



Administration Guide

Building a Defensible
Assessment Roll

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Building a Defensible Assessment

Roll

1.0 Introduction

1.1 Statutory Requirements of the Assessment Roll

The assessment roll is the ultimate product of the assessment process. It is the municipal record of ownership, legal description, property description, property class, tax liability and assessed value. For the municipality and other real property taxing authorities, the assessment roll represents the base upon which budgets are built. For the property owner, the assessment roll is the summary document against which equity can be determined.

The importance of the assessment roll as a legal document is invariably recognized in legislation, which defines its content and often its format. In Alberta, these definitions are provided in the Municipal Government Act, Statutes of Alberta 26.1. Supporting this legislation is Regulation 365/94, the Standards of Assessment Regulation.

Since the roll is the end product of the assessment process, it is essential that assessing authorities be thoroughly cognizant of the provisions of the relevant statutes and regulations regarding the layout of the roll. Defense of the assessed values in the roll is a complex enough matter; there should be no excuses for challenges to the content and/or format of the assessment roll.

For the record, however, some protection in this regard is offered through section 306 of the Act, which states that:

The fact that any information shown on the assessment roll contains an error, omission, or misdescription does not invalidate any other information on the roll or the roll itself.

In the same manner that legislative direction is provided to the assessor regarding the assessment roll, similar direction is provided regarding the assessment notice. Whereas the

roll is the critical element to the taxing authority, it is the notice that is of primary interest to the property owner. Assessment notices must contain the same information as is provided in the roll. In addition, the notices must provide notice of the date of mailing to the assessed person, the date by which a complaint must be made (which must not be less than 30 days after the notice is mailed), and the address to which a complaint must be filed. Again, it is imperative that assessing authorities comply with these minimum statutory requirements.

The Act also stresses that assessments must be derived using mass appraisal and that assessed values must represent a property's value as of July 1 of the assessment year.

1.2 Preparing and Defending the Assessment Roll

The assessment roll is prepared for the primary purpose of equitably allocating real property taxes.

The assessment roll's primary users are municipal councils and education authorities. The clientele affected by the roll, however, includes all those persons in the municipality who are either directly or indirectly responsible for paying property taxes.

It is equally important to the taxing authority and to the taxpayer that the assessment roll be both **stable** and **accurate**. Municipal councils establish their annual tax rates on the basis of the assessment roll provided by the assessor. In order for their budgets to be developed on a sound basis, it is critical that the delivered roll be **stable** and not subject to undue amendment. Similarly, those responsible for paying the taxes need to be confident that the individual assessments are **accurate** and that they are thereby contributing only their fair share of taxes.

In order to satisfy the above objectives, **preparation and defense of the roll should be two parts of the same seamless process**. The process itself is a positive one throughout, conducted with the objective of providing a fair basis for distributing property taxes. The activities of preparation, explanation, and defense are all carried out within this positive mindset.

A key recommendation to the assessor is to develop the confidence of the elected officials and taxpayers in the valuation and verification processes which ensure the accuracy of the assessment roll. This will reduce those eventual instances of appeal, where it becomes necessary to defend the roll.

1.3 Program Scale – Large vs. Small Municipalities

Although the objective of defending the roll is a constant to all municipalities, the means by which it is defended may vary from one municipality to another. At least to some extent, this is a function of the size of the municipality; i.e. the budget and staffing resources available to the assessor's office. Other reasons do come into play, however, and these may include the mix of property types being assessed, the geographic size of the municipality, the assessment history in the municipality, and the experience levels of the assessment staff. In preparing to defend the assessment roll, the assessor must determine what is right for the municipality. A video production may be an asset for one municipality but may be totally inappropriate for another.

2.0 *Preparation of the Assessment Roll*

2.1 Property Owner Consultation Program

Defending the assessment roll begins with planning to prepare the roll. A key element of preparation should be a consultation program with the affected public.

Public input is also a major component of the equally important public relations function. However, it should also be thought of as one of the first steps in preparing to defend the roll. If the property owners are allowed to have their voice heard on such issues as the critical determinants of market value for a specific property type, or designing a user friendly income/expense questionnaire, they are far more likely to “buy in” to the ultimate assessed value derived and thereby have less incentive to appeal.

The nature of the consultation program will vary with the needs of the municipality. It can be as simple as a public open house discussing the sales comparative approach for residential assessments, to the establishment of permanent liaison committees with specific industry groups, which meet, on a regularly scheduled basis.

Focus Groups

For larger municipalities, consideration should be given to developing focus groups to achieve a simple, quick, and relatively inexpensive cross-section of assessment knowledge, interest, and concerns in the municipality.

Focus group sessions are normally prepared by market survey or public relation firms, and comprise one or more sessions of discussion on pre-selected assessment questions. Depending on the time and budget available, the group may be comprised of a cross-section of property owners in the community, or there may be a number of groups, each representative of a certain segment of the community. Groups may be representative of property types, such as homeowners or retailers, or they may be formed based on other grounds, such as those with appeal experience and those without.

In addition to budget and time considerations, the municipality's assessment history will play a part in determining the most meaningful way to conduct this program.

The primary value of focus groups comes with the analysis of the participants discussions. Insights gained can help in several areas of preparing a new assessment. These can include obvious items, such as designing public relations programs targeted to address concerns raised in the sessions. They may also include more technical considerations such as redesigning data collection forms, implementing evening property inspection programs, or amending income/expense questionnaires to more closely correspond to the spreadsheets being used by private sector property managers.

Focus groups offer little public relations benefit since they are low profile and affect such small numbers of property owners. **The overriding objective in creating the groups and in analyzing their results is to concentrate on those aspects that will lead to a more stable assessment roll and a roll that will incorporate in its preparation, at least some of those issues that have been identified as important to the assessed property owners.**

Liaison Committees

Another potential component of a public consultation program is the establishment of liaison committees. As with the focus groups, the incentive here is not so much public relations as it is building an assessment process that reflects and is more knowledgeable of the market value elements that relate to specific property types.

Liaison committees are low profile groups that represent defined property types. They are created at the invitation of the assessor's office and may be either permanent, or periodic, to assist only in times of a reassessment. Committees may represent apartment owners, small retailers, industrial park developers, or hoteliers. Membership will include the assessor and either property owners and professional property managers, or both.

The purpose is to provide a forum where the assessor can learn more about the market for such properties and about the type and form of data that may be available to assist in valuing the properties. A committee also provides an opportunity for the assessor to demonstrate his/her own professional competence and objectivity to the committee members.

Liaison committees are also possible for residential neighborhoods, but here their primary benefit is more in the area of public relations and education, rather than in assisting the assessor in the valuation process.

In rural municipalities, liaison committees of grain elevator companies, ranchers, farmers, etc. may also be useful. Such committees serve a purpose similar to that of committees of owners of urban property types in the larger centres.

Individual Interviews

Many municipalities contain a one-of-a-kind property or, in larger centres, a number of one-of-a-kind properties. In such cases, it is beneficial for the assessor to interview the property owner/manager before the assessment, with a view once again of obtaining insight into the factors determining the property's value.

In small municipalities the unique property may be a hotel, personal care home, pulp mill, or grain terminal. In larger centres the variety may be greater, but the presence of a singular enterprise with no similar properties or comparable sales, means that the assessor should spend some time becoming familiar with exactly what makes that facility unique from a view of assessed value.

Investing time and interest in such interviews increases the likelihood of more accurate assessments and also diminished the potential of appeals. Even in cases with lingering differences of opinion on value, the relationship built up with the owner works well for appeal resolution, potentially reducing costly and time consuming appearances before the actual appeal tribunals.

2.2 Research and Data Gathering

Research and data gathering form the foundation for the estimation of values. Unless this activity is carried out thoroughly and consistently, defending the assessment roll is impossible. It is not within the mandate of this guide to spell out in detail the actual design and conduct of these activities. It is important, however, to stress the attitude that these are not innocuous and inconsequential tasks and that they are absolutely essential to the successful defense of the roll. A brief discussion of the relevance of these tasks is offered below.

Inspection Programs

Accuracy and credibility of assessed values is tied to the state of the physical data contained in the assessment records on any given property. Even for those property types where the income approach to value is used, the credibility of the values is often destroyed if the physical characteristics of the property are either incorrect or seriously out-of-date.

A scheduled program of property inspections should be instituted by all assessing agencies. This does not mean, however, that all properties must be re-inspected with the same degree of frequency or vigor. To do so is too expensive.

The inspection program should be smart. Farmland does not need the same frequency of inspection as new residential subdivisions do. Older subdivisions, in turn, may also need less frequent visits than newer ones since most of the changes that affect value (for example, basement finishing) normally occur within a few short years of construction. In subsequent years, the main purpose of reinspection is to check on property conditions and, from a public relations view, to be visible in the community.

Similar thought should be given to inspection programs designed for commercial and industrial areas. In planning the program, questions should be asked such as: what areas in the municipality have been experiencing the most change (for example, expanding highway commercial strips, vacating central city commercial districts)? Another criteria should be a review to determine the hot spots in the last reassessment. In prioritizing staff resources, it must be the problem or sensitive areas that receive attention.

Finally, inspection programs involving sales verification must be stressed above all others. At appeal tribunals, the ultimate measure of market value is thought to be sales of the subject or comparable properties. In deriving accurate values and in defending them, it is paramount that current and accurate information be obtained on all properties at the time of their sale. If the assessment records inaccurately describe the property as of the sales date, it follows that all analysis based on that sale will be flawed.

Standardized Forms

Not all of the assessor's records come from field inspections. Equally important is information collected by other means. Included in this category may be income/expense information, sales verification questionnaires and interviews with the vendors and purchasers of individual properties.

Careful consideration should be given to the design of any forms that the taxpayer must fill out. The forms must include adequate space for any information required by the assessor. The recipient frequently views filling out forms as a nuisance, so it is important that there be no unnecessary or redundant information cluttering up the document. It is also useful for forms intended for a specific owner to be partially completed in advance, with key identification information already typed in. If confidential information is to be included by the assessor in the pre-printed material, care has to be taken to ensure that names and addresses are current so that the confidential information does not inadvertently go to the wrong parties.

Assessors typically use jargon that is familiar to those in the profession, but quite foreign to the average citizen. All wording in the form should be reviewed by a sample (for example, focus groups, liaison committees) of the intended recipients to ensure that there is a common understanding of the terminology. Confusion or misunderstanding results in poor data and ultimately hinders defense of the roll.

Consistency in format and terminology is also important in designing data collection forms. In large municipalities, individual sections (for example, the multi-residential group) may be designing and collecting information using one format, while another subsection may be mailing out requests employing a different form and variations in the terminology. Recipients who may own both types of properties may be confused by these differences. The resulting misinterpretations may cause inaccuracies in the data collected.

Consistency in the design of data collection forms and the terminology used therein is also important to two other groups of users. Information technology staff design the computer programs required to store and analyze the collected data. The accuracy of such software is tied directly to how well the systems analysts understand the data they are inputting. The less room for confusion in this regard the better. Finally, in those cases that do ultimately appear before appeal tribunals, it is important that the assessor's background data is current, complete, and easily understandable in the eyes of the tribunal members.

2.3 Public Information Program Links

Assessment Data – Available and Understandable

It is commonly held that assessment appeals are caused by incorrect estimates of value. Certainly in some cases this is true. In many circumstances, however, the assessor is called upon to defend the roll not for reasons of bad values, but for reasons of taxpayer misunderstanding, confusion, and/or frustration.

Defending the roll starts by ensuring that in preparing the roll, the processes are well documented, clear, current, and readily available for review and scrutiny by property owners. All of these factors should be linked and taken into account when designing the assessor's public relations or public information programs.

3.0 *Defending the Assessment Roll*

3.1 Seeking the Correct Value

Defending the assessment roll is as much about attitude as it is about the valuations. Differences in opinion about assessed values can be resolved in several venues: in internal discussions (assessor with supervisor); external discussions (assessor with property owner/agent); or through submissions before the appeal tribunals. In all instances, the likelihood of success is far greater if these discussions are conducted in an environment of

searching for the **correct** value, rather than a blind defense of the number in the assessment roll.

A search for the correct value should be the assessor's motto in all activities related to defending the roll.

3.2 Documentation of Methodologies

The rules of assessment and the manner in which they are carried out must be made clear and readily available to all interested parties.

In Alberta, the rules are contained in the Municipal Government Act and in the Standards of Assessment Regulation established under that Act.

The manner in which the rules are employed is the domain of the assessor. It is incumbent upon him/her to document the assessment procedures in a form that, like the legislation, is available to any interested individual.

Legislative Direction

Familiarity with the Municipal Government Act and with those regulations affecting the assessment process should be mandatory for all individuals practicing assessment in Alberta. A number of key sections are reiterated below because they are particularly relevant to the current discussion.

Under the Act, assessors are charged with measuring the market value of most property types. Market value is defined as:

the amount that a property as defined in Section 284(r) might be expected to realize if sold on the open market by a willing seller to a willing buyer.

Under section 289(2), assessments calculated must reflect:

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation standard set out in the regulations for that property.*

Section 293 also directs that assessments be prepared in *a fair and equitable manner*.

Sections 294 to 296 of the Municipal Government Act assist the assessor by providing authority to inspect property and to obtain all necessary information.

Of particular importance to the discussion in this document is the provision in section 299 that allows an assessed person to request sufficient information from a municipality to see how the assessor prepared the assessment of that person's property.

The Standards of Assessment Regulation provides additional detail in the rules for conducting assessments in Alberta. Further definitions of terminology are provided and valuation standards are spelled out for each of the property types to be assessed.

In particular, the Regulation provides that assessments must be carried out using mass appraisal. This term is defined as:

the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing.

In addition it is made clear that it is the value of fee simple estate that is to be measured and that assessments are to reflect *an estimate of the value of a property on July 1 of the assessment year*.

Schedule 2 of the Standards of Assessment Regulation defines the quality standards that assessments must achieve. The terms preferred by the International Association of Assessing Officers (IAAO) are defined and used.

Specific quality targets are set, with median assessment ratios required to be within a range of .90 to 1.10 for residential, income, and vacant properties in both cities and other municipalities. Coefficients of dispersion must be between 0 to 20.0 for all but residential property, where a standard of between 0 to 15.0 is established. The median assessment ratio of any group must be within 5% of the assessment level.

Description of Specific Methodologies by Property Type

Property taxes are paid based on an assessor's measure of the market value of a property. Common sense, common law and, if need be, appeal tribunals, all dictate that the assessor be able to explain the process by which the property was valued.

It is recommended that assessors prepare a reassessment book or a series of individual papers, outlining the assessor's mandate and the method used to assess each of the major property types.

The reassessment book serves a number of audiences and purposes:

- (a) It is a useful and educational exercise for the staff of the assessor's office to concisely document methods.
- (b) It is an essential teaching tool in presentations to elected officials and appeal tribunals.
- (c) For the taxpayer, it is extraordinarily valuable in demystifying the assessment process and demonstrating that there are no secrets.

The book or papers do not need to be detailed instructional manuals. Their purpose is to provide a summary view, frequently to a lay audience, of the overall function of the assessor's office and, more specifically, how values were determined for a given group of similar properties.

An example of a methodology write-up on multi-residential properties is offered below.

Overview of the 1998 Reassessment of Multi-Residential Properties

Definition of Properties:

Multiple residential buildings having five or more self-contained residential units.(Buildings may contain some commercial space.)

Data Collection:

The assessor has collected information on rental rates, vacancy rates, expenditures, and other relevant factors by analyzing the results of questionnaires mailed to all owners of multi-residential properties.

For this reassessment, questionnaires were mailed to the owners of the 100 multi-residential properties in this municipality. Responses were received for 73 of the properties.

In addition to the questionnaires, data was also collected from CMHC and other sources pertinent to the market for multi-residential properties.

Separate questionnaires were also distributed to the purchasers of all multi-residential properties sold within 12 months before and after the July 1 valuation date. Details on the nature of the transfer were obtained from these results, as well as from follow-up telephone calls and inspections.

Analysis

The market value of income-producing properties, such as most multi-residential properties, is normally estimated through the income approach to value. The assessor has used that approach for this assessment period.

Data obtained from the above sources was entered into a database by the assessor and divided into a number of sub-categories based on such criteria as age, neighborhood, and number of stories. Appendix A charts the details on these designated subcategories.

Analysis of the returns by each of the subcategories yielded typical market norms for rent by each suite type, vacancy rates, parking income, laundry income, and expense/effective gross income ratios.

Information from the analysis of the sales data collected was compared against net operating income to determine capitalization rates (rates used for converting property income into property value).

Valuation:

The standard formula for the Income Approach is as follows:

$$\text{Market Value} = \frac{\text{Net operating income (N.O.I.)}}{\text{Capitalization rate}}$$

For multi-residential properties this formula may follow the more detailed example below:

<i>Income</i>	
<i>Suite Income</i>	\$ _____
<i>Vacancy allowance</i> __ @ _____%	\$ _____
<i>Parking income</i>	\$ _____
<i>Laundry income</i>	\$ _____
<i>Other income</i>	\$ _____
<i>Effective gross income</i>	\$ _____
<i>Expenses</i> @ ----%	\$ _____
<i>Net operating income</i>	\$ _____
<i>Capitalization rate</i>	_____
<i>Adjustments</i>	\$ _____
<i>Market value assessment</i>	\$ _____

Information used in calculating income stream and expenses was normally the actual information provided by the owner as long as that information fell within an

acceptable range of the market norms for that category. Where actual information was not available or where it appeared atypical (for example, excessive operating expenses) the assessor relied on market norms. Adjustments were also made on an individual property basis where warranted.

3.3 Preview Period for Draft Values

Concept of a Preview Period

Assessment exists to allocate realty taxes. Budgets and tax rates are based on the assessor's submitted roll. Knowing this, it makes sense that the first priority of most municipal councils is to ensure **stability** in the assessment roll. Once the tax rate has been set, councils expect the designated amount of revenue to be received. An unstable assessment roll presents an unwelcome financial risk.

Property owners, on the other hand, are concerned first of all with the accuracy of the assessment placed on their own property. A second concern is the intimidating and bureaucratic process that may be required when they wish to question their assessment.

One valuable way to address the concerns of both parties is for the assessor to adopt a preview period. Preview periods can only take place if the preliminary assessment roll is released early. During this period, the property owner has the opportunity to review the preliminary assessment and, if need be, talk with the assessor. Since the roll is not official yet, the assessor has the opportunity to make immediate changes to a proposed assessment if errors are found or if new information is brought forward that warrants change. The process is informal and non-adversarial. Its intent is to explain the draft value and to pre-empt the need for a formal appeal to enact changes.

A number of factors may influence the exact scope and duration of the preview period. These include:

- Statutory dates for valuation (July 1) and state and condition (December 31), as well as the statutory deadlines for reassessment, issuance of notices, and delivery of the roll.
- The technology available to the assessor. Easily accessed computer databases are essential in large municipalities if the program is to address all properties. Similarly, the availability of telephone-call-centre technology can be a valuable asset for large-scale programs.

- The assessing municipality must be able to assign or temporarily acquire staff resources adequate to respond to public enquiries. Promoting a program that can't live up to expectations can be disastrous.
- The degree of anticipated change in assessed values may dictate whether a preview program is worthwhile on an overall basis, or whether it should be limited to certain property types or sub-areas within the municipality.
- The nature of the preview program will appropriately vary with the differing property types in the municipality.

Residential and Farm Preview Programs

As has been mentioned, the nature and scope of preview programs will vary from municipality to municipality and from one assessment period to another. It is also necessary to have a program designed to accommodate residential and farm properties, as well as a program to communicate with the owners of commercial and industrial properties. Since there are more residential/farm properties, they usually dominate the roll. Programs targeting them should be volume-oriented. The fewer numbers of commercial and industrial properties normally allow for a more individualized approach.

Preview programs will also vary in design in accordance with the size of the municipality. A residential preview program for a large municipality might include the following components:

- (a) A pre-program publicity campaign. The purpose of the program is to alert the homeowner that the assessor will soon be making draft assessments available to be examined and questioned, if need be, before they are finalized.
- (b) Establishing a customer reception centre, normally the assessor's office or the municipal offices. These centres should present the preliminary assessment roll and contain cubicles for one-on-one discussions with the property owner.
- (c) Self-serve personal computer terminals are ideal for browsing the proposed assessed values and need to show little more than addresses and existing and proposed assessments (subject to freedom of information and privacy legislation).
- (d) Satellite locations which are useful in the larger urban centres and may be housed in neighborhood libraries, schools, or other publicly accessible facilities. An alternative

is to establish kiosk-style facilities in regional shopping centres. These locations should contain the same information as the central location or, at the least, information on assessments in this region of the city. Assessment staff should be available in these locations to answer questions. Extended office hours are desirable in both central and satellite locations to accommodate the schedules of working homeowners.

- (e) An assessment information line staffed by a bank of trained staff, or a professional call centre to answer telephone queries. A script of standard questions and answers should be made available to the staff. Callback provisions can be made for unique or detailed questions.
- (f) Development of a website that contains existing and proposed assessments. The website can provide visitors a chance to study the assessments on their own and comparable properties. Commonly asked questions and answers can also be included.

The above represents a comprehensive preview program. Such a program is neither feasible nor desirable for smaller municipalities. Limited staff, technology, and financial resources call for a more modest approach in these circumstances. However, certain key elements are common to both approaches. A smaller scale program might include:

- (a) Public notice of the pending preview program. Regional newspapers are frequently the ideal vehicles for this type of notice.
- (b) Organization of data in either paper or electronic format to display current and proposed assessments. This information should be made available in at least one location in the municipality. A schedule of times when an assessor will be on-site to answer questions should be publicized. Consideration should also be given to publishing existing and proposed assessments in their entirety in local newspapers.

In rural municipalities it is also useful for maps to be prepared outlining before and after assessments. Such maps normally show all property boundaries and can be color-coded to indicate the degree of assessment change.

Preview Program for Commercial and Industrial Properties

Whereas preview programs for residential and farm properties must be geared to give quick overviews of large numbers of properties, a program for the more complex commercial and industrial properties must take a different tack.

Large and small municipalities may take very similar approaches for these property types. Individual preliminary notices can be sent to each property owner. If time or resources are limited, the mailings can be restricted, for example, to only those properties exceeding a certain value or to those that have an appeal history.

Invitations to discuss the draft assessments with the assessor should accompany the notices. A schedule of appointment times can be developed. If available, it is also useful to include a brief description of the information methodology used in developing the assessment on the property in question.

The objective of the preview exercise is to answer questions, rectify errors, and engage in non-adversarial dialogue, all with the intent of producing a more stable assessment roll. The fact that all of this activity happens before the roll becomes finalized works to reduce the number of appeals that are filed based on misunderstanding, incorrect or incomplete data, or frustration. Defense of the roll is achieved without having to go into court. Ratepayers are also saved the expense of filing unnecessary appeals.

3.4 The Appeal Process

The appeal process is where the phrase “defense of the roll” should be taken literally. If the preceding steps of public consultation, preview periods, etc., have been successfully and thoroughly implemented, most of the remaining areas of disagreement are genuine and require the services of an appeal tribunal to determine the correct value, classification, or liability, as the case may be.

Considerable pre-planning is required for an expeditious and successful appeal process. Although the results are clearly the most important element in the process, time is also of the essence. The budgets of the taxing authorities, as well as the property owner, have been set based on the assessed values. For this reason all parties will be anxious for decisions to be forthcoming as soon as possible.

The assessor should develop a plan for the appeal process at the same time the reassessment is being planned. As with most other aspects of the assessment function, the content of the plan will vary in relation to the size of the municipality. The elements to be considered may remain constant, but the solutions will be a function of size and budget. An appeal plan should take into account such factors as:

- Staffing the appeals - line assessors or appeal specialists?
- Scheduling the appeals – administrative liaison with the board.
- Training the assessors – the Act, case law, negotiation, presenting evidence, cross-examination, and submissions.
- Preparation of standardized appeal briefs (templates).
- Post-decision follow-up procedures.

As with the activities preceding the appeal process, the assessor's goal remains the establishment of correct values. By the time the process has reached this stage, however, there should have been enough opportunity for review so that in most cases the assessor can be confident that the information in the roll is the correct value and that defense of that number is legitimate.

The Assessor Team

At the time when the assessor is planning the reassessment, a decision should be made as to who is going to defend it. The amount of resources applied to the reassessment (for example, field inspections, sales analysis, training programs) are all going to influence the potential success of the assessor eventually chosen to go before the tribunal. Planning the reassessment and planning the appeal process should be part of the same exercise.

In years past, the assessor who prepared the assessment was automatically expected to defend it on appeal. Today, mass appraisal often involves CAMA (Computer Assisted Mass Appraisal) systems so assessments are generated from computer models. The assessor who actually visited the property to collect the physical data may no longer be the individual best suited to speak to the valuation of that property before an appeal tribunal.

In larger municipalities, consideration should be given to designating appeal specialists or an appeal team. This is true for all property types except single family residences. For the latter properties, it should be possible to develop a standardized brief that requires minimal preparation on the part of the assessor and can be presented by the assessor most familiar with that locale.

Different logic may apply to staffing the defense of commercial and industrial assessments. The simple fact that more dollars are normally at risk in these appeals gives reason to consider developing appeal specialists for these properties. For the same reason it is not feasible for all assessors to be expert in the valuation of all property types, it is not feasible to train all assessors to become expert practitioners of the appeal process. The appeal specialist(s) should not only be expert in the law and in the valuation process, he or she should also be given intensive training in tribunal procedures, preparation and presentation of evidence, questioning of witnesses, cross-examination, and summary argument. In larger or more complex cases, the specialist may act strictly as the leader, in making submissions on the law and evidence, examining witnesses, and providing summation, while calling on another assessor as the valuation expert to actually present the evidence.

Selecting staff who are comfortable in this type of arena can also be important. Some assessors thrive on appeal work; others are more comfortable appearing only as witnesses or not at all. The successful defense of the roll can be influenced by these personnel selections.

Many factors influence the assessor's success before appeal tribunals. One of these is experience. The designation of one or more appeal specialists allows that experience to be acquired quickly and ensures that the assessing authority's case is consistently presented in the most professional manner.

The distinction in approach between large and small municipalities on this issue is one of degree, not content. The same elements must be considered and staffing and budget apportioned accordingly. In many cases in smaller municipalities it will be necessary to have omni-purpose assessors who handle public relations, valuation and appeal work. Specific appeal training will still be required. However, the same components should be considered in giving the assessor the best tools available to be successful before the tribunal.

Standardized Appeal Briefs

As assessors prepare for appeal hearings, it is recommended that a series of standardized appeal briefs, or templates, be developed. A template for each of the major property types offers advantages in a number of areas, including efficiency, consistency, and comprehensibility.

Appeal hearings can represent a considerable drain on the assessing authority's resources. Computer-generated appeal briefs can significantly reduce the preparation time for assessors and support staff. The actual format and content of the briefs may vary depending on such factors as municipal resources and degree of computerization, as well as the complexity of the individual property types. For large municipalities, with CAMA systems it is not unusual for the entire appeal brief on single family homes to be generated by the system. The CAMA package portrays the subject property, selects the comparables from a sales file and prints a one or two page report that is adequate, at least for the first level tribunals. At the other end of the scale, a simple word processing template will still be a significant time saver for smaller assessment agencies or for the briefs on more complex properties where greater assessor interaction is required.

Consistency is another benefit that comes with a standardized brief. In municipalities where more than one assessor may be defending assessments on the same property type, a template format ensures that the same key information will be presented and that it will appear in the same predetermined strategic format. Familiarity with the standard format allows the assessor's verbal presentation to flow more seamlessly as well.

Appeal panels also recognize, appreciate and respect consistency in format. Equity is always paramount in a panel's eyes and a standardized presentation of all of the relevant background matter can go a long way to reinforcing the view that all similar properties were treated equally.

An appeal brief is of course worthless if its primary audience, the appeal panel, can not understand it. A standardized brief should be in a style understood by all. In some instances, it is possible to talk with the tribunals in advance to learn what type and format of information the members feel is essential to properly examine the assessed value.

As has been noted earlier, the length, content, and format of appeal briefs are subject to many variables, (for example, municipality size, staff expertise, property type, resources available). In general there are several key ingredients that are standard. These include:

- identification of the subject property
- description of the valuation method employed
- valuation of the subject property and comparables

- the assessor's recommendation

Identification of the subject property includes both its legal description and physical characteristics.

The valuation methodology section is generic to that property type and is a version of the same information contained in the reassessment book discussed earlier.

A summary view of the valuation of the subject property represents the transition from the mass appraisal of the entire property type to the valuation of this specific property. Any unique adjustments for issues such as vacancy rates on an income property show up here.

Finally, based on the contents of the brief, an assessor's recommendation should be included.

Two examples of standardized appeal briefs are provided on the following pages. One example illustrates a brief for an appeal of a single family home while the other is for an apartment block.

The first brief is meant to illustrate part of a sample residential brief. In a CAMA-equipped assessment office it should be possible for the system to generate the brief almost in its entirety, with the assessor or clerk only having to identify the subject property. A generic description of the valuation method and the assessor's recommendations should accompany this spreadsheet. An enhanced version of the brief would include pictures of the subject and comparable properties. Offices that are not automated to the same extent can still develop the template, with the assessor identifying the subject and the comparables, and support staff filling in the balance of the document. Briefs of this nature will meet the requirements of most first level appeal boards for this type of property. Such briefs also require virtually no homework by the assessor who will present them to the board, thereby allowing maximum flexibility in staffing the hearings. Preparation of briefs for exceptional properties with few or no comparables (for example, architecturally designed homes) still require additional preparation.

More complex property types will require a different format but standardized briefs can still be prepared and produce many of the same benefits that accompany the example above. An illustrative two page brief for a multi-residential property, which was valued by the income approach, is shown on the following pages as well.

RESIDENTIAL APPEAL BRIEF				
Description	Subject	Comp. # 1	Comp. # 2	Comp. # 3
Identification				
Parcel ID(roll #)	2215	3000	3500	3700
Street number	27	33	17	62
Street name	Oak	Oak	Oak	Johnson
Neighborhood	B10	B10	B10	B10
Building info				
Type	2 storey	2 storey	2 storey	2 storey
Code	Single Fam.	Single Fam.	Single Fam.	Single Fam.
Year built	1970	1970	1972	1971
Effective age	1970	1970	1972	1971
Excess deprec.	0	0	0	0
Living area-sq.ft	1850	1900	1925	1800
Total rooms	7	8	7	7
Basement type	Full	Full	Full	Full
Basement fin.	None	None	None	None
Full baths	3	3	3	2
Half baths	0	1	1	1
Central air	Y	Y	Y	Y
Fireplaces	1	1	1	1
Att.sin.garage	0	0	0	0
Att.dbl.garage	1	1	1	1
Det.sin.garage	0	0	0	0
Det.dbl.garage	0	0	0	0
Inground pool	0	0	0	0
Land information				
Lot size	6000	6500	6200	6000
Lot influence	None	None	None	None
Sales information				
Sale price	\$148,000	\$150,000	\$152,000	\$147,000
Price/sq.ft.	\$80.00	\$78.94	\$78.96	\$81.66
Sale year	1996	1996	1995	1996
Assessment information				
1997Assmt Roll	\$150,000	\$150,000	\$150,000	\$150,000
Assmt/sq.ft.	\$81.08	\$78.94	\$77.92	\$83.33

Assessment Review Board Information:

Hearing Date Hearing Location Respondent

File # Applicant

Assessment Information:

Roll number: _____ Address: _____

Valuation approach: _____ Interest valued: _____

Current assessment: _____ Owner: _____

Assessment year: _____ Mailing address: _____

Property description

Property type: _____ Original age: _____

No. of buildings: _____ Land area: _____

Storeys: _____ Plan area: _____

Number of units: _____ Basement area: _____

Indoor parking spaces: _____ Gross floor area: _____

Outdoor parking spaces: _____ Construction type: _____

Assessor's Recommendation: _____

Income Valuation Summary

<i>Information year:</i>	<i>Income/expense information provided:</i>
1995	Yes/No
1996	Yes/No

Suite rental income:

Bachelor -- --- units @ \$-----/unit = \$ _____

1 Bedrm. - ----units @\$-----/unit = \$ _____

2 Bedrm. - ----units @\$-----/unit = \$ _____

Potential suite income \$ _____

Vacancy -----%
\$ (_____)

Parking income \$ _____

Laundry income \$ _____

Other income \$ _____

Effective gross income \$ _____

Expenses -----%
\$ (_____)

Net operating income \$ _____

Capitalization rate -----%

Adjustments \$ _____

Assessed value (rounded) \$ _____

Sale history of subject:

Additional information:

As with the single-family residential brief, production of a brief such as the one on the preceding pages will be tied to the size and resources available to the assessing authority. Variations are necessary depending on property type and valuation methodology

employed. A generic description of the valuation methodology used should always be included in the brief. The concept of standardizing appeal briefs remains a valuable aid to defending the roll.

Setting Appeal Schedules

Discussion of the merits of individual appeals between assessing agencies and appeal boards is inappropriate. However, liaison for administrative purposes can be useful to all parties. As has been discussed previously, virtually all parties are interested in expediting the process. The appeal boards are in fact directed to complete their hearings within 150 days.

If significant numbers of appeals are filed, one of the primary problems facing the assessing authorities is adequately staffing the hearings with the appropriate assessors. In such a circumstance, discussions with the clerk of the assessment review board may be useful to determine a hearing schedule that allows proper representation by all parties, yet retains the required rate of hearings to proceed. This may mean hearing dockets based on neighborhoods, property types, designated assessors, or similar groupings that facilitate the process.

Negotiations with Owners/Agents

When appellants receive notice of hearing dates, it triggers a flurry of phone calls to the assessor's office. Notwithstanding all of the previous opportunities for contact and discussion, the actual spectre of the hearing on the horizon generates a heightened interest in resolving the matters.

In some cases the desire for new or further discussions with the assessor is driven by concerns of avoiding the costs and/or time commitments required at the formal hearings. In other cases it may be risk avoidance or simply ignorance of the previous opportunities. However, the assessor should examine such opportunities from the perspective of what they offer to the task of defending the roll. A negotiated settlement within an acceptable range of the correct value is still an opportunity to defend and stabilize the roll without having to fully present the case before the board. In most circumstances, joint recommendations by the assessor and the appellant to the board are accepted without the requirement for a time-consuming full presentation before the hearing panel. It is possible to develop standardized forms for joint recommendations, thereby ensuring consistency in delivery and acceptance.

The Hearing

This paper has discussed the information that is typically brought before appeal panels in defending an assessment. Standardized briefs offer advantages in this regard. Pre-selection of the assessors who will actually present the briefs is also part of the assessing agency's plan. Conduct of the hearing itself is the final part of the appeal exercise and it too requires its own game plan.

An excellent reference for conduct of an appeal hearing is a paper originally prepared for the Alberta Assessors' Association Senior Assessors Seminar at Hinton in July 1995. The paper, "Advocacy before Assessment Review Boards and the Municipal Government Board", provides a detailed account of the relevant statutory references, as well as guidelines on preparing and presenting the case, using witnesses, the assessor's role and the lawyer's role. Material from that paper has been revised and updated to incorporate legislative amendments and rules changes; it is substantially incorporated into the balance of this guide.

Municipal Government Act - The Appeal Process

Assessors must be fully knowledgeable about all legislation and regulations that provide direction on the appeal process. The Municipal Government Act is the primary source on this subject and it speaks at length to the range of appeal activities. A notation of the relevant sections follows.

The Assessor's Ability to Get Information

Section 294 -- The power to inspect property, request production of anything to assist in the assessment, and to take copies of anything. The assessor's right to request information and documentation is limited to properties in the same municipality as the property being assessed.

Section 295 -- A person must provide necessary information to an assessor. A person who fails to provide information to the assessor preparing an assessment cannot file a complaint respecting that assessment.

Section 296 -- The Court of Queen's Bench can direct a person who fails to comply with section 294 or 295 to do so.

The Assessed Person's Right to Know

Section 299 -- An assessed person can request sufficient information from a municipality to see how the assessor prepared the assessment of that person's property.

Section 300 -- An assessed person may ask the municipality for a summary of any assessment. The municipality must comply with the request if it is satisfied that confidentiality will not be breached.

Section 301 -- A municipality may provide information about assessments if it is satisfied that necessary confidentiality will not be breached.

Section 307 -- Any person may inspect the assessment roll.

For some idea about what may be meant by necessary confidentiality, see the access to information provisions in section 217, especially section 217(2), of the Municipal Government Act.

The Municipal Government Board has determined that it does not have jurisdiction to rule whether a municipality has provided sufficient information under section 299, has let the assessed person see or receive a summary of the assessment under section 300 or provided confidential information pursuant to section 301 of the Act. However, since the tribunals may not alter an assessment that is fair and equitable in comparison with the assessments of similar property in the municipality, fairness to the appellant requires that information sufficient to make the required comparison is not unreasonably withheld. The rules of natural justice require that a person know the case to be met.

The Assessment, Tax Rolls and Notices

See sections 303 and 309 for the required contents of assessment roll and notice.

See sections 329 and 334 for the required contents of tax roll and notice.

Note: Under section 309(1)(c), an assessment notice must show the date by which a complaint must be made to an assessment review board, which must be not less than 30 days after the notice is sent out.

Assessment Review Boards

1. Establishment

Section 454 -- Council may, and upon receiving a complaint must, appoint one or more assessment review boards. Each board must usually have a minimum of three members. A majority of members is a quorum (section 458). Boards of a single member are permitted under conditions prescribed by regulation.

Section 455 -- Council must appoint a designated officer to be clerk to the board. The designated officer cannot be an assessor.

Section 456 -- Two or more councils may jointly appoint assessment review boards.

2. Complaints

Section 460 -- A person can complain in writing about any assessment or tax. Only an assessed person or taxpayer can complain, but the complaint can relate to any assessed property or business. A complaint may relate to any of the following shown on an assessment or tax notice:

- a) the description of property or business
- b) the name and mailing address of an assessed person or taxpayer
- c) an assessment
- d) an assessment class
- e) an assessment sub-class
- f) the type of property
- g) the type of improvement
- h) school support
- i) whether the property is assessable
- j) whether the property or business is exempt from taxation under Part 10

There are no provisions in the legislation to make a complaint about the tax rate.

A complaint must explain why the complainant thinks that the information shown in the assessment or tax notice is incorrect.

3. Timelines

Sections 309, 334 and 461(1) -- A person has a right to make a complaint to the assessment review board within the time specified in the assessment or tax notice. This time period cannot be less than 30 days after the notice is mailed.

Section 462 -- Within 30 days of receiving a complaint, the clerk must provide the municipality with a copy of the complaint.

Section 462 -- At least 14 days before the hearing, the clerk must give notice of the date, time, and location of the hearing to the municipality, complainant, and any assessed person affected by the complaint.

Section 468 -- Assessment review boards must make all decisions on:

- a) complaints relating to property tax within 150 days after assessment notices are sent out
- b) complaints relating to any other tax within 150 days after the tax notice is sent out

4. Procedure

Section 463 -- An assessment review board can hear a review in the absence of a party, if it is satisfied that everyone received notice of the hearing.

Section 464 -- An assessment review board is not bound by the rules of evidence or any other law applicable to court proceedings. The board has the power to determine the admissibility, relevance and weight of evidence.

The board may require that evidence be given under oath.

Section 465 -- An assessment review board can require that witnesses appear and documents be made available at the review. If a person does not comply, the Court of Queen's Bench may issue a warrant.

Section 466 -- Witnesses must answer questions, including incriminating questions, but the answers given cannot be used in other proceedings except prosecutions for perjury.

5. Decisions

Section 467 -- An assessment review board may:

- a) dismiss a complaint that was not made within the proper time or does not explain why the complainant thinks the assessment or tax notice is incorrect
- b) make a change with respect to any matter referred to in section 460(5)
- c) decide no change is required

An assessment review board must not alter an assessment that is fair and equitable taking into consideration assessments of similar property or businesses in the same municipality.

Section 469 -- Notice of the decision together with written reasons, if requested, must be sent to the municipality, complainant and any other affected person. The assessment review board is required to provide a written decision only if requested at the time of the hearing.

Municipal Government Board

1. Right of Appeal

Section 470 – A decision of an assessment review board can be appealed to the Municipal Government Board.

2. Appeals by the Municipalities

Section 470 – The decision of an assessment review board may be appealed to the Municipal Government Board by a municipality, if the decision relates to property that is within the boundaries of the municipality.

Section 508 -- If a municipal council considers that the interests of the public in the municipality, or a major part of it, are sufficiently concerned, the council may authorize the municipality to become a complainant or intervenor before the Board. The council may delegate the power to authorize a complaint or intervention to a council committee, chief administrative officer or designated officer (section 203).

3. Appeals by the Public -- Requirements of the Written Statement

Sections 491 and 487 -- Appeals from assessment review boards must be in the form of a written statement and must include:

- (a) the reason for the matter being referred to the Board
- (b) a brief explanation of the issues to be determined by the Board
- (c) an address to which any notice or decision of the Board is to be sent

4. Establishment of Board

Sections 486 and 487 – Members of the Board are appointed by the Lieutenant Governor in Council on the recommendation of the Minister. The administrator of the board is the Deputy Minister. The administrator has the authority to delegate to any person any of the powers, duties or functions of the administrator. One of the functions of the administrator is to select members to sit as a panel of the board. A single member may preside at a hearing under conditions prescribed by the Regulation.

Section 488(1) -- The Board has a jurisdiction:

- a) to hear complaints about assessments for linear property
- b) to hear any appeal relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality, and
- c) to hear appeals from decisions of assessment review boards

5. Timelines

Section 491(1)(c) -- The written notice appealing an assessment review must be filed with the administrator not later than 30 days after the decision is sent to the complainant.

Section 494 -- Within 30 days after receiving the written statement, the administrator must provide a copy to the municipality. At least 14 days before the hearing, the administrator must give notice to the municipality, the appellant and any assessed person affected by the appeal of the date, time and location of the hearing.

Section 500 -- In an appeal from an assessment review board, the Board must make its decision within 150 days after receiving the written statement.

6. Procedure

Section 495 -- The Board can hear a review in the absence of a party, if it is satisfied that all persons required to be notified received notice of the hearing.

Section 496 -- The Board is not bound by the rules of evidence or any other law applicable to court proceedings. The Board has the power to determine the admissibility, relevance, and weight of evidence.

The Board may require that evidence be given under oath.

Section 497 -- The Board can require the attendance of witnesses and the production of documents. If a person does not comply, the Court of Queen's Bench can issue a warrant.

Section 498 -- Witnesses must answer relevant questions, including incriminating questions, but the answers given cannot be used in other proceedings except prosecutions for perjury.

Section 521 -- The Court of the Queen's Bench can hold a person liable for contempt before the Board.

However, the evidence the Board may consider on an appeal may be constrained by the Evidentiary Matters Regulation enacted on June 26, 1997. The regulation provides as follows:

Disclosure of evidence

Where a complaint is made to an assessment review board under Part 11 of the Act, a person who receives notice under section 462(b) of the Act of the date, time and location of the hearing and intends to present evidence at the hearing must, within a reasonable time before the hearing is held, disclose to all other persons who have received such a notice the nature of the evidence the person intends to present, in sufficient detail to allow the other persons to respond to the evidence at the hearing.

New Evidence

Under section 438(1)(c) of the Act, if the Municipal Government Board is presented with new evidence that was not before the assessment review board, the Municipal Government Board:

- (a) must not consider the new evidence, and*
- (b) may refer the matter back to the assessment review board for further consideration, subject to any terms and conditions the Municipal Government Board considers necessary.*

Application

This Regulation applies only where the complaint to which the proceedings relate is made after the coming into force of this Regulation.

7. Decisions

The Board's decision-making powers are set out in section 499 of the Act.

On concluding a hearing, the Board may make any of the following decisions:

- (a) dismiss a complaint or an appeal that was not made within the proper time
- (b) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for linear property
- (c) make a change to any equalized assessment, if the hearing relates to an equalized assessment
- (d) make any decision that the assessment review board could have made, if the hearing relates to the decision of an assessment review board
- (e) decide that no change to an equalized assessment or an assessment or tax roll is required

The Board must not alter:

- (a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality; and
- (b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.

The Board may, in its decision:

- (a) include terms and conditions; and
- (b) make the decision effective on a future date or for a limited time.

The Board's powers after making a decision include:

Section 501 -- The Board can assess and award costs of the hearing.

Section 504 -- The Board can rehear any matter before making its decision, and may review, rescind or vary any decision it makes.

Section 505 -- The Board must send its decision and its reasons, if requested, to all persons notified of the hearing.

Section 507 -- If there is substantial procedural compliance with the *Municipal Government Act*, a decision of the Board is not invalid because of a defect of form, technical irregularity, or informality. The Board can correct errors or omissions in its decision.

Section 516 -- The Board can refer unfair assessments to the Minister.

8. The Procedural Guidelines of the Municipal Government Board

Under section 523 of the Municipal Government Act, the Municipal Government Board can make rules regulating its procedures. The Board has made procedural guidelines. There are three parts to these guidelines. Parts 1 and 3 apply to all proceedings. Part 2 only applies on the direction of the Board, either on its own initiative or where one of the parties requests it.

Part 1 covers such matters as the form in which appeals must be filed, as well as notice, postponements, consent dispositions, and taping or recording the proceedings. Perhaps most important there is a provision for the Board to order meetings between the parties to deal with issues such as the disclosure of documents. There is also a provision requiring ten days notice of adjournment applications.

Part 2 requires the filing of briefs and other documents as directed by the Board. The format of briefs is specified.

Appeal briefs must be filed 30 days before the hearing; there is no timing specified in the rules for filing response briefs but 15 days after the appeal brief is served is usually considered reasonable.

Part 3 sets out the procedure at the hearing, including provisions for challenges to Board members for conflict of interest or bias.

Judicial Review – A Limited Remedy

Under section 506 of the Act, there is no appeal from a decision of the Municipal Government Board. The only recourse after a decision of the Board (aside from a review by the Board itself under section 504) is to apply to the Court of Queen's Bench for a judicial review.

A judicial review is an extremely narrow remedy. It is unlike an appeal from an assessment review board to the Municipal Government Board, where the entire case is considered. In a judicial review, the court only determines whether there has been an error in law on the face of the record or certain types of errors of a municipality. The court may not reconsider the facts or merits of the case. Indeed, because of section 506, a court may refuse even to consider errors in law on the face of the record as grounds for a review. (Section 506 arguably creates a privative gloss on the decisions of the Board. A privative gloss is a protective shield.)

Alberta courts decided numerous cases under the old Assessment Appeal Board (AAB) Act that give an idea of how narrowly the courts interpret their role on judicial review in assessment matters:

- (a) "It's not the court's function... to substitute its opinion for that of the Board." *Br. Pac. Bldg. Ltd. v. AAB* [1973] 5 WWR 344(SCAD) at p. 351.
- (b) "The fact that the Board may have reached the wrong decision does not entitle the court to re-examine the merits of the case..." *Balmoral Curling Club v. AAB* (1993) 9 Alta. LR (3d) 103 (QB) at p. 105.
- (c) "It is within the Board's power to accept or reject evidence in arriving at a proper determination of this issue. Such a finding based on proper evidence results in a finding of fact which is not reviewable by the Court." *Coscan v. AAB* (1993) 9 Alta. LR (3d) 135 (CA) at p. 136.

In addition, courts recognized the AAB as a specialist tribunal where decisions should only be overturned if shown to be clearly unreasonable. (*Rowley v. AAB*, 62 Alta. LR (2d) 146 (QB)). In a more recent case, *Canada (Director of Investigation and Research) v. Southam Inc.* (1997) 1 S.C.R. 748, the Supreme Court of Canada (per Iacobucci J.) defined an unreasonable decision as "one that, in the main, is not supported by any reason that can stand up to a somewhat probing examination". The Court noted that "if the Tribunal did ignore items of evidence that the law requires it to consider, then the Tribunal erred in law". Caution was added that although "the Tribunal should consider each factor; but that the according of weight to the factors should be left to the Tribunal". In addressing the issue of deferring to a Tribunals

expertise, the Court notes, "Expertise commands deference only when the expert is coherent. Expertise loses a right to deference when it is not defensible".

In brief, therefore, the courts will only intervene if:

1. There is an error of law on the face of the record (as there was in *CIBC v. AAB* (1992) 4 A.R. 419(CA) and *T. Eaton Realty Co. v. AAB* (1995), 128 D.L.R. (4th) 469(CA)). As noted above, this ground for judicial intervention may no longer exist. It is necessary to establish that the Board's interpretation of the law was clearly unreasonable; or
2. There is an error of jurisdiction, which includes:
 - (a) doing something the statute does not let the Board do, such as restricting the ability to purport to cancel an assessment (*Ainslie v. St. Albert* (1979) 11 Alta. LR (2d) 207) or ignoring something the statute tells it to do, such as failing to give reasons for a decision if a request is made
 - (b) breaching the duty of fairness or natural justice
 - (c) making a decision on the facts or law that is patently unreasonable (e.g. deciding a point based on no evidence)

Preparation of the Case

1. A good case is built on a competent assessment. The assessor does the most important work on the case before the assessment is completed.
2. Analyze the complaint. Are there reasons why it may be technically invalid:
 - (a) Was it filed in time?
 - (b) Is the complainant an assessed person or taxpayer?
 - (c) Does the complaint relate to one of the matters that can be the subject of a complaint?
 - (d) Is it about the tax rate?
 - (e) Does it explain why the information shown on an assessment or tax notice is incorrect?

3. Prepare evidence on the issue of fairness and equity of the assessment.

Remember that both an assessment review board and Municipal Government Board are prevented from altering assessments that are fair and equitable in relation to similar properties. Gather the evidence that you have that shows that the assessment is fair and equitable in relation to similar properties.

4. Put yourself in the complainant's shoes.

Look to see where your assessment is vulnerable. Are there any places when you had to make judgment calls? If so, are you able to support them? You may need expert evidence to assist you, especially in areas where you may not be an expert (for example, business valuation for an income approach to market value).

5. Check the adequacy of your evidence.

List all of the factors upon which the appellant is relying on one side of a page, and your response down the other side of the page. Do you have the evidence to address each factor? If not, can you get it?

Evidentiary Checklist

Evidence must be produced to prove that:

1. The subject assessment reflects the characteristics and physical condition of the subject property on December 31 of the year prior to the year the tax is imposed (MGA s. 289(2)(a));
2. The subject assessment:
 - (a) reflects the valuation standard set out in the regulations for that property (MGA s. 289(2)(b));
 - (b) is based on valuation standards that were applied in a fair and equitable manner (MGA s. 293(1)(a)); and
 - (c) took into consideration assessments of similar property in the same municipality (MGA s. 293(2)).

In proving these elements, the assessor must be prepared to show:

- (a) how market value (or in the case of farmland -- agricultural use value) was determined for the assessment of any land;
- (b) how value was determined for the assessment of any improvements, either through the depreciated replacement cost method or some other determination of market value (except for railways, linear property and machinery, where there are special rules); and
- (c) that the assessment was prepared using a mass appraisal process and in accordance with the quality standards.

(Alta. Reg. 365/94 s. 2 , 3, 1(h), 10, 11 and Schedule 2)

The information required to prove the above elements must be well organized and concise. It must also be comprehensive.

Even though the regulations state that the assessment of an improvement may be based on depreciated replacement cost or market value (and the distinction being made here is not clear in the legislation), the challenge to the assessment can (and will) be based on any method of determining market value (and often on a combination of methods).

At the end of the day, it is not likely sufficient to defend an appeal using only a depreciated replacement cost standard or market value applied on a mass appraisal basis. The bottom line is that mass appraisals are attacked on a site-specific basis. Your defense will therefore have to anticipate issues that arise on a site-specific basis.

Making and Requiring Disclosure

Proper disclosure by the municipality and complainant lies at the heart of a fair and effective appeal process. Trial by ambush does little to further the fairness of the process or the result.

Good disclosure by the municipality has three potential benefits:

1. It may encourage some complainants to back down. Disclosure demonstrates the strength of your case. Some complainants may be satisfied by the information provided. Others, who are simply appealing for the sake of appealing, may back down on seeing the daunting task awaiting them.
2. It helps to narrow and refine the issues. Often, points of contention disappear once disclosure is made and the review or appeal can focus on the essential issues in dispute.
3. It reflects well on the municipality generally. Specifically it reflects well on the municipality in the hearing before the board. A party that is willing to share information tends to have more credibility.

Initial Disclosure

The assessor has considerable power to obtain information in the process of preparing an assessment (see ss. 294, 295 and 296). Therefore the initial onus lies on the assessor to ensure that sufficient information has been gathered to prepare the assessment in a fair and equitable manner.

The assessed person has a statutory right to sufficient information to show how the assessor prepared the assessment, as well as information relating to the assessment of any other property.

Therefore, ideally speaking, both the municipality and the assessed person will enter the appeal process with a high degree of disclosure. However, as assessments must be prepared on a mass basis and appeals will be made on a site specific basis there may be large disclosure gaps.

Dealing with Inadequate Disclosure

There are two types of disclosure:

1. disclosure of the issues to be raised; and
2. disclosure of the evidence to be relied upon.

1. Disclosure of the issues to be raised

The first type of disclosure ought to be addressed through the requirement that a complainant provide an explanation of the nature of the complaint (s. 460(7)) to the assessment review board and reasons for the appeal and a statement of issues (s. 491(2)) to the Municipal Government Board.

If the complaint to an assessment review board or written statement to the Municipal Government Board do not meet the requirements under s. 460(7) or 491(2), the following course of action should be considered:

- (a) Write to the complainant noting the requirements of the applicable section, either s. 460(7) or 491(2). Note that it is your position that they do not comply. Ask them to comply. Ask them to provide you with particulars of their complaint. Written correspondence is recommended so that it is easy to establish to the Board that a request was made.
- (b) If no reply or a non-responsive reply is received, consider one of the following courses of action:
 - i) Ask for an adjournment until there is compliance. (Note: The Municipal Government Board's rules of procedure require 10 days notice of a request for an adjournment before the scheduled hearing.)

One of the requirements of natural justice is that an adjournment be given if a party, through no fault of its own, is not in a position to put its case before the Board. Where the reason is a defect in the other party's disclosure, there is a very strong argument that an adjournment should be given, at least until the defect is remedied.
 - ii) If the limitation period has passed, ask for the complaint to be dismissed summarily. The basis for this request would be that a valid appeal was not filed within the time required. Both sections 460(7) and 491(2) impose mandatory requirements that the document initiating the review or appeal provide an explanation of the basis of the complaint or appeal. If a document is filed without the explanation, it is deficient and arguably no valid complaint or written statement has been filed.
 - iii) If it is an appeal to the Municipal Government Board, request a pre-hearing conference under Part I, Section 8 of the Board's Procedural Guidelines to

apply for further disclosure or ask for an order invoking the provisions of Part II, which require extensive disclosure, where the Board so orders.

- (c) Boards will be loathe to grant adjournments and will be even more hesitant to dismiss complaints or appeals summarily for technical defects. Therefore, it is important that the assessor be in a position to show a request for compliance (or more than one) and a refusal. It will also be important to argue convincingly why the inadequate disclosure is unfair to the municipality. The assessor should also be able to show complete disclosure of the assessor's case.

2. Disclosure of evidence

When a complaint is received, the municipality should advise the complainant of the evidence it intends to put before the assessment review board or Municipal Government Board and ask the complainant to provide a summary of evidence and copies of documents (see following disclosure checklist). Options to deal with inadequate disclosure of evidence are:

- (a) request that the formal rules of the Municipal Government Board be applied
- (b) ask for an adjournment to provide you with time to prepare and respond
- (c) ask that the undisclosed material not be admitted in evidence at the hearing
- (d) in argument, refer to its late appearance. Ask that an adverse inference be drawn against the party who produced it and that little weight be assigned to it
- (e) ask for costs (only applicable to hearings at the Municipal Government Board)

Disclosure Checklist

1. Ensure that all of the information required to defend the assessment has been collected, sorted and summarized.
2. Contact the appellant to discuss the grounds of the appeal and evidence. Share with the appellant information on how the assessment was done.
3. List all of the factors upon which the appellant is relying down one side of a page and your response to these factors down the other side of the page. Analyze your case for weaknesses or uncertainties.
4. Identify the information you will need to confirm or challenge the appellant's position.
5. If you need further information from the appellant, put your request in writing to the appellant.
 - (a) Set a date by which the information must be provided to you.
 - (b) Indicate that you will be following up on your request at that date.
6. If the information is not forthcoming, reissue your request in writing.
 - (a) Indicate that you will be taking steps either to compel disclosure or to object to any undisclosed evidence if the information is not provided in sufficient time.
 - (b) Send a copy of the letter to the assessment review board or the Municipal Government Board.
7. If information is not forthcoming or you are informed by the appellant that you have all of the information on which the appeal is based, confirm this in a letter to the appellant and take a copy of the letter to the appeal hearing;
8. If no information is forthcoming you must decide on one of the following:
 - (a) to make a formal request to the Board for an adjournment
 - (b) to request that the Board's formal procedures be applied in this case
 - (c) to deal with the issue during the case by arguing that the evidence not be admitted or that it be given little weight
9. Ensure that you have provided the other side with all relevant information on the assessment and your defense.
10. Ensure that all problems with disclosure are documented and report them to the Board.
11. Put your correspondence on the record. If during the hearing, the other side produces evidence of which you have had no (or insufficient) advance notice, object to its admission and request an adjournment on the record.

Conduct of the Hearing -

Natural Justice and Fairness

Hearings before an assessment review board and Municipal Government Board are informal. While there are procedures to guide the hearing, these boards are not limited by the same strict procedural or evidentiary rules that govern courts of law. They decide what is admissible, what is relevant and what weight to give the evidence.

However, this does not mean that the procedure is unrestrained. Naturally, the boards must comply with the Municipal Government Act. But they also must abide by the rules of natural justice and duty of fairness.

The rules of natural justice and duty of fairness are common law rules created by the courts to ensure fair hearings before administrative tribunals. They are a flexible set of rules and apply to different tribunals in different measures.

The central features of natural justice and fairness are:

- (a) You have a right to a hearing before an unbiased tribunal.
 - The Municipal Government Act deals specifically with pecuniary interest (s. 480 and s. 520). However, bias can arise in a number of ways (for example, a panel member could be prejudiced because of previous knowledge of the case or dealing with one of the parties, or a panel member could conduct himself or herself during a hearing in such a manner as to raise a reasonable apprehension of bias).

(Note: Extreme caution should be exercised before raising an allegation of bias.)

- (b) The hearing must be procedurally fair, which includes but is not limited to
 - (i) the right to a hearing, notice of the hearing
 - (ii) knowing the case to be met
 - (iii) the right to cross examine witnesses
 - (iv) the right to legal counsel
 - (v) a hearing before the person making the decision
 - (vi) the right to an adjournment in appropriate circumstances

- (vii) the right to adequate reasons for the decision
- (viii) the right to have the case decided based on the evidence put before the Board in the hearing (subject to the Board's right to use its expertise to analyze the evidence)

Presenting the Case

The Role of the Assessor

The role of the assessor in hearings is frequently twofold:

1. To be a witness for the municipality; and
2. To present the case on behalf of the municipality (to be an advocate).

As the assessor is a public officer, care should be taken not to be partisan. But this must be balanced by recognition of the need to establish the municipality's position strongly and clearly.

As much as possible, an assessor should distinguish between giving evidence and making an argument. While this should not be done in an awkward way and break up the flow of the case, it is important to keep the evidence conceptually distinct from the argument. Argument alone is not enough to sustain a position. It must be supported by evidence.

When to Use a Lawyer

In many cases it is probably not necessary to use legal counsel. There are some factors that work against the use of legal counsel:

- (a) cost
- (b) increased preparation time
- (c) if the taxpayer is unrepresented, a fear of appearing to be unfairly overpowering

However, in the following circumstances you should consider using the skills of counsel:

- (a) if complex legal issues are raised
- (b) if the decision may establish a precedent which will affect many other properties
- (c) if it is a complex hearing with many witnesses, especially expert witnesses

- (d) if the strategy is to position the appeal for a judicial review application

Preliminary Objections

Consider whether any of the following are applicable:

- (a) appeal out of time
- (b) inadequate notice
- (c) inadequate statement of reasons for appeal
- (d) inadequate disclosure
- (e) reasonable apprehension of bias on the part of a Board member

Objections Generally

Objections should be used with discretion. The hearing is informal and the board will not appreciate being tied down in procedural wrangling. However, if clearly irrelevant and prejudicial evidence is being given or if the hearing is becoming unfair, place your objection clearly and succinctly on the record.

The Appellant's Case

The appellant bears the onus of establishing that the assessment is incorrect and unfair.

Listen carefully and take careful notes with reminders of areas on which to cross examine and give evidence. Divide your note pages in two. Write the witness's testimony on one side. Use the other side to write reminders for:

- (a) cross examination
- (b) rebuttal evidence
- (c) argument

Cross Examination

“Cross examination, skillfully employed, is perhaps the most useful of all ‘instruments’ used in the administration of justice.”

G. Coleman, *Cross Examination* (1970) p. 1.

1. The objectives of cross examination
 - (a) to obtain admissions that are useful for your case

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- (b) to clarify and expand on partial truths
- (c) to show that a witness is mistaken
- (d) to show that a witness is biased
- (e) to raise questions about the witness's truthfulness

2. When to cross examine

Only cross examine if the witness has said something that will hurt your case. If the witness's statement is consistent with your view of the facts there is no need to cross examine.

If you are going to contradict the witness in your own testimony you should cross examine on the point at issue otherwise the Board will not be able to assess credibility.

3. How to cross examine

Cross examination is an art, not a science. However, good cross examination is built on careful preparation (for example, you should know the details of all documents prepared or relied upon by the witness as witnesses often give testimony that is inconsistent with what they have previously written or said). Some pointers:

- (a) Limit the number of points on which you cross examine (your best points go first and last).
- (b) Don't go fishing; know the likely answer to the question before you ask it (or, at a minimum, be sure that the answer can't hurt you).
- (c) Don't simply have the witness repeat the direct evidence.
- (d) Don't get into an argument with the witness (remember your chance to give testimony comes later).
- (e) Ask leading questions. Witnesses will use open ended questions to strengthen their case or to explain away inconsistencies.
- (f) Be polite, but confident and forceful.
- (g) Use short, clear questions (and don't link two questions).
- (h) Don't prepare written questions; prepare areas of likely cross examination or cross zones).
- (i) Build the trap before you try to catch the witness.

4. Cross Examination Example

A witness may produce only one page from an appraisal report. Quite possibly there is something the witness does not want disclosed from the report.

The following approach to cross examination is unlikely to get the results you want:

Q. Why did you only submit one page of the appraisal report?

A. It was the only important page; see how it shows that the income stream doesn't support your assessment of market value?

Try this:

Q. Sir, you knew you were coming here to give evidence today?

A. Yes.

Q. And you carefully prepared by putting all your documents together?

A. Yes.

Q. You will agree with me that it is important that the Board have a complete picture of the factors underlying the value of your property?

A. Yes.

Q. And you wouldn't want to mislead the Board by submitting only a part of the picture?

A. No.

Q. I am showing you Exhibit "A", which is one page of a longer report, is it not?

A. Yes.

Q. And you have the whole report?

A. Yes.

Q. And you didn't bring it with you?

A. No.

Q. By the way, I note Mr. Smith, the appraiser is not here himself to give evidence, is he?

(Note: Resist the temptation to ask where Mr. Smith is; it gives the witness the chance to develop an excuse for his absence.)

You can then refer to this cross examination in argument to support your position that no weight should be given to the information on the one page.

Always use restraint when cross examining. Treat the witness with dignity and be fair to the witness.

The Municipality's Case

As much as possible, your case should unfold like a story.

1. The opening statement

Tell the Board who you are and introduce the witnesses that are with you.

Always take the opportunity to explain to the Board what your position on the issues will be and what evidence you are going to lead. That way the Board will know what to expect and hear the evidence in context.

The opening statement should be short, forceful, accurate, and organized.

Don't overstate your case; it's embarrassing if you cannot support the stated position.

2. Giving evidence

(a) Be truthful and candid.

- (b) Let the Board know your qualifications and experience. Remember that you are an expert in assessment. The Board members may not know it, so tell them.
- (c) Watch the Board members to make sure that they are keeping up with you.
- (d) Use simple ordinary language where possible. Explain technical terms.
- (e) Speak clearly and direct your evidence at the Board (not the other side or your lawyer).
- (f) Establish sufficient background in what you have done in arriving at the assessment. Remember that the Municipal Government Board members are lay people who do not have your technical expertise. Therefore, explain your approach to value. Explain how a mass assessment is done, and explain why you have adopted a particular approach to value (over others).

3. Facing cross examination

- (a) Before the hearing, prepare to be cross examined:
 - (i) Make sure you know what is in all your documents.
 - (ii) Be aware of areas of vulnerability. Be ready to address them.
 - (iii) Have someone cross examine you in a dry run.
- (b) Stay calm and collected. Do not become argumentative or start asking the cross examiner questions.
- (c) Listen to each question carefully. Think before answering it. (Don't be afraid of dead air.)
- (d) Make your answers complete, but concise. Qualify yes or no answers when necessary.
- (e) Do not volunteer anything unnecessarily.
- (f) Always be forthright and truthful.
- (g) Do not assume or speculate; speak only from personal knowledge or refer to the documentary evidence to support your answers.

4. Examining witnesses in your case

- (a) Prepare the witnesses for the questions you will ask.
- (b) Ask short questions.

- (c) If possible, avoid leading witnesses on critical points.
 - (d) Prepare witnesses for cross examination.
5. Dealing with expert witnesses
- (a) Before you call an expert witness, confirm that the person really is an expert in the area. Is the person credible before the Board, or has his or her evidence previously been rejected?
 - (b) An expert should be independent and objective. An expert who is partisan loses credibility.
 - (c) Work with the expert before the hearing so that you are comfortable leading the expert through the case. Prepare the expert for cross examination.
 - (d) The first things you must do when calling an expert are:
 - i) Tell the Board why you are calling the expert witness (establish the need for the expert evidence).
 - ii) Establish the credentials of the expert. Focus on the expert's
 - education;
 - training;
 - professional activities/publications; and
 - previous testimony given and accepted.
 - (iii) Mark the expert's resume as an exhibit.
 - (e) Have the expert present his or her evidence in an explanatory manner, almost like giving a seminar. The expert should not simply read a report. The expert should be careful not to appear arrogant.
 - (f) Have the expert explain technical terms.
6. Final argument
- (a) Follow a logical structure.
 - (b) State your major points in a strong introduction.
 - (c) Explain how all the things you told the Board about in your opening have been proven.
 - (d) Demonstrate how the facts support your position.
 - (e) Address the weaknesses in your case.

- (f) Listen to the appellant's argument and be responsive.
- (g) If questions have been raised by the Board members, be responsive to them as well.
- (h) Address issues of the relevance and weight of the evidence.
- (i) Have a strong closing statement.
- (j) Remember to humanize your case. The appellant is often an unrepresented individual appearing against the municipality. There is a natural sympathy for the appellant. Acknowledge the appellant's position but point to the higher goals of fairness and equity for all. Show the harm to other individuals if the Board acts out of sympathy rather than the principles established under the Municipal Government Act.

Follow-up Activities

Appeal hearings eventually conclude. However, several residual activities should flow from tribunal decisions. Most of these relate to documenting and analyzing the decisions to obtain insight that will result in a more accurate assessment the next time around.

An obvious task is to document those appeal decisions where legal precedent has been established in the judgment. Assessing agencies should develop and maintain a Decided Cases Manual to provide ready future access to precedent setting decisions.

A post-assessment audit of the appeal process should also be conducted periodically by the assessing agency: What worked and what didn't? Were the appeal briefs well received? Did the Board consistently request additional information? How did the assessors perform under cross-examination? Is additional training required? Action plans should be implemented to correct any systemic problems identified.

The final lesson to be learned from the whole consultative and appeal process is to identify hot areas, be they geographic or property types, where the current valuation practices don't appear to be doing an acceptable job. Review of this question provides direction for allocating staff resources and developing enhanced systems or training programs for the next reassessment.

4.0 Conclusions

Building a defensible assessment roll is best achieved by deriving the correct value of the property at the time of the assessment. The onus is on the assessor to begin this task. The assessor is assisted along the way by consultations with property owners. However, the objective of all parties should always be the same: determination of market value. Care should be taken to not place a premature emphasis on the defense aspect of the process. “Defense” is a negative word that brings an undesirable connotation to the process. It can affect the mindset of the assessor, the appellant, and the appeal boards. Primarily, assessment is a positive activity. It is followed by a stage of explaining the derived values. Defending the roll may well become a necessary third and final stage of the process and the assessor must, of course, be prepared for this possibility. However, the frequency of this circumstance will be inversely proportional to the success of the building and explaining phases.

Building a defensible assessment roll is a cyclical task. It commences with the very first activities of the assessment program. It should be kept in mind as data collection forms are designed, computer systems built and job descriptions written. It does not cease with the completion of appeal hearings; it simply recycles and carries on into the next assessment.