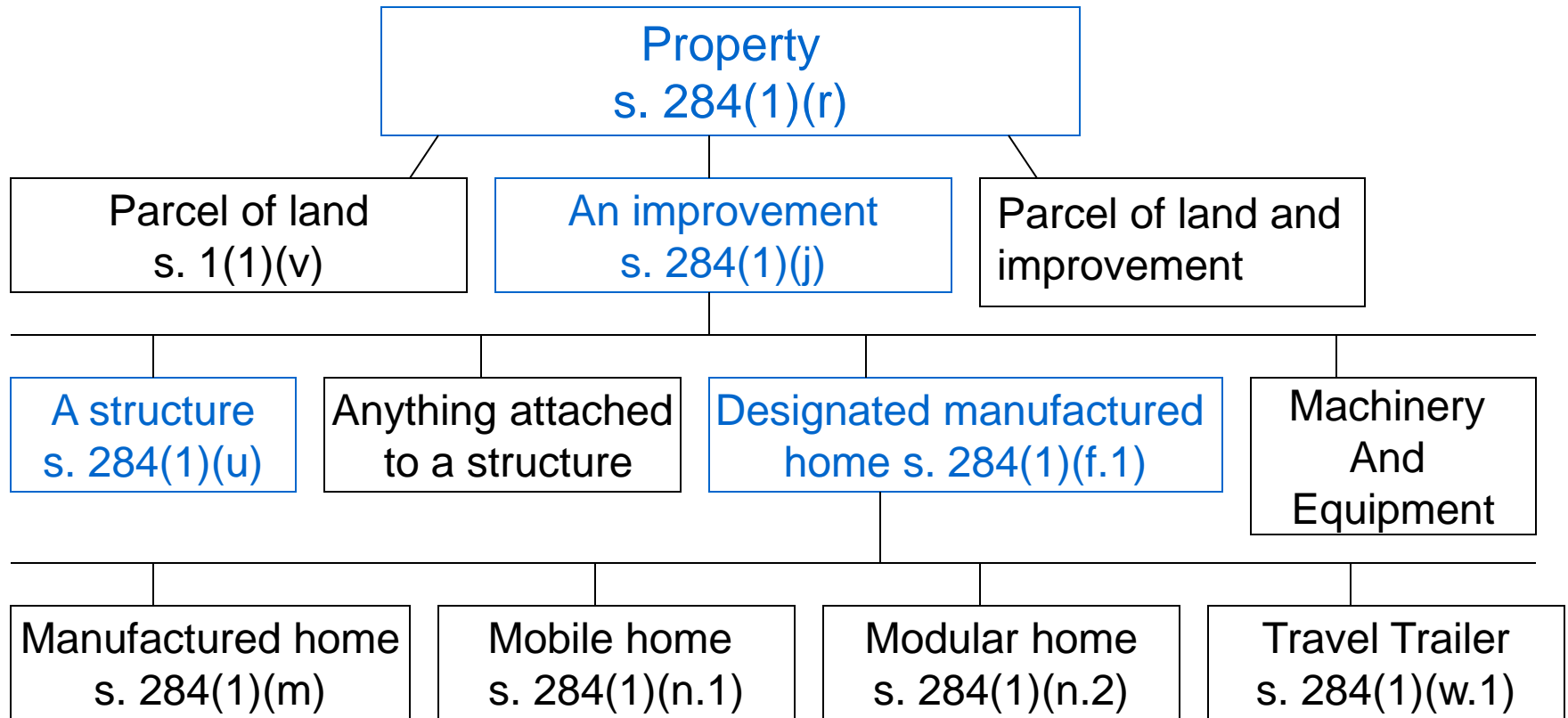




Step One – Define the Property – s. 284

Step Two – Listed in s. 298?

Step Three – Who's the assessed person s. 304?



s. 298(1)(bb) – No assessment is to be prepared for travel trailers that are not connected to any utility services provided by a public utility, and not attached or connected to any structure



- S. 284(1)(j): *“improvement” means:*
 - (i) a structure,
 - (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,
 - (iii) a designated manufactured home, and
 - (iv) machinery and equipment



- S. 284(1)(d): *“designated manufactured home” means a manufactured home, mobile home, modular home or travel trailer*
- S. 284(1)(m): *“manufactured home” means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the CSA Z240 and this is used as a residence or for any other purpose*
- S. 284(1)(n.1): *“mobile home” means a home that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet CSA Z240*
- S. 284(1)(n.2): *“modular home” means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site*
- S. 284(1)(w.1): *“travel trailer” means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road*



If Unit Was a Travel Trailer

- What about MGA s. 298(1)(bb)(i)?
 - No assessment... prepared for... travel trailers that are (i) not connected to any utility services provided by a public utility...
- Does the unit being plugged into electric power qualify as “connected to any utility services provided by a public utility”?



If Unit Was a Travel Trailer

- What about MGA s. 298(1)(bb)(ii)?
 - *No assessment... prepared for... travel trailers that are... (ii) not attached or connected to any structure*
- Is a covered deck a “structure” ?
 - S. 284(1)(u): “structure” means a building or other thing erected or place in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land



- Parcel of land – s. 1(1)(v)
 - *(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;*
 - *(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;*
 - *(iii) a quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of title*
- Is a bare land condominium a parcel of land?
 - Short answer - yes



- Step One – Definition
 - Designated manufactured home
 - Structure (covered deck)
 - Parcel of land (bareland condo)
- Step Two – s. 298
 - Not removed from assessment as a travel trailer under s. 298(1)(w.1)



- Step Three – Who's the Assessed Person
 - S. 304(1)(b) – *the owner of the parcel of land;*
 - S. 304(1)(k) – *the owner of the designated manufactured home if the municipality passes a bylaw to that effect*



PART 2 – WHAT IS THE STATUS OF THE INVALID COMPLAINT FORM DECISIONS?



- *S. 460(7) – 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 assessed value, if the complaint relates to an assessment.*
- *S. 467(2) – 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).*



MRAC

- *S. 2(1) – If a complaint is to be heard by an assessment review board, the complainant must*
 - *(a) complete and file with the clerk a complaint in the form set out in Schedule 1, and*
 - *(b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.*
- *S. 2(2) – If a complainant does not comply with subsection (1),*
 - *(a) the complaint is invalid, and*
 - *(b) the assessment review board must dismiss the complaint*



- “boiler plate” or “shopping list” complaint forms
- Show the correct information
- 2010 – initial decisions – refused to dismiss
- Late 2010 – decision from Edmonton – dismissed
- 2011 – three member Edmonton ARB reversed itself and refused to dismiss
- Other CARB’s continue to refuse to dismiss



- Leave to Appeals filed for 2010 – none argued yet (some being argued this fall)
- Recent “success” asking for dismissal and alternate remedy better details – but ARB gave the Complainant another 60 days to provide those details
- Revisit after Court Applications are heard
- Expect same type of complaint forms for 2012



PART 3 – WHO IS THE ASSESSED PERSON? – WHO IS THE AGENT?



Facts

- Tenants at the mall are required by their lease to pay a portion of the municipal tax assessment.
- The Tenant disputing the tax assessment is an anchor tenant.
- The Lease required that the Landlord assist the Tenant in any dispute over the tax assessment.
- The property owner (the Landlord) agreed to the assessed value after meeting with the assessor in the fall of 2010.



Facts

- The Tenant does not own property in the Municipality.
- The Tenant filed an Assessment Complaint Form listing itself as the Agent of the Landlord (property owner).
- Landlord (property owner) signed a modified agency form filed with the complaint
- Landlord (property owner) sent a letter after complaint filed – confirming a different tax agent



Facts

- The Landlord (property owner) filed a letter at the ARB hearing stating “the assessment was fair and equitable and they were not asking the ARB to decrease the assessment”



Issues

- Was the Anchor Tenant an assessed person or taxpayer?
- Was the Anchor Tenant the agent of the assessed person or taxpayer?



Tenant's Argument

- The Tenant was an agent of the Landlord because of the provision in the lease authorizing the Tenant to contest the tax assessment.
- The Landlord filled out the Assessment Complaints Agent Authorization Form authorizing the Tenant as an “agent”.



Tenant's Argument

- The Tenant argued that the MGB and CARB have issued decisions where the anchor tenant has challenged the assessment based on the valuation of an anchor tenant within an entire property (such as the Tenant in this mall).



City's Argument

- The validity of the complaint depends upon the MGA and the MRAC
 1. The complaint must be made by an Assessed Person or the agent of an assessed person.
 2. Agent: Fee or Potential Fee.
- The Tenant does not own any property in the City.



City's Argument

- The Tenant was not receiving a fee from the Landlord.
- Landlord retained another (different) Agent after they filled out the Assessment Complaints Agent Authorization Form.
- The terms of the Lease cannot override the provisions of the legislation.



Decision

- The Agency relationship in the Lease document between the owner and the Tenant is unrelated to the Municipality or the Municipal tax legislation.
- The tax obligation is between the assessed person (the owner) and the Municipality.
- Complaint dismissed.



Decision

- Leave to Appeal to the Court of Queen's Bench was recently filed.



PART 4

- Section 295 – recent decisions from Okotoks
- Section 294 – Hotel McDonald and City of Edmonton (Court of Appeal November 2nd)



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PART 5 - COSTS



- Does a single member CARB have jurisdiction to award costs?
 - Common law – power to award costs must be specifically mentioned
 - MRAC s. 36(2) – doesn't specifically say
 - S. 36(2) *A one-member composite assessment review board may hear and decide one or more of the following matters:*
 - (a) *a complaint about a matter shown on an assessment notice, other than an assessment;*
 - (b) *a procedural matter, including, without limitation, the scheduling of a hearing, the granting or refusal of a postponement or adjournment, an expansion of time and an issue involving the disclosure of evidence;*
 - (c) *an administrative matter, including, without limitation, an invalid complaint;*
 - (d) *any matter, other than an assessment, where all of the parties consent to a hearing before a one-member composite assessment review board*



- Do the criteria in s. 52(2) of MRAC and at the outset of Schedule 3 have to be met before costs are awarded?
- *S. 52(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:*
 - *(a) whether there was an abuse of the complaint process;*
 - *(b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process*
- **Schedule 3**
 - *Where the conduct of the offending party warrants it, a composite assessment review board or the Municipal Government Board may award costs up to the amounts specified in the appropriate column in Part 1.*
 - *Where a composite assessment review board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.*



Fact Situation

- Municipality requested a preliminary hearing saying the complaint was not valid because of s. 460(3)
- Clerk directed 7 day simultaneous exchanges of argument
- Representative of property owner did not ask for staggered exchanges
- Arguments filed on the same day – assessor’s argument dealing with s. 460(7) and property owners with s. 460(3)
- ARB advised – error made (typo) regarding the subsection
- ARB gives property owner time to re-file argument and written hearing only
- Application for costs made



ARB Decided

- Error was made – not intentional
- No abuse of process
- No contested hearing was held unnecessarily
- ARB's simultaneous exchange process contributed to the problem
- Awarded \$500 in costs



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PART 6 – WHAT IS A QUESTION OF LAW?



- The amended Act:
 - Took away the right to appeal to the MGB
 - Allows the parties to seek Leave to Appeal to the Court of Queen's Bench on issues of law and jurisdiction only



- On a Leave to Appeal application, the party seeking leave must convince the court that:
 - The question of law or jurisdiction is of sufficient importance to merit an appeal and
 - Has a reasonable chance of success



- **Judicial Review**

- Is still available even though s. 470 says the remedy is to seek Leave
- Issues of pure fact and mixed fact and law are still subject to Judicial Review



- What is a question of law?
 - Questions of law are about the correct legal test
 - Errors of law involve an incorrect statement of the legal standard, or flawed application of the legal test
 - I.e. when a decision-maker only factors A, B, and C, but the test also requires factor D to be considered.



- What is a Question of Mixed Fact and Law?
 - Questions of mixed fact and law are about whether the facts satisfy the legal test.
 - Questions of mixed fact and law involve the application of a legal standard to a set of facts.



- How have the Courts dealt with applications for Leave to Appeal under the new Act?



- *Ruppert v. Calgary Assessment Review Board and City of Calgary*
 - Court found that some of the questions were questions of law which attract a reasonableness standard of review
 - Tribunal interpreting its own statute
 - Not central to the legal system as a whole
 - Court concluded that Mr. Ruppert did not raise questions of law or jurisdiction on which he had a reasonable chance of success
 - Questions before Court were whether Board erred by
 - Not providing “sufficient information” under s. 299 of the MGA
 - Finding that flood protection measures and storm sewer draining systems are not “public works”
 - Concluding that a restrictive covenant could be lifted by the Appellant and that this was a factor in how it arrived at a market value determination
 - Ignoring Court of Appeal authority
 - “Ignoring” the 2009 assessment as set by the Municipal Government Board in the previous tax year



- *Globbex Properties Ltd. v. The City of Edmonton*
 - Court concluded that the ability (or not) of a municipality and CARB to ignore a successful appeal (the effect of which was to direct the City to place a revised assessment on the Property which would then become the starting point for the next year's assessment) is a question of law and
 - That its of sufficient importance to warrant granting Leave to Appeal.



- *Edmonton (City) v. Edmonton (City) Assessment Review Board*
 - Application for Judicial Review requesting an order prohibiting the ARB to commence the merit hearing
 - Court concluded that the ARB breached a basic principle of procedural fairness and granted the application



- *Alberta (Municipal Affairs) v. TransCanada Keystone Pipeline*
 - Court concluded that the following were questions of mixed fact and law:
 - What is part of pipeline?
 - Where a pipeline starts and finishes
 - Whether a pipeline is one continuous string of pipe
 - What comprises a pipeline: block valves, Remote Telemetry Units, and SCADA systems
 - Pressure testing of a pipeline and the finding of fact in connection with pressure testing.



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PART 7 – TIME FOR QUESTIONS



Thank You To The Association For The Invitation to Speak

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