

Residential Property Assessment Appeal Process in New Brunswick: Levelling the Playing Field

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Ombudsman



**NEW BRUNSWICK
NOUVEAU-BRUNSWICK**

Report

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Introduction

For some years now, the Office of the Ombudsman has been receiving complaints about how residential properties are assessed in New Brunswick. Discontent amongst tax-paying residential property owners in the province has been fuelled by a perceived unfairness in taxation policies. In addition to the frustration brought on by a lack of transparency surrounding the residential property assessment appeal process and practices, property owners have long complained about sudden significant increases in property tax assessments. They also lament what they consider arbitrary powers of property assessors, using methods that are complex and legislative provisions and policies that offer little in the way of evidence disclosure.

For the purpose of this report, our examination of the “property assessment appeal process” has been limited to residential properties.

Overview of Complaint

Many of the complaints lodged with our office have dealt with what residential property owners consider to be an unfair and burdensome appeal process. As a result of an investigation by our office, we have concluded that property owners who challenge property assessments are at a considerable disadvantage. Secrecy surrounding the appeal process and how “real and true” property value is determined, result in an unnecessarily frustrating experience for residential property owners. Therefore, the homeowner is not only disadvantaged by the fact that he or she is not fully aware of Assessment Services’ evidence; he or she must also prove that the assessed value of the property is wrong. The onus is not on Assessment Services to demonstrate that its conclusions are correct.

As well, a number of communities over time have complained that property owners in their area have been unfairly disadvantaged by high assessment increases. In our view, the best way to deal with such situations is to emphasize that property owners have the right to appeal assessments and to see that Service New Brunswick undertake changes to the appeal process to make it more fair, effective, timely and transparent. We believe that an improved and renewed appeal process is the best way to ensure that all areas of the province are being treated fairly.

Our investigation focussed on three main areas of complaint, namely: (1) the degree of disclosure to residential property owners who proceed with a “reference” or appeal, (2) the onus on those appealing to provide most of the information required for a successful appeal, and (3) whether the overall appeal process is fair and equitable.

Many government officials participated in the investigation by the Office of the Ombudsman, and we wish to thank them for their assistance and cooperation.

We believe the changes to the appeal process recommended in this report will assist public servants in better serving the citizens of New Brunswick and increase the credibility of property assessment and the appeal process in the eyes of taxpayers.

Context

Assessment Services, a division of Service New Brunswick, has the responsibility of assessing all property in New Brunswick at its real and true value. The assessed value is reflected on the property tax bills which go out to residential property owners each year on March 1. For residential properties, the expression “real and true value” essentially means “market value”. This value is established by professional assessors based on complex calculations.

Every 15 years, there is a comprehensive re-inspection of residential properties in New Brunswick. According to Service New Brunswick officials, a comprehensive re-inspection can't be done in each year, but provincial assessors do maintain an average margin of accuracy between 93% and 95% of the actual market value of residential properties. These officials also point out that this margin is within the latitude of accuracy accepted by the International Association of Assessing Officers (IAAO).

Various factors are taken into account when assessing a property and these can vary yearly, namely trends in the sales of similar properties. All residential properties are assessed using the so-called “mass appraisal” approach which consists of complex operations and comparisons. Yet, each residential property is considered to be assessed individually. The results are tallied and submitted to the Department of Finance which applies tax rates to those assessments. However, only the assessed value of a property may be appealed. While the tax rate is an important number affecting tax payable, the property owner can have little impact on the tax rate, leaving the assessment as the key number from his or her point of view.

The property tax bill or “Assessment Notice” provides basic information such as the property description and location, the assessment amount and the breakdown of the taxes. Other information may subsequently be disclosed “informally” to a property owner prior to or following the triggering of the appeal process. This process also offers the opportunity for the assessor to take into account relevant and previously unknown or unnoticed factors that may result in a reduction of the assessed value of the property. Nonetheless, once the assessment is formally issued (commonly known as “struck”) no changes can be made to the assessment notice unless it is modified formally at some point in the appeal process.

Observations Regarding the Appeal Process

Challenging the assessed value of a property is currently a two-step process. The appeal process is triggered by returning the Notice of Reference of Assessment provided with the tax bill. The Reference must be filed before the closing date of appeal that appears on the bill or Assessment Notice.

However, a disagreement on the assessed value of a property is commonly dealt with informally sometime prior to or following the filing of the Notice of Reference. The property owner is invited to contact the assessor and meet informally with him or her to request additional information on how the value of the property was determined. An explanation of how the value was arrived at is often all that is necessary.

If the property owner and the assessor fail to agree on the assessed value of the residential property, the owner may proceed to the formal Reference process. Once the Notice of Reference is filed, both the property owner and Assessment Services need to fulfill certain obligations related to the challenge of the assessed value. However, the Reference process provides for little disclosure in terms of methods of assessment, market information or other relevant factors that would be known in order to challenge the Assessment. For their part, property owners are expected to disclose all relevant information to the assessor and allow him or her to inspect the property if such an inspection is requested as is provided for under the Assessment Act. Failure to comply with this request may result in rejection of the appeal. Also relevant is the fact that upon a referral being filed by the property owner, Assessment Services switch from a “mass appraisal” approach to the individual appraisal technique. This first part of the appeal process ends with the assessor sending a notice to the owner, by which the original assessment is confirmed or varied. Included with the notice is information on how the assessor’s decision may be appealed. Copies of the assessments are sent to the municipalities which can also appeal.

The second step in the appeal process is much more formal. The property owner and Assessment Services have opposing positions at this point and a third party, the Assessment and Planning Appeal Board becomes involved to review the correctness of the “real and true value” of the property.

The Appeal Board members rely on the evidence presented by both parties to make their decision. But unlike in civil or criminal trials, in this proceeding very little information is exchanged between the property owner and Assessment Services prior to the hearing before the Appeal Board. Only in large industrial or commercial cases will the Appeal Board order all participants to exchange a copy of the information they wish to submit at the hearing.

Yet, there is a gap between what Assessment Services does on an informal basis to make information available to the residential property appellant and what is required by law. It is standard practice for Assessment Services to provide, on an informal basis, additional information such as “sales comparables”. These are detailed information on the sales of

similar properties in the neighbourhood or a similar neighbourhood. More specifically, sales comparables are properties similar (or “comparable”) to the subject property in terms of physical size, age, location, condition, amenities, and style, which have been recently sold between a seller and a buyer who are independent from one another and who negotiate on an equal footing. Sales comparables may include details on private sales transactions, names of sellers and buyers, and other notes relevant when assessing the value of a property.

However, since the information found in sales comparables may contain personal information regarding other property owners, they are considered private by law and therefore protected from public disclosure. Disclosure is limited to a number of circumstances. Restrictions on the release of this information may be found in the *Registry Act*, the *Land Titles Act* and the *Assessment Act*. Nonetheless, the information may be provided to the Appeal Board and the property owner informally at the time of the hearing to establish how the value of a property was determined. The Appeal Board may use this information to question Assessment Services on the methods used to reach the challenged assessed value of a property. Finally, Assessment Services regularly agree to send copies of additional information (other than the sales comparables) several days prior to the hearing so that the property owner has the opportunity to examine it.

During the hearing, Appeal Board members will normally give all property owners the chance to examine any previously undisclosed evidence. The board routinely takes steps to ensure that the owners understand the significance and possible impact of the new evidence submitted by Assessment Services. An adjournment of the hearing may also be granted on request. The hearing reconvenes once the property owner has had the opportunity to examine the sales comparables or other relevant information disclosed by Assessment Services during the initial hearing.

The problem is that these actions taken by Assessment Services and the Appeal Board during the appeal process are the result of good faith and discretionary procedures. They are not obligated under the law and property owners do not necessarily have the benefit of them.

Finally, the *Assessment Act* provides that where a decision of the Assessment and Planning Appeal Board results in a wrong interpretation or application of legislation or regulations, it may be appealed to the Court of Queen’s Bench.

Findings and Recommendations

Government must be accountable to the public. The property assessment appeal process must be fair and credible. For the appeal process to be perceived as legitimate in the eyes of taxpayers, the methods and information used in assessing residential properties should be made available to property taxpayers. In our opinion, a number of legislative changes are needed to achieve fairness in the appeal process.

Disclosure

New Brunswick's *Land Titles Act* and *Registry Act* as well as several provincial regulations severely restrict Assessment Services' freedom to disclose sales comparables, stemming from the fact that many continue to view property sale prices as private information. It is clear that provincial officials are erring on the side of caution when dealing with sales comparables in the appeal process. Yet, these comparables are primarily relied upon by Assessment Services itself to demonstrate that the assessed value arrived at is correct. Restrictions on comparables also impact the work of the Appeal Board in that members have been reluctant to publish decisions that could disclose all or part of the sales comparables.

Property owners will sometimes request that the information regarding sales comparables be disclosed pursuant to the *Right to Information Act*. However, the practice is that most of the information provided in sales comparables (names of past buyers and sellers and amounts paid for the property) will not be disclosed. This position has been backed up by the courts. Thus, the impact of the *Right to Information Act* further underlines the unacceptably weak position of residential property owners in accessing crucial information regarding the assessment process. We conclude that the present balance between the property owners' right to a fair hearing and the protection of personal information regarding other property owners must be revisited to allow for a more effective degree of disclosure.

- **It is recommended that existing legislation and regulations be amended and that Assessment Services be required to provide the residential property owner with all of the information they intend to submit at the Appeal Board hearing within fifteen (15) days from the time the hearing has been scheduled by the Board.**
- **Considering that, currently, many elements of information are already publicly available, it is recommended that legislative amendments be enacted to allow for the disclosure of the relevant information found in sales comparables.**

Unfair Burden of Proof on the Residential Property Owner)

Section 32(5) of the *Assessment Act* places on the property owner the burden of proving that the assessment exceeds the real and true value of a property. This change was made in 1984 to reduce the backlog of appeals before the Appeal Board. It contributed to the elimination of frivolous appeals and, according to Assessment Services, it "serves the taxpayers better" by allowing assessors to spend more time on maintaining a more equitable and accurate level of assessed values. Frivolous appeals serve no valid purpose.

Notwithstanding these considerations, there are also a number of reasons why Assessment Services should be defending the assessment it has established, including the

assessed value of a property, as this assessment affects both the property, regardless of its owners into the future, but also the individual interests of the present property owner relating to taxation. We believe a solution is possible that would make the system fairer without leading to a backlog of complaints. This solution would require several changes in the existing legislation and regulation but, in our opinion, would assist greatly in educating owners on how residential properties are assessed. In order to avoid frivolous complaints however, residential property owners would have to identify in simple and clear terms their reasons for launching an appeal.

- **It is recommended that the burden of proving the accuracy of the assessment valuation be placed on Assessment Services. In launching an appeal, residential property owners would have to explain in simple terms why they are appealing.**

Publication of Appeal Board decisions

Another feature of the current appeal system is that the legally binding Appeal Board decisions are not published. It is agreed that administrative tribunals such as the Appeal Board are not bound by their previous rulings. Nonetheless, the nature of the questions addressed by the Board and the issues they resolve serve to *educate* and *inform* those who are subject to the laws of this province and whose interests may be affected by them.

Furthermore, the fact that Assessment Services receives a copy of each decision issued by the Appeal Board related to residential property assessment creates an unequal and indefensible system. Sales comparables are mentioned or detailed in the decisions of the board. But that does not, in our opinion, outweigh the interests of New Brunswickers in having a transparent property assessment and appeals system. The issue of the protection of personal information can be addressed in a number of ways by the Appeal Board, such as referring to general information rather than specific information that could disclose the identity and personal information of other property owners as contained in sales comparables. It can also be addressed by publishing abstracts of the Board's decision rather than the complete wording.

Publication of the Appeal Board's decisions is not new in New Brunswick. In fact, the Appeal Board, which also acts as the appeal tribunal in matters of community planning, is required under Section 88(3) of the *Community Planning Act* to publish those decisions deemed by the Environment Minister to be of significance. Those decisions are to be published annually.

- **It is recommended that abstracts of the Appeal Board's decisions, insofar as they relate to residential property assessment, be published annually and made publicly accessible to property owners.**

Appeal Board decisions are an important part of the property assessment process in the province of New Brunswick. They have an impact on property owners themselves but also on how the Assessment Services conducts subsequent individual or group

assessments. In short, the Appeal Board's decisions may serve as important tools when owners wish to challenge the assessed value of their property.

Conclusion

The one constant in our review of the property assessment appeal process is that there is a real need to restore a proper balance of power between the Government and residential property owners. In order for property owners to effectively challenge the assessed value of their property, they must have access to the information used in setting the assessed value of a property. In our opinion, this requires that a property owner be entitled:

- To be made aware of evidence presented to justify a determined level of assessment, and;
- To have the opportunity to respond in an effective way;
- To benefit from an exchange of information prior to the hearing before the Appeal Tribunal; and
- To leave to the Assessment Services the burden of establishing the correctness of the assessed value of a property.

All efforts should be made by the government to ensure that the goal of adequate disclosure is achieved. This would level the playing field and ensure a more appropriate balance of power between the parties as well as greater legitimacy for the Assessment and Planning Appeal Board, the system of property assessments and the overall government process itself. In this area of public administration as in all others, transparency is the best public policy.