



# Alberta Assessors' Association

[www.assessor.ab.ca](http://www.assessor.ab.ca)

## CONTACT US

10555 - 172 Street  
Edmonton, AB T5S 1P1  
Phone: 780.483.4222  
Fax: 780.487.7505  
Email: [info@assessor.ab.ca](mailto:info@assessor.ab.ca)

## MC&PR COMMITTEE

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Vasily Kim, AMAA  
Mike Minard, AMAA  
Amy Murphy, AMAA  
Tally Quaschnick, AMAA  
Melissa Zayac-Smith, AMAA  
Denise Ziegler-Handel, AMAA  
Scott Powell, AMAA

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Lawrence Buchart, AMAA, Past Pres.  
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**Discipline Committee**  
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**2017 Conference Committee**  
Gail Butz, AMAA/Rene Boutin,  
AMA

## Driftpile School - Driftpile, Alberta



*While non-assessable, Driftpile School is a stunning example of Alberta architecture. Woodland Cree First Nation commissioned Manasc Isaac to design the iconic building. Inspired by the area's nesting eagles, the structure is in the shape of an eagle feather. The school houses k-8 students and is located in the community of Driftpile between Slave Lake and High Prairie. Readers may be familiar with Manac Isaac whose body of design work includes Camrose City Hall, the*

*Banff Town Hall and the Slave Lake Government Centre and Library - twice (pre- and post-2011 fire).*

## Annual Conference - Hold the Date

The Conference Planning Team will be meeting shortly to recommend the theme and sort the agenda for the 2017 Conference. In order to assist with your pre-planning, however, the dates and contact information are as follows:

When: April 30-May 2 Pre-Conference Education  
May 3– May 5 Conference and AGM

Where: Sheraton, Red Deer  
3310 50 Ave, Red Deer, AB T4N 3X9  
403-346-2091

[Click Here](#) to book a room today!

Promoting *QUALITY*  
through membership excellence

# Supreme Court Rules: It Was Reasonable For The CARB To Decide It Could Increase An Assessment

Carol M. Zukiwski  
Reynolds Mirth Richards & Farmer LLP

On November 4<sup>th</sup> the Supreme Court issued its decision in *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.* The majority of the Court overturned the decision of the Alberta Court of Appeal and reinstated the decision of the CARB. What follows is an excerpt from the Supreme Court's decision, a full copy of the decision can be found on the Association's website.

The taxpayer Company owns a shopping centre in Edmonton, Alberta. For the 2011 taxation year, the City of Edmonton assessed the value of the mall at approximately \$31 million. The Company disputed this assessment by filing a complaint with the Assessment Review Board. The Company's position was that the assessed value exceeded the market value of the mall and was inequitable when compared to the assessed value of other properties. It sought a reduction in the assessed value to approximately \$22 million.

When reviewing the Company's submissions and evidence, the City discovered what it determined was an error in its original assessment. The City requested that the Board increase the assessed value of the shopping centre to approximately \$45 million. While the Company expressed concern about the City's change in position, it did not dispute the Board's power to increase the assessment in this case. Under s. 467(1) of the *Municipal Government Act*, after hearing a complaint, an assessment review board may "change" the assessment or "decide that no change is required." The Board ultimately increased the assessment to approximately \$41 million. A decision of an assessment review board may be appealed to the Court of Queen's Bench, with permission, on a question of law or jurisdiction of sufficient importance to merit an appeal. On appeal to the Alberta Court of Queen's Bench, the chambers judge set aside the Board's decision and remitted the matter to the Board for a hearing *de novo*. This order was affirmed on appeal to the Alberta Court of Appeal. This Court must determine what the appropriate standard of review is for the Board's implicit decision that it could increase the Company's property assessment and determine if the Board's decision withstands scrutiny on that standard.

*Held* (McLachlin C.J. and Moldaver, Côté and Brown JJ. dissenting): The appeal should be allowed, the decision of the Court of Appeal set aside and the Board's decision reinstated.

*Per* Abella, Cromwell, **Karakatsanis**, Wagner and Gascon JJ.: The standard of review in this case is reasonableness. Unless the jurisprudence has already settled the applicable standard of review, the reviewing court should begin by considering whether the issue involves the interpretation by an administrative body of its own statute or statutes closely connected to its function. If so, the standard of review is presumed to be reasonableness. This presumption of deference on judicial review respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts. A presumption of deference on judicial review also fosters access to justice to the extent the legislative choice to delegate a matter to a flexible and expert tribunal provides parties with a speedier and less expensive form of decision making.

In this case, the framework from *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, provides a clear answer. The substantive issue here — whether the Board had the power to increase the assessment — turns on the interpretation of s. 467(1) of the Act, the Board's home statute. The issue does not fall within one of the four categories identified in *Dunsmuir* as calling for correctness review. Accordingly, the standard of review is presumed to be reasonableness.

A statutory right of appeal is not a new category of correctness and should not be added to the list of correctness categories enumerated in *Dunsmuir*. Recognizing issues arising on statutory appeals as a new category to which the correctness standard applies would go against strong jurisprudence from this Court.

The presumption of reasonableness is grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing.

Expertise arises from the specialization of functions of administrative tribunals like the Board which have a habitual familiarity with the legislative scheme they administer. Expertise may also arise where legislation requires that members of a given tribunal possess certain qualifications. However, expertise is not a matter of the qualifications or experience of any particular tribunal member. Rather, expertise is something that inheres in a tribunal itself as an institution.

This Court has often applied a reasonableness standard on a statutory appeal from an administrative tribunal, even when the appeal clause contained a leave requirement and limited appeals to questions of law, or to questions of law or jurisdiction. In light of this strong line of jurisprudence — combined with the absence of unusual statutory language — there was no need for the Court of Appeal to engage in a long and detailed contextual analysis. Inevitably, the result would have been the same. The presumption of reasonableness is not rebutted here.

The contextual approach can generate uncertainty and endless litigation concerning the standard of review. As in British Columbia, legislatures can specify the applicable standard of review; unfortunately explicit legislative guidance is not common.

The Board’s decision to increase the Company’s property assessment was reasonable. Given that the Company did not dispute the Board’s power to increase the assessment in this case, it is not surprising the Board did not explain why it was of the view that it could increase the assessment. Accordingly, the Board’s decision should be reviewed in light of the reasons which could be offered in support of it. It was reasonable for the Board to interpret s. 467(1) of the Act to permit it to increase the Company’s property assessment at the City’s request. While s. 460(3) of the Act provides that only assessed persons and taxpayers may make complaints, the scheme of the Act does not require that municipalities be empowered to file a “complaint” against an assessment. The Act provides other mechanisms by which municipalities can change or seek changes to an assessment. The Board’s interpretation of s. 467 (1) of the Act is consistent with the ordinary meaning of “change” in s. 467(1) and the overarching policy goal of the Act, to ensure assessments are correct, fair and equitable. The alternative would permit taxpayers to use the complaints process to prevent assessments made in error from being corrected, thereby frustrating the Act’s purpose.

## **“Area in Use” Assessments**

### **The Interpretation of the phrase “any area used for commercial or industrial purposes” in s. 4(3)(e) of MRAT in relation to the assessment of land at wellsites**

Carol M. Zukiwski

Reynolds Mirth Richards & Farmer LLP

The Court of Queen’s Bench just issued its decision regarding the correct interpretation of section 4(3)(e) of MRAT in the context of Column 1 of section 304(1)(f). The issue before the Court was whether the area to be assessed was the area identified in the surface lease or a smaller tear drop shaped area which the Appellant called the ‘area in use’. The Court provides a thorough analysis to conclude that the area to be assessed is the area held by lease. The citation for the decision is *Canadian Natural Resources Ltd. v. Red Deer County* 2016 ABQB 558, and a copy of the decision has been posted on the Association’s website.

### **More CARB Decisions recently posted:**

#### **Thacker Farms Co. v. County of Forty Mile No. 8**

**Issue:** Should a portion of the main shop be considered Machinery and Equipment or should it be exempt?

#### **Quattro Farms Co. v. County of Forty Mile No. 8**

**Issue(s):** Should a portion of the main shop be considered to be Machinery and Equipment or exempted?  
Should the office portion of an improvement be classed as non-residential or exempted?

*Association staff post notices of decisions from CARB and MGB hearings on the Members’ Website as they are received and are pleased to including articles by contributors on legal and assessment issues.*

## News from the Association

### Increase in Membership Dues

At its November 2-4 meeting, Executive approved a motion to increase membership dues by a nominal amount of \$10 for regulated and Associate categories for the 2017 membership year. Accredited dues will increase from \$450 to \$460; Candidates and Associate dues will increase to \$385. This change will come into effect on the March 1, 2017 new membership year.

### Change in Publication Frequency - eClipboard

In response to a recommendation from the Marketing, Communications and Public Relations Committee, the Executive agreed to changing the publication frequency of the eClipboard from monthly to bi-monthly, but asked Administration to implement an email “bulletin” process to update members of time-sensitive information such as job posting or other news. These changes will come into effect in November.

### Strategic Planning

On November 4, the Executive Committee participated in its first strategic planning session since 2010. The session was facilitated by Consultant Kerry McKinstry, MBA, B.Com., CHRP, an Organizational Development Consultant with Covenant Health. Kerry is also a Certified Executive Coach and used her skills to guide the Executive members, Chairs of the Practice Review and Discipline Committees and Association staff through the process of creating a vision statement, a mission and benchmarking goals to achieve the mission. The Executive will review the draft plan at its next meeting and present to the membership at the Annual meeting in May.

### This is what Association business looks like on a Friday....



*Beginning from the left: President Elect Bannerman, President Lindsay, Consultant Kerry McKinstry (standing), Public Member Frank Schoenberger, Financial Director Basseur, Rural Director Burnand, Member Services Mondor. Executive Administrator Hodge and DC Chair Ballhorn discuss measures and evaluations as the final step in the strategic management process. Out of sight are Urban Director Powell and Vice President Boutin and PRC Chair McKinnon.*

“Planning is a process of choosing among those many options.  
If we do not choose to plan, then we choose to have others plan for us.”

**Richard I. Winwood**

## Another one bites the dust?

### Stan Dilworth Retires!(!?)

Stan Dilworth, AMAA, was honoured by colleagues and friends at his retirement bash on October 5 in Lethbridge. Stan's career has spanned more than 40 years from Municipal Affairs to the City of Edmonton, the City of Lethbridge and, lately, working with AUMA as it responds to Bill 21. Stan's commitment to the profession and to the Association is legend.

*Good luck, Stan!*



## Congratulations to Newly Accredited Members

Having completed all the core education requirements, the Tools for Practicing Assessment in Alberta, a demonstration report on an income producing property and having been successfully examined by accredited members, the following members have been granted the use of the “Accredited Municipal Assessor of Alberta” (AMAA) designation with all the rights and obligations thereof:

- ◆ Jamie Clark, City of Camrose
- ◆ Scott Hyde, City of Edmonton

## Welcome Returning Candidate

Having submitted an application for membership as required by policy, including obtaining the support of an accredited member, the following individuals have been accepted as regulated Candidate members:

- ◆ Kyle Galbaransingh, Government of Northwest Territories

## Hold the date - CPTA Seminar

March 6 and 7, 2017 - CPTA Educational Seminar - Bankers Hall, Downtown Calgary, AB  
The cost will remain the same at \$350 + gst (members) and \$425 + gst (non-members).

## Employment Opportunities

*New postings since the last eClipboard:*

- Lac St. Anne County, Property Assessor—November 14, 2016
- SAMA, Regional Manager, November 18, 2016
- M.D. of foothills, Assessor December 2, 2016

Check the Current Job Postings for these and other competitions.

## Random Thoughts

*“Education is a progressive discovery of our own ignorance”*

William (Will) Durant, 1885-1981

Will Durant also said “We are what we repeatedly do. Excellence, then, is not an act, but a habit,” paraphrasing Aristotle’s “...virtues are formed in man by his doing the actions...for as it is not one swallow or one fine day that makes a spring, so it is not one day or a short time that makes a man blessed and happy...”

# *Alumni Christmas Lunch*

Friday November 25, 2016, 12:00pm  
Alberta Assessors' Association  
10555—172 Street  
Edmonton, AB T5S 1P1



TICKETS  
\$20.00

*Let's Share in the  
Christmas Cheer  
As we celebrate  
This time of year!*

Please join us for lunch, entertainment, and connect with familiar faces at our 1st annual Alumni Christmas lunch!



RSVP by Friday November 18 to [membership@assessor.ab.ca](mailto:membership@assessor.ab.ca) or you may contact Ashley Mondor at 780-483-4222