



# Alberta Assessors' Association



## Fall Education Symposium

*E-Clipboard*  
**Issue 219**  
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*To be leaders  
and experts in  
property  
assessment  
in Canada.*

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## Camrose Resort Casino, Camrose Alberta

September 24-25, 2019

Registration Information is available on the Association website

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

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### 2019-20 COMMITTEE CHAIRS

**Executive Committee:** Steven Leroux, AMAA, President

**Nominating Committee:** Rene Boutin, AMAA

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**2020 Conference Committee:** Suzanne Magdiak and Collin Hindman

# Great Expectations: Meeting the Court's High Standards on Judicial Review

By Carol Zukiwski and Michael Swanberg

## 2019 IMPORTANT DATES

### **August 22, 2019**

Oral Exams (full)

### **August 26, 2019**

TOOLS Course Fall Offering Begins

### **September 1, 2019**

Prorated membership dues begins for new member applications.

### **September 23, 2019**

AAA Annual Golf Tournament  
[Registration](#)

### **September 24 & 25, 2019**

Fall Education Symposium  
[Registration](#)

### **October 17, 2019**

Oral Exam  
(see [Are you ready Checklist](#))

### **December 12, 2019**

Oral Exam  
(see [Are you ready Checklist](#))

In *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, the Supreme Court of Canada directed that courts must show deference to Assessment Review Boards (“ARBs”) when conducting a judicial review of an ARB decision. The concept of “deference” means that the Court will not simply substitute its own decision if it decides it would have reached a different conclusion; rather, the Court must be satisfied that the decision made by the ARB “falls within a range of possible, acceptable outcomes” (para 36 of *Capilano*). Importantly, the Supreme Court confirmed that the ARB’s interpretation of its own statute (or statutes “closely connected to its function”) is also entitled to deference.

While this might appear straightforward, it can be difficult to determine if a particular decision is reasonable, particularly when the Court is reviewing the ARB’s interpretation of legislation. Judges interpret legislation all the time, and they are the foremost experts on statutory interpretation. ARBs do not have that same level of expertise, and yet, the Supreme Court has directed judges to show deference to interpretations by administrative tribunals of their home statutes. Two recent decisions from the Court of Queen’s Bench illustrate how critical it is for ARBs to craft well-reasoned and thorough decisions to ensure that their interpretations of their home statutes meet the Court’s approval.

In *Associated Developers Ltd v Edmonton (City)*, 2019 ABQB 262, the Court was tasked with reviewing an ARB decision which interpreted section 4(3) of the *Matters Relating to Assessment and Taxation Regulation* [“*MRAT*”] and section 297 of the *MGA*. Section 4(3) of *MRAT* states that, if a parcel is being used for farming operations, but can be serviced using water and sewer distribution lines located adjacent to that parcel, a notional area of three acres must be assessed at market value, instead of using the “agricultural use” valuation standard that typically applies to farm land. The ARB determined that, when determining the assessment class of the three-acre parcel, it was reasonable for the assessor to classify that land as “non-residential” instead of “farm land” since section 4(3) directed that the agricultural use valuation standard could not apply. On judicial review, the taxpayer argued that it was not reasonable for the ARB to conclude that section 4(3) influences which assessment class applies to the parcel, particularly since the parcel was being used as farm land.

In this case, the Court agreed that the taxpayer’s preferred interpretation of the relevant legislation was more consistent with what the Court believed was the proper interpretation, but the Court ultimately found that the ARB’s interpretation was justifiable nonetheless. In other words, the judge upheld the ARB’s interpretation, even though she found that she would have preferred a different interpretation (and even though she had far more expertise in interpreting statutes than the ARB did). In coming to this conclusion, the Court noted that the ARB’s reasons were transparent and intelligible, and applied the tools of statutory interpretation properly. Had the ARB’s reasons not been clear, intelligible and complete, it is possible the Court might have found its interpretation to be unreasonable.

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## Great Expectations cont'd/

### ALBERTA ASSESSORS' ASSOCIATION

**Our Values** that guide decision-making

**INTEGRITY**....acting with honesty and a high standard of moral principles

**PROFESSIONALISM**....holding a high level of industry (technical) skill, competence and character

**LEADERSHIP**....the ability to inspire and move vision into reality

**EXCELLENCE**....superior performance delivered to our members and the public

In *Quattro Farms Ltd. v. County of Forty Mile No. 8*, 2019 ABQB 135, the Court was asked to review an ARB decision which evaluated whether certain improvements located on a mint farm used to extract mint oil from mint plants met the statutory definition of “farm buildings” under the *MGA*. In its decision, the ARB determined that the improvements were not “farm buildings” because the improvements included machinery and equipment involved in processing, which was beyond what the statute intended for farm buildings to be engaged in.

While the Court recognized that the ARB was entitled to deference in determining whether the improvements on the subject property constitute “farm buildings”, the Court found that the ARB’s interpretation “does not accord with the legislation or its purpose.” In coming to this conclusion, the Court noted that the ARB’s reasons improperly focused on whether the improvements could be classified as “machinery and equipment”, which was not the question before it. On that basis, the Court concluded that the ARB’s analysis was premised on an improper framework, and it proceeded to conduct its own statutory interpretation. In doing so, the Court found that it would have reached a different conclusion. Given the errors identified by the Court in the ARB’s reasons, the Court concluded that the Board’s interpretation was “not defensible on a proper reading of the legislation” (*Quattro* at para 48).

The *Quattro* and *Associated Developers* decisions demonstrate the high standards courts hold ARBs to in crafting written decisions. If the Court finds that it would have interpreted a statute differently, the Court will scrutinize the ARB’s reasons to determine if its contrary interpretation is defensible. If the reasons are confusing or incomplete, there is a greater risk that the Court will find the decision is unreasonable if it determines that it prefers an interpretation that differs from the ARB’s.

Practically, these decisions demonstrate how important it is for ARBs to receive proper training in statutory interpretation. ARBs are rarely supported by independent counsel, which would assist in crafting written decisions that will withstand scrutiny by the Court. The Supreme Court’s direction to show deference to ARBs means that it is more important than ever for ARBs to get their decisions right at first instance. Training and supporting ARBs can go a long way to instilling certainty in the assessment review process, and will reduce the likelihood that decisions are overturned by the Court.

The Supreme Court of Canada is expected to release a trilogy of decisions before the end of 2019 clarifying the standard of review that applies to tribunals. It is possible that the Supreme Court will update the framework set out in *Capilano* and provide more certainty on how courts should approach judicial reviews of tribunal decisions. Regardless of whether the law on judicial review changes, providing ARBs with training and support to tackle the complex legal issues put before them is the best way to ensure ARB decisions will be upheld when scrutinized by the Court.

## *Fall Education Symposium Sep 24 and 25*

### *Co-Hosted by the City of Camrose & Camrose County*

#### ALBERTA ASSESSORS' ASSOCIATION

##### **OUR VISION – What we aspire to**

*To be recognized as leaders and experts in Property Assessment in Canada.*

##### **OUR MISSION – Our reason for being**

*The Alberta Assessors Association provides expertise and leadership for our members and the public through education, advocacy and ethical standards of practice to ensure fairness, equity and transparency in Property Assessment.*

##### **OUR STRATEGIC OBJECTIVES – Our strategic areas of focus for the next three years:**

**Advance High Quality Educational Opportunities** *for our members and the public.*

**Grow Our Membership** *within the industry and municipalities to enhance our influence and recognition with government and advocacy groups.*

**Strengthen Our External Relationships and Develop Collaborative Partnerships** *to ensure that we are acknowledged as experts and relied upon for our input on policy, legislation and implementation.*

**Advocate on behalf of the membership** *to facilitate understanding of our profession and how we use our expertise to advance the field of property assessment.*

**Improve Financial stability** *by considering efficiencies to support the Association's sustainability.*

## **What to Expect**

### *Tax Recovery 101*

*All things tax recovery—legislation, collection, auctions, liens against title, Court Orders, etc.*

**Presenter: Gwendolyn Stewart-Palmer, Shores Jardine LLP**

### *Municipal Financing: Building the Budget*

*How are municipal capital and operational budgets created? What are the fiscal policy parameters and do they match political realities. How do municipalities plan and execute projects? Are reserve funds and ever-green funding part of the process? Where does the revenue come from? How are tax rates set? What all goes into a Municipal Budget?*

**Presenter: Jason Labonte, The Next Shift**

### *Legal Update*

*Recent Court decisions and the impact on the assessment industry.*

**Presenter: Al Kosak, Brownlee Law**

### *Equalization and School Taxes*

*Equalized, Progressive and Supplementary assessments will discuss the reasons, the process and the effects with consideration given to the recently enacted MGA.*

**Presenter: Janice Romanyshyn, AMAA**

### *Open Mike - Legal Questions (Assessment and Taxation)*

*Come prepared or send us your questions so the speaker can prepare..*

**Presenter: Carol Zukiwski, RMRF**

### *Working Session: PAAH Special Purpose Properties*

*This two-hour session will dive into PAAH's Special Purpose Properties Module that dates back to 1999. Bring your copies, your ideas, and suggestions and let's get to work on updates, and ideas and plans for re-writes, etc..*

**Facilitator: Karac Hendriks-West, AMAA**

## **Re-Certification Credits for Symposium**

Accredited members earn 9 learning credits for attending the full Symposium (6 for Day 1 and 3 for Day 2), or 9 hours of learning and four (4) general credits. Individual workshops chosen are recorded automatically, but delegates should verify credits for accuracy and to ensure both learning and general are added for Association activities.

Courses offered by the Association are automatically loaded at the time of registration. They are eligible for credits on an hour per credit basis, rounded down (so workshops that are 90 minutes are only eligible for 1 credit).

Delegates who attend Day 1 or Day 2 only or a single workshop may have to enter/record the workshop and learning credits manually.

As always, accredited members are encouraged to seek assistance from Administration, for clarification. Accredited members must have 50 credits by 2020. At least forty (40) must be learning credits.

## MEMBERSHIP CATEGORIES

An **Accredited Municipal Assessor of Alberta** is any person who is a practicing assessor, has been a Candidate Member for at least one year, and has met all of the requirements of and holds the AMAA designation in good standing.

A **Candidate Member** is the entry-level membership category for those wishing to pursue the AMAA designation or for those who are practising assessments under the supervision of an Accredited Member.

An **Associate Member** is any person who has demonstrated an interest in the practice of assessment as determined by the Registration Committee and has been sponsored by an Accredited Member.

A qualifying **Student Member** must be a person enrolled full time in secondary or post-secondary educational studies and cannot be employed full time in the assessment or appraisal industry.

## *Welcome New Members*

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:

### New Candidates

- ⇒ Krista Paul of the City of Airdrie
- ⇒ William Gibbs of the City of Calgary
- ⇒ Harmohit Singh of the City of Red Deer

## *Congratulations Newly Accredited Members*

Having met all the requirements for accreditation, the following members have been granted the Accredited Municipal Assessors of Alberta (AMAA) designation with all its rights and obligations:



Christopher Down, AMAA  
City of Medicine Hat



Thomas Ludlow, AMAA  
City of Calgary



Gillian Greene, AMAA  
City of Airdrie



Jodi Ruschin, AMAA  
City of St. Albert