

Appeals from the Municipal Board and the Land Value Appraisal Commission

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Appealing an Order of the Municipal Board

Assessment Appeals

Appeal to Court of Appeal

63(1)

Subject to this section, a party to an appeal to the Municipal Board ... may appeal the order of the Municipal Board or the Court of Queen's Bench to the Court of Appeal upon

(a) a question involving the jurisdiction of The Municipal Board ...; or

(b) a point of law; ... (***The Municipal Assessment Act***, s. 63(1))

Leave to Appeal is Required

Leave to appeal

63(2)

A party may not appeal an order of the Municipal Board to the Court of Appeal without leave of a judge of the Court of Appeal.

- **Apply for leave within 30 days**



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Can an Interim Order be Appealed?

- Generally, the Court will not permit appeals of interim order
- Section 60(1) of the *MAA* provides that the “Order” which may be appealed (with leave), is the “order” that is issued *after the hearing of an appeal*.

MAA – appeal rights

60(1)

After hearing an appeal, the Municipal Board may, by order:

(a) confirm the assessment; or

(b) change the assessment ..., (by increasing o decreasing the assessment; or changing the classification)...



When will the Court Grant Leave to Appeal?

- leave to appeal may be granted only on a question of law or jurisdiction and, even then, “***only if the question has arguable merit and is one of sufficient importance***” to warrant the attention of the Court of Appeal.
- neither the *methodology* used by the Board to determine assessed value nor its calculation of value is a question of law.
- (***Assessor for The City of Winnipeg v. 346 Portage Avenue Inc.***, 2011 MBCA 110)

Must be a Pure Point of Law

“Unless the legal principles involved can be applied in the case before it, without the court involving itself in factual issues, leave to appeal should be refused, no matter how important the point of law is. . . .”

Russell et al v Tundra Oil & Gas Limited, 2020 MBCA 35

Appealing an Award of the LVAC

Expropriation Act

Appeal of certified amount to Court of Appeal

44(1)

A party to a proceeding before the commission may appeal the amount certified as compensation payable to The Court of Appeal within 40 days after the day the commission certifies the amount under subsection 15(2), or within seven days from the day the commission issues a decision or certifies an amount under subsection 15(5), whichever is the later.

Expropriation Act – Appeal Rights ...

Powers of Court of Appeal

44(2)

An appeal under subsection (1) may be made on questions of law or fact or mixed law and fact, and The Court of Appeal may

(a) refer any matter back to the commission for determination;
or

(b) make any determination that the commission has the power to make.



Appealing Costs?

- LVAC costs awards are typically addressed *after* the award for due compensation.
- There is no statutory right to appeal costs awards made by the LVAC
- an award of costs made by the Commission pursuant to section 15(7) is not appealable pursuant to section 44(1) because section 44(1) only permits an appeal of **the amount certified as compensation payable** under section 15(2).
- Must appeal costs to a QB judge by way of judicial review

Judicial Review

- Judicial Review is *only* available if there is *no* statutory right of appeal.
- A judge will generally refuse to hear the application as there is an alternative remedy: appeal as per the legislation.
- Judicial review is entirely discretionary.

THANK YOU

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