

DECISION

2017 NSUARB 137
M07647

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ASSESSMENT ACT

- and -



IN THE MATTER OF an appeal by **PETER M. TUPPER** and **RONALD H. MACDOW** from a decision of the Nova Scotia Assessment Appeal Tribunal on August 15, 2016, respecting property located at 191 Pleasant Street, Wolfville (Town of Wolfville)

BEFORE: Richard J. Melanson, LL.B., Member

APPELLANTS: **PETER M. TUPPER** and **RONALD H. MACDOW**

APPEARING: **RONALD H. MACDOW**

RESPONDENT: **DIRECTOR OF ASSESSMENT**
Robert W. Andrews, LL.B.

HEARING DATE: August 3, 2017

DECISION DATE: **August 15, 2017**

DECISION: **Appeal is dismissed.**

I INTRODUCTION

[1] The owners of a property located at 191 Pleasant Street, Wolfville (Property) did not provide information to a Property Valuation Services Corporation (PVSC) assessor within the 30 day time limit provided under the *Assessment Act*. The owners appealed the 2016 assessment.

[2] The Nova Scotia Assessment Appeal Tribunal (NSAAT) held the appeal could not proceed, as the failure to provide the requested information was a bar to proceeding with the appeal under the *Assessment Act*.

[3] Ronald H. MacDow, on behalf of the owners, appealed the NSAAT decision to the Board.

[4] A hearing was held at the Council Chambers in Wolfville, Nova Scotia on August 3, 2017.

[5] Mr. MacDow appeared on behalf of the Appellants, and was their sole witness.

[6] The Director of PVSC was represented by Robert W. Andrews, LL.B., who called Mathieu Chaput as his only witness. Mr. Chaput is an assessor in the Wolfville PVSC office.

II ISSUES

[7] The only issue in this appeal is whether the Appellants' failure to provide the information requested by the Director pursuant to the *Assessment Act*, within 30 days of the date the request was received, means the Appellants have lost their right to appeal the 2016 assessment.

[8] For reasons discussed below, the Board considers the Appellants are statute barred from appealing the 2016 assessment, and dismisses the Appellants' appeal.

III FACTS

[9] The PVSC records show the Property is owned by Mr. MacDow and Peter M. Tupper. It houses an apartment building. The Property was assigned a residential taxable assessment in the amount of \$525,600 for the 2016 assessment year.

[10] On May 13, 2014, the Director mailed, by registered mail, a letter to the owners, requesting information about the Property, which states in part:

Pursuant to Section 21 of the *Assessment Act*, **you are required to return this information within 30 days** of receipt of this request. Pursuant to Section 23, **failure to do so will result in the loss of your right to appeal your 2016 assessment**. Please note that replies which are submitted but which do not contain the actual information requested may also result in the loss of a right of appeal. In addition, please note that replies in the nature of "same as last year" do not satisfy this annual requirement. It is suggested that you maintain a copy of your submission for your records. **[Emphasis added in original]**

[11] The Canada Post Proof of Delivery form shows the letter was signed for on May 16, 2014. Mr. MacDow acknowledged receiving the letter and did not dispute the date it was received.

[12] The Director's records indicate the completed information questionnaire accompanying the letter was only received on July 28, 2014. The 30 day period set out in the letter would have expired on June 15, 2014, which was on a Sunday. The next business day was June 16, 2014.

[13] Mr. MacDow acknowledged that he returned the completed questionnaire after the expiry of the 30 day period outlined in the letter.

[14] Mr. MacDow testified the Property was acquired in 1989. He said he and his wife worked as a team. Mr. MacDow was responsible for maintenance and day to day operations of the building. His wife was responsible for the finances and the paperwork.

[15] In 2012, Mr. MacDow's wife was diagnosed with a debilitating condition which grew progressively worse. By 2014, she was not able to assist with the operation of the apartment building. Aside from caring for his wife, Mr. MacDow had to learn how to deal with the finances and paperwork aspects of the business. He indicated he had to play catch-up with respect to paperwork which had accumulated.

[16] Mr. MacDow indicated he was overwhelmed by the amount of paperwork which he had to address. He ended up returning the completed questionnaire late. He said he did not fully appreciate the importance which would be placed on a late filing.

IV ANALYSIS AND FINDINGS

[17] The relevant provisions of the *Assessment Act* are as follows:

Duty to inform assessor

20 (1) Every person shall give to the assessor all necessary information requested by him for the purpose of enabling him properly to assess the property of that person.

(2) The Director may cause to be delivered to any person a request for relevant information required by him in order to make a proper assessment of the property or occupancy assessment of the person to whom the request is delivered.

(3) Any request shall be sufficiently delivered if mailed by registered mail, postage prepaid, addressed to the person at the last address known to the assessor.

Request for information

21 (1) Every person to whom a request referred to in Section 20 is delivered shall provide the information requested.

(2) If a form has been delivered to him, he shall answer and complete it with a true statement of the particulars thereby required, and shall sign the same and shall,

within thirty days after receipt thereof, return it to the assessor so answered and completed.

Penalty

23. Every person who

...

(b) neglects, refuses or fails to

(i) give to an assessor information reasonably required by him,

(ii) furnish any particulars required by this Act or by a form authorized thereby, or

(iii) provide information in response to a request under Section 20 or to answer, complete and return the form referred to in Section 20,

is guilty of an offence under this Act and, whether or not he has been prosecuted or paid any fine or served any imprisonment to which he has been sentenced, he shall not be entitled to appeal from the assessment of his property for the year in respect of which the information, particulars or form were requested.

[18] Based on the evidence before the Board, which was summarized in a report prepared by Mr. Chaput, dated July 6, 2017, it has been established that information was requested of the Appellants, in relation to the Property, for the 2016 taxation year, in the manner prescribed by s. 20 of the *Assessment Act*, and that the information was not provided within the 30 day period prescribed by s. 21(2) of the *Assessment Act*. In fact, this was not disputed by the Appellants.

[19] Mr. MacDow testified, in a frank and forthright manner, as to the reasons why he failed to provide the requested information within the time limit. The Board accepts all Mr. MacDow's testimony in this regard. The Board must determine the legal impact of these facts on the Appellants' right to continue with this appeal.

[20] The Board has had occasion to review, in numerous decisions, whether there is any discretion to extend the time period set out in s. 21(2) of the *Assessment Act*. The Board has consistently held it has no such discretion.

[21] The reasoning in *APL Properties Limited (Re)*, 2007 NSUAR 99 (CanLII), which was referenced in Mr. Andrews' submissions, provides a thorough analysis of the

Board's reasoning with respect to the operation of ss. 20, 21 and 23 of the *Assessment Act*. This analysis is summarized at paragraphs 53 to 57 as follows:

[53] The relevant provisions of Nova Scotia's *Act* — whether one agrees with them as a matter of policy or not — communicate a clear message: they prescribe a period of 30 days to provide information requested under s. 20, and make no provision whatever for exceptions. For example, the statute does not say (or even just imply) that the normal period will be 30 days, but extensions sometimes may be granted in circumstances in which it may be reasonable to permit a longer period.

[54] With respect to the specific provisions relevant to the present proceeding, the Board has uniformly held that it has no jurisdiction to grant an extension: see, for example, *County Realty Ltd. v. Nova Scotia (Director of Assessment)*, [2001] N.S.U.R.B.D. No. 78 (Q.L.); see also *MacFarlane v. Director of Assessment (Nova Scotia)*, [2005] N.S.U.R.B.D. No. 44 (Q.L.), 2005 NSUARB 48 (CanLII).

[55] The Board considers such fixed periods, with no exceptions, to be a common theme in the *Assessment Act*. It is, in the view of the Board, a statute which has been repeatedly held to contain time limits which are, to all intents and purposes, absolute. Moreover, where the statute does permit an extension, that extension is often strictly limited. For example, the *Act* does permit, under certain restricted circumstances, an extension of time for filing an assessment appeal with the R.A.A.C. — but the *Act* does not permit an extension for filing an appeal of an R.A.A.C. decision with the Board: see, for example, references in *Hinspergers Poly Industries Ltd. v. Nova Scotia (Director of Assessment)*, [2003] N.S.U.R.B.D. No. 81 (Q.L.), 2003 NSUARB 83 (CanLII), paragraph 15; *Hinspergers Poly Industries Ltd. v. Nova Scotia (Director of Assessment)*, [2004] N.S.J. No. 27 (C.A.).

[56] That the Board, or its predecessors, have felt bound to strictly apply such time limits even in very difficult factual circumstances is illustrated by a decision of the Nova Scotia Municipal Board (a predecessor of the present Board) which has been cited subsequently by the Nova Scotia Utility and Review Board. In *Branch Developments Ltd. v. Director of Assessment (1988)*, 7-A M.P.D. 90, the lawyer for the appellant in an assessment appeal was hospitalized with a severe burn injury to his leg, for more than three weeks. During that hospitalization, the 30 day period for commencement of an appeal of the R.A.A.C. decision lapsed. The Municipal Board denied the assessment appeal, on the sole ground, it seems, that the *Act* did not permit a notice of appeal to be filed outside the 30-day period.

[57] Finally, the Board notes the sharp differences between its powers as an administrative tribunal, and those of the Supreme Court of Nova Scotia (or of Newfoundland). On this point, the Board notes that the *Limitation of Actions Act* recognizes, and expressly confers on, the Supreme Court of Nova Scotia, a discretion to extend the time period for commencing a civil action. That *Act*, however, applies only to civil actions commenced in a court, and it has repeatedly been held to have no application to a proceeding before this Board. More particularly, the *Act* has not been held to provide any authority to this Board to exercise the sort of discretion that the Supreme Court has in granting extensions under the *Limitation of Actions Act*. Moreover, the Supreme Court has certain inherent powers (which are not derived from statute), some of which relate to the power to extend certain kinds of time periods. No case law was brought to the attention of the Board which suggests that it, as a statutory tribunal, enjoys any of those inherent powers — to the contrary, the case law of which the Board is aware generally points in the opposite direction.

[22] The Board understands the reasons why Mr. MacDow was late in supplying the requested information to the Director. This understanding, and the unfortunate set of

circumstances before it, does not change the fact that the Board does not have the jurisdiction to extend the time for providing information requested pursuant to s. 20 of the *Assessment Act*.

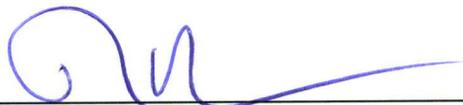
V CONCLUSION

[23] It is the clear intent of the *Assessment Act* that information requested pursuant to s. 20 must be provided within 30 days. Failure to do so means an appellant cannot proceed with an appeal for the taxation year in question. This is what occurred in this case.

[24] The Board must, therefore, dismiss the Appellants' appeal.

[25] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of August, 2017.


Richard J. Melanson