SUPREME COURT OF NOVA SCOTIA

Citation: *Northwoodcare Inc. v. Nova Scotia(Assessment)*, 2014 NSSC 167

Date: [2014-05-05]
Docket: Halifax No. 417019
Registry: Halifax

Between:

Northwoodcare Inc.

Applicant

and

Property Valuation Services Corporation, A Body Corporate Created by the *Property Valuation Services Corporation Act* **(Director of Assessment)**

Respondent

Judge:	The Honourable Justice Pierre L. Muise
Heard:	November 26, 2013, in Halifax, Nova Scotia
Final Written Submissions:	December 13, 2013
Counsel:	Tracy S. Smith, for the Applicant Robert W. Andrews, for the Respondent

INTRODUCTION

[1] Northwoodcare Inc. (“Northwood’) is the owner of a property at 2630 Gottingen Street, Halifax, Nova Scotia, on which it operates a nursing home. The Notice of Assessment in relation to that property was issued January 15, 2013. Northwood engaged the services of Turner Drake and Partners Inc. (“Turner Drake”) to handle the appeal from that assessment. The appeal was filed on January 24, 2013. The Director of Assessment (“Director”) sent the Notice of Confirmation of Assessment by registered mail on April 23, 2013. Turner Drake signed confirmation of registered delivery of that Notice on April 24, 2013. That commenced the 14 day limitation period for filing a notice of continued appeal, resulting in a deadline of May 8, 2013 to do so.

[2] By that time, the Turner Drake employee responsible for the file was André Pouliot, who had taken over the file from an employee who was on maternity leave. The additional files Mr. Pouliot took over from the worker on leave exacerbated his already heavy caseload. At the time of the deadline he was also

facing very challenging family issues. On May 4 he had received word that his mother-in-law was no longer responding to her terminal cancer treatments. As it turned out, she passed away shortly thereafter, on May 23. On the day of the deadline, May 8, his 16 month old son fell ill and was having great difficulty breathing. He had to bring his son to the medical clinic that morning, then to the emergency department that afternoon. He had to remain with his son until he was released at about 7 PM that night. May 9 was spent trying to catch up on messages received while he was out on May 8. He only noticed the missed filing deadline on May 10 and filed, immediately that day, the notice labelled as "Notice of Dissatisfaction", included on the Notice of Confirmation of Assessment. The Notice of Dissatisfaction, stated: "If you are not satisfied with this Notice of Confirmation and wish to continue to NS Assessment Appeal Tribunal, complete this form and return to the Recorder at the NS Assessment Appeal Tribunal … ." Therefore, it was, in effect a Notice of Continued Appeal.

[3] By letter dated May 29, 2013, the Nova Scotia Assessment Appeal Tribunal ("Tribunal") responded that Northwood's Notice of Continued Appeal was received outside the 14 day deadline and, as a result, the appeal had been deemed abandoned. It indicated it had no further jurisdiction to hold a hearing in relation to the matter.

[4] On June 21, 2013, Northwood, through counsel, wrote the Tribunal asking it to extend the filing deadline respecting the Notice of Confirmation and Notice of Dissatisfaction, pursuant to s. 84 of *the* ***Assessment Act***, R.S.N.S. 1989, c. 23. The Tribunal declined jurisdiction to hear the request for extension of time.

[5] Northwood brought the within Application in Court for an order declaring that the Tribunal has jurisdiction to grant an extension of time to file a notice of dissatisfaction / continued appeal pursuant to s. 84 if the request is made within 60 days of the receipt of a notice of confirmation of assessment, or for an order allowing Northwood to file the Notice of Dissatisfaction / Continued Appeal outside the deadline. In the alternative, if this Court determines that a s. 84 extension of time is only available within the 60 day period following the original notice of assessment, Northwood seeks a determination that the Director's delay in providing the Notice of Confirmation of Assessment was unreasonable and constitutes a breach of the duty of fairness, warranting a remedy.

[6] The Director takes the position that s. 84 does not apply to notices of dissatisfaction or notices of continued appeal, under ss. 68 and 68A of the ***Assessment Act***.

[7] The Director also submits that the delay in providing the Notice of Confirmation of Assessment did not amount to a breach of procedural fairness because such delay occurs, at least in part, to accommodate the workload and work schedules of agents of record for commercial assessment appeals.

[8] In connection with the particular assessment appeal herein, Charlene MacNeil, Senior Commercial Assessor with Property Valuation Services Corporation ("PVSC"), in consultation with Turner Drake, as agent of record for Northwood, established a schedule which provided that Turner Drake's position on the assessment appeal for the subject property was to be provided by March 22, 2013. The purpose for requesting such information from such agents is that most commercial assessment appeals are filed by agents and contain only generic grounds of appeal. In order to conduct a meaningful review, the PVSC requests: particulars of the grounds of appeal; the positions of the appellant; disclosure; and, discussion on the appeals. Having noted, by April 18, 2013, that she had not received Northwood's position on the appeal for the property in question, she conducted her review of the file without such input, and determined that the assessed value should be confirmed. She then communicated her decision to Turner Grant, by an email sent April 18, 2013, at 3:15 PM, albeit to two employees

other than Mr. Pouliot, one of whom was the individual on maternity leave, who had remained active on many files.

ISSUES

[9] In my view, the issues to be determined in this application are the following:

1. Does the Tribunal have jurisdiction, pursuant to s. 84 of the ***Assessment Act***, to extend the time to file notices of dissatisfaction and notices of continued appeal, within 60 days from service of notices of amended assessment and notices of confirmation of assessment under ss. 68 and 68A?

2. Should this Court, pursuant to s. 94, grant Northwood an extension of time to file its Notice of Continued Appeal?

3. If the answer to questions 1 and 2 is "no", does the delay by the Director in providing the Notice of Confirmation of Assessment amount to breach of procedural fairness warranting this Court permitting the late filing of the Notice of Continued Appeal?

[10] The Director raised, as a preliminary issue, whether the inclusion of the words "deemed abandoned" in subs. 68(5) and 68A(3) are to be interpreted as creating a conclusive or a rebuttable presumption. However, in my view, the interpretation of the words "deemed abandoned" requires consideration of the ***Act*** as a whole, including s. 84. Therefore, it is more appropriate to determine the proper interpretation of those words as part of the determination in relation to whether s. 84 applies to a s.68 notice of dissatisfaction and a s. 68A notice of continued appeal, than it would be to do so in isolation. Consequently, I will discuss those words as part of my analysis in relation to the first issue listed above.

LAW AND ANALYSIS

ISSUE 1: DOES THE TRIBUNAL HAVE JURISDICTION, PURSUANT TO S. 84 OF THE ASSESSMENT ACT, TO EXTEND THE TIME TO FILE NOTICES OF DISSATISFACTION AND NOTICES OF CONTINUED APPEAL, WITHIN 60 DAYS FROM SERVICE OF NOTICES OF AMENDED ASSESSMENT AND NOTICES OF CONFIRMATION OF ASSESSMENT UNDER SS. 68 AND 68A?

(A). Principles of Statutory Interpretation

[11] The Court in ***Romad Developments Ltd. v. Nova Scotia (Director of Assessment)***, 2008 NSSC 260, at paragraphs 33 to 36, described the current approach to interpretation of taxation statutes as follows:

> **"33** Any ambiguity as to whether taxation statutes are to be interpreted as all other statutes -- that is, remedially or purposively, was resolved by ***Quebec* v. *Notre-Dame de Bonsecours***.
>
> **34** After reviewing Supreme Court decisions that reflected the change in the Court's interpretative policy for taxation statutes from that of strict construction against the government, except where it "relates only to the clarity of the wording of tax legislation" (para. 28), to a purposive approach, the Court effectively adopted Elmer A. Driedger's formulation of the modern approach to statute interpretation.
>
> **35** In a more recent decision, ***Bell ExpressVu Limited Partnership* v. *Rex*** [2002] 2 S.C.R. 559, 2002 SCC 42, the Court held that:
>
> a) this approach recognizes the important role that context must play in construing the words of a statute (para. 27);
>
> b) other principles, such as strict construction of penal statutes and "Charter value" approaches, only enter the picture where an ambiguity exists (paras. 28 and 53-67);
>
> c) by necessity, an ambiguity only arises if, after consideration of the entire context of a provision, it is reasonably capable of multiple interpretations. An ambiguity must be real and the words reasonably capable of more than one meaning (para. 29); and,
>
> d) the interpretative factors laid out by Driedger need not be canvassed separately in every case, and are closely related and interdependent (para. 31).
>
> **36** For the Court, Iacobucci, J., grouped his analysis of the interpretative factors in that case into two headings: first, interpretation of the grammatical and ordinary sense of the words of the provision; and, second, interpretation within the context of the broad legislative scheme, the rest of the statute, and related legislation."

[12] The Court in ***Romad*** analyzed the ***Assessment Act*** under the following three groups of interpretive factors:

1. "Words in their grammatical and ordinary sense";
2. "Words in the context of the Assessment Act"; and,
3. "The scheme of the Assessment Act".

[13] Justice Iacobucci, in ***Bell ExpressVu***, at paragraph 26, stated that Elmer Driedger's modern approach to interpretation of statutes was the preferred approach in a wide range of situations. He cited with approval the following Driedger formulation:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[14] He considered the scheme and object of the legislation in question, and intention of Parliament, under the interpretive factor headings noted by the Court in ***Romad***, i.e. the grammatical and ordinary sense, and the context.

[15] Also at paragraph 26, Justice Iacobucci noted that the Driedger approach was "buttressed by s. 12 of the Interpretation Act, R.S.C. 1985, c. I-21, which provides that every enactment 'is deemed remedial, and shall be given such fair,

large and liberal construction and interpretation as best ensures the attainment of its objects'."

[16] In the case at hand we are dealing with Nova Scotia legislation. Therefore, the applicable provision is subs. 9(5) of the ***Interpretation Act***, R.S.N.S. 1989, c. 235, which states:

> " (5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
> (a) the occasion and necessity for the enactment;
> (b) the circumstances existing at the time it was passed;
> (c) the mischief to be remedied;
> (d) the object to be attained;
> (e) the former law, including other enactments upon the same or similar subjects;
> (f) the consequences of a particular interpretation; and
> (g) the history of legislation on the subject."

[17] Our Court of Appeal, in ***Antigonish (Town) v. Antigonish (County)***, 2006 NSCA 29, after citing with approval the Driedger formulation of the modern test for statutory interpretation, and noting that the factors in s. 9(5) of the ***Interpretation Act*** were also to be considered, commenced its analysis with a discussion of the applicable factors enumerated under s. 9(5).

[18] In my view, in the case at hand, it is appropriate to conduct the statutory interpretation analysis by examining the words in their grammatical and ordinary

sense, with emphasis on key words, and assessing the words in the context of the ***Assessment Act***, while considering its object and scheme, as well as legislative intent, under both those headings, bearing in mind the factors enumerated in s. 9 of the ***Interpretation Act***. However, examining the words in their ordinary sense also requires, to some extent, comparison with other provisions of the ***Assessment Act***.

B. Relevant Statutory Provisions

[19] The main ***Assessment Act*** provisions which are relevant to the interpretive exercise required to determine the issues in the case at hand include ss. 53, 62, 63, 68, 68A and 84, which state the following:

> **Notice of assessment**
>
> **53 (1)** The Director shall, on completion of the assessment roll, give notice of the assessment by serving each person liable to be rated with a notice which may be in Form B in the Schedule to this Act or to the like effect bearing the name of the Director or of a person acting for him, showing the amount at which the property of the person has been assessed and the classification of the property with the same detail as appears on the roll.
>
> **(1A)** The notice of assessment must also include the amount at which the property of the person was assessed for each of the preceding five years.
>
> **(2)** The notice may be served either personally or by leaving it at the residence or place of business of the person assessed or by posting it in a conspicuous place on the property assessed or by mailing it, postage prepaid, addressed to his last or usual place of residence or business, if known to the assessor, but where such place of residence or business is not known to the assessor, failure to serve the notice shall not render invalid the assessment or any subsequent proceedings based on the assessment.

Notice of appeal by complainant

62 (1) Any person complaining that he has been wrongfully inserted in or omitted from the assessment roll or that his property has been undervalued or overvalued by the assessor or that his property has been wrongfully classified may give notice in writing to the recorder that he appeals from the insertion, omission, valuation or classification and shall give a name and address where notices may be served upon him by the recorder.

(2) Any ratepayer or the clerk of any municipality complaining that a person has been wrongfully inserted in or omitted from the roll or that property of a person has been undervalued or overvalued by the assessor or that property of a person has been wrongfully classified may give notice in writing to that person and to the recorder that he appeals from such insertion, omission, valuation or classification and shall give a name and address where notices may be served upon him by the recorder or the respondent.

(3) Any person having an interest in a property complaining that the property has been overvalued by the assessor or that the property has been wrongfully classified may give notice in writing to the person assessed for the property and to the recorder that he appeals from such valuation or classification and shall give a name and address where notices may be served upon him by the recorder or the respondent.

(4) Where a person complains that a property has been undervalued, or has been wrongly classified, and where the property is occupied by a person who is assessed an occupancy assessment, then the person complaining shall give notice in writing to the occupier that he appeals from the valuation or classification and shall give a name and address where notices may be served upon him by the occupier, in addition to any other notices required by this Section.

Notice of appeal

63 (1) The notice of appeal shall state with particularity the grounds of objection to the assessment and shall be given not later than thirty-one days after the notices of assessment are served as provided in Section 53.

Duties and powers of Director on appeals

68 (1) The recorder shall send a copy of every notice of appeal taken with respect to property in a municipality to the Director within seven days after the receipt thereof.

(2) The Director shall forthwith review the assessment complained of and for that purpose he may, at his discretion, confer with the appellant and the respondent.

(3) After having reviewed the assessment, the Director may alter the assessment complained of and shall forthwith notify the clerk and recorder of the change.

(4) If the Director amends the roll under the authority of this Section, he shall immediately serve an amended notice of assessment upon the appellant and upon the person assessed, either by personal service or by mailing it by registered mail addressed to the appellant at the address given by him for service and to the respondent, if any, at the last address known to the assessor.

(5) When an amendment has been made under this Section, the appellant and the respondent shall, if either of them is dissatisfied, serve notice in Form E in the Schedule on the recorder and on the opposite party within fourteen days after service under subsection (4) and if no notice is so served, then the appeal shall be deemed to have been abandoned.

(6) When notice in Form E has been given, the appeal shall proceed in the manner provided by this Act.

Notice of confirmation

68A (1) Where the Director determines that no change in the assessment is required, the Director shall immediately serve a notice of confirmation of assessment upon the appellant and upon the person assessed, either by personal service or by mailing it by registered mail addressed to the appellant at the address given by the appellant for service and to the person assessed at the last address known to the assessor.

(2) A copy of the notice of confirmation shall be sent to the clerk.

(3) Where the assessment is confirmed pursuant to this Section, the appellant, the person assessed and the clerk may serve notice of continued appeal on the recorder within fourteen days after service and, where no notice is so served, the appeal is deemed to have been abandoned.

Special hearings and time extensions

84(1) If any person shows, within sixty days from service of the notice of assessment by oath or affidavit on *ex parte* application, to the satisfaction of the Tribunal, that he has been prevented by absence, illness or other sufficient cause from appealing from the assessment or from duly prosecuting his appeal, the Tribunal may grant such person a hearing and arrange a sitting of the Tribunal to hear the appeal, and the Tribunal may impose such terms as to notice and service of documents as it considers proper.

(3) The Tribunal may sit at such time and place as it shall determine to hear and determine appeals authorized under this Section.

C. Prior Judicial Commentary

[20] The Court in ***Nova Scotia (Attorney General) v. Emscote Ltd.***, 2001 NSCA 92, at paragraph 22, stated that extensions of time to file under s. 84 of the **Assessment *Act*** did "not appear to apply to the Notice of Dissatisfaction to be served under s. 68(5)".

[21] S. 68 essentially parallels s. 68A. It addresses situations where the Director, after reviewing the assessment complained of in an appeal, alters the assessment and amends the assessment roll accordingly. It requires the director to immediately serve an amended notice of assessment upon the appellant in the same manner as the Director is required to serve notice of confirmation of assessment under s. 68A. Like s. 68A, it also provides that if the appellant does not serve a notice of dissatisfaction within 14 days after being served with the amended notice assessment, "then the appeal shall be deemed to have been abandoned". Therefore, if the Court of Appeal in ***Emscote*** had made a clear pronouncement on the question, following an analysis of the issue of the applicability of s. 84, this Court would be bound by that pronouncement.

[22] However, the Court of Appeal in ***Emscote*** conducted no analysis and the applicability of s. 84 was not in issue. It simply made a comment in passing that s. 84 did not "appear" to apply. Therefore, I must conduct an interpretive analysis of

whether or not s. 84 applies to service of a notice of dissatisfaction or continued appeal under s. 68 or s. 68A.

D. "Words in Their Grammatical and Ordinary Sense"

Definition of "Notice of Assessment"

[23] The 60 day period during which a request for an extension of time can be made pursuant to s. 84 commences with the service of "the notice of assessment". "notice of assessment" is not defined in the ***Assessment Act***.

[24] "Notice of assessment" is used as the heading for s. 53, which is the provision dealing with the original notice of assessment issued by the Director. Therefore, one might be inclined to consider the reference in s. 84 to "the notice assessment" as being a reference to the original notice of assessment issued pursuant to s. 53. However, ss. 56 and 57 provide for service of an "amended notice of assessment" where the Director discovers or determines, after the assessment roll has been filed, that there has been one of a number of specified types of assessment errors or omissions.

[25] The Director concedes that the 60 day period referred to in s. 84 runs from the date of service of such an "amended notice of assessment". The Director distinguishes the amended notices of assessment under ss. 56 and 57, from the amended notice of assessment under s. 68, and the notice of confirmation of assessment under s. 68A, for reasons which I will discuss later. However, in the meantime, at the very least, the applicability of s. 84 to amended notices of assessment under ss. 56 and 57 shows that the reference in s. 84 to "the notice of assessment" is not restricted to the original notice of assessment filed pursuant to s. 53.

[26] It also shows that the reference to "the" notice of assessment, rather than "a" notice of assessment, is not meant to restrict the applicability of s. 84 in that fashion.

"Duly Prosecuting" the Appeal

[27] The time extension under s. 84 is available to any person who shows that he or she has been prevented, for the reasons listed, "from appealing from the assessment or from duly prosecuting his appeal".

[28] In my view, serving a notice of dissatisfaction or continued appeal, pursuant to s. 68 or s. 68A, is a step in the prosecution of an appeal from an assessment, which is mandated by those sections. As conceded by the Director, there is no other formally required step of that nature between the filing of an appeal and service of the notice of dissatisfaction or continued appeal.

[29] Amended assessments made under ss. 56 and 57 are appealed as original assessments in accordance with ss. 62 and 63. Therefore, the filing of appeals from those types of amended assessments would not constitute due prosecution of an appeal.

[30] According to the affidavit of Philip Schofield, of PVSC, because the majority of appeals from commercial property assessments are filed by agents "en mass with generic grounds of appeal", commercial assessors are directed to "organize and pace" reviews to allow time for those agents to provide the details required to conduct a proper review. Since those details are often "not forthcoming until appeals are scheduled on a tribunal docket months later or not provided at all", the Commercial Assessors are directed to conduct the review without them if they are not received "in a timely manner".

[31] In the case at hand, the notice of assessment was issued January 15, 2013, and the notice of confirmation of assessment was delivered on April 24, 2013. That was well outside the 60 day period commencing with the service of the original notice of assessment. According to the affidavit of Charlene MacNeil, the Commercial Assessor responsible for the file, she asked that the details required to conduct the review be provided by March 22, 2013, which would already have been outside the 60 day deadline. The schedule attached to Exhibit B to her affidavit indicates deadlines for Turner Drake Agents to provide requested details for other commercial properties under assessment appeal ranging from March 15 to April 5, 2013. Therefore, in relation to all of the 14 properties on that schedule, by the time the review was conducted, and the notice of confirmation of assessment or amended notice of assessment was served, it would have been more than 60 days from the service of the original notice of assessment. I infer that similar schedules were set for properties appealed by agents other than Turner Drake agents. Therefore, for many or most commercial properties, limiting the availability of s. 84 relief to the 60 day period commencing with service of the original notice of assessment would, in practice, make it unavailable to extend the time to file a notice of continuation of appeal to duly prosecute the appeal.

[32] Consequently, in my view, unless a s. 84 extension is available for service of the notice of continued appeal under s. 68A or the notice of dissatisfaction under s. 68, within 60 days from service of the notice of confirmation of assessment or the amended notice of assessment, the words "from duly prosecuting his appeal" are, in practice, rendered meaningless.

[33] The Court in ***Antigonish (Town) v. Antigonish (County)***, at paragraph 39, cited with approval the principle of the "presumption against tautology" articulated by Ruth Sullivan in *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths, 2002) as follows:

> "[E]very word and provision found in a statute is supposed to have a meaning and a function. For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant."

[34] The rule of "presumption against tautology", combined with the practical effects of limiting s. 84 extensions of time to those requested within 60 days from service of the original notice of assessment, suggests that the words "from duly prosecuting his appeal" were meant to be interpreted as extending the application of s. 84 to the formal steps required to prosecute an appeal (e.g. the filing of a notice of continued appeal), with the time limit for making the extension request

beginning to run when the time limit for taking the step begins to run (e.g. when a notice of confirmation of assessment is served).

[35] The Director argues that the words "duly prosecuting" are included to permit time for the appellant to amend the notice of appeal and to provide information requested by PVSC, provided it is within 60 days of the original notice of assessment. However, such an interpretation is inconsistent with the apparent purpose of s. 84, which is to provide relief from failure to meet a deadline. The ***Act*** and the regulations made pursuant to it do not provide deadlines for amending the notice of appeal or providing requested information. As such there is no deadline to extend.

"Deemed to Have Been Abandoned"

[36] Subs. 68(5) and subs. 68A(3) provide that, where no notice of dissatisfaction or continued appeal is served within 14 days of service of the amended notice of assessment or the notice of confirmation of assessment, "the appeal is deemed to have been abandoned".

[37] The Director submits that this creates a conclusive presumption, such that, once the failure to serve a notice of dissatisfaction or continued appeal within 14

days is proven, a finding that the appeal was abandoned automatically follows, and there can be no extension of time to file under s. 84. Northwood submits that it creates only a rebuttable presumption, or, alternatively, that s. 84 provides an exception to the deemed abandonment.

[38] In determining whether the word "deemed" creates a rebuttable or a conclusive presumption, the Court must consider the statutory context in which it is used, and the purpose of the statute: ***St. Leon Village Consolidated School District No. 1425 v. Ronceray***, 1960 CarswellMan 15 (C.A.); ***St. Peter's Evangelical Lutheran Church v. Ottawa (City)***, [1982] 2 S.C.R. 616.

[39] However, in my view, it is unnecessary to determine the nature of the presumption created for the following reason. Even assuming it is a conclusive presumption, if, after considering the factors required by the modern principle of statutory interpretation, s. 84 is determined to be available to extend the time for filing of a notice of continued appeal within 60 days from service of the notice of confirmation of assessment, it creates an exception to the presumption. In other words, it extends the deadline at which the presumption takes effect.

[40] The Court in ***St. Leon Village*** found a provision deeming an appeal to have been dismissed if the judge did not dispose of the appeal within 3 months of the

service of the notice of appeal to be an irrebuttable presumption, subject to the ability of the judge to extend the time for disposing of the appeal. The deeming provision was expressly subject to the exception that the judge may extend the time for disposal of the appeal if satisfied of certain conditions. In the case at hand, it is not expressly stated that the presumptions in ss. 68 and 68A are subject to s. 84. However, in my view, if a s. 84 extension of time to file is meant to apply to a s. 68 notice of dissatisfaction and a s. 68A notice of continued appeal, such an extension of time is an implied exception to the presumption, even if it is determined to be conclusive.

[41] The implied exception rule is articulated by Professor Sullivan, at page 273 of the fourth edition of her text, as follows:

> "When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general; it does not matter which was enacted first."

[42] The rule has been applied to conflicting provisions within the same statute: ***Frankowski v. Canada (Minister of Citizenship & Immigration)***, [2000] F.C.J. No. 1253 (T.D.).

[43] Words like "subject to" and "notwithstanding" are sometimes used by legislatures to signal which conflicting provision is to be given priority and used by Courts in finding an implied exception: Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., *supra*, at pages 278 and 279; ***Frankowski v. Canada***, at paragraph 13. However, an implied exception may be found without such express words of intention, such as in ***Platana v. Saskatoon (City)***, 2006 SKCA 10.

[44] As noted at page 274 of *Sullivan*: "A key consideration in any implied exception analysis is determining which provision states the general rule and which is the specific exception."

[45] In the case at hand, at first blush, one might look at s. 84 as being a provision which generally deals with extensions of time, while ss. 68 and 68A deal specifically with late filing of notices of dissatisfaction and of continued appeal. However, in my view, s. 68A addresses late-filed notices of continued appeal, and s. 68 addresses late-filed notices of dissatisfaction, generally, irrespective of whether the person appealing was prevented from filing the notice "by absence, illness or other sufficient cause". S. 84 specifically addresses those situations where the person appealing was prevented from filing the notice for one of the

enumerated reasons. As such, in my view, assuming it is determined to be applicable, s. 84 would be an implied exception to the general deemed abandonment in ss. 68 and 68A.

[46] This would not create a situation where the appellant could rebut the presumption by leading evidence that he or she had not abandoned his or her appeal. Rather, the appellant would have to satisfy the Tribunal that he or she was prevented from filing the notice of continuation of appeal for one of the listed reasons, so as to warrant the Tribunal exercising its discretion to grant the appellant a hearing, despite having missed the filing deadline.

[47] The inclusion of the words "deemed to have been abandoned" is, nevertheless, a factor to consider in interpreting s. 84. Further, in determining the applicability of s. 84, the Court must consider the statutory context in which the words are used, and the purpose of the statute. These same considerations come into play in determining the nature of the presumption. Therefore, the factors which inform the inquiry in the nature of the presumption created, also inform the inquiry into the interpretation of s. 84.

[48] I will, while examining the words in the context of the ***Act***, discuss those factors, as well as the Director's argument that the fact that the words "deemed to

have been abandoned" are only contained in ss. 68 and 68A signals an intention that the applicability of s. 84 to those sections be interpreted differently.

E. "Words in the Context of the Assessment Act"

[49] Counsel for the Director, Robert Andrews, provided the Court with a letter dated December 13, 2013, addressing the legislative history of s. 68A and emanating from research conducted jointly with Counsel for the Applicant, Tracy Smith. Therefore, I took the representations contained therein to be joint representations submitted by both parties.

[50] It is noted that s. 68A was added to the ***Act*** in 2000 by virtue of s. 12 of the ***Municipal Law Amendment (2000) Act***, S.N.S. 2000, c. 9. Prior to the addition of s. 68A, persons appealing an assessment were not required to file a notice of continued appeal after receiving notice that the assessment appealed from had been confirmed following the review conducted pursuant to s. 68. Instead, if the assessment was not amended in the course of the review process, the appeal went "straight to hearing".

[51] That resulted in the appeal process being "plagued by 'no-shows' at hearing". S. 68A was introduced largely to remedy this no-show problem. I,

therefore, infer that the object to be attained by the introduction of s. 68A was to render the appeal hearing process more efficient by reducing the number of no-shows.

[52] Initially, notices of dissatisfaction, pursuant to s. 68, and notices of continued appeal, pursuant to s. 68A, had to be served within 7 days of service of the amended notices of assessment and notices of confirmation of assessment. By way of amendments introduced in 2012, that deadline was increased to 14 days. These amendments, among others, arose from Bill No. 71, which resulted in ***An Act to Amend Chapter 23 of the Revised Statutes, 1989, the Assessment Act***, S.N.S. 2012, c. 16, which received Royal assent May 17, 2012.

[53] Counsel provided the Hansard Report of Debates surrounding the 2000 and 2012 amendments. The record of the debates surrounding the 2000 amendments do not specifically address the s. 68 appeal review process or the addition of s. 68A to the ***Act***, and do not assist in determining whether or how s. 84 applies to ss. 68 and 68A. However, the record of the debates surrounding the 2012 amendments contain comments which, in my view, are of some assistance in assessing legislative intent in connection with amendments relating to the assessment appeal process.

[54] In the Nova Scotia Legislature, Hansard Debates and Proceedings, Assembly 61, Session 4, May 3, 2012, at pages 1650 to 1652, the Honourable John MacDonell, Minister of Service Nova Scotia and Municipal Relations, spoke in relation to Bill No. 71, which culminated in, among other things, extending the time limits for notices of dissatisfaction and continuation of appeal in ss. 68 and 68A from 7 to 14 days.

[55] He discussed this extension from 7 to 14 days, as well as the extension of the time for filing an initial appeal from 21 to 31 days, noting it would give more time for preparation and filing of appeals. Then he stated:

> "In keeping with our government's commitment to make the assessment appeal process easier for Nova Scotians, the proposed changes are designed to provide greater flexibility for those who may consider appealing a property assessment."

[56] He then spoke of the importance of the Tribunal having access to the information it requires to make informed decisions, so as to increase the efficiency and transparency of the assessment appeal process. He summarized by saying:

> "I want to emphasize that these amendments are designed to provide flexibility, fairness, accessibility, and transparency as we work to improve the appeals process for the benefit of Nova Scotians."

[57] The objective of providing flexibility, fairness, accessibility and transparency is consistent with the view expressed by the Court in ***Romad***, at paragraph 45, that "the object of the *Act* is to provide a scheme for the

classification, valuation, and exemption of property for municipal taxation that is fair and falls uniformly upon all such property."

[58] The Director does not contest that the general object of the ***Act*** is as articulated in ***Romad***. However, he submits that the object of the appeal provisions of the ***Act*** is more specifically to balance the need to provide "an accessible, inexpensive, and less formal avenue for property owners to question their assessments, and property owners … procedural safeguards to ensure fairness in the process". He suggests that, because a right of appeal from assessments arises annually, and because municipalities require certainty as to the tax base upon which they will fix annual budgets, the appeal process must be efficient and finite, such that s. 84 ought not to be interpreted as extending the time for filing notices of dissatisfaction and continued appeal more than 60 days from the initial notice of assessment. These arguments are founded largely upon the decision in ***Re David***, 1999 NSUARB 95.

[59] In ***Re David*** the issue was whether subs. 53(2) of the ***Act*** should be interpreted "as meaning that service of the notice assessment occurs upon mailing, even if the notice is never received". The Board, starting at paragraph 42, examined whether such an interpretation could be justified "in terms of, first,

plausibility (compliance with the legislative text); second, efficacy (promotion of the legislative purpose); and third, acceptability (that the outcome is reasonable and just).”

[60] The Board had no difficulty concluding that the first two heads of justification were satisfied because: the provision clearly stated that “the notice may be served… by mailing it”; and, the fact that the section provided that “failure to serve”, if there was no address to mail to, did “not render invalid the assessment or any subsequent proceeding” indicated “a heavy legislative emphasis on administrative efficiency”.

[61] The Board acknowledged that such an interpretation may appear unjust, particularly since the taxpayer who appeals an assessment must be able to show that the notice of appeal was received. However, it went on to find that the interpretation produced an outcome that was reasonable and just, based on the following “counterbalancing” factors:

> 1. “If service of notices of assessment always occurs as of the date of mailing, municipalities [can] be sure that, 60 days after the mailing of the notices, all properties which have not been appealed have a known, fixed, assessment for the coming year. Municipalities calculate their tax rate based upon the size of their assessment roll, and then prepare budgets to provide services to their citizens from their taxation revenues. If service of notices does not occur until received, persons could (as in this case) come in many months later - after the tax rate has been fixed, and the budget determined - to appeal their assessment.”

> 2. "[I]f notice does not occur upon mailing, but only upon delivery, proof of delivery of notices of assessment (for example, through certified mail, etc.,) might be seen as useful. Proof of delivery for hundreds of thousands of properties, year after year, could be seen as requiring significant additional public money for relatively little benefit - something of which taxpayers, collectively, might also disapprove."
>
> 3. "[N]otices of assessment in Nova Scotia are routinely mailed to property owners every year, in January. Property owners expect to receive these notices, and they can … inquire if they do not receive one."
>
> 4. "[A] person who misses an opportunity to appeal can appeal in the next year, and in every year after that (i.e., rights are not lost forever, as they may be in an ordinary civil action).
>
> Further, a later appeal, if successful, can move the assessment back to the level existing at the time prior to the missed appeal, meaning that the loss, if any, is solely of the added tax differential for the single year that was missed."

[62] Although these four counterbalancing factors are all relevant justification factors for interpreting service of initial notices assessment as having been effected upon mailing, in my view, the first three are not relevant justification factors for interpreting s. 84 as being limited to the 60 days from service of the initial notice of assessment or amended notices of assessment pursuant to ss. 56 and 57.

[63] A review of assessment and service of an amended notice of assessment or a notice of confirmation of assessment, pursuant to s. 68 or s. 68A, does not occur unless there has been an initial notice of appeal filed. That initial notice of appeal must be filed within 31 days of service of the initial notice of assessment, unless the time for doing so is extended pursuant to s. 84, which request for extension must occur within 60 days of service of the initial notice of assessment. Therefore,

interpreting s. 84 as permitting an extension of time to file a notice of dissatisfaction or notice of continued appeal up to 60 days from service of the notice of amended assessment or the notice of confirmation of assessment will not extend the time at which the municipalities can know which property assessments have been appealed.

[64] It is reasonable to conclude that, once the municipalities receive information regarding which property assessments have been appealed, they would base their budget and tax-rate decisions on the jeopardy posed by the number of appeals filed. Counsel for the Director represented to the court that municipalities are provided ongoing reports of properties under appeal. Certainly subs. 68(3) and subs. 68A(2) require notices of amended assessment and confirmation of assessment to be sent to municipal clerks. However, there has been no evidence that municipalities await the outcome of assessment reviews, to determine whether the property value base has changed from that indicated in the assessment roll, prior to commencing preparation of their budgets. If that is the case, they have to wait well past the 60 day period, thus defeating that alleged purpose for limiting the filing of notices of dissatisfaction and continued appeal to an absolute maximum of 60 days after service of the initial notice of assessment. Uncertainty arising from outstanding appeals can be addressed by including, in municipal

budgets, projects or expenditures that are subject to final determination of available property tax revenue.

[65] Furthermore, s. 52 expressly authorizes the Minister of Municipal Affairs to extend the time for the Director to complete and file the roll for up to three months, i.e. to the end of March, and provides that "all dates relating to appeals from assessment shall be extended by the period of the extension granted by the Minister". This signals an intention to include, in the ***Act***, flexibility in relation to deadlines. S. 64 of the ***Municipal Government Act***, S.N.S. 1998, c. 18, specifies that the fiscal year of municipalities begins on April 1. If the roll is not filed until the end of March, and the time-frames for filing appeals only commence to run then, municipalities will be well into their fiscal year before they can know how many assessments have been appealed. This indicates that the ***Act*** is not designed to ensure that municipalities have complete information regarding assessment appeals prior to the commencement of their new fiscal year for which they are required to set a tax rate and establish a budget.

[66] Arguably, these inherent and discretionary delays in the initial stage of the assessment appeal process make it more important to avoid additional extensions of time. However, they also signal an intention to accommodate such delays as

may be required to ensure a flexible, fair, accessible and transparent appeal process.

[67] The applicability of s. 84 does not impact upon the costs of service of amended notices of assessment or notices of confirmation of assessment. Ss. 68 and 68A require that those be served by personal service or registered mail in any event.

[68] This same requirement for personal service or registered mail also makes the routineness of mailing by the Director irrelevant as a counterbalancing justification, even though it has some relevance for the interpretation of the applicability of s. 84 to ss. 68 and 68A, as it provides some explanation for differing methods of service. That aspect will be discussed later.

[69] In my view, only the fourth of these factors is relevant in counterbalancing a finding that limiting the application of s. 84 to the 60 day period from the initial notice of assessment would not produce a reasonable and just outcome. In my view, that factor standing alone would not have provided the requisite justification for the interpretation arrived at in ***Re David*** and it does not provide sufficient justification for the interpretation suggested by the Director in the case at hand. In my view, it would not be reasonable and just to interpret s. 84 as being inapplicable

simply because it would only result in loss of a right of appeal for the year in which the deadline was missed. Such a result would not promote the objective of providing flexibility, fairness, and accessibility in the assessment appeal process.

[70] I also note that, although the Court in ***Romad*** had to determine what constituted compliance with s. 21(2) of the ***Act***, it was in effect dealing with the right of appeal from assessment because failure to comply with s. 21 resulted in the loss of the right to appeal by virtue of s. 23. Therefore, the Court's expression of the object of the act was made specifically in connection with a consideration of the appeal process in the ***Act***.

[71] The Director highlights that initial notices of assessment under s. 53 may be served by regular mail, while amended notices of assessment and notices of confirmation of assessment under ss. 68 and 68A must be served personally or by registered mail, thus assuring receipt, and eliminating the "vagaries and possible failures of regular mail service". He points to this difference as a factor supporting a conclusion that s. 84 is not meant to apply to ss. 68 and 68A, at least not past the 60 days from service of the initial notice of assessment.

[72] However, this argument fails to address the fact that amended notices of assessment, pursuant to ss. 56 and 57 must also be served personally or by

registered mail, and the Director has conceded that s. 84 applies to extend the time to file notices of appeal from such amended notices of assessment up to 60 days from service of the amended notices of assessment. Unlike assessment notices served pursuant to ss. 56, 57, 68 and 68A, original notices of assessment served pursuant to s. 53 are sent out by regular mail at approximately the same time each year. Therefore, taxpayers can protect themselves from the vagaries of service by regular mail by making appropriate inquiries if they do not receive their notices of assessment around the time anticipated. However, taxpayers cannot anticipate whether notices under ss. 56 and 57 are coming, and cannot anticipate, with sufficient accuracy, when notices under ss. 68 or 68A are coming, so as to prompt them to make such inquiries in a timely way. In addition, assessment notices under ss. 68 and 68A are given in the course of an existing appeal. These points, in my view, explain the difference in the manner of service of assessment notices. Therefore, that difference does not signal an intention that the manner of service of assessment notices under ss. 68 and 68A is meant to provide a substitute procedural safeguard, justifying elimination of the procedural safeguard under s. 84, to ensure procedural fairness in situations where the appellant was "prevented by absence, illness or other sufficient cause from … duly prosecuting his appeal".

[73] The Director submits that the fact the words "deemed to have been abandoned" are not included in the provisions dealing with filing of notices of appeal pursuant to ss. 56, 57 and 63, shows, in the absence of clear and concise language to the contrary, that s. 84 was not meant to apply to notices under ss. 68 and 68A. This submission is based on the Presumption of Consistent Expression and the Doctrine of Different Words, Different Meaning, discussed at pages 214 to 217 of *Sullivan on the Construction of Statutes,* Fifth Edition, by Ruth Sullivan (Markham: LexisNexis Canada, 2008), excerpts of which were provided by the Director.

[74] However, in my view, the phrase "the appeal is deemed to have been abandoned", in ss. 68 and 68A, is an additional expression, not contained in ss. 56, 57, 62 or 63. It is not a different manner of expressing a concept so as to distinguish it from a comparable concept, such as the use of the word "wrong" in s. 16(1) of the *Criminal Code*, to distinguish the concept from that conveyed by the use of the word "unlawful" elsewhere in the *Code*.

[75] Further, there is no need to include a provision deeming an appeal to have been abandoned when an appellant fails to file a notice of appeal pursuant to s. 63, in relation to an original notice of assessment under s. 53, or an amended notice of

assessment under s. 56 or 57, because there has been no appeal commenced which can be abandoned.

[76] Therefore, in my view, the inclusion of such a deeming provision does not invoke the Presumption of Consistent Expression and the Doctrine of Different Words, Different Meaning, and is a not a differentiating feature warranting making s. 84 inapplicable to service of notices of dissatisfaction and notices of continued appeal under ss. 68 and 68A.

[77] The Director also suggests, using the same rules of construction, that the use of the expression in s. 63 that the notice "shall be given not later than 31 days after", as compared with the use of the expression in s. 68A that "the appellant, the person assessed and the clerk may serve notice of continued appeal", is a distinguishing feature which warrants differing conclusions as to the applicability of s. 84. However, s. 63 merely provides the formal procedural requirements of initial notices of appeal. S. 62, which outlines the particular complaints giving rise to rights of appeal by particular classes of persons, uses the expression that those persons "may" give or serve notice. Also, ss. 56 and 57, which also outline rights of appeal, state: "Any amended assessment made under this Section may be

appealed in accordance with Sections 62 and 63." That terminology is consistent with s. 68A. As such, I disagree with the suggestion of the Director.

[78] I pause to note that s. 68 uses the expression that, upon receipt of an amended notice of assessment following an initial appeal, "the appellant and respondent shall, if either of them is dissatisfied, serve notice in Form E in the Schedule". Form E is a Notice of Dissatisfaction. In my view, like s. 63, s. 68 uses the "shall" terminology because it also provides the formal procedural requirements for the notice in question.

[79] A further differentiating feature, which was only briefly touched upon by the Director, is that ss. 56 and 57 provide that amended notices of assessment served under those sections may be appealed "in accordance with Sections 62 and 63", while ss. 68 and 68A contain no such phrase. At first blush this difference might support a differing interpretation as to the applicability of s. 84. However, since the notices required to be filed under ss. 68 and 68A are to continue the prosecution of an appeal already ongoing, there is no need to specify that there is a right of appeal. As already indicated, s. 84 expressly states that it applies to steps required for "duly prosecuting" the appeal. Consequently, it would run contrary to the express wording of s. 84 to determine that it is only applicable to sections

providing rights and procedures to commence an appeal, and inapplicable to sections providing procedure to prosecute an appeal. As such, in my view, this difference does not lead to a different interpretation of the applicability of s. 84.

[80] S. 68A was introduced in 2000, creating a new mandatory procedural step in the prosecution of an assessment appeal. Before that, if the assessment was confirmed following review, a hearing date was provided automatically. With the introduction of s. 68A it became necessary to file a notice of continued appeal after receiving the notice of confirmation of assessment. That step was added to reduce the number of no-shows at assessment appeal hearings, not to create an impediment to obtaining a hearing for those who wish to continue the prosecution of their appeal. In my view, those persons who miss the deadline for filing a notice of continued appeal because they were prevented from filing it by "absence, illness or other sufficient cause" and request an extension of time to file on that basis, do not pose any greater risk of not appearing at their hearing than those who meet the deadline. If anything, it shows they are more intent on prosecuting their appeal and appearing at the hearing. Therefore, making a s. 84 extension unavailable to such persons would not reduce the number of no-shows in any meaningful way. As such, it would not promote the legislative purpose of s. 68A.

[81] Rather, in my view, it would create an unjust result for those taxpayers who have commenced an assessment appeal, with a legitimate intention of seeing it through to hearing, but have been prevented from compliance with this additional procedural step, through one of the enumerated special circumstances.

[82] It would create unfairness, inflexibility and inaccessibility from a provision meant only to avoid wasting the resources of the Tribunal. That would be contrary to the objectives and intention of the legislature in passing and amending the assessment appeals provisions of the ***Act***.

[83] In my view, providing an extra 46 days (i.e. 60 less 14) in which to seek permission to continue prosecuting the appeal would have minimal impact upon the efficiency and timing of the appeal hearing process. No one would deliberately miss the 14 day deadline, for fear of not being able to satisfy the Tribunal that he or she was prevented from filing for one of the enumerated reasons. In addition, not a large percentage of appellants would be able to satisfy the test. Therefore, the percentage of appeal hearings affected would, more likely than not, be very low. Not all hearings can take place at once. The small percentage of hearings emanating from requests to extend the time to file notices of dissatisfaction or continued appeal , more likely than not, would be discovered prior to the hearings

of the other appeals being completed and could be added to the end of the list. In addition, s. 84(3) appears to recognize that special times may need to be set to hear appeals authorized under s. 84. It states: "The Tribunal may sit at such time and place as it shall determine to hear and determine appeals authorized under this Section."

[84] If s. 84 was interpreted to apply to ss. 68 and 68A only within the 60 day period starting with the original notice of assessment, it would create a situation where different taxpayers appealing their assessments would have different deadlines for applying to extend the time to file notices of dissatisfaction or of continued appeal, depending upon when the review of their appeal was conducted and when they were served with the notice of amended assessment or notice of confirmation of assessment. In my view, that would create a remedial extension of time mechanism which does not apply uniformly or equitably. Further, it would discourage staggering of deadlines to obtain the information necessary to conduct appropriate reviews because all appellants would want their review conducted as soon as possible to get the maximum benefit from the 60 day extension limit. That would put tremendous pressure on the Director to conduct a large number of reviews in a very short time, compromising the quality of the reviews, and potentially resulting in more appeal hearings. Such a result would create greater

demands on the Tribunal's resources, rather than reduce them, as was intended by the introduction of s. 68A.

[85] Justice Gonthier, for the majority, in ***Ontario v. Canadian Pacific Ltd.***, [1995] S.C.J. no. 62, at paragraph 65, stated:

> "Since it may be presumed that the legislature does not intend unjust or inequitable results to flow from its enactments, judicial interpretations should be adopted which avoid such results."

[86] In my view, to avoid the unjust and inequitable results noted, s. 84 should be interpreted as applying to notices of dissatisfaction and notices of continued appeal under ss. 68 and 68A.

F. Answer to Question 1

[87] Based on the points I have noted in the course of considering the words of ss. 68, 68A and 84 in their grammatical and ordinary sense, and assessing them in the context of the ***Assessment Act***, while considering the ***Act***'s object and scheme, in light of the factors enumerated in s. 9 of the ***Interpretation Act*** and apparent legislative intent, I find that the answer to Question 1 is "yes". The Tribunal does have jurisdiction, pursuant to s. 84 of the ***Assessment Act***, to extend the time to file notices of dissatisfaction and notices of continued appeal, within 60 days from

service of notices of amended assessment and notices of confirmation of assessment under ss. 68 and 68A.

[88] In my view, the relevant considerations and rules of construction clearly point to this conclusion. After considering the entire context of the relevant provisions, I am of the view that no ambiguity exists requiring resort to "other principles, such as strict construction of penal statutes". However, even if I was left with a "reasonable doubt" as to whether this was the proper conclusion, I would have to resolve that doubt in favour of the taxpayer. As noted in ***Romad***, at paragraph 29: "[A] reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer." Therefore, the result would be the same.

ISSUE 2: SHOULD THIS COURT, PURSUANT TO S. 94, GRANT NORTHWOOD AN EXTENSION OF TIME TO FILE ITS NOTICE OF CONTINUED APPEAL?

[89] Northwood has asked that, if this Court finds that s. 84 applies to ss. 68 and 68A, as it has done, it exercise its discretion under s. 94 of the ***Act*** to extend the time for Northwood to file the Notice of Dissatisfaction/Continued Appeal. In the

alternative, it asks that this Court remit the matter to the Tribunal to determine whether an extension under s. 84 should be granted. In my view, the more appropriate approach is to remit the question of extension to the Tribunal to be determined by it, for the reasons which follow.

[90] S. 84 does not specify that the Tribunal "must" or "shall" grant the extension requested if it is satisfied that the appellant "has been prevented by absence, illness or other sufficient cause from … duly prosecuting" the appeal. It states that, in those circumstances, the Tribunal "may grant such person a hearing and arrange a sitting of the Tribunal to hear the appeal". Consequently, there may be additional factors to be considered in determining whether the discretion to grant a hearing to such a person should be exercised. The Tribunal's area of expertise is assessment appeals. It deals regularly with requests under s. 84 and it has intimate and practical knowledge of the assessment appeal hearing process. As such, it has an in-depth understanding of the factors relevant to the exercise of its discretion under s. 84. Therefore, in my view, it is the more appropriate adjudicative body to determine whether a hearing should be granted.

[91] In addition, s. 84 provides that "the Tribunal may impose such terms as to notice and service of documents as it considers proper". Given its knowledge of

the assessment appeal process, in my view, the Tribunal is better placed to determine such terms, particularly when trying to accommodate an appeal process emanating from a previous taxation year.

[92] Further, the discretion to do the things authorized by s. 84 is best exercised in the course of one global determination, rather than on a piecemeal basis, because terms of notice and service are dependent, at least to some extent, upon available hearing dates. This Court does not have the information required to determine hearing date availability.

ISSUE 3: IF THE ANSWER TO QUESTIONS 1 AND 2 IS "NO", DOES THE DELAY BY THE DIRECTOR IN PROVIDING THE NOTICE OF CONFIRMATION OF ASSESSMENT AMOUNT TO BREACH OF PROCEDURAL FAIRNESS WARRANTING THIS COURT PERMITTING THE LATE FILING OF THE NOTICE OF CONTINUED APPEAL?

[93] Given this Court's answer to Question 1, it is unnecessary to address this issue.

CONCLUSION

[94] In light of the foregoing, I conclude that the Tribunal does have jurisdiction, pursuant to s. 84 of the ***Assessment Act***, to extend the time to file notices of dissatisfaction and notices of continued appeal, within 60 days from service of notices of amended assessment and notices of confirmation of assessment under ss. 68 and 68A.

[95] Northwood made a request, in writing, to the Tribunal, within 60 days from service of the Notice of Confirmation of Assessment, to extend the filing deadline for the notice it was required to file under s. 68A to continue its appeal. The Tribunal, in my view, and with due respect for its position to the contrary, had jurisdiction to hear and determine the request. However, it declined to do so. I, therefore, remit this matter to the Tribunal to hear and determine Northwood's request to obtain a hearing date for its assessment appeal, despite having missed the deadline for filing a notice of continued appeal, which request is made on the grounds that it was prevented from filing the notice by one or more of the reasons listed in s. 84.

ORDER

[96] I ask that counsel for Northwood, Ms. Smith, prepare the Order.

COSTS

[97] If the parties are unable to reach an agreement on the issue of costs, I will receive submissions in writing.

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Muise J.