



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 21, 2022
Docket: LT21014
Type: Real Property
Assessment Act Appeal

INDEXED AS: 3288216 Nova Scotia Limited v. Minister of Finance

Order No: LT22-08

BETWEEN:

3288216 NOVA SCOTIA LIMITED

Appellant

AND:

MINISTER OF FINANCE

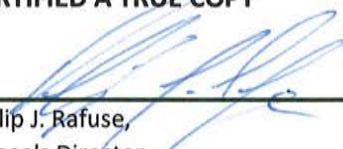
Respondent

ORDER

Panel Members:

J. Scott MacKenzie, Chair
M. Douglas Clow, Vice-Chair
Erin T. Mitchell, Commissioner

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Philip J. Rafuse,
Appeals Director
Prince Edward Island Regulatory & Appeals
Commission

This proceeding requires the Commission to consider whether it has the jurisdiction to hear an appeal pursuant to s. 22 of the Real Property Assessment Act, R.S.P.E.I. 1988, c. R-4 ("Act").

BACKGROUND

- 1) On October 12, 2021, the Minister of Finance ("Minister") disposed of an assessment referred to her for reconsideration ("Decision") and mailed notice of her decision to the affected property owner, 3288216 Nova Scotia Limited ("Owner").
- 2) In her decision, the Minister included notice that, in the event that the Owner was not satisfied with the Decision, a notice of appeal had to be completed, forwarded by registered mail, and received by the Minister and the Commission within 21 days of the mailing date noted on the face of the Decision.
- 3) On November 2, 2021, the Owner mailed a notice of appeal to the Commission by registered mail.
- 4) On November 2, 2021, the Owner mailed a notice of appeal to the Minister by registered mail.
- 5) On November 3, 2021, the Minister received the notice of appeal.
- 6) On November 4, 2021, the Commission received the notice of appeal.

ISSUE

- 7) The written submissions filed by the parties raise one main question for the Commission. That question is whether the Commission has the jurisdiction to hear this appeal pursuant to s. 22 of the Act. The question raised is a legal one. There is no material dispute between the parties as to the timeline of events. No issues of credibility are present. Having received written submissions from the parties on the subject of jurisdiction, the Commission will determine this matter in writing.

DISPOSITION

- 8) The appeal is dismissed. For the reasons that follow, the Commission, as a statutory tribunal without inherent authority, does not have the jurisdiction to hear an appeal that has been filed out of time. The Commission is also without the statutory authority to extend the time for filing an appeal under the Act.

SUBMISSIONS FROM THE PARTIES

Minister

- 9) The Minister submits that the appeal was served outside the 21-day appeal period prescribed in s. 22(2)(a) of the Act and is therefore out of time. The Minister states that the deadline for filing an appeal was November 2, 2021. The Minister was served with the notice

of appeal on November 3, 2021 while the Commission was served November 4, 2021. The appeal must therefore be dismissed because the Commission has no jurisdiction to extend the time for filing an appeal.

Owner

- 10) The Owner submits that the appeal was begun under s. 23(1)(a) of the Act by mailing the notice of appeal by registered mail on the 21st day after the mailing date of the Decision. According to the Owner, the notice of appeal was mailed on November 2, 2021. Having mailed the notice of appeal within 21 days, the Commission has jurisdiction to hear and determine the appeal.

ANALYSIS

- 11) In order to determine this legal question, the Commission must consider the text, context, and purpose of the enabling provisions in the Act related to appeals.

Legislation

- 12) Subsection 22(1) of the Act states that a person who has requested reconsideration by the Minister “may appeal to the Commission” to have the assessment vacated or varied. The appeal is therefore made to the Commission. Subparagraph 22(2)(a) of the Act goes on to provide that an appeal to the Commission may be made “within twenty-one days of the mailing of the notice referred to in subsection 20(3).” A person who wishes to make an appeal to the Commission therefore has 21 days from the mailing date of the notice delivered by the Minister. In this case, that mailing date was October 12, 2021.
- 13) Subsection 23(1) of the Act states that the appeal to the Commission “shall be instituted by serving a notice of appeal” upon the Minister and the Commission “by mailing a copy of it by registered mail.” The institution of appeal is therefore grounded in service upon the Minister and the Commission. The manner of service is by registered mail. In this case, the notice of appeal was mailed on November 2, 2021.
- 14) There are a number of purposes for appeal provisions like those found in ss. 22-23 of the Act. Two are particularly relevant here. First, the appeal period is relatively short – 21 days – to give effect to the finality of assessment decisions by the Minister. Finality is particularly important in the context of real property assessments given the volume of assessments made annually by the Minister. Second, the processes for instituting an appeal are detailed so as to ensure that notice is provided to the party affected by the appeal – the Minister – and the body charged with determining the appeal – the Commission. This statutory procedure for notice is fixed by the Legislature and aimed at ensuring that notice of an appeal is received by the parties involved and in a timely manner. Any interpretation of these appeal provisions must take accord of these purposes and practical realities.
- 15) Context is also important. The appeal provisions must be read with the Act as a whole. Subsection 23(1) of the Act states that an appeal to the Commission is instituted by “serving” a notice of appeal upon both the Minister and the Commission. Subsection 25(1) of the Act provides that a notice is “sufficiently served” if it is delivered personally or sent by registered

mail. Subsection 25(2) of the Act further states that, when a notice is served by registered mail, “the service shall be deemed to be made on the third day after the date of mailing.” Mailing is therefore not service according to the text of the Act. The Act expressly distinguishes between the two concepts. Service is deemed to be made by registered mail on the third day after mailing. In addition, service would be made in fact on the actual date of receipt if the document was received before the deemed date of service, being the third day after mailing. In this case, the notice of appeal served on the Minister on November 3, 2021 and served on the Commission on November 4, 2021.

- 16) Read as a whole, the appeal provisions state that an appeal to the Commission is instituted when a notice of appeal has been served on the Minister and the Commission within 21 days of the mailing of the reconsideration decision by the Minister.

Case law from the Commission

- 17) In Order LT00-04, the Commission received a notice of appeal under the Act on November 1, 2000. The Minister had mailed notice of the assessment decision on July 24, 2000. The Commission invited submissions as to its jurisdiction. The Commission found that it was without jurisdiction to waive the statutory time period in the Act and had no authority to hear the appeal. In addition to making these relevant findings, this previous order of the Commission is helpful in that the Commission relied upon the date that the notice of appeal was actually received by the Commission.

Procedural rules established by the Commission

- 18) In its own rules of practice and procedure, the Commission generally considers the date of service to be the date that a document is actually received. This is subject to any specific statutory directions to the contrary. Rule 24 provides as follows:

24. Date of Service

Unless otherwise stipulated by legislation, the date of service of a document is the day on which the person being served receives the document.

In other words, the essence of service is receipt of the document in question. Receipt is notice to the affected party or parties.

Application to this record

- 19) The starting point is the counting of days and the determination of the statutory appeal period in s. 22(2)(a) of the Act, which requires an appeal to be made to the Commission within 21 days of the mailing of the notice from the Minister. There is no dispute in the record that the notice was mailed by the Minister on October 12, 2021. Excluding that date, the appeal period ended on November 2, 2021. A day is generally considered to be an entire calendar day but, for practical purposes, the filing period ends 4:00 p.m. on that day. See Rule 21(2). Again, there does not appear to be any dispute that the notice of appeal was mailed by the Owner on November 2, 2021. However, it was not actually received by the Commission until November 4, 2021. The Commission must therefore consider whether the

act of mailing constitutes service under the Act or whether the notice of appeal actually has to be received (or deemed in law to be received) by the Commission.

- 20) As ss. 22(1) and 22(2)(a) of the Act make clear, the appeal is “to the Commission” and that appeal must be made within 21 days “of the mailing of the notice.” An appeal is instituted or started “by serving a notice of appeal” according to s. 23(1) of the Act. This service must be effected on both the Minister and the chairperson of the Commission, and the manner of service is prescribed to be registered mail. Meaning must be given to the words “by serving a notice of appeal” in s. 23(1) of the Act. The Legislature chose to use the words “serving” and “mailing” in the Act, and this choice in text must be given meaning by the Commission. An appeal is therefore instituted by service of the notice of appeal on the Commission. The manner of service is by registered mail.
- 21) The essence of service is receipt or notice. This is supported indirectly by s. 27(2) of the Act, which deems service by registered mail to be made on the third day after mailing. Mailing is therefore not service according to the Act. It is also supported directly by Rule 24 published by the Commission, which states that the date of service of a document is the day that it is received. In order to be served under the Act, a notice of appeal must actually be received by the Commission or be deemed in law to be received by the Commission. This interpretation avoids any potential for ambiguity, reflects the prior case law of the Commission, and is consistent with the text, context, and purpose of the appeal provisions in the Act.
- 22) While it is the Commission alone that must decide the interpretation of ss. 22 and 23 of the Act, it is worth noting that the Minister, in her notice to the Owner, did also state that a notice of appeal had to be completed, forwarded by registered mail, and received by the Minister and the Commission within 21 days.
- 23) In summary, the notice of appeal was received by the Commission outside the 21-day appeal period as prescribed by the Act and must be dismissed.

Other case law related to mailing versus service

- 24) This interpretation by the Commission is supported by the case law in this area.
- 25) In the context of an appeal against an assessment, the Nova Scotia Utility and Review Board (“NSUARB”) considered a notice of appeal that had to be served within 30 days from the day when notice of the assessment decision was received. The decision was received on September 28, 1998. The notice of appeal was received by the NSUARB on October 30, 1998. The notice was mailed on October 24, 1998 with the belief that it would be received within the prescribed appeal period. The NSUARB found that the act of mailing the notice of appeal does not constitute service until the notice is in fact received. The notice of appeal was therefore not served within the time period required by the statute. The NSUARB had no jurisdiction to hear the appeal. The essence of service was therefore receipt. (See 1999 NSUARB 32).
- 26) Similarly, in 1995 NSUARB 81, the NSUARB considered an appeal from an assessment decision received on April 24, 1995. The notice of appeal was mailed on May 19, 1995 but

not received by the NSUARB until May 26, 1995. Again, the notice of appeal had been mailed within the time limit of 30 days; however, it was not received until after the statutory appeal period expired. The NSUARB found that it did not have the authority to extend the time for serving the notice of appeal “even in situations where it appears that the delay has been caused by Canada Post.” The NSUARB did not have jurisdiction to hear the appeal.

- 27) In *Supercity Machining & Electric Motor Ship Inc. v. Attorney General (Nova Scotia)*, 1998 NSCA 223, the Nova Scotia Court of Appeal dismissed an appeal from a decision by the NSUARB that it did not have jurisdiction to hear an appeal from the provincial tax commissioner because the notice of appeal was filed out of time. The impugned decision by the tax commissioner had been received on January 7, 1998. The notice of appeal was dated February 5, 1998, but it was mailed in error to the wrong party. The notice of appeal was later redirected to the NSUARB and received on February 12, 1998. The appeal period expired on February 6, 1998. The Nova Scotia Court of Appeal found no error on the part of the NSUARB and held “[t]he late filing of the notice of appeal deprived it of jurisdiction to entertain the appeal.”
- 28) Similarly, in *Glow-Worm Investments Ltd. v. Atlantic Shopping Centres Ltd.*, [1981] N.S.J. No. 415 (C.A.), the Nova Scotia Court of Appeal considered an appeal from the Provincial Planning Appeal Board (“Board”) where the Board had concluded that it had no jurisdiction to hear the appeal. Under the statute, an interested person could appeal to the Board within 30 days of notice of the impugned decision being published. The appeal period expired on November 29, 1979. The notice of appeal was mailed on November 28, 1979 and received by the Board on December 6, 1979. According to the Nova Scotia Court of Appeal, the appeal provision “clearly requires that a notice of appeal be given to the Board, that is, be actually communicated to the Board in some way, within thirty days.” This was not done and, for that reason, the Nova Scotia Court of Appeal found that the Board correctly held that it did not have jurisdiction to entertain the appeal.
- 29) Secondary legal sources also support the conclusion reached by the Commission. In her leading text, Blake observes that a notice of appeal “must be served on all other parties and the tribunal.” Blake also states that an appeal is out of time “if the notice of appeal is not filed with the appellate body in time, even if it was mailed in time.” See Blake, *Administrative Law in Canada*, 5th ed. (Markham, ON: LexisNexis, 2011) at 168.

CONCLUSION

30) For the reasons above, the Commission dismisses the appeal. The Commission thanks the parties for their submissions in writing.

DATED at Charlottetown, Prince Edward Island, Friday, January 21, 2022.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, Commissioner