

“Getting it Right”

Executive Summary

- 1 MPAC (the Municipal Property Assessment Corporation) does not tax Ontarians. It does, however, determine the share of property tax that Ontarians will pay. The corporation holds this significant power over the financial interests of the people of this province because it has a government conferred monopoly to assess value for property tax purposes. MPAC receives the funds it needs to function from municipalities, who have no choice but to use its services. It receives the information it needs from public registries or from taxpayers who are legally obliged to furnish it. Without doubt, all of this can mean only one thing; while technically MPAC is a non-profit corporation it is in substance a public servant meant to operate in the public interest and in the public trust. As such, it has to get it right in matters of transparency, competence and fairness. My investigation of MPAC has revealed that, instead, MPAC has all too often gotten it wrong.
- 2 In large part, MPAC’s problems have occurred because, while it is in many respects an impressive company undertaking a massive task with fewer resources than it should have, it is not imbued adequately with the ethos and attitude of a public servant. This is evident from the staggering discontent that exists across this Province. More than 3700 angry, disaffected taxpayers have told us that MPAC has been getting it wrong. This Report is meant to assist MPAC, along with the necessary support from the Government of Ontario, in doing what it takes to get it right.
- 3 In order for MPAC to get it right MPAC has to do more, however, than increase its appreciation of its role as a public servant. It also has to accept more fully and openly than it has, that property appraisals, including the sophisticated form of property appraisal it practices, are fallible. While its managers no doubt understand this at an intellectual level, if they truly appreciated it then what are perhaps the three practices of MPAC that most irritate Ontario taxpayers would not be happening.
- 4 First, MPAC does not take the importance of openness and transparency seriously enough. It has made it difficult for taxpayers to get access to the information they need to understand their assessments or to appeal them to the Assessment Review Board (ARB). If MPAC truly appreciated that its own assessments were as fallible as they are, and if it was truly imbued with the spirit of civil service I describe, MPAC would be vigilant in assisting taxpayers in accessing the information they need, as a check or balance on its own work. Instead, for the information MPAC is prepared to share (information in MPAC’s possession about the specific property; information about the assessment MPAC has made of other

“comparable” properties, and limited information about MPAC’s appraisal techniques) it has proved ill-adept at explaining to taxpayers how they can get it. MPAC has also been poor at explaining to taxpayers why the information is important to them. Moreover, the information that it does supply is incomplete. For example, when taxpayers want to discover whether comparably taxed properties are really comparable to their own they need full information yet MPAC’s disclosure policies give them access to only limited information. To be fair, that information is adequate for most purposes, but not always, and MPAC has much more detail it can share.

- 5 Moreover, MPAC has historically resisted sharing information about the computer program it uses in its appraisals. It does so because it developed the program with great ingenuity and expense, and is worried that if it releases the information competitors could come along and replicate it, ruining MPAC’s side-business of selling assessment data to insurance companies for underwriting purposes. I appreciate the validity of MPAC’s intellectual property claims, and I understand that MPAC is not profiteering – that the proceeds from its side-business are used to offset assessment costs that municipal taxpayers would otherwise have to endure. Still, the failure by MPAC to share this information leaves its processes mysterious, and beyond full critical examination.
- 6 The complications that exist for taxpayers in getting access to information have created the deep mistrust and suspicion I have spoken about. MPAC is in a sensitive business. Its decisions cost people money in the most unpopular way – by taxing them. Anything done to shroud MPAC’s processes in secrecy, or to obstruct transparency, will engender deep resentment. People will think the worst, and MPAC’s reputation will remain tarnished. Worse, its errors may go undiscovered.
- 7 I therefore make a series of recommendations that seek to address the question of openness, transparency and access to information. In particular I am recommending that when notifying taxpayers of their assessment, MPAC describe the importance of ensuring that its information about a taxpayer’s property is right, and that MPAC explain exactly how that information can be accessed. I am also recommending that MPAC advise taxpayers, along with their Assessment Notice, of the average increase in assessed value in their relevant zone, (rather than solely in the municipality as now occurs). Supplied information should also explain why “comparable” property assessments are desirable, exactly how those comparables can be accessed, of the particular importance of the six MPAC comparables that it presents to justify its assessment, and that all of the information relevant to the assessments of the comparables should be included in the disclosure. In addition, I am recommending that MPAC implement measures it has already identified in an internal review for increasing access to information about its computerized appraisal processes. Finally, I am recommending that the

Government of Ontario undertake an active review of whether the public interest in the secrecy of its computer program to protect its entrepreneurial initiatives outweighs the public interest in full transparency and disclosure. To help overcome the legacy of mistrust I am also recommending more generally that MPAC publish, including on its website, its administrative procedures regarding assessments and inspections, disclosure of information, requests for reconsideration and ARB appeals.

- 8 The second of the three most pernicious practices of MPAC is that it does not give enough respect to the very property market that its appraisal system is built upon. In assessing a property, MPAC far too often ignores the actual sale price of the property it is assessing without any concrete reason to suspect that the sale does not reflect market value. It also downplays the importance of any recent sale of comparable properties. The simple fact that a sale does not match its appraised value is taken by MPAC as evidence, not that its appraisal is suspect, but that a real sale does not reflect the real market. The practice is a circular and self-serving one that taxpayers cannot understand. Nor can I. I am therefore recommending that when a property assessment is challenged based on an actual sale price proximate to the valuation date, that MPAC should *generally* accept that sale as the best evidence to the property assessment. The actual sale price should also be an important factor in assessing the value of the property in future years. MPAC should deviate from these general rules only if there are concrete, cogent reasons for believing that the sale has not been made under market conditions or does not otherwise reflect actual market value.
- 9 The third of the three practices of MPAC that has caused the loss of confidence that brought so many complainants to my door is that MPAC does not give adequate respect to the decisions rendered by its appeal body, the ARB. Quite simply, MPAC believes that its appraisal techniques are superior to those used by the ARB. In a nutshell and as intimated by what I have already said, for most of its property assessments, MPAC uses mass appraisal techniques that employ sophisticated computerized models to generate assessments. Those models build in market values from the “zone” where the property is located, and then adjust the average value for the particular property in light of the particular characteristics of the property relevant to its market value – up to 300 such characteristics. In contrast, the ARB does not even look at the mass appraisal data or at the system used by MPAC. It judges the accuracy of MPAC’s assessment “on the ground” rather than through models by looking at things like the assessments that are being imposed on select, concrete comparable properties; or the sales history of the subject property and other like properties in the neighbourhood; or the accuracy of the information MPAC has about the description of the subject property. There is a cultural gap that emerges from these different techniques. MPAC tends to worry that the relatively isolated focus of the ARB will create anomalies, since the ARB does not look at all properties in

the objective way a computer program does, but focuses resolutely on the contextual proof about the specific property. Because of the commitment that MPAC has to its mass appraisal technique, it tends to look at any ARB decision that deviates from its appraisal, not as a correction, but as an aberration. While it is legally bound to accept ARB decisions for the tax year appealed, MPAC has had a history of ignoring those decisions in the very next tax year. It has even done so for subsequent taxation years that use the same valuation date that the taxpayer had succeeded in showing to be wrong. The result has been that taxpayers are in a vicious cycle of assessment, appeal, victory, assessment, appeal, victory. It is as though MPAC is saying “Gotcha” to the frustrated taxpayers.

- 10 MPAC’s lack of commitment to the ARB assessments is also reflected in the fact that they have been woefully bad at recording ARB decisions that favour the taxpayer. In many cases inputting errors by MPAC have failed to accurately capture the result of ARB hearings, but the problem has been more systemic than that. Until recently MPAC used separate data banks to record property assessment information and ARB decisions. After I announced my investigation, a memo was sent to staff at MPAC to identify those cases where information from ARB decisions was not cross-referenced properly. As a result of this internal review over 5,000 cases were identified where the failure to record this information led to assessment errors.
- 11 It is evident that MPAC’s commitment to its own appraisal techniques has caused it to give an inappropriately low level of deference to ARB decisions. I explain in this Report why I think MPAC is wrong to prefer its general assessment results to those achieved at an ARB hearing. Suffice it for now to say that MPAC’s practice creates serious problems. It is disrespectful of the appeal process and of the ARB. Moreover, it is justifiably distressing to the taxpayer who, at great expense and effort, has won an assessment appeal only to find that MPAC has done the same thing again. I am therefore recommending that MPAC should apply ARB findings of value at specific valuation dates when carrying out assessments for future years that use the same date. MPAC should also apply assessment reductions imposed by the ARB in arriving at future assessed values, unless the ARB decision is quashed, or circumstances justifying the reduction have changed.
- 12 There is one other key issue, not of MPAC’s making, that has to be addressed if taxpayers are to be satisfied that the property assessment practices in this province are fair and accurate. This time the ball falls in the court of the Government of Ontario. It has to do with the onus of proof at an ARB hearing. At a hearing in Ontario the onus is not on MPAC to explain its assessment and show why it is right. It is on the taxpayer to show that MPAC’s assessment is wrong. Even though this is the practice in all provinces other than Manitoba, it is an ossified or

antiquated practice that can no longer be justified. First, at an ARB hearing, the taxpayers are not alleging a wrongdoing by MPAC; are simply saying MPAC got the assessment wrong. An ARB hearing is not, in other words, like a civil suit where the party making an allegation of wrongdoing should have to prove it.

13 Second, it is MPAC that is the public servant making a decision that affects adversely the fiscal rights of a citizen. The public servant should have to justify that consequence. Third, it is not the case that MPAC's assessments should be treated as presumptively right; appraisers are in the guesstimate business, and there are enough indications of inaccurate information in MPAC files to put any presumption of accuracy on the run. Fourth, an ARB hearing is not an appeal from a lower tribunal that has already decided that MPAC is right. An ARB hearing is the first opportunity for a tribunal to consider the result. Fifth, and most significantly, at an ARB hearing MPAC has an advantage because of its crushing power imbalance. MPAC has a monopoly on information – acquired for the benefit of the public including the taxpayer – a sophisticated computer system for accessing it, and expert assessors and expert litigators – all acquired or paid for at public expense. Meanwhile, the taxpayer is called upon to cope with the complex, obscure and specialized area of property assessment. The only basis upon which the imposition of the burden on the taxpayer can be sought to be justified is administrative convenience; it discourages appeal. The problem is that if it discourages appeals at all, it discourages appeals evenly whether they are meritorious or not. Imposing a wrongful tax assessment on taxpayers by making the appeal process inaccessible in the interests of efficiency is not a very impressive policy position. I am therefore recommending that the onus in assessment matters before the ARB should be placed on MPAC to substantiate its assessments when they are challenged.

14 There is an array of other, incidental issues dealt with in this Report, things ranging from occasional unfair practices by MPAC at ARB hearings, to the failure by MPAC to acquire important information or to preserve it accurately. These and other issues I address are irksome problems that need to be corrected. The key issues that brought unprecedented numbers of complainants to my door, however, were about the issues I have introduced in this executive summary - inadequate disclosure practices, the indefensible practice of MPAC in preferring its own appraisals to actual sale values, and the failure by MPAC to respect ARB decisions. If MPAC accepts and reflects a becoming humility about the accuracy of its own appraisals, and truly institutionalizes an ethic of public service, I have every confidence that it will move from a vilified to a respected organization. More importantly, if MPAC does these things and if the Government of Ontario moves to fix the onus problem, I have every confidence we will achieve the kind of fair and accurate property tax assessment process that members of this province deserve and rightly expect.