Calgary Assessment Review Board

Leading legal case excerpts (as of March 6, 2025)

Caution: The following are excerpts from and discussion about leading cases. The reader is cautioned that the full decision and related legislation should be referenced in order to determine the applicability and relevance of each case to the circumstances under consideration. Cases and legislation may be affected or varied by more recent cases or legislation.

Roles and duties of participants in a hearing

Assessor's duty to be fair:

An assessor has a duty to be fair. - *Boardwalk REIT v Edmonton*, 2008 ABCA 220 at [157]-[163], leave to appeal denied 2008 CanLII 67834 (SCC).
MGA, s. 293(1) In preparing an assessment, an assessor must, in a fair and equitable manner . . .

Board's duty of procedural fairness to self-represented participants:

The duty of procedural fairness does not require a quasi-judicial tribunal to direct a self-represented party how to manage and present his case. The tribunal meets its duty of procedural fairness when it has set appropriate deadlines and given a self-represented litigant a reasonable opportunity to provide evidence and name witnesses within its Rules of Practice and Procedure. – *Magneson v Alberta Securities Commission*, 2023 ABCA 348

Board, City and taxpayer roles in ARB hearings:

Edmonton v. Edmonton East (Capilano) Shopping Centres Ltd, 2016 SCC 47 at [47] and [54]:

[47] The Board is not simply an adjudicator responding only to the parties' record and submissions, as evidenced by its inquisitorial powers (s. 465) and power to refer an assessment to the Minister even when it is not the subject of a complaint (s. 476(1)). Within the complaints process, the Board's role is to determine whether the assessment is fair and equitable (s. 467(3)). Outside the complaints process, the Board may refer an assessment it "considers unfair and inequitable" to the Minister, who may investigate or quash the assessment (s. 476.1). . . .

[54] . . . Properly understood, a complaint does not "belong" to anyone. It is a process through which the Board, with assistance from the taxpayer and municipality (and potentially other persons at the Board's request), determines the correct, fair and equitable value for the assessment.

ARB independence and the rules of natural justice:

The ARB's structure has the necessary degree of independence required of a tribunal charged with taxation assessment as set out by the Alberta Legislature under the MGA. MGA, ss. 454.1 and 454.2, "which clearly express the legislature's intent regarding independence of the tribunal have ousted common law guarantees of independence." - *Altus v Calgary*, 2015 ABCA 86 at [41-45]; following *Oceanport Hotel Ltd v BC (Liquor Control & Licensing Branch)*, 2001 SCC 52 at [27]. "Simply put, the

board is not a court. It is an administrative body engaged in the review of municipal property assessment and taxation. It is not therefore entitled to the same constitutional guarantee of independence. Moreover, in this instance, the degree of independence required of the ARB has been set out in the MGA. I must defer to a structure specifically set up by the Legislature.": 2013 ABQB 617 at [152] per Eidsvik J, affirmed on appeal in *Altus v Calgary,* supra.

Member's term expiring prior to completion of hearing

S. 20(7) of the Interpretation Act provides that an LPRT or ARB Member engaged in any investigation, hearing, review, appeal or undertaking may conclude that duty or function notwithstanding the natural expiry of the Member's appointment term, unless the minister or person authorized to make the appointment directs otherwise. However, s. 20(8) provides that if the Member's appointment "is terminated, revoked or rescinded", the Member may only conclude that matter if expressly permitted by the Minister or person authorized to make the appointment. These provisions are to be given a "fair, large and liberal construction and interpretation", such that the Member may conclude the matter even if the appointment expires before the hearing on the merits has commenced: *Rollingson Racing Stables Ltd. v. Horse Racing Alberta*, 2019 ABQB 632, confirmed 2020 ABCA 419, leave to appeal to SCC dismissed 2921 CanLII 39843 (SCC).

Issues affecting merit hearing outcomes

Properties with no market:

A taxpayer is not to be relieved of the burden of property tax based on a technical interpretation of a statute. When, for whatever reason, there is no market for a property that has value to its owner, that owner can serve as a proxy for a competitive market. – *Victory Motors v Fraser Valley Assessor*, 2017 BCCA 295; leave to appeal denied 2018 CanLII 35646 (SCC). However, reserve lands in a subdivision which must later revert to the City for no cost have no market value and must be assessed at nil. – *Calgary v Municipal Government Board*, 2004 ABCA 10 at [12-13] & [18].

Mass appraisal model does not apply once a complaint is filed; sale of the subject property close to the valuation date is the best indicator of market value; market value is not a range of values:

Altus v Alberta (Edmonton CARB), 2023 ABCA 35 ("Chappelle Boulevard case"):
[14] The use of the mass appraisal method is mandated by s. 5(a), but the overall objective of s. 5 is still the "assessment of property based on market value". The City acknowledges that the mass appraisal method is used by the assessor to prepare assessments, but does not apply to the Review Board's review of an assessment following a complaint. The use of the mass appraisal method to assess based on market value, having regard to "typical market conditions", does not displace the standard of "market value" with a standard of "average values", "typical market prices" or "typical market values". It follows that the Board is not obliged to look at "typical market values" if cogent, uncontroverted evidence of market value exists.
[15] Both s. 5 and s. 6 of the Regulation refer to "estimates" of market value, reflecting the fact that it is often impossible to determine the exact value of a property at a given point in time. There may well be a

range of market values that could be justified, and the Review Board's confirmation of an assessment value in that range will not be disturbed on judicial review. However, the task is still to determine market value on the valuation date for each property, not a range. And where there has been an actual timely sale of the subject property, then it is possible to set the exact market value.
. . . [18] . . . The real issue appears to be an allegedly overly deferential attitude towards the City's assessments, and an implied obligation on the taxpayer to show that any sale data inconsistent with the City's assessment is "typical".
[27] . . . Some convincing justification is needed for assessing a property in excess of its actual sale price.
[29] . . . the Review Board's treatment of the Chappelle Boulevard transaction is problematic. When it is used as a comparable, it is acceptable to adjust it for time and other factors, but it must still be regarded as an accurate measurement of the value of the Chappelle Boulevard property on the date of the transaction.
[30] . . . The mass appraisal method allows the use of "common data", but it does not negate the objective of setting a market value for individual properties. That may be an acceptable way to set an assessment based on mass appraisals, but once an individual property owner challenges an assessment the Review Board's task is to assess its market value*:* *Mountain View County v Alberta (Municipal Government Board)*, 2000 ABQB 594 at paras. 21, 25, 86 Alta LR (3d) 269, 272 AR 123.
[39] These systemic standards are important tools in ensuring that the assessment system as a whole is operating fairly. They do not, however, displace or dilute the right of a property owner to complain about the assessment of an individual property under s. 460 of the *Act*. An inaccurate assessment cannot be justified on the basis that the system as a whole is operating within the statistical parameters permitted by the *Regulation*: ***534 Capital Corp. v Calgary (City)***, CARB 79715P-2015 at para 21.

Judicial review standards for ARB decisions

ARB not bound by previous decisions, but should explain variation from them:

Canada v Vavilov, 2019 SCC 65 at para [22]: While administrative decision makers are not bound by their previous decisions, they must be concerned with the general consistency of administrative decisions. Therefore, whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable.

Standard of judicial review of ARB decisions:

Altus v Alberta (Edmonton CARB), 2023 ABCA 35 ("Chappelle Boulevard case"):
[9] It is common ground that the standard of review of the Board's decisions is reasonableness, as described in ***Vavilov****. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and that is justified in relation to the facts and law that constrain the decision maker, and exhibits the requisite degree of justification, intelligibility and transparency: ***Vavilov*** at paras. 85, 99-107. To be reasonable, the analysis must be rational and logical, and demonstrate a line of reasoning that leads to the ultimate conclusion. The outcome must also be reasonable. It must be justified in relation to the constellation of law and facts that are relevant to the decision: ***Vavilov*** at para. 105.

[10] This is a process of "review", marked by judicial restraint and respect for the mandate and specialized expertise of decision makers: ***Vavilov*** at para. 75. The court is not to start by re-making the decision *de novo*, or deciding what decision it would have made, or deciding what decision would have been "correct": ***Vavilov*** at paras. 83, 116, 124.

[11] The appellant argues that a taxpayer is entitled to an assessment that is "both correct and equitable". That is a fair statement of the objective, but on judicial review the issue is the reasonableness of the Review Board's determination that the assessment is correct and equitable.

**Canada v Vavilov*, 2019 SCC 65

Discussion about "reasonableness" and "correctness" standards of judicial review

"Reasonableness" is the default standard, which results in the Court giving deference to a specialized tribunal, such as the ARB. A decision can be found to be unreasonable if the tribunal gives undue weight to an irrelevant factor, overlooks an applicable statute or case law, or provides reasons that do not follow a rational chain of analysis. The Court will usually send an unreasonable decision back to the tribunal for rehearing.

The "correctness" standard, which results in the Court deciding whether the tribunal's decision is correct, is applied in more limited circumstances: a) constitutional questions such as Charter rights or federal/provincial jurisdiction; b) when specified by statute; c) deciding jurisdictional boundaries between tribunals; or d) of central importance to the legal system beyond the specific case. The Court will usually substitute an incorrect decision with its own.

Even before *Vavilov*, the standard of review, with respect to issues of natural justice and procedural fairness, was correctness: *Grand Central Properties v Cochrane,* 2013 ABCA 69 at para. 14.

The standard of review for an SDAB regarding interpretation of its own statute is correctness: *Cargill v Wood Buffalo SDAB* 2023 ABCA 264 at [24]; *Clarity Development Authority v Edmonton SDAB*, 2024 ABCA 147. A discrete question of law, especially with respect to a statutory appeal structure, is one which attracts correctness review: *Avillia Developments v Edmonton SDAB*, 2024 ABCA 95.

Comment: The following BCCA decision is notable in its finding that the misinterpretation of case law is an error of law extricable from the contractual interpretation process:

> *Yegre EB Ltd. v. Seguin*, 2024 BCCA 365
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> [33] The first ground of appeal relates to the judge's contractual interpretation, which raises issues of mixed fact and law. Appellate intervention is justified if the appellant demonstrates that the judge made an extricable error of law or a palpable and overriding error of fact. The Supreme Court of Canada has cautioned appellate courts to adopt a restrained approach to identifying extricable errors of law in disputes over contractual interpretation: *Trenchard v. Westsea Construction Ltd.*, 2020 BCCA 152 at paras. 39–40, citing *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 53–54 [*Sattva*].
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> [50] Accordingly, I conclude that the judge erred in interpreting the case law as recognizing a relevant distinction between the terms "attorn" and "submit", so as to lend weight to the respondents' submission that the Clause granted exclusive jurisdiction to the Alberta courts. This is an extricable error of law because it concerns the judge's misinterpretation of a legal precedent as establishing a principle ("submit" and "attorn"

have different meanings) that is unconnected to the factual matrix. The application of an incorrect principle is an error of law: *Sattva* at para. 53.