SUMMARY OF THE RULES OF THE ASSESSMENT REVIEW BOARD ON APPEAL FROM MPAC PROPERTY ASSESSMENTS SUGGESTIONS ON APPEAL PRESENTATION UPDATED AS OF JANUARY 15, 2014

An Introductory Overview

This is a summary of the third revision of the Rules of Practice and Procedure of the Assessment Review Board ("ARB") originally proclaimed in force in 2003. Significant revisions were enacted in 2009. Once again there has been a further significant if not a remedial revision of the Rules. This overview is prepared as a commentary upon the Rules as they affect residential property owners. My impression is that since their original enactment the Rules of the Board have become more complex and more restrictive in respect of residential property owners seeking to appeal their assessments made by the Municipal Property Assessment Corporation. ("MPAC")

On February 15, 2013, Associate Chair of the ARB, Mr. Richard F. Stephenson released a memorandum commenting on the updates to the ARB's Rules of Practice and Procedure and Practice Directions together with caseload statistics which as of that date included a backlog of 55,000 of the assessment appeals from the 2009 - 2012 assessment cycle. Of those appeals 88% related to non-residential matters while 12% concerned residential property owners. Under the new Rules appeals are allocated either to the "Direct Hearing Stream" or to the "Standard Stream." Residential property appeals are assigned to the Direct Hearing Stream which is designed to compel a hearing at an early date with minimum pre-hearing procedures. As Mr. Stephenson puts it: "Revised procedures will be consistent with the principles of natural justice and procedural fairness, proportionality principles reflected in the Rules of Civil Procedure and best practices at other Ontario tribunals in an effort to make the Board's processes more accessible and efficient."

Residential property owners may have good reason to feel that terms such as "accessible" and "efficient" mask a desire on the part of the Board to place rapid case disposition ahead of making sure appealing property owners get full disclosure of the case they have to meet through proper production from MPAC, given the corporation's reluctance to provide information and documents except on a limited basis. As of the present date the ARB appears to be sending out mixed messages. The ARB has a form letter entitled "*Acknowledgment Letter - Appeal with Correct Fee*," sent to residential property owners in acknowledging receipt of their appeals. It contains the following statement:

> *"Your appeal(s) will be scheduled for a full hearing in the Direct Hearing Stream of the issues in your appeal(s). You may request a pre-hearing of preliminary matters by sending a written request to the Board."*

Recently a Toronto residential property owner sent written notice to the ARB requesting a pre-hearing under the new **Rule 85** which provides:

> *One pre-hearing conference may be held in the Direct Hearing Stream if doing so is consistent with the intent of the Direct Hearing Stream, is proportionate to the issues under appeal and assists in an expeditious resolution of the appeal.*

The property owner was seeking a pre-hearing to discuss settlement, obtain admissions from MPAC, require MPAC to identify the homogeneous neighborhood upon which the assessment was based, provide a comprehensive list and comparables property report containing full particulars of all comparable sales within the neighborhood, including any upon which the corporation wasn't relying (*Note:* MPAC has a history "cherry picking"only comparables that favour their assessment.) The property owner also sought from MPAC "property profiles" with a breakdown of the decoded translation of all items of the property assessment detail on the appellant's property and on all other properties that MPAC would be relying upon as comparables at the hearing and how the current value assessed was calculated. MPAC was further requested to provide details of the disposition of requests for reconsideration made by other residential property owners within the homogeneous neighborhood.

The information being sought by the property owner was consistent with the relief ordered as a result of motions before the Assessment Review Board in 2005, in the appeal of *Benwell in Trust v. MPAC, Re: 1A Dale Ave., Unit 409,* made respectively by Members J. De P. Seaborn and J. D. Brownlie. This notwithstanding, the **ARB** denied the request for a pre-hearing by the Toronto residential property owner, in the following terms conveyed by Case Coordinator:

> *"The Board denies your request for a prehearing as per your attached letter. There is insufficient reason to presuppose that this matter differs consequentially from a conventional Direct Hearing Stream residential appeal.*
>
> *The request includes matters that the parties are intended to address prior to the hearing. Rule 45(2) of the Board's rules of Practice and Procedure requires full disclosure of each party's evidence at least 21 days prior to the hearing, which for this matter is not scheduled until about six weeks hence. In the unforeseen event that necessary production by a party is denied, motions for disclosure can be brought in accordance with the Board's Rules.*
>
> *The Board encourages the parties to exchange information at an early stage. This can often lead to the meaningful discussions and settlement."*

The situation confronting residential property owners is that it is not at all clear under what circumstances a request for a pre-hearing will be granted. **Rule 85** is framed in the vaguest of terms. On the other hand **Rules 57 to 64** dealing with Motions are equally applicable to matters in the Direct Hearing Stream and the Standard Stream. This was the route followed in *Benwell v. MPAC* (supra) to obtain timely disclosure from the Corporation. Where "disclosure" in the form of production or information is being sought from MPAC it is important that the residential property owner place his requests in writing before MPAC with precision at the earliest possible opportunity. Such written requests can form exhibits to the affidavit material that must accompany motions made before the Board. Using the procedures made available under the Rules of Procedure and Practice of the ARB requires a careful understanding of them. Sad to say, this is not easy unless the reader is a lawyer! But persistence can pay off and the purpose of this summary is to help the residential property owner get started. At the conclusion of the summary I have set out some ideas that may assist in the preparation of the appeal.

A Summary of the Rules

This summary is offered for the guidance of those ratepayers wishing to appeal their Property Assessment by the Municipal Property Assessment Corporation (**MPAC**) to the Assessment Review Board (**ARB**). The last revision of the rules originally proclaimed in effect as of April 1, 2009 have been updated effective April 2, 2013. They are available to be viewed on the website maintained by the **ARB** either in Microsoft Word Format or as a PDF file by following the links at:

http://www.arb.gov.on.ca/english/LegislationandRules/arb_rules.html

The Rules apply to all proceedings before the ARB. The forms referred to are available on the Board's website and may be changed administratively from time to time. **Rule 2** is interpretative and requires the Rules to be liberally interpreted to ensure the just, expeditious and least expensive determination of every proceeding on its merits with Orders and directions made proportionate to the importance and complexity of the issues. **Rule 3** allows the Board to act on its own or at the request of a party and for matters for which there is no procedural direction the Board may apply ***The Rules of Civil Procedure*** which are the rules applicable to proceedings before the Superior Court of Justice. These are not easily understood by lay persons. They are comprehensively laid out at the following link:

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900194_e.htm

Rule 4 discourages technical objection by providing that substantial compliance with requirements respecting the content of forms notices or documents under these Rules or any Act is sufficient. **Rule 5** allows the parties to consent to non-compliance with procedural requirements.

Rule 6 is very important since it contains the definition of many terms appearing in the Rules. Defined are such terms as "**affidavit**" and "**ADR**" which is an acronym for "alternative dispute resolution" including mediation or settlement conferences. In all proceedings brought before the board, either as an appeal or an application, the "**appellant**" is the person who makes an appeal. "**Board**" means the Assessment Review Board. The definition section is fairly extensive and should be carefully read.

Included in the definition section is a definition of **"Direct Hearing Stream"**
"Direct Hearing Stream" means the stream in which appeals proceed directly to a hearing without the exchange of Statements of Issues and Responses. Pre-hearing procedures are very limited and there is generally no need for pre-hearing conferences or examinations for discovery. This is really an alert for residential property owners who may find themselves on the receiving end of "summary" justice.

The extent of the definition section makes it clear that the Rules of the Assessment Review Board have become more complicated and perhaps therefore likely to discourage many property owners from persuing appeals of their assessments by MPAC. Imported directly from the ***Rules of Civil Procedure*** are such terms as "**moving party**" and "**responding party**" in

reference to “**motions**,” and “**procedural order**,” which as a term is both complex and introductory in respect of the concept of “streaming.” ie:

> *“Procedural Order” means an order of pre-hearing procedure that is mandatory in the Standard Stream and possible in the Direct Hearing Stream. In the Standard Stream, a Procedural Order will, at minimum, set out dates for procedural steps to be taken prior to the hearing; it must also include a hearing date and consequences for non-compliance. A sample Procedural Order can be found at the back of these Rules... ”*

Defined are important terms such as, “settlement conference,” “stream“ and “standard stream,” “expert witness,” “witness statement,”“hearing” and “written hearing.” Having read the definition section it is easy to imagine that some residential property owners will be inclined to stay clear of the whole process! But take heart, there is an editorial section in the Rules at page 10, following the definition section that provides parties for relief against non-compliance with the Rules, which can be considered by the Board in a motion made by the party under **Rule 9**. There are some seven different factors which the Board usually considers.

- the prejudice to the parties resulting from the failure
- whether the failure was part of a repeated pattern of conduct
- whether the failure could reasonably have been avoided
- evidence that the failing party made reasonable efforts to avoid failure
- whether the failure could be cured or addressed by any other appropriate direction or by awarding costs; and
- any other relevant factors

Parties appearing before the Board may appear personally or by representative. **Rule 9** provides that where the representative is not a lawyer the Board may ask to be provided with written confirmation of the representation**. Rule 11** sets up a curious distinction concerning representation in the “**direct hearing stream**” where a party’s representative (unless a lawyer) is allowed to be both a witness and an advocate. In other words, while a lawyer, appearing before the Board as counsel, cannot be both an advocate and a witness (unless the Board orders otherwise) there is no such restriction on a non-lawyer representative. On the other hand in the “**standard stream**” unless the board orders otherwise, no representative may be both advocate and witness

Rule 12 introduces the concept of “**TIME**,” within which various procedures or steps must be taken based on Rules or a Board order. **Rule 13** permits the Board to extend, reduce or change the time requirements. This includes extending the time for filing a Request for Reconsideration with MPAC if in the Board’s view there is sufficient reason. **Rule 14** relates to the time for delivery of documents where there is the consent of the parties. **Rule 15** relates to hearing events. Where the parties are to attend this rule provides for a 30 minute delay in case of a party’s non attendance and lesser time where the event is a Teleconference or Videoconference. Thereafter the Board may proceed to hear the matter in the party’s absence or dismiss it.

Rule 16 introduces the **Form of Appeal.** The Appeal is addressed to the Board Registrar and it must provide the following information. Appellant’s name, telephone, fax, email address

(if any), street address and postal code, identify the property by roll number, state the nature of the appeal and the reasons for it, and inform the Board of any request for an interpreter. The appeal document must be signed by the appellant, or his or her representative (and, if the representative is not a lawyer, that the chosen representative has the authority to represent the property owner); include a copy of the Request for Reconsideration (**RfR**) decision **or** the date of release of MPAC's response. There are also directions for third party or non-owner appeals. Those filing appeals should have this rule in front of them as a checklist. There is an appeal form on the Board's website which can be filed electronically

https://www.arb.gov.on.ca/efile/Default.aspx

Apart from utilizing the Board's **E-Mail format**, an appeal may be commenced by **letter** or an **Appeal Form,** also available on-line. In the Toronto area the letter or the Appeal Form must be delivered, mailed or faxed to the Board. Delivery *in person* can be made to the Board at:

655 Bay Street, 15th Floor, Toronto (just north of Dundas St. West)

The appeal, whether by letter or by the Appeal Form, very easily downloaded as a PDF document from the Board's website, may be completed and **mailed** to:

Assessment Review Board
655 Bay Street, Suite 1500
Toronto, Ont. M5G 1E5

In addition, the appeal document utilized may be filed by **email** addressed to the <assessment.review.board@ontario.ca>, or by **fax** sent to the Board at **416 - 314 - 3713** or toll free to **1 - 877 - 849 - 2066.** Whatever the method of filing chosen there is a non-refundable fee of $75 payable to the Minister of Finance where the appeal is in respect of a residential assessment. There is a discount of $10.00 for filing by email. The format and email address is set out on line. Major credit cards are accepted.

The **Appeal Form** provided by the ARB on-line contains no direction about filing a copy of the RfR decision but simply to provide information as to the mailing date "**of your RfR decision."** Similarly, the "Reason(s) for Appeal" is set out in a box ie: "The property assessment value from MPAC is: ❑ "too high." This conforms with the practice of previous years in that there is no requirement in the appeal document to go into any greater detail.

Rule 19 deals with administrative screening of all appeals to determine whether (I) the required fees have been paid, (2) the grounds of the appeal have been set out in writing, (3) the appeal has been E-filed or signed, (4) the appellant has responded to a request for further information by the board on a timely basis, (5) the appeal has been filed within the statutory deadline as well as other technical matters.

Rules 20, **21** and **22** relate to the Board being able to stop processing the appeal where there is inadequate information, with prior warning to the appellant before rejecting an incomplete application, and dispensing with requests for further information where there is

good reason. **Rules 25** to **26** set out the internal procedures or adjudicative screening whereby the Board may dispose of appeals where it is satisfied it doesn't have jurisdiction or the appeal is vexatious, frivolous, or brought in bad faith or for the purposes of delay, or otherwise when the appellant has failed to provide requested information. By **Rule 26**, before dismissing the matter the appellant is to be given an opportunity to respond within the time stated in the Board's notification.

Rule 27 deals with **Late Appeals** which allows the Board to accept an appeal received after the time set out in any statute or regulation under limited circumstances pertaining to failure in receiving notification of assessments or classification. This links up with the saving provisions of the ***Assessment Act*** under ***Section 40(4)***. The reasons for seeking an extension of time are quite specific as well as limited and an affidavit must be filed setting out the circumstances

Rules 28 to 31 deal with Notices required under the Rules. Ordinarily all notices are given in writing unless the Board directs otherwise. Included is a section on "**Special Notices**" which will not affect most residential assessment appeals. **Rule 32** deals with notice where MPAC requests that the Board make a finding to have the burden of proof rest with the appellant as to the correctness of the current value of the land pursuant **to Section 40(18)** of the ***Assessment Act***. By way of background:

Section 40(17) of the ***Assessment Act*** provides:

"For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation. 2008, c. 7, Schedule. A, s. 11."

The ***Assessment Act*** at ***Section 40(18)*** qualifies this burden of proof in situations where the property owner fails or refuses, (a) to give the assessment corporation reasonable opportunity to inspect the property under section 10; or (b) to comply with a request for information and documentation under section 11. 2008, c. 7, Sched. A, s. 11.

Rule 32 sets out a special procedure requiring MPAC to give notice that it is seeking to have the burden of proof shifted and in the absence of such notice, MPAC may not make such a request at a later date:

- in the Direct Hearing Stream, in writing to the other parties and this notice must be filed with the Board at least 21 days prior to the hearing.
- in the Standard Stream, in the Response to the Statement of Issues.

Rule 33 sets out the requirement that if a party intends to raise issue estoppel at a hearing it must give notice in writing in the same manner as relates to seeking to shift the burden of proof. Issue estoppel is a legal term meaning that the issue has been previously decided between the same parties at a previous hearing. This might relate to a claim that MPAC has changed the assessment in a follow-on year from that originally determined in the base year in a proceeding before the Board.

Rules 35 to 38 deal with **service** of documents. Permitted methods of service include mail, courier, fax, email and personal service including service upon representatives are

specified. Details relating to each method with applicable limitations are set out. Where proof of service is required in the first instance it may be by correspondence to the Board indicating the method and date of service. The Board may require a formal affidavit of service in appropriate circumstances.

Rule 39 deals with the filing and amendment of documents. Much of the Rule is imported from the ***Rules of Civil Procedure*** which govern Superior Court procedures. Depending on the stage of the proceedings documents may be amended without consent or where consent is required but not given then by leave of the Board on motion which must be given in the absence of prejudice. **Rule 40** deals with the making of motions whether in the **Direct Hearing Stream** or the **Standard Stream**.

Rule 41 deals with the filing of documents at the Board where two copies are required. By **Rule 42** in the Standard Stream, where a party has served a Statement of Issues, a Statement of Response, or an amended Statement of Issues or of Response, the party must file that document with the Board either at least 60 days prior to the pre-hearing conference or no later than 16 months after filing the appeal.

Rule 45 to **Rule 56** introduces issues such as Disclosure, Evidence, Experts and Discovery.

Rule 45(1) pertains to the **Direct Hearing Stream** and within 90 days of filing the appeal requires MPAC to disclose to the appellant and the municipality any assessment data together with the basis or analysis that supports the assessment that has been appealed. Under **Rule 45(2)**, unless the Board orders otherwise, if a party intends to present documentary evidence at a hearing, at least 21 days before the hearing, the party must provide one copy of each document to each party. Note that

(a) If documentary evidence is not exchanged at least 21 days before the hearing, the Board may refuse to accept the documents at the hearing, and

(b) Material in response must be exchanged 14 days prior to the hearing and other parties may respond 7 days prior to the hearing.

Rule 45(3) deals with disclosure in the **Standard Stream** where time-frames for disclosure of information will be set by Procedural Order and in accordance with the Board's guidelines (see also Rule 86).

Where the appeal proceedings are in the **Standard Stream** the concepts of request to admit facts or documents are introduced by **Rule 46**. Notice that they are *absent* from the **Direct Hearing Stream**. A party may serve on any other party a "Request to Admit" the truth of a fact or the authenticity of a document and provide a copy of the document unless it is already in possession of the opposite party. Under **Rule 47** the party served is to respond by serving a "Response to Request to Admit." Failure to serve a response will constitute an admission that the fact is correct or the document is authentic. The responding party can deny the truth of the fact or the authenticity of the document by setting out the reasons for the denial.

Rule 48 pertains to **Expert** reports and makes reference to them only for the purposes of the **Standard Stream**. In the Standard Stream, at least 60 days before the hearing, unless the Board orders otherwise, the parties must provide one copy of any expert report to every other party. If a party intends to call an expert witness without a report, the party must provide a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the expert witness at least 60 days before the hearing.

Rule 49 sets out the duty of an expert witness to complete a form (see Rules Appendix A) attesting that their opinion evidence is fair, objective and not partisan, related only to matters within the expertise of the witness, and to be willing to assist the Board as reasonably required to determine the matter at issue. **Rule 50** and **Rule 51** deal with Reply reports which are to be provided to the others parties within 30 days of the hearing. Supplemental reports are to be provided within 15 days of the hearing. **Rules 52 and 53** are incidental and deal with providing copies of written argument at "in person hearings" as well deal with the examination and copying of Board documents.

Rule 56 deals with **discovery** which can be obtained by Board order, made on motion, where the party requesting has either been refused the requested information or no response has been received. The motion brought must be supported by evidence on affidavit which sets out the efforts made to obtain the desired information and the reason why the information is needed. The Board can make an order requiring a person (usually only a party) to provide an affidavit containing a list of relevant documents which that person possesses and their delivery, by oral or written discovery and other forms of discovery. In effect the discovery procedures under the ***Rules of Civil Procedure*** has been incorporated into proceedings before the ARB. It would appear to be applicable to appeals placed in the **Direct Hearing Stream** as well as the **Standard Stream**.

Practically speaking, a property owner may seek discovery from MPAC where it has refused to provide information. For example, you may want to know what actual comparable sales they have in their data base. This can mean all comparable sales and not merely those that MPAC seeks to "cherry pick" that are helpful to them. Assuming that a homogeneous area has been defined, you may want to get details on all requests for reconsideration filed and the specific changes made in such areas as allowances for economic obsolescence. Before scheduling a date for a hearing property owners will want to know what comparable properties including sales that MPAC is going to rely upon at the hearing. They will also want to obtain property assessment details (PADS) and **full** "Comparable Property Report,"that have the same full information as set out in "property profiles," which MPAC releases to residential property owners on their own property. MPAC tries to get away with an abridged Comparable Property Report that contains minimum information.

Rules 57 to 64 deal with **Motions**. Generally, a date is obtained in advance from the Board's Case Co-ordinator and a notice of motion is served with supporting affidavit material based on either first-hand knowledge or upon information and belief. Service takes place within 10 days of the return date of the motion. Under **Rule 58** the notice of motion and all supporting documents must be served at least 10 days before the date for the hearing of the motion. A notice of motion must be served on all parties, the Board Registrar, and any other person as directed by

the Board. An affidavit stating that this was done must be filed with the Board before or at the hearing of the motion.

Rule 59 deals with responding material to be served within 5 days of the motion date hearing. The responding party is to serve a Notice of Response, with supporting affidavit material. The Board can designate shorter times for the delivery of motion materials. Ordinarily oral evidence is not heard on a motion unless the Board makes a prior determination. **Rule 62** provides that a party bringing a motion and those responding to it may make oral submissions at the hearing of a motion, whether the hearing is held in person or by electronic hearing. **Rule 63** deals with motions made in the course of oral hearings.

Rules 65 and 66 deal with **settlements** prior to a Board hearing event. The Board may issue a decision approving the settlement if all statutory requirements are fulfilled.

Rule 67 deals with **withdrawal of appeals**. **Rule 69** deals with compelling the attendance of witnesses by summons obtained from the Board. **Rule 70** provides for personal service of the summons along with conduct money paid in accordance with the tariff of the Superior Court of Justice.

Rules 71 to 76 deal with administrative matters such as the language at proceedings, English, French or sign language and arrangements for interpreters which is to be at the expense of the parties unless in the official languages.

STREAMING

The heart of the Rules concerns **streaming** and it is introduced with a commentary. There are two streams - (1) **Direct Hearing Stream** and (2) the **Standard Stream**.

In the **Direct Hearing Stream** there is no exchange of Statement of Issues and Responses. Pre-hearing procedures are very limited and there is generally no need for pre-hearing conferences or examinations for discovery. A party and/or representative (other than a lawyer appearing as counsel) may act as both an advocate and a witness during the proceedings. Most residential matters will be heard through the Direct Hearing Stream. Generally, appeals in this stream will be completed within one year of filing of the appeal.

The **Standard Stream** is intended for higher value appeals and more complex issues that require greater disclosure prior to the hearing. In the Standard Stream parties are required to exchange pleadings (Statements of Issues, Responses and Replies) prior to the hearing. It also includes procedural requirements for disclosure and/or discovery, early exchange of expert reports, benchmarks for the achievement of process steps and time limits on processes before and during the hearing. Time-limited examinations for discovery may be conducted where required. Representatives may not act as both an advocate and a witness unless the Board orders otherwise and the representative is not a lawyer appearing as counsel. Appeals in this stream will generally be completed within 2 to 3 years of filing the appeal.

In choosing the appropriate stream for a matter, or when deciding whether to transfer a matter from one stream to another, the Board will consider which stream provides the just, most expeditious and least expensive determination of the matter and the following relevant factors:

(1) nature of the dispute; **(2)** value of the property; **(3)** property classification, **(4)** novelty of the issues, **(5)** complexity of the issues; **(6)** facts and evidence; **(7)** applicant's representation; **(8)** complexity and quality of the documents, **(9)** likelihood of settlement; **(10)** number of parties involved; **(11)** likely number of witnesses and/or expert witnesses; **(12)** number of procedural steps that may be required to narrow the issues and expedite resolution; **(13)** estimated duration of the hearing; **(14)** remedies requested, **(15)** parties' preferences for a particular stream, and **(16)** potential for any jurisdictional challenges.

Generally, proceedings in the **Standard Stream** will follow a timetable of dates set out in a draft Procedural Order to be finalized at a pre-hearing conference. The Board expects the parties to apply for a pre-hearing conference after the exchange of pleadings and to file a draft Procedural Order in accordance with the Board's requirements, including setting a hearing date on consent within certain time limits. The draft Procedural Order and the dates and time-lines contained therein will be finalized and approved by the Board at a pre-hearing conference.

Rule 77 provides that the Board **may** schedule an appeal into either stream. According to **Rule 78** where there has been an RfR completed, the appeal is streamed into the direct stream.

However, under **Rule 79**, parties may transfer from the Standard Stream to the Direct Hearing Stream as of right but must do so no later than 6 months after filing the appeal. **Transfer from the Direct Stream to the Standard Stream will require the parties to bring a motion before the Board to argue the matter of transfer no later than 120 days after filing the appeal**. After these time-frames, transfer to a different stream is not permitted unless the Board determines that it is appropriate. The Board, on its own initiative, may re-direct a matter at any time into a different stream in order to expedite resolution of the matter

Rule 80 deals with **consolidated hearings** or **hearing matters together**. Where two or more matters are related to each other by common facts, common issues, questions of law or any other reason, the Board may, with the consent of the parties, order that the matter be consolidated or heard at the same time or that the matters be heard one after the other or that a matter be stayed or adjourned until the determination of any other matter. In the wording it is not altogether clear whether the consent is that of the appellant parties only or the consent of all appellants and MPAC. **Rules 81** and **82** provide procedural directions on consolidation or hearing together.

Rule 83 provides that the Board may separate proceedings or require that matters be heard together, at any time when in its opinion the proceedings have become unduly complicated, delayed or repetitive or when a party is unduly prejudiced.

PRE-HEARING CONFERENCES

Rule 84 introduces pre-hearing conferences which a party may seek or the Board direct. The purposes are wide ranging, including identification of the appeal issues, admissions and evidence by agreement, exchange of witness lists and expert reports, discussing settlement or mediation or other dispute resolution procedures, addressing issues of production, seeking agreement on procedural issues, and fixing a hearing date among other matters.

Rule 85 deals with pre-hearing conferences within the **Direct Hearing Stream**. **One** pre-hearing conference may be held if doing so is consistent with the intent of the Direct Hearing Stream, is proportionate to the issues under appeal and assists in an expeditious resolution of the appeal**.**

Rule 86 sets out the purpose of a pre-hearing conference for matters in the **Standard Stream** which is to give direction and approve a procedural order drafted by the parties and setting a hearing date. Before the conference and not more than 6 months after the appeal has been filed, MPAC must have released the "*assessment data*" required, the appellant must have served a Statement of Issues and the other parties served their Statements of Response. Under **Rule 87**, where the parties have not requested a pre-hearing conference or have an approved procedural order within 18 months of the appeal the Board will set a peremptory pre-hearing date and require that the parties abide by the terms of a Procedural Order which will set benchmarks and processes designed to resolve the appeal(s) within 2 to 3 years.

The Board may provide a "sample order"(see Rules Appendix B) and under **Rule 88** the parties are expected to meet before the pre-hearing conference to consider the matters set out in **Rule 84** and present recommendations to the Board for the conduct of the hearing.

Rules 89 and **90** provide that the Board will give the applicant a Notice of Pre-hearing conference which the applicant serves on the other parties and files an affidavit of service. The notice provided will set out that the parties are expected to arrive prepared for a procedural and settlement conference. The Board can make a final decision on any evidence received during the conference. Under **Rule 91** the Member conducting the pre-hearing conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event. Except for good reason this will be binding on the Member conducting the hearing event.

Rule 93 introduces the form of statements in the proceedings. Statements of Issues and Response are to be used to bring focus to matters in the **Standard Stream** and are to include the required information. Parties to a hearing are usually the assessed person, MPAC and the municipality, but may also include the Minister and any other parties added by the Board.

The Rule sets out the minimum of information required. If the issue is "current value," then details are required as to how it is calculated, as well as a full statement of the issues that the party intends to raise, including identification of similar property to be referred to by the appellant, an identification of the vicinity claimed by the party; and a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing. There are parallel suggestions where the issue is equity of assessment under

Section 44(3) of the **Assessment Act**, and where the issue is classification of property or there is an issue of cancellation, reduction or refund of taxes.

This part of the Rule brings into focus the Ombudsman's disagreement with MPAC that accuracy of assessment and equity are two separate and distinct equally important requirements. Accordingly, **Section 44(2)** of the **Assessment Act** was subsequently amended by the addition of **Section 44(3)**:

> "For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,
> (a) determine the current value of the land; and
> (b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a **reduction** of the assessment of the land. 2008 c.7, Sched. A, s. 13

The affect of the amendment is that equity is taken into consideration only where the result favours the property owner in terms of a lower assessment. To otherwise allow MPAC to place its view of "equity," according to its model over "current value," as mandated by *Act* raised at least 3 problems. First of all, no appeal would be able to succeed before the ARB unless MPAC input the wrong data in a particular case. Secondly, if MPAC's assignment of relative tax obligations as determined by its mass appraisal model was to be the measure of equity then full access to MPAC's methodology should be furnished. Thirdly and most importantly, MPAC in its own evaluation of its mass appraisal systems allows for a **margin of error of up to 10%** of the property value in residential cases and even more in commercial cases

Rule 95 and **Rule 96** deal with "**adjournments**" and are introduced with the comment that Hearing dates are fixed and will proceed as scheduled unless an adjournment is granted. The Board expects parties to be ready for hearings and attend on time. The Board, parties and participants invest significant resources in preparing for scheduled hearings. Postponements may result in delays in completing hearings, substantial cost to the tribunal and inconvenience to other parties. Adjournments will not be granted automatically, even where parties consent. Adjournments may be granted where it is necessary to permit a fair hearing. Except for unavoidable cases of illness where another representative or witness cannot be obtained, last minute adjournments will not be granted.

Under the terms of **Rule 96** a party seeking an adjournment shall provide notice to the Board and other parties as soon as practicable with written submissions and documentary evidence as to whether the adjournment is on consent, giving reasons for the adjournment and suggest a new hearing date within 6 months. The Board can require an electronic or in-person hearing to consider the request. Where less than 10 days notice is given the Board can refuse to consider written requests and require the parties to attend on the hearing date to make the request and be ready to proceed if it is declined. The powers of the Board in considering an adjournment request are set out in **Rule 97**.

ALTERNATIVE DISPUTE RESOLUTION

We have now left the section dealing with Pre-hearing conferences and in this section **alternative dispute resolution emerges as a procedure in own right**. A.D.R. can in some respects be another word for a settlement conference. However it receives its own distinct consideration under the Rules. Not every case will merit access to this procedure and quite likely will in practice apply only to those larger commercial or industrial assessments.

The head notes to the section at **page 35** of the Board's published rules provides that it is a form of "consensual dispute resolution" where the parties meet with a Board member or some other person appointed by the Board as a mediator to try to settle the dispute in an informal way. The Board requests the A.D.R. because it may provoke a settlement. Evidently everyone must be in agreement to take part. The A.D.R. may be beneficial in resolving either all matters or some matters that will reduce the length of the hearing. A.D.R. may also resolve either some of the procedural issues or the substantive issues. A hearing can be interrupted in the appropriate case to hold an A.D.R. event.

Rule 98 is enabling in that the Board may direct parties to take part in a mediation or settlement conference or other A.D.R. event either of its own accord or at the request of the parties. The event may be held electronically or in person. The person presiding may make use of any appropriate dispute resolution process to help the parties resolve the issues in dispute. The parties should advise the Board in writing if they feel that one method is more appropriate than another.

Rule 100 sets out that the presiding person will explain the process, the safeguards and the benefits of the process which may be invoked on short notice. **Rule 112** provides that the person assisting may assist the parties in setting out a statement of agreed facts and remaining issues, even if they do not agree on everything. An A.D.R. report is prepared (but does not include the actual terms of settlement). The report is then placed in the file for the information of the Board panel conducting the hearing. The report is binding on the parties and the member or members hearing the other issues unless there is good reason to vary.

Under **Rule 101** the A.D.R. procedure requires the parties 3 days before the event to exchange and file concise statements describing the nature of the appeal, the evidence expected to be called at the hearing and the applicable legal principles and expert reports to be relied upon or a summary statement of the anticipated opinion if the reports have not yet been prepared, the facts upon which the opinion is based and the qualifications of the expert.

Rule 102 sets out the framework of the A.D.R. under four basic sections:

(a) The event is confidential and is held in camera.

(b) The person presiding decides how the A.D.R. will be conducted and typical of a mediation can cancel the process if a party or a representative lacks authority to enter into a binding resolution on any issue. Typically as mediator the person presiding can meet with the parties separately or together and give non binding

opinions on any issue, adjourn the event, and make a report of the results including any settlement reached.

(c) The presiding person can also make any order that could be made under the Rules, refer the matter at issue to be scheduled for a hearing event, and include in the report any interim orders made,

(d) At the end of the A.D.R. event the presiding person shall return any document provided which might be used as evidence in a hearing event.

Under **Rule 103** a Board Member who presides at an A.D.R. event cannot preside at the hearing of any unresolved issue **unless** all parties consent, but according to **Rule 104** the Board member may preside if the parties so request.

Rule 105 provides that **all documents created for** or anything said at the A.D.R. and any offer to settle shall be confidential and cannot be introduced into evidence in the same or other proceeding without the consent of the party creating the document. Note the keys words **"created for an A.D.R. event**." All notes are confidential and the person presiding is not a competent or compellable witness at any subsequent hearing.

Under **Rule 106** any settlement reached must satisfy the requirements of the *Assessment Act* and if needed the Board can hold a hearing on that issue.

Rules 108 to 118 deal with methods of holding "hearing events" and related procedural rules. **"Electronic"** hearings for all practical purposes are hearing events held by telephone or by video conference. **"Written"** hearings are those where submissions are made in writing either in whole or part. Where evidence in writing is received it is to be by affidavit based on direct or personal knowledge of the person giving the evidence as opposed to information on belief. Opportunities are provided for objection to hearing events that proceed in this manner, basically on the ground of significant prejudice. The factors to be considered are set out for both type of hearings and involve issues of fairness, convenience, cost and the type of issue or the type of testimony. A typical objection may relate to the importance of cross-examination which is better suited to an oral hearing.

Practically speaking, most hearings will be heard by attendance in person as an event that is open to the public. **Rules 119 to 128** deal with the recording of hearings, conditions of approval and qualified verbatim reporters. At the end of the hearing a party who requires **written reasons** may request them at the conclusion of the hearing or within 14 days of the conclusion of the hearing, according to **Rule 128**.

Rule 129 provides that the Board Registrar will issue a written decision, unless the Board directs otherwise. The decision is effective on the date it is released, unless it states otherwise. **Rule 130 and Rule 132** deal with correcting of minor errors, re-hearings, review of a Board Decision or Order and the making of requests in that respect. **Rule 132** provides that following the end of the hearing and before the issuance of a decision or where written reasons are required no party shall communicate with the member without giving notice to and receiving the consent of the other parties.

COSTS

For the first time the **ARB** Rules have been amended to include costs. The essence of **Rule 133** is "where a party believes that another party in the proceeding before the Board has acted *unreasonably, frivolously, vexatiously, or in bad faith*, that party may make a request to the Board for costs at the end of a hearing event." The Board can also exercise its own authority to award costs after hearing the party against whom the order is proposed. If costs are not sought by a party before or when the Board renders its decision at the end of the hearing the submissions may be made within 30 days. The Board may decide the issues of costs based on the written material or the Board may require brief oral submissions.

As to when a party has acted unreasonably, frivolously, vexatiously, or in bad faith is to some extent defined in **Rule 137**, although not exhaustively. Included are failure of a party without notice to attend at a hearing, failure to comply with a Procedural Order, a case or appeal management plan, that unduly prejudices or delays another party. Included as well is the failure of a party to comply in a timely manner with the disclosure or discovery requirements set out in the Board's Rules of Practice or order or direction of the Board, including, without limiting the generality of the foregoing, the disclosure requirements respecting documents, particulars, or constitutional issues, provisions of responses to undertakings given on discovery including document disclosure; or presenting false or misleading evidence.

Under **Rule 134** the party seeking costs must show that the requested costs were necessarily incurred in this proceedings, are reasonable, documented and verified. The party must provide a summary statement with a calculation of the amount of costs requested, including particulars of fees and disbursements for lawyers and consultants, supported by time dockets, invoices, receipts and a detailed description of activities; where invoices or receipts are not obtainable for good reasons, the Board may accept a written record of individual disbursements and associated dates.

The party against whom costs are sought may serve and file an objection within 14 days to which the party seeking costs has 5 days to file a reply. **Rule 138** provides that where the Board finds that a party has acted unreasonably, frivolously, vexatiously, or in bad faith, the Board may order that party to pay the costs of another party or parties to the proceedings subject to **Rule 139** respecting the amount of costs that may be ordered. Taking into consideration all of the factors outlined the amount of costs shall not exceed the sum of $1500.00 per day or up to $750.00 for each half day or less. It is not clear whether the per diem stated is exclusive of those items set out in the summary statement.

The wording of the cost Rules would seem to suggest that it will really only be applicable to matters in the **Standard Stream** since most if not all of the events listed in **Rule 137** will not be relevant to cases in the **Direct Hearing Stream**. **However** there is no such express limitation of applicability. Currently there is no way of knowing whether the costs rules will be interpreted broadly or restrictively.

The balance of the Rules between **Rule 140 and Rule 146** deal with correcting of minor errors, re-hearings, review of a Board Decision or Order and the making of requests in that respect. Details of these Rules are not set out since resort to their application is not likely to be frequent.

Annexed to the Rules are Appendix A **- "Expert Duty Form**" and Appendix B - An **ARB Sample Procedural Order**." Various forms for motions, affidavits, Statements of Issues and Responses, Certificates of Readiness and Certificates of Objection are not attached to the Rules. It is said that they can be found on-line.

Concluding Comments on Summary

In taking a case before the **Assessment Review Board**, does it help to be a lawyer or retain a lawyer at any stage of the proceedings? The answer is obviously in the affirmative as lawyers are familiar with process and procedures including time lines and tactical considerations to help present a case. At hearings they understand evidence presentation, cross-examination, argument and submissions. Most property owners may be inclined to despair at the process. It is complicated to some extent and time consuming to a greater extent. However, ordinarily MPAC will not have a lawyer responding to your appeal but only their assessor and with some effort on your part to understand process and procedure you can adequately represent yourself.

Hiring a lawyer can impose a problem for property owners. Even assuming they can afford that step, it may be that even in the best possible outcome or scenario the cost of a lawyer will still exceed the amount of property taxes that would be saved. For this reason many residential property owners will turn to services, usually staffed with lay personnel, sometimes working under a lawyer who will handle the case. There are a number of "Property Tax Services" who are prepared to take on your Request for Reconsideration and/or filing of a Notice of Appeal before the Assessment Review Board. Their charges for services, at least as to fees, are on a contingent basis. No reduction. No fee. The contingent arrangement may require the property owner to agree to pay 50% of the tax reduction over the four years plus HST of 13%. These services do not commit to attending an ARB hearing and they may decline to act as they determine in their sole discretion.

On the more positive side, and in the hope that it may be of help, I have prepared this summary and commentary in anticipation that it may help residential property owners put together their appeals to the ARB. Many property owners have appealed their assessments during previous assessment cycles and they have become quite good at it. But as helpful or not as this summary may be, it is up to the property owner to become knowledgeable about his or her property and homogeneous neighbourhood. In the past MPAC has proven resistive in allowing property owners to have full access to its data bank of valuation information. Because of the report of the Ontario Ombudsman, "Getting it Right," prepared by Andre Marin and released March 27, 2006, the door has been opened a crack and maybe a bit more and the playing field has been levelled to the extent of imposing on MPAC the burden of proving its claimed valuation.

Residential property owners who appeal their assessments to the ARB should carefully consider the importance of the *Assessment Act, Section 39(1)(17)* which provides that:

> *"For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation. 2008, c. 7, Schedule. A, s. 11."*

There is a provision in the *Assessment Act* that the newly imposed burden of proof on the assessor or MPAC may not apply. This is found in *Section 40(18)* of the *Assessment Act:*

> *"(18) Despite subsection (17), the burden of proof as to the correctness of the current value of the land rests with the appellant where he or she fails or refuses,*
> *(a) to give the assessment corporation reasonable opportunity to inspect the property under section 10; or*
> *(b) to comply with a request for information and documentation under section 11. 2008, c. 7, Sched. A, s. 11."*

Rule 32 sets out a special procedure requiring MPAC to give notice that it is seeking to have the burden of proof shifted and in the absence of such notice, MPAC may not make such a request at a later date. Burdens of proof are very important since in the case of an assessment appeal, MPAC must prove the correctness of its claimed current market valuation of the owner's property on the basis of evidence presented before the Board. Proof is generally taken to mean proof on a balance of reasonable probabilities.

In the presentation of appeals before the **ARB** property owners would do well to emphasize to the sitting member the importance of this burden of proof and that it receive consideration in the Board's written reasons for decision which the parties may request.

In its assessment of "your property" MPAC will tend to rely on its own assessment of the value of similar lands which it has assessed in the vicinity, even though under the *Assessment Act* "current value" means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by willing seller to a willing buyer." There is provision in the Assessment Act which allows MPAC to take into consideration its own assessment of other similar properties. *Subsection 44(2)* of the *Act* states:

> *"In determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.*

Even where there are actual sales of similar properties which do not favour MPAC's assessment of "your property," nevertheless, as noted previously, MPAC will try to argue that an assessment that is less than the value at which they have assessed similar properties would not be fair or "equitable." This backdoor used by MPAC has now been closed by a recent amendment to the Act.

Section 44(2) of the Assessment Act was recently amended by the addition of **Section 44(3)**:

> *"For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,*
> *(a) determine the current value of the land; and*
> *(b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a reduction of the assessment of the land. 2008 c.7, Sched. A, s. 13*

In other words "equity" is taken into account where the outcome would favour the residential homeowner and lead to a reduction in the assessment.

Preparing for your Appeal

In **Appendix "A"** to this summary I have set out many of the more common categories found in MPAC's property assessment detail or "PAD" that form the content of the corporation's assessment model being a complex computerized mass appraisal technique called "multiple regression analysis." In simple terms, that process involves identifying a basic market value for properties in a geographical area and then adjusting the value up or down according to the character of the particular property in question to find its current value. The process does not involve MPAC going into an area and finding specific similar "comparator" properties and tracking their particular sales histories. It relies on models to generate sophisticated market estimates.

Appendix "A" may help residential owners in understanding what factors were or were not taken into consideration in the assessment of their property or any other properties either they or MPAC seek to reply upon as "comparables." For example, on some properties, within the same or adjacent neighbourhoods MPAC allows a significant reduction for "economic obsolescence", or "functional obsolescence." Your eyeball examination of those properties and an analysis of "Your Property Profile" for that property may reveal that you ought to be in the same boat! On a comparable street, as to traffic flows, MPAC may have allowed a larger reduction for "Abutting medium traffic pattern," but given you no allowance at all or only an allowance for a "light"traffic pattern. MPAC may have assessed your "Total Area Adjustment (above grade living space)" at a much higher square footage rate than comparable properties which you can analyse from the data presented on-line.

At the time of the current assessment, when MPAC sent out its Property Assessment Notice to each residential property owner it also enclosed an "Important Information" bulletin which invited property owners to seek detailed information on up to six comparables *selected* by MPAC in addition to 24 properties of their own choice. The "detailed information" not only includes PADS but also includes the kind of information which MPAC makes available to property owners in respect of their own property called a "Property Profile." While MPAC won't release Property Profiles voluntarily in respect of the properties you and they select, they do offer a "Comparable Property Report." MPAC tries to get away with releasing an "abridged version" which gives limited information when the full version offers the same information provided in the "Property Profile." The following is an example of information possessed by MPAC which is available on the full version but not on the abridged version:

5. Legal description
6. Realty Tax classification
7. Unit of Measure
8. Effective Unit of Measure
9. Hydro
10. Sanitary
11. Water
12. Heat type
13. Fireplace total
14. Full baths
15. Half baths
16. Bedrooms
17. 1st Floor area
18. 2nd Floor area

12. Addition area
13. Addition year
14. Split level
15. Central air
19. Upper Floor area
20. Basement Height
21. Proximity variables
22. On site variables

Insist on *full disclosure* of all information that may be relevant to the valuation of property. MPAC has committed to accept **Recommendation 6** of the Report of the Ombudsman, Andre Marin, entitled, “Getting It Right,”released in March 2006.

> *“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 property.”*

In the presentation of appeals it is important that residential property owners appreciate that there is really only **one** issue before the Assessment Review Board, namely, the value of the homeowner’s property on the valuation date set out in the *Assessment Act*, which is currently January 1, 2012. That date is currently set legislatively every four years when each new assessment cycle comes into effect for the phased-in assessments starting the next calender year. To this extent MPAC’s multiple regression analysis on any individual property becomes a secondary consideration. The issue remains that assessments are to be based on **value**, that is, as of a specific date, currently January 1, 2012, the amount of money a willing buyer would pay to a willing vendor for a specific property. In other words the **ARB** is interested in SALES, and more particularly sales of comparable properties.

There currently exists a questionable practice at the *ARB* in which members hearing appeals believe they are entitled to look at “shoulder” years in considering properties that have been sold and that are being put forward as comparables. As a matter of real estate appraisal law it is well settled that where there is a mandated “valuation date” eg: January 1, 2008, no sales after that date can be taken into consideration since that would amount to guessing as to a future event. For example, in the state of Florida, housing prices on that date were firm. However, in the fall of 2008 the financial crises struck in the United States, which came as a complete shock to the real estate market. By the end of that “shoulder” year, real estate prices plunged by half. Valuation dates become meaningless when future events are taken into account. Unless the ARB is prepared to change its policy should there be a direct challenge on motion, it will probably take a Superior Court challenge on appeal from an ARB decision to correct what those familiar with appraisal law regard as a palpable error.

It is important to remember that in assessing your property, MPAC has not conducted a property valuation as such. MPAC has probably never seen your house unless you did renovations requiring a building permit or an assessor personally attended. While it does examine title transfer records to see what you paid for your property that transfer could have been many years or even decades ago.

As noted, the *Assessment Act* provides that assessments are to be based on **value**, that is, as of a specific date, the amount of money a willing buyer would pay to a willing vendor for a specific property. It follows as a matter of necessity that property owners seeking to appeal their

property assessment must be prepared to check out sales of property within their area during the period under consideration. Many property owners know a real estate broker or agent who, as a member of a real estate board, may be able to access information for them as a matter of courtesy. Realtors are always so anxious to help you when you wanted to buy and when you wanted to sell. This is their way of showing their gratitude in between! Your search of sales may reveal that MPAC is way off the mark especially when MPAC claims that the average increase in your city over the last three years is 21% but they have boosted your assessment during the same period by 30, 40 or even 50 percent! This is all the more disturbing bearing in mind that over previous cycles MPAC had already calculated base line differentials on all properties in your neighbourhood and in different districts. So, absent renovation or new housing, a change from the established differentials may be questionable.

Some property owners may be content with almost any adjustment MPAC makes to their property assessments as a result of filing their RfR. However, those wishing to take the process further, **after** MPAC's response to their RfR, should begin **immediately** writing MPAC to request what information and what documents they would like to receive from the corporation. This may include requests to be provided with all neighbourhood sales which MPAC has in their data bank for the period mentioned above and not just those upon which MPAC will rely, although these, of course, will be important. They may wish to request a detailed statement of MPAC's response to requests for reductions in assessment to properties in your area where MPAC has lowered their valuations. You may also want a listing of all those properties within the same or adjacent neighbourhoods where, for example, and just as an example, MPAC allowed a reduction for "economic obsolescence", or "functional obsolescence," but made no such allowance for your property. You may want to know why another property or properties comparable to your own was assessed lower because of a reduction for "Unspecified" or "Market not otherwise defined," or "other." Ask MPAC for particulars. Making requests as soon as possible is important because you really can't ask the **ARB** to grant you relief concerning such requests where you have not made them on a timely basis and received an adequate response**.**

From the date that MPAC responds in writing to your RfR you have 90 days within which to file your appeal to the **ARB**. If you are a member of a group of property owners who filed an RfR or you know others in your neighbourhood who have and who are not happy with MPAC's response, you may want to press appeals to the **ARB** on a consolidated basis or have your matters heard together. The more properties that can be brought into this type of consolidation the more likely your case will get the attention of MPAC and even the Board which **may** move your group to the **Standard Stream**, should that be your desire. This is a matter which requires careful consideration as obviously the procedures in the Standard Stream are more complex and time consuming and even protracted. Unless you are prepared to spend the time to follow the required procedures you may be best to stay in the Direct Hearing stream.

The Assessment Review Board has a useful video that may be of some help to residential property owners in preparing for their appeal and participating in the hearing. The hearing process is explained utilizing the format of a mock hearing with added commentary. The on-line link is:

http://www.arb.gov.on.ca/english/ComplaintTypes/HearingProcess/HearingVideo/hearingvideo.htm

The format of the hearing requires the assessor or MPAC to call its evidence first. Where lawyers are not involved in representing parties at the hearing, the assessor may fulfil the function of advocate for MPAC as well as give evidence as a witness under oath. The property owners or the property owner's representative may then cross-examine or question the witness. Questioning a witness means simply that. Frame and ask the witness specific questions. Don't use cross-examination as a means of making statements. That opportunity will come later. After MPAC has presented its case the property owner will be invited to present evidence which may include providing evidence under oath through calling witnesses and/or the property owner giving evidence. The concept of evidence includes oral testimony and the filing of documents which the parties are required to exchange in advance of the hearing. See **Rule 45(2)**.

When MPAC's assessor gives evidence it is not as a real estate appraisal expert or an expert at all for the purposes of giving opinion evidence. Assessors are not members of the Appraisal Institute of Canada with recognised professional standards. Nevertheless the Board does allow assessors to give evidence as to value. A property owner seeking to challenge an assessment on appeal before the ARB can call expert appraisal evidence. The Rules give this consideration only in appeals in the **Standard Stream**. See **Rules 48 to 53.** Should a residential property owner in the **Direct Stream** wish to go to the expense of retaining a real estate expert appraiser it ***may*** be that these rules would apply by analogy. The Appraisal Institute of Canada maintains a useful website worth examination.

https://www.aicanada.ca/find-an-appraiser/

If residential property owners cannot afford to call as a witness an expert real estate appraiser, they may consider calling an experienced real estate agent as a witness who has great familiarity with the homeowner's neighbourhood and has access through a local real estate board to a database of sales and may even possibly have been involved in the sales of comparables which either party is relying upon. Since, assessors, as non-experts, can give opinion evidence there is no reason why real estate agents with similar or greater experience can't also give opinion evidence as well.

Taking photographs of residential properties including the appellant's own property, showing differences or deficiencies may be useful to enter into evidence. Efforts should be made to get a "curb side" view of properties claimed by either party to be "comparables." Taking photographs as well to demonstrate factors which favour the appellant's position may be helpful. It is important to remember that for the purposes of the hearing photographs are documents and therefore an appellant should be prepared to have at least three copies to be made available at the hearing.

For those unfamiliar with hearings and who can make the time, preparation for an appeal should include the property owner taking the time to attend at the Assessment Review Board offices where the hearing will be held and sitting in on other appeal hearings. Except in special instances all hearings of the **ARB** are open to the public. Attending several weeks before your own hearing and making notes may give you time to reflect on what you observed and help you in your own preparation.

January 15, 2014 **Bruce Haines, Toronto**

APPENDIX “A” - SOME MPAC ASSESSMENT CRITERIA

When MPAC appraises your property in its “Property Assessment Details,” it sets out various components or criteria opposite which it inserts a figure either by way of addition or subtraction. Some of the components defy explanation such as the insertion of the word “other.” Some are specifically recognised valuation concepts. Others are arbitrary. Consider which items may be applicable to your property from the following list but did not appear in your MPAC appraisal, or whether you feel your assigned category of Total Area Adjustment is fair.

DESCRIPTION	DEDUCTED (RANGE)	ADDED (RANGE)
Economic obsolescence	5% to 15%	
Functional obsolescence	20% to 35%	
Proximity to multi residential property	4%	
Ft. Foot Rate - HNBHD E10 (eg: surcharge for assessment area E-10)		(dollar amount)
Abutting a multi residential commercial property	5%	
Corner lot	2%	
Abutting a ravine		7% to 10%
Unspecified	(dollar amount)	
Market not otherwise defined	up to 50%	
Other	up to 32%	
Abutting heavy traffic pattern	17%	
Abutting light traffic pattern	3% to 10%	
Abutting medium traffic pattern	9%	
Renovation adjustment		(dollar amount)
Duplex	(dollar amount)	
Structure area adjustment (for over 2200 sq. ft.)	(dollar amount)	
Structure depreciation	(dollar amount)	
Total Area Adjustment		$147.74

(Above grade living space) Typical non new base amount per sq. ft.		
Total Area Adjustment (Above grade living space) Typical non new medium amount per sq. ft.		$164.16
Total Area Adjustment (Above grade living space) Typical non new higher amount per sq. ft.		$188.78
Total Area Adjustment (Above grade living space) Typical non new premium amount per sq. ft.)		$221.62