



# The Municipal Assessment Act - Penalty Provisions

By Mark Newman, Fillmore Riley LLP

Section 16(1) of *The Municipal Assessment Act* (the Act) gives broad discretion to assessors to request information from property owners, occupiers or users, relating to the value of a property. More specifically, the section allows assessors to request information relating to the sale of the property, the cost of any construction on the property, and any income or expense related to the use or operation of the property.

Section 16(2) of the Act states that the information is to be provided within 21 days, and Section 54(3.2) of the Act specifies that where the information not provided relates to the income or expenses related

to the use or operation of a property, any reduction in assessment is to be deferred until the later of the year following the year in which the order is made, or the year to which the application relates.

Boards of Revision of municipal government hear assessment appeals on an ongoing basis and are frequently faced with requests from assessors to impose the penalty provisions of the Act.

The Court of Appeal of Manitoba has recently heard four cases relating to the penalty provisions, and their application.

In *Winnipeg City Assessor et al v. Licharson et al*, (2005) MBCA 95, the court ruled on a variety of issues that had arisen in the

context of the four different cases which the court was hearing.

The conclusions expressed by the court may be summarized as follows:

- a) Service of a request for information on a property manager is not good service upon an owner for purposes of Section 16 in a circumstance where the owner has not held up the property manager as being the party to whom the request should be directed, and as well in the absence of any evidence that the request was in fact received by the property owner;
- b) Actual receipt of the request for information under Section 16 will negate any service issue;

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- c) An assessor is free to raise for the first time at the Municipal Board level, the second level of appeal, an issue of a failure to comply with a request for information, even if this issue was not previously raised at the Board of Revision level;
- d) The deferral of reduction applies only in respect of the deferral granted at each level of appeal, with the result that any reduction granted by the Board of Revision will not apply for multiple years, but will apply for a single year only;
- e) The provision of information prior to the Board of Revision hearing does not cure the default;
- f) The requirement of Section 54(3.2) which uses the expression “shall” is mandatory, and there is no discretion in the Board once the statutory preconditions are met;
- g) The fact that the information requested by the Assessor is not used because a different methodology is used, for example, income and expense information is requested, but a cost approach is used, will not excuse the default and the deferral will still apply.

The court noted that there is bound to be a bureaucratic unevenness in the administration of the system whereby requests for information are made, some are followed up, some are not, and ultimately so long as there is no abuse of authority, then the failure of the Assessor to act consistently will not excuse the default.

There are likely to be more cases to be heard by the Court of Appeal relating to these provisions as different factual circumstances continue to present themselves. §

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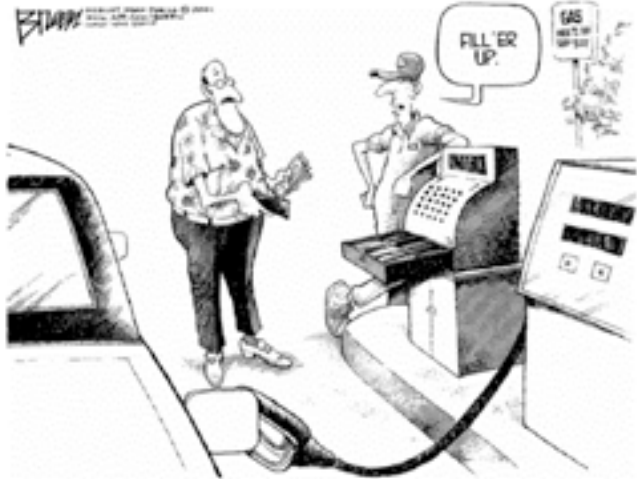




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