

ARB RULES OF PRACTICE & PROCEDURE

1 YEAR LATER

Grace Marsh, Town of Newmarket

Casey Brendon, City of Toronto

James Krauter, City of Guelph

September 2019

Outline - Introduction

- This session is an update to our presentation last fall where we offered some practical advice and strategies for Treasurers to:
 - support and assist their tax and assessment staff in the management of assessment appeals,
 - mitigate assessment losses and the resulting reductions in tax revenue, and
 - offers insights into some challenges arising from the ARB's new rules of practice and procedure introduced April 1, 2017.
- With a fully year 'under our belt' now – what worked, what didn't and what is still up in the air!

Property Tax is Important!

Municipal Reliance on Property Tax
% of Total Revenue (2017 FIR)

Property Tax as a % of Total Revenue	# of Municipalities in Range	Percentage	Cumulative Percentage
10-20%	5	1.13%	1.13%
20-30%	31	7.00%	8.13%
30-40%	81	18.28%	26.41%
40-50%	121	27.31%	53.72%
50-60%	111	25.06%	78.78%
60-70%	67	15.12%	93.91%
70-80%	26	5.87%	99.77%
80-90%	1	0.23%	100.00%
Grand Total	443	100.00%	

Assessment Appeals

- Assessment appeal activity within a municipality has direct consequences on municipal property tax revenues
- The resolution of appeals can have direct implications on current and future year operating budgets particularly in terms of the length of time it takes to resolve them

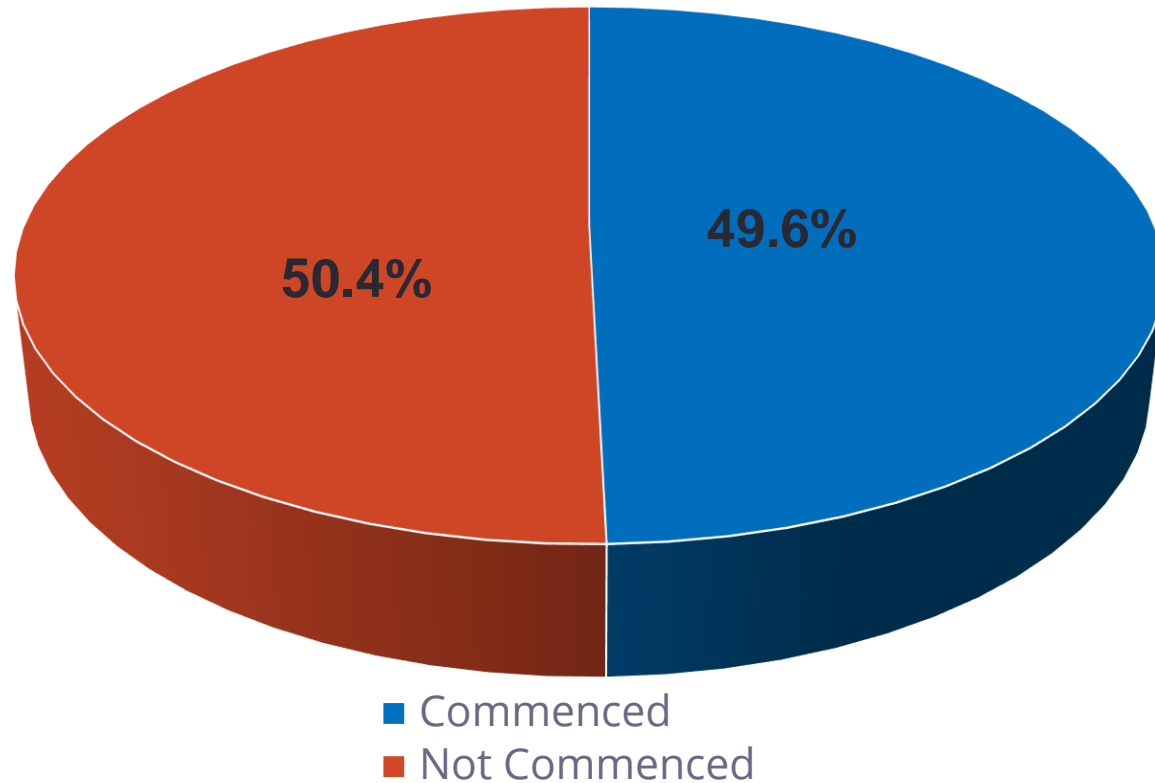


Overview

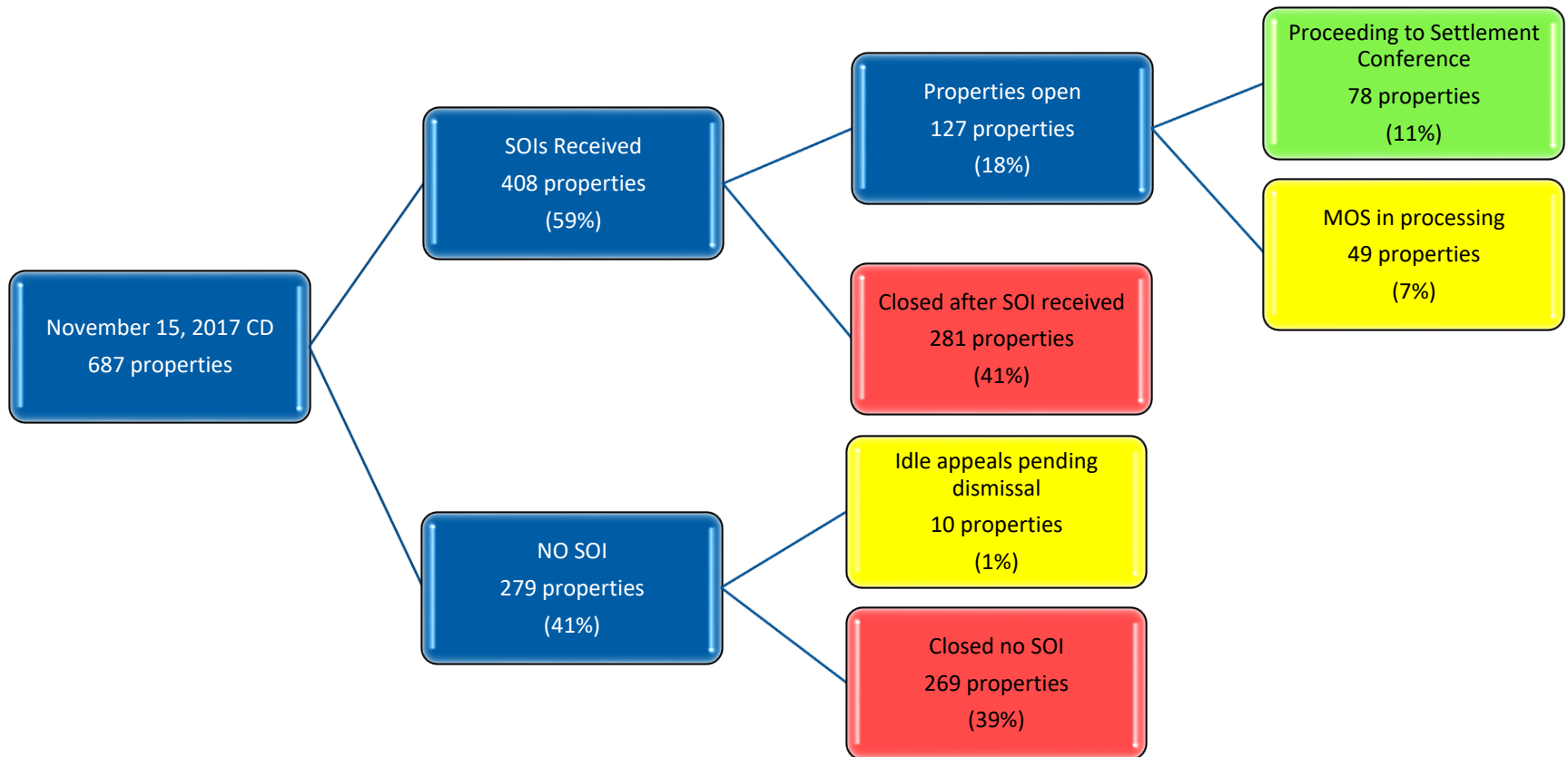
- Section 1 – Progress is Being Made or Is It?
- Section 2 – Participation is Key
- Section 3 – What municipalities need to know
- Section 4 – Wrap Up and Takeaways

Section 1 - Progress

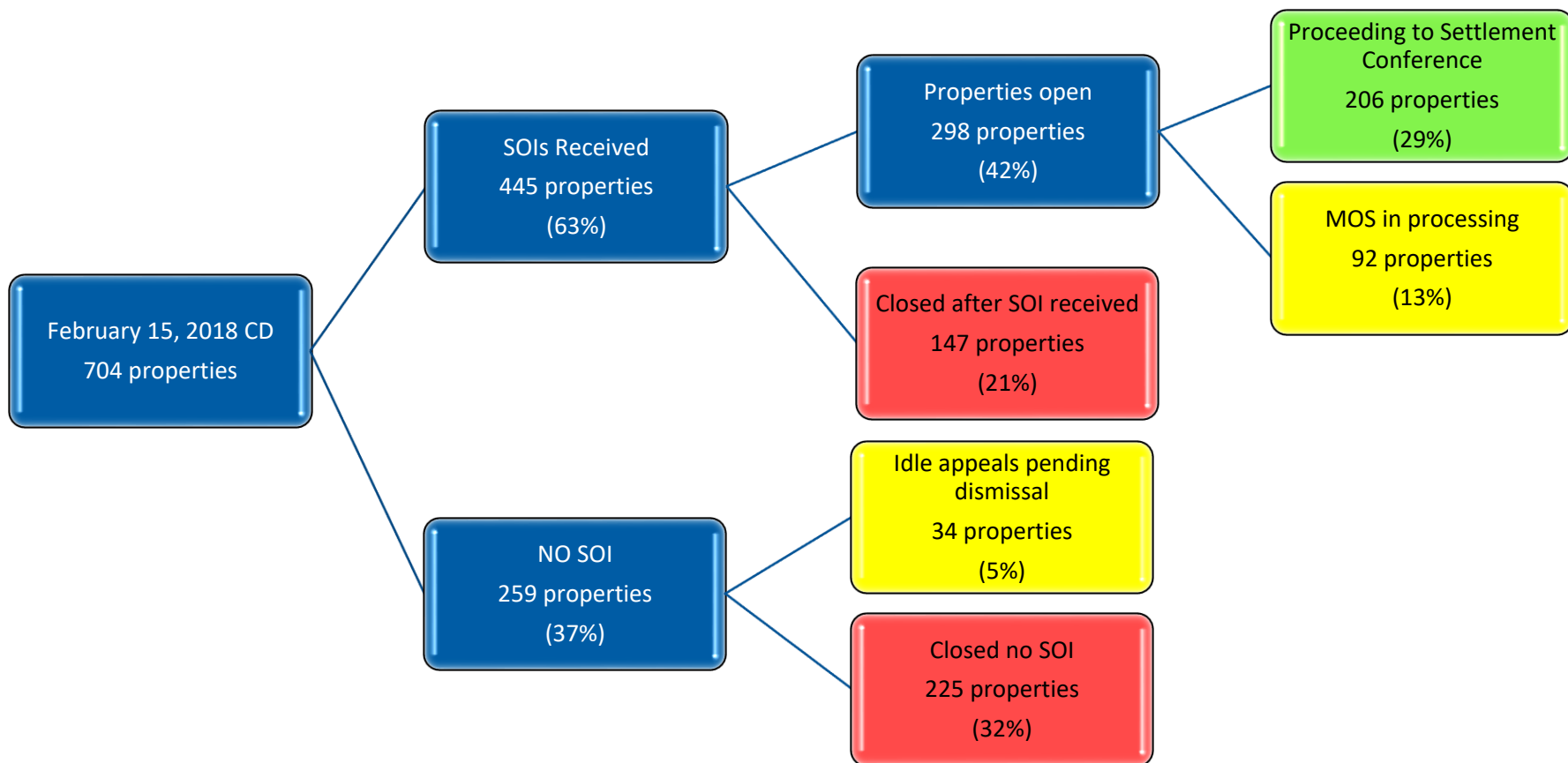
As of June of 2019 about ½ of the appeals filed have commenced the 106 week process of the General Stream.



November 15, 2017 Commenced



February 15, 2018 Commenced



Newmarket Statistics

- Tax Years 2017 through 2020 – 124 properties appealed representing \$1.6B of assessment each year.
- 92 or 75% of those remain open due to ARB scheduling and length of the process.
- The 32 appeals that have resolved (primarily in the 2019 year) half were withdrawn with no reduction. Some for lack of activity by the appellant, others following the appellants initial review or response by the Town/MPAC.
 - Strong indication that participation works
- Largest loss was 58% of the assessment (fair market rent way too high and extensive vacancy).
- Average loss 20% of the value.

Section 2 – Participation is Key

Each Municipality is require to provide the following to the ARB

- Assignment of an Appeals Representative
 - each municipality should have provided the ARB with the name and contact information of the person who is its representative on an appeal
- Assignment of a Complaint Representative
 - each municipality should have provided the ARB with the person who is its Complaints Representative
- These lists must be kept current and can be accessed <https://elto.gov.on.ca/tribunals/arb/assessment-cycle-2017-2020/> if/when individuals change within your municipality, the ARB (Registrar) should be updated

Resources

There are tools available to help municipalities understand both their assessment situation and the appeal process:

- **Municipal Connect (MPAC)** - a tool for understanding and management of the local assessment base, which helps you gain insight into your 'assessment at risk'. It is available to all municipalities.
 - <https://www.mpac.ca/mconnect/>
- **OPTA (Province of Ontario)** - a free, online service for Ontario municipalities for the administration of property taxation and mitigation.
 - <https://opta.reamined.on.ca/>
- **Assessment Review Board (ARB)** – website includes many resources including an appeals representatives list
 - www.arb.gov.on.ca
- **RPTA** – pay for use service that provides detailed data and appeal tracking as well as assists in appeal management
 - <http://www.realpropertytaxanalytics.com/>

What we do – City of Guelph

- Disclosures – All municipal info available on the web related to Official Plan, Zoning, Building Permits. This allows for self serve by appellant and MPAC for the majority of disclosures from the City of Guelph
- When does a municipality show interest in the appeal.
 - Prioritize, MPAC does not represent the municipality
 - City of Guelph has chosen to be involved with every appeal. Summary appeals allow for learning opportunities for staff.
 - Ensuring timely review of the appeals, especially prior to receiving SOI's may allow for opportunities to request an increase in assessment. It also sends a clear message to appellants that frivolous appeals may result in increased taxes for the owners.

Benefits of frivolous appeals

- Municipalities can consider where there may be a case for a higher assessment
 - If applicable allows the potential for increased revenue through an appeal. This may result in additional taxation revenue or strategically this can be used to make appellants take a further look into the assessment and evaluate if they actually want to move forward and may initiate a discussion related to a withdrawal.
 - Rule 38 identifies when the municipality is required to send notice in the General Proceedings - it is filed with the Statement of Issue (SOI) or Response to Statement of Issues (RSOI), and in the same format as the SOI or RSOI. The ARB should be copied when serving the appellant.

Process of the Appeal

- Mandatory Settlement Meetings (MSM) – This may be an opportunity to facilitate a resolution to the appeal. The appellant and MPAC are not motivated in the way municipalities are to find timely resolutions. The City of Guelph has found great value of in person MSM's to bring the parties together and broker a resolution to complex appeals.
- Later in the appeal process Mediation can also assist in resolution of appeals. This process differs from the MSM as all parties must have a representative that can legally bind the party. For the City of Guelph ensuring the appropriate delegated authority bylaw was essential.

Guelph Statistics

- Tax Years 2017 through 2020 – 258 properties appealed representing \$1.9B of assessment each year.
- 194 or 75% of those remain open due to ARB scheduling and length of the process.
- The 64 appeals that have resolved (primarily in the 2018 year) 53 or 83% were withdrawn with no reduction. Some after initial review by the appellant, others for lack of activity by the appellant, and the remainder following the appellants initial review or response by the City/MPAC.
 - Strong indication that participation works

Guelph Statistics – Cont.

- Largest loss for 2016 CVA was 29% of the assessment (racking was assessed in a distribution warehouse).
- Average loss in 2016 CVA 13% of the value.
- Still 71 appeals on 24 properties under appeal from 2007- 2016 representing a CVA of \$224M for 2016

Section 3 – What municipalities need to know

The new ARB rules were intended to address a number of concerns:

- Municipalities not receiving or not being included in pleadings, exchange of information, documentation or dialogue regarding appeals
- Clarity whether a municipality is participating or not
- Disclosure – what is expected from a municipality
- Delays in the finalization of settlements - production, circulation and filing of Minutes of Settlement now have structured timelines

Who from your municipality should be interested in appeals?

CAO

- lead and support staff and seek council consideration of policy changes

Finance/Tax Practitioner

- forecast, budget, and report the impact of appeal outcomes

Council

- approve policy and provide appropriate delegation of authority to staff practitioners or agents.

Assessment Review Officer/ Appeals Representative

- participate in appeals process, provide disclosure, attend settlement discussions, and comply with ARB timelines

Complaints Representative

- staff person who receives any complaints from other parties to an appeal as it relates to compliance or conduct

About Municipal “participation”

- Former “waiver” which transferred authority to the ARB to process settlements without municipal signature **no longer exists**
- If a municipality is considering actively participating in an appeal they will need to review the appellant’s statement of issues and any disclosure in order to consider filing a “Response to Statement of Issues”; this occurs at week 35 of the Event Schedule and cannot be late or delayed.
- Municipalities remain statutory parties to an appeal, even if they don’t file a Statement of Response.

The Most Important Rule - Deemed Consent

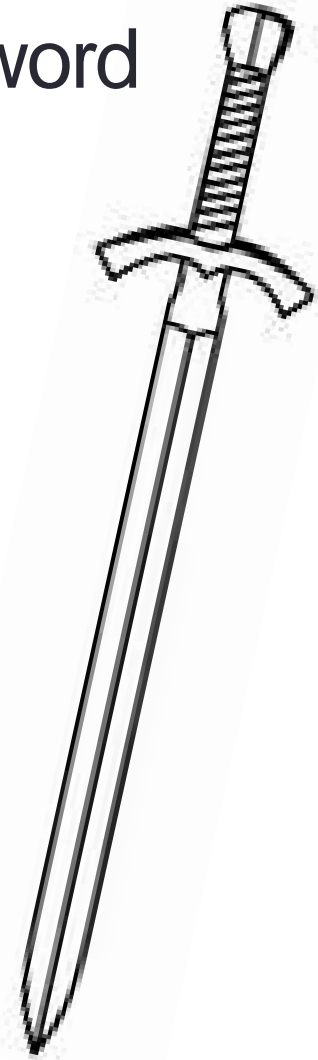
- **Rule 39: Deemed Consent**

*“A Party that does not serve a statement of response in a **general proceeding** on or before the day set out in the schedule of events is deemed not to oppose any future settlement in that proceeding.”*

- If a party chooses not to participate in the process, in the form of a response to the statement of issues, the party will not have the ability to challenge any settlement arising from the appeal discussions.
- a municipality fails to provide a Response to the Statement of Issues, they lose their right to oppose any future settlements.

Rules, however, can be a double-edged sword

- The ARB, the legal and appraisal communities and appellants expect, and have the right to expect, that all parties to an appeal must follow the same rules in order to participate.
- Municipalities intending to participate must file all required documents, follow disclosure rules and timelines, and communicate with other parties as required.
- Resource constraints, lack of staff or unfamiliarity with process cannot be used as excuses for failure to observe and comply with the rules or to meet timelines.



Implementation and consultations

The ARB's new Rules of Practice and Procedure became effective April 1, 2017.

The ARB also established 2 stakeholder advisory bodies to provide feedback about the rules:

- Appeals Management Advisory Committee (AMAC)
- Advisory Rules Review Committee (ARRC)

These committees met over 2018 and 2019.

On April 2, 2019, the ARB announced that the work of both committees was being suspended as a result of an organizational review that was being carried out by Tribunals Ontario. No recommencement date has been announced.

...and now changes to the rules

- On July 3, 2019, the ARB announced via memo to stakeholders that it was proposing a number of changes to its rules and some of its practices.
- <https://elto.gov.on.ca/proposed-amendments-to-the-arb-rules-of-practice-and-procedure-now-open-for-comments/>

ELTO News

Proposed Amendments to the ARB Rules of Practice and Procedure Now Open for Comments

July 8, 2019 | News

OMTRA's feedback on the proposed changes

Following consultations with its membership, MPAC and other stakeholders, OMTRA provided written feedback on the proposed changes.



Ontario's Municipal Revenue Specialists

“...we are concerned that the ARB's proposed changes to the rules of practice and procedure were made after 2 stakeholder committees, the Appeals Management Advisory Committee (AMAC) and the Advisory Rules Review Committee (ARRC), were suspended, and as a result, opportunities for consultation with affected stakeholders have been limited to written submissions. Our preference would have been an open dialogue on the ARB's proposed changes, and an opportunity for stakeholders to understand the changes, ask questions and clarify the intent and the timing of the changes, and identify impacts.”

OMTRA's feedback on the proposed changes

- 1. Any appeal from a previous cycle that does not have a current cycle appeal (2017-2020) will be set to a new expedited Schedule of Events timeline, even if the appeal has been assigned a Commencement Date.*

Assigning older appeals to a new expedited Schedule of Events timeline will shorten timeframes and increase workloads for municipal staff involved in preparing and defending appeals.

Has the potential to result in unjust or unfair decisions or dismissals of appeals, particularly for larger municipalities that may have many appeals outstanding from the previous cycle.

The Board should clarify how commencement dates will be assigned, and importantly, prescribe a process and agree to consider requests to re-stream appeals or adjust timelines where appropriate.

OMTRA's feedback on the proposed changes

- 4. All hearing events before the Board will be scheduled as an electronic hearing unless there is prejudice as per section 5.2(2) of the Statutory Powers Procedure Act and the Board's Rules.*

OMTRA strongly disagrees with this proposed change.

This precludes holding in-person hearings where appropriate - this is particularly important for highly complex appeals.

Electronic hearings, perhaps while time- and cost-effective for the Board, do not provide an adequate opportunity for all parties to an appeal to be appropriately heard, and expert evidence argued and cross-examined, in the same manner as an in-person hearing.

This risks unfair outcomes and or unfair dismissals.

OMTRA's feedback on the proposed changes

5. Schedule of Events – General Stream Appeals will be reduced from 66-104 weeks to 40 weeks. This change will affect Commencement Dates on or after October 15, 2019.

OMTRA's membership disagrees with this proposed change, as this will seriously compromise both in-progress appeals, and those with commencement dates after October 15, 2019.

A shortened timeframe, results in less time to prepare for appeals and higher workloads for staff – this may seriously jeopardize the quality and completeness of a party's case and risks unfair outcomes.

A shortened timeframe will also negatively impact the ability for municipalities and/or MPAC to conduct inspections – a two-week period in which to schedule and conduct an inspection is likely inadequate and not realistic.

OMTRA's feedback on the proposed changes

2. *There will be an expedited process for dismissal of appeals for non-compliance with the Schedule of Events.*
3. *Every appeal will be assigned a "hearing event month." If a hearing becomes necessary, it will be scheduled to take place during this month.*

OMTRA is not opposed to these changes.

OMTRA's feedback on the proposed changes

- 8. Rule 18(d) will be amended to more specifically require that “grounds” for appealing to the Board are articulated. This amendment not come into effect until the 2021-2024 cycle of appeals.*

OMTRA is supportive of this change, believing all parties to an appeal have a right to understand the basic nature of an appellant's complaint.

At the same time, OMTRA strongly feels that property owners should not be discouraged or disadvantaged by processes that would prevent them from initiating and participating in the appeal process due to a lack of understanding or failure to meet an arbitrarily imposed level of response.

UPDATE



ARB Comment Review

August 29, 2019 | News

Thank you to all the stakeholders who provided comments on the ARB proposed changes. The Board is currently reviewing all comments. At this time, an implementation date has not been confirmed.

Please continue to visit our website for more information.

Toronto Statistics

General Stream Appeals – All Toronto

	Total Appeals	# closed	# open	# withdrawn
2017	7,132	2,862	4,270	1,591
2018	6,913	2,232	4,681	1,285
2019	5,438	877	4,561	425
Total	19,483	5,971	13,512	3,301
	6,780 properties	(31%)	(69%)	

Closed appeals	Total CVA (pre-appeal)	Total CVA (post appeal)	CVA Change	CVA change %	Estimated Property Tax
2017	50.8 B	49.6 B	-1.2 B	-2.4%	-\$30 M
2018	47.7 B	46.3 B	-1.4 B	-2.9%	-\$33 M
2019	18.6 B	18.0 B	-0.6 B	-3.2%	-\$14 M
Total	117.0 B	113.9 B	-3.2 B	-2.7%	-\$77 M

Toronto Statistics

General Stream Appeals – City-initiated only

	Total Appeals	# closed	# open	# withdrawn
2017	342	118	224	66
2018	463	118	345	60
2019	465	64	401	28
Total	1,270	300	970	144
	532 properties	(24%)	(76%)	

Closed appeals	Total CVA (pre-appeal)	Total CVA (post appeal)	CVA Change	CVA change %	Estimated Property Tax
2017	859 M	1,013 M	+155 M	+18.0%	+\$4 M
2018	976 M	1,009 M	+33 M	+3.3%	+\$1 M
2019	568 M	586 M	+18 M	+3.2%	+\$0.4 M
Total	2,403 M	2,608 M	+205 M	+8.5%	+\$5 M

Section 4 – Wrap Up and Takeaways

- Change is the Constant:
 - On January 1, 2019 the ARB became part of the new Tribunals Ontario along with 19 other tribunals and boards
 - As part of a broader review, the Ministry of the Attorney General is conducting a review of all tribunals and boards that form Tribunals Ontario
 - This will likely bring organization review to the ARB
 - Committees that were discussing the implementation of the rules were disbanded – decisions on changes are somewhat unilateral now
- Recent Changes:
 - Almost 50% of the appeals that have commenced - no Statement of Issues filed by the deadline – appeal is in limbo for MPAC and municipalities
 - ARB introduced a template for Motions to Dismiss Appeals for Failure to serve an SOI. Somewhat less onerous than a full motion but still work for MPAC and municipalities

Key Takeaways

- OMTRA Tips & Tricks
- ARB Website
- MPAC collaboration
- Keep Talking and Sharing Experiences and Successes
- Stay Tuned

**Thank you and Further
Questions**