

Appendix 2

- 178** During the course of our investigation, we heard from thousands of individuals, numerous associations, and many municipalities that expressed strong opinions regarding the current state of property assessment in Ontario. However, the focus of my investigation was the administration of the property assessment system by MPAC, not the system itself. As Ombudsman my responsibility is to address government administration, not to substitute my views for the political judgment of legislators. The broader issue of how we tax municipal property is one that we elect Members of Provincial Parliament to decide. It is not the function of the Ombudsman of Ontario to supplant the role of Parliamentarians, who decide the broad-based policy issues. Having said this, I cannot ignore the tidal wave of criticism that was directed at the legislative framework for property assessment in Ontario during this investigation. Accordingly, I am taking this opportunity to set out some of the compelling issues that were raised with our Office.
- 179** A number of individuals and organizations urged wholesale reform of the market value assessment system. They emphasized the volatility and unpredictability of market value assessments. “Hot” real estate markets result in property owners of modest homes and waterfront properties finding themselves being taxed on substantial unrealized capital gains. This is particularly challenging for those with little ability to pay. A common theme addressed by a multitude of complainants was the immense burden the current system imposes on those on fixed incomes, such as seniors. Some individuals say they may have to sell their homes because of increased taxation. It is not an answer to say to these valued citizens that in their later years, they will just have to adjust, leave the homes they have lived in for decades, and “downsize.” It has also been suggested that the Province’s 5 per cent cap on reassessment-related increases for businesses results in inequitable distribution among the commercial class with some businesses funding the shortfall that the cap creates, as well as an unfair shift of the tax burden from the business class to the residential class.
- 180** Some have suggested that one way to stabilize the system would be to introduce a cap on assessment increases, for instance by creating a base year, and limiting future increases to the rate of inflation or to a level that parallels the historic long term Ontario Real Estate price index. For instance, in some jurisdictions properties are reappraised at current fair market value only when there is a change of ownership or upon completion of new construction. Some jurisdictions provide that annual assessments only increase up to a set percentage.

- 181** Many expressed frustration with the current deadlines for requesting reconsideration and complaining to the Assessment Review Board. Property owners often have to file a complaint to preserve their rights before the Board, before their request for reconsideration has been considered. If they settle before the Board hears the matter, they must then wait sometimes many months before obtaining a refund of their filing fee if they settle with MPAC before an Assessment Review Board hearing. The suggestion was repeatedly made that the process of reconsideration and complaint should be made sequential, and some suggested that the complaint timeline be a floating one. Both MPAC and Assessment Review Board staff have expressed support for this option. This concern may, however, be balanced against the need of municipalities to have sufficient information to quantify their potential tax exposure prior to finalizing budgets and setting tax rates.
- 182** We also heard from those in the agricultural field who expressed concerns about the current classification and valuation of farm and related land in the Province.
- 183** It is unlikely that any system for the assessment and taxation of land will ever be praised by those subject to it. While most Ontarians accept the inevitability of taxes, they want assurance that their assessments for tax purposes have been fairly arrived at. There is always room for improvement. It is clear that the current assessment system is far from perfect, and I urge the government to engage in a process of review to consider the many concerns and options available with respect to the property assessment system in Ontario.



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March 22, 2006

Mr. André Marin
Ombudsman of Ontario
Bell Trinity Square
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Dear Mr. Marin:

Thank you for providing us with a copy of your report entitled "Getting It Right" - Final Report on the Investigation into the Transparency of the Property Assessment Process and the Integrity and Efficiency of Decision-Making at the Municipal Property Assessment Corporation (MPAC).

Ministry of Finance officials have completed a thorough review of the report and have taken careful note of the commentary and detailed list of recommendations stemming from your investigation.

While most of the recommendations in the report deal with internal processes and procedures at MPAC, we have identified the following two recommendations which propose specific actions on the part of the Province:

- ▶ Recommendation 8 – Undertake a review of whether the public interest is better served by permitting MPAC to maintain confidentiality over its intellectual products or by requiring full disclosure of property assessment methodology to taxpayers.
- ▶ Recommendation 21 – Place the onus of proof on MPAC (rather than the taxpayer) to substantiate the correctness of assessments upon appeals to the Assessment Review Board.

We note that a third recommendation which was directed to the Province in the preliminary version of the report has been removed. Specifically, the former recommendation number 14, which proposed an amendment to subsection 44(2) of the *Assessment Act* regarding the degree of emphasis to be placed upon actual sale prices, has not been included in the final report.

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- 2 -

As noted in my previous correspondence, we all share a common goal of maintaining a property tax system that is transparent and accountable to taxpayers and municipalities, and we appreciate receiving suggestions for ongoing improvements to this system.

With respect to recommendation 8 of your final report regarding the nature and scope of assessment information that is made available to the public, we agree with your statement that this is a complex question of public policy. There is a delicate balance to be struck between the amount of information that should be made publicly available to maintain transparency in the tax system, and the need to safeguard the privacy rights of individuals as well as the legal and contractual rights of various stakeholders.

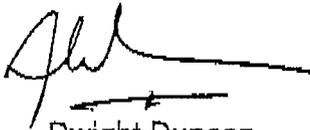
We believe it would be helpful to bring clarity to these issues so that all affected parties will be aware of the rules that govern the disclosure of assessment information. It is our intention to proceed with consultations on this issue following the public release of your report. Input will be sought from a variety of stakeholders, including MPAC, Teranet, and the Information and Privacy Commissioner.

With respect to recommendation 21 of your final report regarding the onus of proof on assessment appeals, we have noted the proposal to reverse the traditional onus and we intend to explore this idea further by engaging in consultations with the Ministry of the Attorney General, the Assessment Review Board, MPAC, and the legal community. We also intend to engage in discussions with other jurisdictions, including Manitoba, to learn from their experiences.

With respect to the 20 recommendations in the report that are directed towards MPAC, the Ministry of Finance is prepared to work closely with MPAC in its examination of measures that may be undertaken to bring about the recommended changes.

Thank you again for your advice on these important issues and for the opportunity to provide feedback on your report.

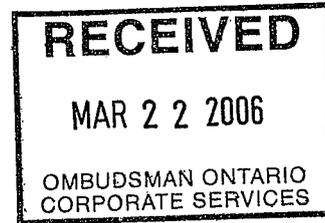
Sincerely,



Dwight Duncan
Minister



MUNICIPAL PROPERTY ASSESSMENT CORPORATION



March 22, 2006

Mr. André Marin
Ombudsman
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Toronto ON M5G 2C9

Dear Mr. Marin:

Thank you for the opportunity to respond to your final report and recommendations. As mentioned in the Municipal Property Assessment Corporation's (MPAC) response to your preliminary report, we strongly believe that transparency and openness are fundamental in building trust in the property assessment system.

We note your acknowledgment of MPAC's rigorous quest for improvement and your comment that the public as a whole remains prepared to support MPAC in this quest. To this end, we welcome your suggestions for improvement and agree that it is important to ensure that Ontario taxpayers know more about the system and how their own property is assessed.

As we requested previously, the full MPAC Board of Directors would like to meet with you prior to the public release of this report.

We were pleased to provide feedback and comments on the preliminary report and appreciate the changes made in the final report. In your final report's 22 remaining recommendations, there are two that are the responsibility of the Government of Ontario. Of the 20 that are within our purview, there are 17 that we will implement and in several cases had already begun addressing. There are three recommendations that will require a more in-depth review due to the potential impact for significant resource requirements.

We will ensure all recommendations in your report are reviewed by the MPAC Board of Directors in a timely manner, and provide direction in those matters that will require funding support or legislative changes.

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As noted by the Ombudsman in his preliminary report, MPAC's corporate culture is one of continuous improvement. As an example, in 2004 the Board of Directors approved a strategy to improve MPAC's services in four key areas: product quality, service delivery, productivity and communications. We have made great strides in improvement in these areas in the last two years.

- We add 80,000 properties annually to the assessment rolls. Since 1998, we have added more than half a million properties, which is roughly equivalent to the City of Toronto.
- We are committed to improving our data. Upon the completion of three years of negotiation with the Government of Ontario and Teranet Inc., an agreement was reached wherein MPAC will receive electronic transfer of critical Land Registry documents. The benefits we will derive from this agreement include improvements in the timeliness and quality of data, as well as the associated operational efficiencies. Municipalities will also benefit from this agreement through improved services such as the processing of severances and consolidations.
- We responded to increases in the number of properties by adding more than \$25 billion of in-year construction assessment to the 2005 municipal rolls.
- We made steady progress in processing building permits to deliver more timely supplementary and omitted assessments. We also met our target in 2005 to bring severances and consolidations up to date. For severances and consolidations where information is complete and accurate, we are meeting our performance standard of completing severances within 30 days of receipt.
- Our work to build a new relational database to replace our legacy mainframe system is progressing well. The new Integrated Property System is scheduled to be fully implemented in late 2006 and will allow us to further improve quality, speed and accuracy. It will allow us to include additional information on the Property Assessment Notice and other materials – a capability we did not have in the past.
- In 2004, staff visited more than 370,000 properties as part of a dedicated reinspection program. Taking the success of this program one step further, we are implementing a data integrity project this year. The integrity of our data is critical to the delivery of accurate assessments.
- Customer service improved in 2005. The time to review taxpayers' concerns through MPAC's Request for Reconsideration program decreased by half. Our

average speed to answer taxpayers' calls into the Customer Contact Centre decreased from 5.5 minutes to an average of 30 seconds in 2005.

- MPAC committed to improving communications with taxpayers. In 2005, we launched a province-wide outreach program. Additional information was provided on the Property Assessment Notice; over 600 open houses and information sessions were held where more than 10,000 property owners attended to hear about how their assessed values were determined; and we contacted hundreds of media outlets to ensure reporters had information about the assessment function and how values are determined. This program was built on the results of polling with a random sample size of 1,300 Ontario taxpayers, focus groups, and interviews with over 100 municipal and government elected representatives and their staff.

In our response, we have not identified the full cost for implementing the recommendations. The MPAC Board of Directors, as representatives of municipalities, businesses and taxpayer groups will need to consult fully with the Government of Ontario and municipalities to determine how additional costs may be borne by the taxpayer.

As stated in our response to the preliminary report and in our representations with the Ombudsman, MPAC requested that the report be disclosed to the Assessment Review Board, the Association of Municipalities of Ontario, the City of Toronto and Teranet Inc. prior to its final release. MPAC continues to encourage the Ombudsman to seek representations from these organizations before the release of your final report.

Response to the recommendations and MPAC's capacity for implementing them

Many of the recommendations of this report are consistent with MPAC's four key priority areas – product quality, service delivery, productivity and communications – as identified by the Board of Directors.

Our Board of Directors will review all recommendations to ensure we have, through existing resources and current legislation, the capacity to move faster and further on these much needed changes. Our current commitments are in the following three areas, and we will make changes where possible to accommodate further changes:

- delivering on our legislative responsibility to complete the 2006 Assessment Update for the 2007 taxation year;

- delivering on our legislative responsibility to provide services and products in support of the November 2006 municipal and school board elections, including carrying out our enumeration project; and
- implementing MPAC's Integrated Property System (IPS) including the completion of development projects which will enable a complete migration from our legacy mainframe system (OASYS) and the associated decommissioning of our mainframe operations. The completion of this project will facilitate the implementation of many of the Ombudsman's recommendations.

We have grouped the final recommendations into three categories:

- Recommendations that are the responsibility of the Government of Ontario;
- Recommendations that require more review prior to implementation; and
- Recommendations that we will implement.

Recommendations that are the responsibility of the Government of Ontario

***Recommendation 8:** That the Government of Ontario undertake a review of whether the public interest is better served by permitting the Municipal Property Assessment Corporation to maintain confidentiality over its intellectual products, or by requiring full disclosure of property assessment methodology to Ontario taxpayers.*

If the Government of Ontario undertakes such a review, MPAC believes it should be called upon to make representations, and will be pleased to respond if requested.

***Recommendation 21:** That the onus in assessment matters be placed on the Municipal Property Assessment Corporation to substantiate its assessments when they are challenged.*

This recommendation will require a legislative change to the *Assessment Act* and a change in the practices of the Assessment Review Board, both of which fall under the purview of the Government of Ontario. If the Government of Ontario undertakes such a review, we believe MPAC should be called upon to make representations, and will be pleased to respond if requested. See **Addendum** for additional information.

Recommendations that require more review prior to implementation

***Recommendation 5:** That the Municipal Property Assessment Corporation provide a copy of the Property Profile Report relating to the property when it sends out its property assessment notices.*

MPAC agrees with the recommendation.

In 2006, MPAC will undertake a pilot project in one geographic area to help develop strategies for wider distribution and determine the additional production costs, as well as the increased staffing requirements for responding to an anticipated increase in enquiries.

***Recommendation 10:** That the Municipal Property Assessment Corporation review its current Customer Contact Centre practices with a view to ensuring that property owners gain access to those staff who can most appropriately address their enquiries.*

MPAC agrees with the Ombudsman's recommendation that property owners gain access to staff who can most appropriately address their enquiries.

MPAC has undertaken this review in the past to arrive at our current business and staffing models in order to address the high volume of enquiries we receive. We continuously review this model.

The Ombudsman has noted that MPAC has a massive and challenging task in administering the property assessment system in Ontario. One of the challenges facing MPAC in early 2000 was how to efficiently and effectively deliver annual assessment updates to over 4 million property owners and respond to their enquiries in a timely and appropriate manner.

The need to change the business processes at MPAC to respond to this challenge was the driver to implementing the Customer Contact Centre. The Centre, like the call centers established by most large organizations, provides the first point of contact for all customers. MPAC's Contact Centre provides level one support to all property owners in Ontario and handles over 500,000 enquiries on an annual basis.

MPAC's Contact Centre representatives are extremely effective in responding to general customer enquiries and resolve 92% of all phone enquiries. However, complex customer enquiries requiring local property knowledge and or in-depth assessment knowledge are forwarded to the field offices for further action. These enquiries are forwarded via e-mail and typically customers are contacted within one to two business days.

Requests for Reconsideration and Guidelines for the Release of Assessment Data (GRAD) requests such as comparable reports are some of the key activities managed by field office staff. These requests are often detailed in nature and can take weeks or months to fulfill. These requests are typically the issues that customers want or need to speak to field office staff about. Service has improved dramatically in these areas over the course of the last four years. With a combined improvement in the ability of Call Centre staff to respond to first calls, field office employees have been able to improve their turn around time for completion of Requests for Reconsideration and Assessment Review Board appeals.

MPAC encourages walk-in visits at each of our 33 local field offices. During every assessment update, including 2005, we extended hours to give every opportunity for taxpayers to have their enquiries addressed.

Recommendation 11: That the Municipal Property Assessment Corporation undertake a review of its staffing needs to determine whether staffing strategies can be identified and pursued for improving the accurate collection of property data.

MPAC agrees with this recommendation. However, to address the issue fully, we need to go further than reviewing staffing strategies. Storage, processing and integration of attribute and spatial data and the organizational structure to support high quality data must also be considered.

It is MPAC's practice to continuously strive to improve the accuracy of its data. Just as accurate property values are the cornerstone of the property tax system, accurate data is the foundation of accurate values. We have never lost sight of this important issue nor the sense of urgency to achieve accuracy of data.

In 2004, we undertook a \$2.5 million dedicated reinspection program. Of the 319,022 residential properties that were inspected, 201,795 properties, or 63.3%, resulted in no data changes. Of the remaining 117,227 properties inspected where a change was recorded, the total absolute value change was \$663.3 million or an absolute average value change of approximately \$5,700, which represents 2% of the average value in the province (\$267,000). The inspection audit conducted in late 2004 indicated a change rate of 50% after a field inspection. The request to have a recent inspection audit include similar statistics that were generated in the 2004 reinspection program was to gauge the significance of the errors in real terms on the same basis and in no way was there any attempt to diminish the findings.

This year MPAC has a \$1.7 million project for data integrity. Future years' forecasts have included a similar provision for data integrity, subject to the Board's review and approval of annual budgets.

MPAC has made a number of strategic investments to improve data quality. The Integrated Property System (IPS) is a multi-million dollar and multi-year project representing the largest single capital investment to date by MPAC. The primary purpose of IPS, an enterprise-wide Oracle database platform, is to improve MPAC's handling of data. The Ontario Assessment System (OASYS), which is currently used by MPAC, is a 25-year-old legacy system incapable of meeting MPAC's business needs from service, data capture, processing, and reporting perspectives. With the new system in place, MPAC will be able to store and retrieve data efficiently as well as run new automated audits that will identify data anomalies. This system has just come out of development and is being rolled out in a phased implementation this year. As a result of this initiative, MPAC will no longer be hampered in our ability to systematically and efficiently review our data.

As noted by the Ombudsman, the valuation model process was prone to errors as identified by MPAC's internal audits. However, the errors identified in the report were issues that were appropriately corrected before values were produced. The cause of the errors is an inability to integrate a statistical package model building application and OASYS (our existing data system). As a result, staff were required to manually enter all of the necessary output data from a statistical software package to OASYS. Not surprising, this manual process was prone to error. With the implementation of IPS this February, we have greatly reduced the opportunity for error through the automation of this process.

Approximately three years ago, MPAC introduced a new organizational structure to improve quality, consistency, and productivity of capturing and processing data, by creating a separate and dedicated Property Inspection group and Central Processing Facility (CPF) to focus on collecting and processing data. In doing so, MPAC also moved from paper and pencils to electronic devices to record and capture data. Through audits, MPAC identified shortcomings and areas for improvement. MPAC established uniform work procedures and training across the province. Since implementation, MPAC continues to see improvements in the quality and consistency of our data as documented by the Quality Services department.

MPAC has also recently signed an agreement to secure electronic Land Transfer Tax Affidavits/Statements, registered plans and other documents associated with ownership. Processes have been redesigned to implement more efficient and accurate transfer of information. This information will be used to update, assess and correct inaccurate information on file.

However, all these advanced tools and organizational restructuring do not relieve MPAC of the need to physically inspect property. To this end, MPAC will be conducting data integrity reviews via field inspection and questionnaires and will be piloting new

electronic data collection devices and forms. The intent of this project is to improve the accuracy and speed with which data can be collected.

To carry out a site review of every property within a five-year cycle would cost significantly more than MPAC's current funding allows. Most assessment jurisdictions target 4 to 6 year physical reviews; however, most have difficulty achieving their targets because of a lack of resources. The 2004 reinspection project demonstrated the effectiveness of such a program in identifying and correcting errors.

MPAC believes that a dedicated reinspection program, combined with major technology investments and organization changes, as outlined above, are the basic building blocks to improving data accuracy.

MPAC will continue to highlight data accuracy in our strategic planning and budgets, as recommended by the Ombudsman.

Recommendations that we will implement

***Recommendation 1:** That the Municipal Property Assessment Corporation should amend the Brochure that accompanies its Notice of Assessment to describe the importance to taxpayers of ensuring that the Municipal Property Assessment Corporation has accurate information about the taxpayer's property, and describing alternative means for learning about **all** of the information the Municipal Property Assessment Corporation has relating to the subject property.*

MPAC agrees with the recommendation and will implement the changes to the brochure for the 2006 Assessment Update.

In preparation for the province-wide communications and outreach program implemented by MPAC in 2005, focus groups and province-wide surveys were conducted which gave MPAC the basis for improving the assessment information provided to taxpayers. The Property Assessment Notice and the brochure were cited as a primary source for information used by taxpayers. For these reasons, we believe this recommendation will further enhance the information already provided to property owners.

Recommendation 2: *That the Municipal Property Assessment Corporation should amend the Notice of Assessment to describe, for cases where "multiple regression analysis" techniques have been used, not only the average municipal assessment increase or decrease but also the average percentage change within the particular neighbourhood zone the property falls within.*

MPAC is in agreement with the Ombudsman's recommendation to provide more complete information concerning the performance of the local real estate market.

The recent change to this year's notice was the result of focus group sessions with property owners. From these sessions, MPAC learned the primary concern for property owners was how the change in value would affect their taxes. By providing the percentage change at the municipal level as well as the percentage rate of change on the individual property, taxpayers were able to gauge the likely impact their new current value assessment will have on their taxes. As well, taxpayers also received last year's assessed value for comparison purposes.

MPAC also discussed internally whether market percentage change by neighbourhood and property type (i.e., detached, semi-detached, townhouse, and condominium) would also be helpful as recommended by the Ombudsman. It is felt that all of this information helps to set the context for the market change on properties that are similarly situated. However, these statistics are averages and do not drive the individual property value.

There are typically five key factors in determining the valuation of a property. However, MPAC also tracks and evaluates a large number of property characteristics to determine their potential influence on the price, if any. The significance of these characteristics on value depends on the market in which the property resides and to a large extent on the variables present within the valuation model. For example, a condominium valuation model will not have the same property characteristics as a waterfront recreational model.

To communicate these concepts in a clear manner poses a real challenge. The communications strategy will also take into account the information and operational requirements of the other stakeholders in the property assessment process; the ARB, the municipalities and the Ontario Government. MPAC has begun working on strategies to clearly communicate the complexity of the valuation process and, in a way that accurately reflects the situation's specific nature of the valuation process. MPAC will hold focus groups before launching its revised communications program.

The Property Assessment Notice will provide the basic level of information that answers the vast majority of concerns raised by the typical taxpayer. The brochure will contain more general information about the subject and how to obtain much more specific information as discussed above.

MPAC will make additional information available on its web site and through the Customer Contact Centre. This information could include market analysis broken down by neighbourhood, design type, and by the variables within the model.

MPAC suggests that the primary approach used to derive the value (i.e., sales comparison approach, cost approach, income approach) be identified on the Property Assessment Notice. MPAC would target implementation of this recommendation as part of the 2007 Assessment Update.

Recommendation 3: *That the Municipal Property Assessment Corporation should amend the Brochure that accompanies its Notice of Assessment to describe how information about comparable properties can be useful on appeal, furnish accurate and complete information as to exactly how many comparables can be secured and how these comparables can be accessed, making particular note that the six comparables the Municipal Property Assessment Corporation selects are likely to be relied upon by the Municipal Property Assessment Corporation in the event of an appeal to the ARB.*

MPAC agrees with this recommendation and will implement for the 2006 Assessment Update.

Recommendation 4: *That the Municipal Property Assessment Corporation should include a box on the Notice of Assessment provided to property owners recording the previous years where Requests for Reconsideration settlements or Assessment Review Board reassessments were achieved. The box should record "No" if the Municipal Property Assessment Corporation believes there are none, and the years in question and type of review process used, where the Municipal Property Assessment Corporation is aware that reassessments have occurred.*

MPAC agrees with this recommendation and will target implementation in 2007.

Recommendation 6: *That the Municipal Property Assessment Corporation, in providing information about comparables, should include all information about those properties that may be relevant to the evaluation of the property.*

MPAC agrees with this recommendation and will undertake a broader review of our release of information about comparables. The immediate implementation of this recommendation is captured in the Multiple Regression Analysis proposal, outlined under Recommendation 7, with the release of the Valuation Detailed Enquiry (VDE) screen information.

Recommendation 7: *That the Municipal Property Assessment Corporation implement the changes in its Proposal for Release of MRA Related Data, dated November 17, 2005.*

MPAC agrees with this recommendation. An internal MPAC team has been struck to implement the Proposal.

Recommendation 9: *That the Municipal Property Assessment Corporation ensure that its administrative procedures regarding assessments and inspections, disclosure of information, requests for reconsideration and Assessment Review Board appeals be set out in writing and made available to the public on its website. These procedures should include those administrative procedures incorporating the recommendations set out in this report.*

MPAC agrees with this recommendation.

Recommendation 12: *That the Municipal Property Assessment Corporation standardize its inspection audit reports, and provide the Ombudsman with the results of its inspection audits and quality reviews for 2006, as they become available.*

MPAC agrees with this recommendation.

Recommendation 13: *That, when a property assessment is challenged based on an actual sale price proximate to the valuation date, the Municipal Property Assessment Corporation should generally accept that sale price as the best evidence of the property assessment. The actual sale price should also be treated as an important factor in assessing the current value of the particular property in future years. MPAC should deviate from these general rules only if there are concrete, cogent reasons for believing that the sale has not been made under market conditions or does not otherwise reflect actual market value.*

MPAC agrees with this recommendation.

When a property's current value is challenged based on an actual sale price proximate to the valuation date, MPAC will generally accept that the sale price is evidence of great weight in determining current value. The sale price will also be treated as an important factor in assessing the current value of the property in future years, absent economic or physical change. MPAC will deviate from these general rules only if there are concrete, cogent reasons for believing that the sale has not been made under market conditions or does not otherwise reflect current value.

Further to paragraph 105 of the Ombudsman's Report, some examples of why a sale of a property may not be the best indicator of current value are:

- (i) there may be evidence that the sale was not an arms length transaction between willing and knowledgeable buyers and sellers. For example, the sale was between related parties, or was compelled under a power of sale, family break-up or as part of winding up of an estate;
- (ii) upon inspection and investigation of the property and similar properties sold in the same time frame, it is demonstrated that the sale is anomalous; and,
- (iii) there may be evidence of circumstances affecting the sale price so that the price does not reflect the current value of the unencumbered fee simple. Such circumstances may include:
 - (a) the composition of tenants,
 - (b) leases or transaction terms that do not reflect the current market, or
 - (c) lack of exposure of the property to the market.

MPAC will take steps to ensure that this principle is properly communicated. Further, MPAC will place stronger emphasis on this issue in its ongoing staff training. Where MPAC's current value is challenged based on a sale and the sale is not considered to be the best indicator of current value, taxpayers will be fully informed of the reasons for this determination.

Recommendation 14: *That the Municipal Property Assessment Corporation should apply Assessment Review Board findings of value at specific valuation dates when carrying out assessments for future years based on the same date.*

The *Assessment Act* now requires annual assessment updates so this situation is not expected to occur in the future. However, if it should, MPAC agrees that decisions of the Assessment Review Board (ARB) will be carried forward to future assessment years where the valuation date has not changed. Exceptions will be made if there has been a physical change to the property that affects the current value, a change in use affecting the classification, or new evidence comes to light that clearly demonstrates that the adjustment of the ARB is no longer warranted.

Recommendations 15 & 17: *That the Municipal Property Assessment Corporation should be bound to apply any assessment reductions imposed by the Assessment Review Board to future years' market value assessments of the same property, unless they have been determined to be wrong by a court of law or the Municipal Property Assessment Corporation can clearly demonstrate that the circumstances justifying the assessment reduction have changed. In such case the reasons justifying the change should be set out in the taxpayer's assessment notice.*

That the Municipal Property Assessment Corporation should be bound to apply reductions agreed to in minutes of settlements to future years' assessments of the same property unless the Municipal Property Assessment Corporation can clearly demonstrate that the circumstances justifying the assessment reduction have changed. In such case the reasons justifying the change should be set out in the taxpayer's assessment notice.

MPAC agrees with the Ombudsman that reductions granted by the Assessment Review Board (ARB), whether by Minutes of Settlement or decisions of the Board, will be carried forward. Adjustments made under Requests for Reconsideration will also be carried forward unless circumstances as noted by the Ombudsman prevent the carry forward. As noted by the Ombudsman, in cases where circumstances justify changing the assessment reduction, MPAC will notify the taxpayer.

As the Ombudsman acknowledged, MPAC has already undertaken laudable steps, through the efforts of the Year-End Process Improvement Team established in 2004, to improve in this area. The following steps have or will be taken to address this issue:

- Electronic tools have been developed to scan the various databases involved in the appeal process.
- Exception listings with possible anomalies are produced for staff to review.
- Exception listings will be reviewed several times throughout the year to ensure appeal adjustments are properly updated as they happen.
- With the implementation of the Integrated Property System in 2006, MPAC will examine options for automating the process to minimize the chance of error.
- Clear directives will be provided to staff to ensure a consistent understanding of those occasions when, as noted by the Ombudsman, decisions cannot legally be carried forward.
- A better coding system will be established to carry forward decisions.

- Audits will be conducted.

In terms of communicating carrying forward decisions to property taxpayers, MPAC will examine options, including the recommended use of the Property Assessment Notice, to determine the most effective method for communicating the decision to affected taxpayers.

Recommendation 16: *That the Municipal Property Assessment Corporation should ensure that all minutes of settlement it enters into relating to the assessment reductions contain reasons clearly explaining why a reduction has been agreed to, and that these reasons are recorded.*

MPAC agrees that it can provide additional information to the taxpayer to explain the reasons for the settlement. MPAC will record the reasons for the Minutes of Settlement in its files.

All parties to the settlement should continue to have the option of not recording the reasons for the settlement in the Minutes.

For appeals to the Assessment Review Board (ARB), settlements are complicated by the fact that more than two parties are legally involved. MPAC, the assessed person, and the municipality are statutory parties to all assessment complaints. Other parties, such as regional municipalities or counties may apply to the ARB to be joined as parties. In other cases, third parties commence appeals on properties owned by others. Assessment complaints for a property may also involve several tax years and may include supplementary and omitted assessments. The parties may have the same reasons for settling, different reasons for settling, they may agree on a value but not the reasons, and/or they may differ for each tax year under complaint. Currently, taxpayers, municipalities or MPAC do not have to agree to the reasons for any settlement, only the revised value or classification, when they sign the Minutes of Settlement. Some of the parties to the appeal, particularly those represented by agents or legal counsel, will object to the inclusion of reasons, either as part of the Minutes of Settlement, or as a separate document.

Most assessment complaints before the Board are the result of a difference of opinion as to the correct value and are not factual in nature. In many cases, especially for high value commercial and industrial properties, both parties undertake an extensive analysis of the market using one or more of the three approaches to value and each have a range of value that they believe is appropriate for the property, and within which they believe a settlement is possible. Through discussions and negotiation they come to a 'meeting of the minds' on the appropriate assessed value.

In these situations, settlement discussions between parties are usually done on a “without prejudice” basis, and as such the details of the discussions are privileged. Many of the discussions leading to the settlement are solicitor-client privileged and cannot be disclosed. Such discussions are protected based on a public policy that favours attempts by parties to reach amicable settlements and reduce the costs to the taxpayer, which would otherwise be incurred if all disputes had to be resolved through the courts. In some cases, a party will settle at the high or low end of the value range in order to conclude the matter quickly and minimize their legal fees and other costs. As a result, there will be times when parties agree on the assessed value or the classification, but not the reasons, or where the parties do not wish to disclose the reasons. As well, any of the parties to the litigation may be reluctant to document the reasons for the settlement because they feel that they would then be “estopped” from raising the same, or a closely related, issue in a future appeal.

Recommendation 18: *That the Municipal Property Assessment Corporation should request reasons for Assessment Review Board decisions if the basis for an assessment decision is unclear, and record all Assessment Review Board reasons.*

MPAC agrees with this recommendation.

Recommendation 19: *That the Municipal Property Assessment Corporation immediately cease the practice of bringing new property comparables to Assessment Review Board hearings without sufficient prior disclosure.*

MPAC agrees with this recommendation.

Our practice is to provide comparable reports prior to the appeal hearing dates; however, due to various circumstances there may be exceptions. MPAC will establish standards and review staffing requirements to sufficiently notify the property owner prior to the hearing date (such as 7 days' prior notice) when different comparables will be used. In circumstances where sufficient information is not given, and the other party requires more time to consider the new information, MPAC will consent to an adjournment of the hearing.

Recommendation 20: *That the Municipal Property Assessment Corporation give direction to its staff to ensure that challenges to assessment are seriously considered and resolved at the earliest opportunity and that last minute settlements before the Assessment Review Board are discouraged.*

MPAC agrees with this recommendation.

Significant improvements in the timely resolve of Requests for Reconsideration have already occurred. During the 2005 Assessment Update, the time required for completing a Request for Reconsideration was reduced by half. For appeals to the Assessment Review Board, MPAC will establish standards and review staffing requirements for contact with taxpayers to encourage early resolution.

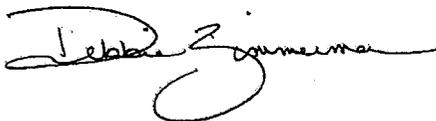
The new standards will reduce the number of late settlements. However, due diligence requires that careful consideration must be given to all the evidence and circumstances surrounding each challenge. While a timely resolution will be achieved in most cases, there will continue to be last minute settlements as many of the presiding Assessment Review Board members ask MPAC to meet with each property owner as the hearing commences to determine if a last minute agreement can be reached. During these last minute discussions, new evidence may be presented that may lead to an agreement between the parties.

Recommendation 22: *That the Municipal Property Assessment Corporation report back to the Ombudsman's office in six months time on its progress in implementing the Ombudsman's recommendations.*

MPAC agrees with this recommendation.

Thank you for the opportunity to respond to this report.

Yours truly,



Debbie Zimmerman
Chair, MPAC Board of Directors

Attachment

Addendum

Re: Recommendation 21

The Onus of Proof

MPAC is bound by current assessment legislation, regulations, common law and the ARB Rules of Practice and Procedure, all of which are determined by the provincial government, under the Ministries of Finance and the Attorney General. Any decision to change the onus on an assessment appeal will have to be made by the Province, rather than MPAC.

Onus is important from a legal perspective because the party with the onus must prove their contention, or their case fails. Some refer to this as “the risk of non persuasion” because the party with the onus will lose unless the tribunal is satisfied that the contention they raise, has merit.

Under current assessment appeal proceedings, as in most other legal matters, the person who alleges is usually the person who must prove what is alleged. That basic principle is applied in most other assessment jurisdictions in North America, with the exception of the Province of Manitoba. Typically, in assessment matters, the complainant must prove the assessment is not correct, or the assessment as returned on the roll is assumed to be correct.

While the ultimate onus to prove the assessment is incorrect lies with the appellant or property owner throughout a hearing, the Courts have ruled that the onus can shift to the assessor if the assessment is not prepared in compliance with the Act. The Ontario Court of Appeal in *Re Empire Realty Co. Ltd. And R.A.C. for Metropolitan Toronto (1968)*, recognized this:

“... notwithstanding that there rests on the assessee, as appellant, the onus of establishing error (the ultimate onus), when the Assessment Commissioner admits that he has departed from the directives in the Act, the onus of going forward (the intermediate onus) thereupon requires the Assessment Commissioner to adduce evidence to prove that the method he has adopted has resulted in an assessment which will result in the same distribution of tax burden as would have maintained if the assessments had been strictly made as required by the Act.”

If the ultimate onus were on the assessing authority, as the Ombudsman is recommending, then MPAC would have to satisfy the ARB that the assessment is correct.

While it is difficult, having no experience with such a model to understand the operational impacts such a change would have, at the very least it would require MPAC to alter the way it prepares for appeals to ensure the onus is met, where it believes the assessed value is accurate. Since municipalities are statutory parties to every appeal, and many participate as a full party to the proceedings, this change may have similar implications for them.

The Ombudsman has indicated in his report that he believes that the onus on the taxpayer is in place to discourage appeals. The reason may simply be that this is an historic principle with respect to onus in tax assessment legislation of all types and was not introduced with a view to either encourage or discourage appeals. The appeal statistics cited for Manitoba are recent and do not take into account the record high appeal levels in the City of Winnipeg that followed assessment reform in 1990 and resulted in a forecast of potential losses of \$200 to \$250 million in tax revenue by an inquiry report by John Scurfield in 1996. Although final losses on appeal were much lower by the time all complaints and appeals were disposed, the Winnipeg appeal experience was not as neutral as the more recent appeal statistics indicated. The Winnipeg City Assessor reported to Council on May 17, 1999 that Winnipeg was found in a nation-wide survey to have a higher level of appeals than any other jurisdiction.

The Evidential Onus

During the trial of any matter, there is another type of onus, referred to as the *evidential onus*, which is the burden of producing sufficient evidence to raise a particular issue. All parties during the course of a hearing will have an evidential onus, which requires that they prove or disprove the facts that are in contention. Once the ARB is satisfied that the evidence provided by the assessor supports the assessed value, the appellant will have the evidential onus to prove it does not and that an alternate value is more appropriate.

If the assessor could not prove the assessed value was accurate, the onus would then lie with the property owner to prove an alternate value. Practically speaking, both parties have an onus to discharge and are still required to prove their case, regardless of to whom the onus is initially assigned.

During the proceedings, the party with the ultimate onus leads evidence first and the other parties respond or rebut that evidence. The existing ARB order of proceeding at a hearing calls upon the assessor to provide a preliminary explanation of the "manner in which the assessment was arrived at ..." (s. 40(8) of the *Assessment Act*), before the complainant provides details of his or her assessment complaint. It can sometimes be advantageous to lead evidence first. When a party leads evidence first, that party has the initial opportunity to establish the issues in the proceeding. Leading evidence first also provides a party with the right to call reply evidence and to make submissions in reply. In essence, the party who starts first has the opportunity to have the last word in the

evidence and the submissions. If a change in onus is adopted in Ontario, there is a risk the taxpayer may feel that they lost before they began, since MPAC would no longer simply provide an introductory explanation, but set the stage at the hearing by establishing its full case before the owner has a chance to state her or his case. MPAC would also have the last word. The Assessment Review Board, could however, establish rules of practice under the authority granted in the *Statutory Powers Procedures Act* to alter the order of proceedings.

The Standard of Proof

The standard of proof in assessment matters is *the balance of probabilities*, which means that the party bearing the onus must satisfy the tribunal that it is more probable than not that his version of the facts are true. The Ombudsman refers to this in his report as the benefit of doubt going to MPAC (i.e., if the ARB can't decide, or the case is 50/50, the taxpayer loses and MPAC wins). A decision by the ARB, which defaults the outcome to MPAC because the evidence is 50/50 occurs rarely, if ever. Currently, if the owner does not satisfy the onus of proving the assessment is incorrect, MPAC could put forward a motion for non-suit – in other words, ask the Board to dismiss the appeal without calling any evidence because the property owner didn't prove his case, so the case must fail. This too is rare. MPAC does not as a matter of practice, motion for non-suit, especially with unrepresented residential property owners.

Reversing the onus does not, however, give the taxpayer the non-suit option if MPAC doesn't prove its case. As pointed out above, they will still need to show on balance of probabilities that an alternate assessed value is appropriate. Where the taxpayer does so, the result would not default to the taxpayer's suggested value, but would instead be a win by the taxpayer on the evidence. However, what happens when the Board is not satisfied that the assessor has properly determined the assessed value and the taxpayer does not provide sufficient evidence to show on balance of probabilities that an alternate assessed value is appropriate? Does the ARB digress from its adjudicative role and assume the role of an investigative tribunal in the place of the assessor under section 45(1)? Section 45(1) provides:

45. (1) Upon a complaint or appeal with respect to an assessment, the Assessment Review Board may review the assessment and, for the purpose of the review, has all the powers and functions of the assessor in making an assessment, determination or decision under this Act, and any assessment, determination or decision made on review by the Assessment Review Board shall, except as provided in subsection (2), be deemed to be an assessment, determination or decision of the assessor and has the same force and effect.
(Underlining added)

It appears that the recommendation to reverse the onus was made in the context of a residential appeal, where the property owners are not as likely to be represented by legal counsel and don't have MPAC's familiarity with the appeal process. This is not the case for appeals involving large commercial and industrial properties where property owners are represented by legal counsel and tax agents. In these situations, the property owners often have a much more specialized understanding of their industry, the value of their real estate holdings, the current trends and economics of their industry than MPAC.

The Manitoba Model

MPAC has not had a lot of time to review the Manitoba appeal model that the Ombudsman suggests be adopted for Ontario, and only has a preliminary understanding of how their appeal system works. While both provinces work on a market value based assessment system, there are differences, not only in the complaint/appeal practices, but also in the broader property assessment system. One key difference is that assessment updates are only conducted every four years in Manitoba, rather than annually.

The Manitoba appeal model would need to be analyzed and understood in the broader context of how it works within their property assessment system to know whether the onus provisions could be adopted in isolation or whether there are other differences in the two systems that allow their model to work.

Some of the differences that would need to be reviewed include:

- Municipalities are not parties to assessment appeals in Manitoba, whereas they are a statutory party in Ontario. This raises questions respecting the obligations of municipalities if they take the same position as MPAC or support a taxpayer; or how does the standard of proof (balance of probabilities) apply to municipalities?
- Third party or stranger appeals are not allowed under Manitoba's *Municipal Assessment Act*, only the owner or tenant who pays taxes can appeal, whereas any person may appeal the assessment of another in Ontario. This raises questions similar to those that arise when a municipality is involved in the appeal as to how the onus applies to the third party.
- In Ontario, there is a single level of appeal to the ARB and only an opportunity to request a review of the decision of the ARB, or appeal to the Divisional Court on a question of law. A two-tier appeal system exists in Manitoba – the first level of appeal is to the Board of Revision, with an appeal to the Manitoba Municipal Board. Typically on an appeal to a higher tribunal, the appellant has the onus, regardless of who had the onus in the initial complaint. On a request for a review of a decision, the person requesting the review has to prove to the ARB that a

review is necessary. However, in Manitoba, the onus remains with the assessor on issues of value, even at the appeal level.

- Manitoba's *Municipal Assessment Act* has a different test on appeal than Ontario. The dominant test is of equity, rather than accuracy of the value. Section 60(2) of the *Manitoba Act* states that "*The Board shall not change an assessed value where the assessed value bears a fair and just relation to the assessed values of other assessable property*". As a result, an assessor in Manitoba has to show on balance of probabilities, that he treated similar property equitably.
- Another difference is that the *Municipal Assessment Act* includes a presumption of accuracy clause, which changes the onus requirements on the assessor. Section 18 of the Manitoba legislation provides that: "*Notwithstanding any other provision of this Act, an assessment is presumed to be properly made and the assessed value to be fixed at a fair and just amount where the assessed value bears a fair and just relation to the assessed values of other assessable property*"

MPAC suggests that a review of Manitoba's system would need to be undertaken by the provincial government in consultation with the Assessment Review Board, municipalities, the assessment bar and MPAC to better understand how a reversal of onus would work in Ontario.