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SECTIONS 357 & 358 OF THE MUNICIPAL ACT, 2001

A Municipal-Centric Perspective

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Session Overview

What We Are Here to Talk About

Section 357… Primarily issues surrounding eligibility, timing and quantum of relief

1. The foundational principle: why these provisions exist and what they are not
2. Four core analytical principles that should govern every application
3. Clause-by-clause: What each provision actually requires
4. Section 358 and correcting Gross and manifest errors
5. Open discussion

While I have not included specific content regarding administration procedures, I'm happy to speak about any aspect of the program.

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Session Overview

A Note on Session Perspective

This session reflects my own interpretation of sections 357 and 358. It does not represent the position of any specific municipality, nor should it be read as a definitive interpretation of the provisions.

This is a nuanced area and different conclusions on the same facts can be reasonable and valid…. that is part of what makes this a worthwhile conversation.

No presentation can address every nuance these provisions generate in practice so what follows is a framework and a perspective, not a comprehensive or conclusive set of rules or guidelines.

The intent is to facilitate discussion and an exchange of perspectives, not to suggest that any specific application should be resolved in any particular way.

Informed judgment applied to the specific facts of each individual application is always relevant and always necessary. Nothing here is a substitute for that.

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Framing

The Policy Foundation – Why does 357 Exist?

The municipal tax roll must mirror the assessment roll… except when it doesn't

- Taxes are levied on the basis of assessments made by MPAC & it is through the assessment process that changes to a property's value or classification are ordinarily captured
- Sections 357 and 358 are deliberately limited exceptions to that principle in that they allow remedial adjustments to the tax roll in response to a defined set of circumstances, without necessarily requiring a corresponding change to the assessment roll *(and in some cases only when such a change has not been made)*
- These provisions are not general relief mechanisms and they are not vehicles for revisiting assessed values
- Each carries a specific **eligibility threshold** and the **quantum of relief** available is tied directly to the nature and impact of the eligible event
  - Manner of relief (cancel, reduce, refund) is a function of the status of the tax account
- The municipality's job is to apply those thresholds and that logic accurately, consistently and transparently

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PART ONE

Core Analytical Principles

Four disciplines that should govern every application regardless of which clause applies

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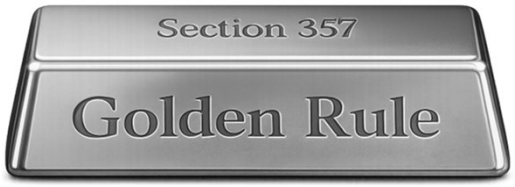
Principle 1

Separate Eligibility from Quantum of Relief — Always

The Eligibility Question	The Quantum Question
Has a qualifying event or circumstance occurred within the required timing window? Does the applicant and property meet the conditions the relevant clause imposes? The answer to this question does NOT determine the quantum of relief.	What is the difference between taxes as levied and taxes that would have been levied had the assessment roll reflected the new or corrected circumstances? This is a separate analytical question. It must be treated as one.

These are not the same inquiry, and they do not follow automatically from one another.



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Principle 1 — The Risk Runs in Many Directions

The Demolished Building: Both Failure Modes

Scenario:
A building has been demolished & clause (d)(i) is satisfied. But the structure had a negligible or zero assessed value at the time of roll return.

Failure Mode 1 — Eligibility and quantum treated as one →
Relief is approved because the demolition occurred. The eligible event produced no tax differential. The municipality has paid out relief that the circumstances do not warrant.

Failure Mode 2 — Denied without addressing quantum →
If the application is denied without context, the municipality leaves an information gap The taxpayer knows a building was torn down so they do not understand outcome Creates a credibility risk and exposure at the ARB

The answer in both cases:

Confirm eligibility on its own terms. Determine quantum separately.

Document both findings including a nil quantum determination where that is the correct answer.

A finding of eligibility with a calculated relief of nil is a complete and defensible disposition of the application.

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Principle 2

Do Not Oversimplify the Criteria or the Relief Options

One of the most persistent problems in section 357 administration is oversimplification.
Both in terms of the circumstances each clause contemplates and the form and amount of relief available.

The Checkbox Problem
Eligibility Circumstances are often boiled down to overly simplistic terms **'Ceased to be eligible to be taxed at its current rate.'** This bears little resemblance to the actual statutory test under clause (a), which requires a specific change event as defined under subsection 34(2.2) of the Assessment Act, eligibility for reclassification into a lower tax ratio class, and the absence of a supplementary assessment. The simplified prompt creates expectations the provision cannot support.

Cancellation, Reduction, or Refund — Not Discretionary
The opening language of section 357 suggests broad discretion. **The form of relief is tied to the specific circumstance, but also to the state of the individual tax account.** A cancellation may be appropriate where a true exemption arises but most property-change scenarios will point to a reduction. A refund is not a distinct category of relief but a function of the state of the tax account, not the underlying circumstance. A well-administered program is precise about all three.

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Principle 3

Quantum Must Reflect the Eligible Event

The amount of relief must correspond directly to the change in tax liability the eligible event actually produced. No more and no less.

- For most provisions this means working from assessment data
  - MPAC apportionments, value splits, and classification confirmations connect the relief to the specific impact of the event on the property's assessed value
- The quantum analysis must not drift beyond what the eligible event actually warrants. Section 357 is not a vehicle for general tax adjustment
- Most clauses reveal a prescriptive formula for relief. *For example:*
  - If a property moves from industrial to commercial, the relief is the exact tax differential between the two class protocols,
  - If an error correction is in play, the adjustment must resolve the overcharge, no more and no less
- Where no formula is prescribed, renovations and extreme poverty being the primary examples, the municipality must establish its own principled approach.

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Principle 4

Timing Is Not a Technicality

The timing rules that govern eligibility under section 357 are deliberate and purposeful.

They go to the core of what the provision is designed to do.

Why the Timing Window Exists	Why the Window Is Also a Limit
The assessment roll is a snapshot of the state, use, and condition of properties at a specific point in time. Where that snapshot was accurate when taken, the roll is correct, even if circumstances change after the fact. If a home burns down after the roll has been returned, the roll was not wrong when prepared. There is no mechanism to appeal or seek reconsideration of an accurate roll, and there are no partial-year adjustment mechanisms • We have no reverse supplementary assessments Section 357 fills that gap. It allows the municipality to adjust taxes to reflect the treatment that would apply if the roll were updated in real time.	Where the roll was inaccurate or incomplete as at the time it was returned, there is no gap to fill If a house had already burned down before roll return, but the roll still reflected it as standing, the roll was wrong. The appropriate remedy is a Request for Reconsideration or an assessment appeal under the Assessment Act. Section 357 deliberately defers to those first-instance mechanisms for anything that was incorrect as at roll return. In this way, the two frameworks are designed to operate in their respective lanes, and the eligibility rules under section 357 enforce that boundary.

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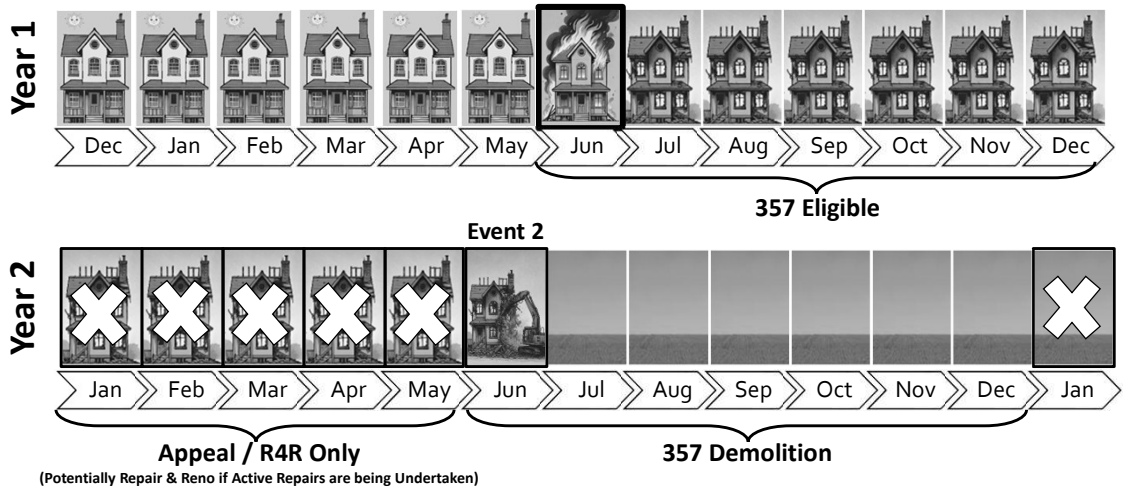
Principle 4

Timing is not just about the Tax Year and the Application Due Date



Year 2 Quantum may be Nil if the building is reflected with zero value on the new roll

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PART TWO

A Clause-By-Clause Review

Considering Eligible Events, Circumstances, Timing & Quantum

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Group A — Changes to the State, Use, or Condition of the Property

This group covers the circumstances in which a physical, legal, or circumstantial change to the property itself gives rise to a claim for relief.

(a) Class Change

(b) New to Vacant or Excess Land Subclass

(c) Land Became Exempt

(d)(i) Building Razed

(d)(ii) Building Damaged – Substantially Unusable

(e) Mobile Unit Removed

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Clause (a)

Change Event: Class Reclassification

Eligibility

Three conditions must all be present:

1. A change event as defined under subsection 34(2.2) of the Assessment Act must have occurred during the taxation year itself.
2. As a result of that change event, the property must be eligible for reclassification into a class with a lower tax ratio.
3. No supplementary assessment capturing that reclassification has been issued.

Quantum of Relief

Tax differential between the assessed class and the reclassified class, prorated to the date of the change event.

MPAC should confirm the appropriate classification and provide any apportionment needed.

Event timing window narrower than other clauses

Technical test of eligible change event must be met

Lower tax ratio does not necessarily mean lower taxes

Change Event Notes:

- Commencement of commercial activity in a formerly industrial facility supports reclassification.
- Cessation of industrial activity without a new qualifying use does not.

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Clause (b)

New to Vacant Land or Excess Land Subclass

Eligibility	Quantum of Relief
A physical or circumstantial change has caused the property to newly meet the criteria for the vacant land or excess land subclass. The change must have occurred after roll return and before December 31 of the taxation year. The question is not whether the property is physically underused but whether the change causes the property to meet the specific regulatory criteria for these subclasses.	Treated as a classification change, not a valuation adjustment, in most circumstances unless a building has been removed. Critically: where the municipality has eliminated its vacant/excess land discount, reclassification into the subclass may produce no tax differential at all. Quantum may be zero even where eligibility is clearly established. Document both findings.

Commonly misunderstood clause… "I am not using the land, please provide a rebate"

Most eligibility is going to be triggered by another eligible circumstance, such as demolition, although a zoning change could also trigger new eligibility.

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Clause (c)

Land Became Exempt from Taxation

Eligibility	Quantum of Relief
A change in ownership and/or use has brought the property within the exemptions under section 3 of the Assessment Act – Standard roll return to Dec 31 event window The exemption must be properly grounded in section 3 of the Assessment Act Not every change in ownership or use that removes a property from economic activity creates an exemption ***Examples:*** An exempt body reclaims a property previously leased to a taxable tenant Improvements placed into use as a place of worship under a qualifying ownership	Taxes cancelled and prorated to effective date of the exemption Refund issued if all or part of the cancelled taxes had been paid Taxes related to any non-exempt portions remain unchanged

Not an avenue for arguing exempt status based on ongoing use or ownership.

Proration: While the qualifying event may have occurred prior to January 1, the application and relief remain tax year specific. (Applies to All Clauses)

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Subclause (d)(i)

Building Razed by Fire, Demolition, or Otherwise

Eligibility

Three conditions must be met:

1. The improvement must have been completely removed; partial loss is addressed under subclause (d)(ii)
2. The improvement was assessable and reflected in the assessed value of the property.
3. The razing was complete after roll return and before December 31 of the taxation year, or during the preceding year after roll return for the preceding year.

Does NOT apply where the improvement was razed prior to the eligible event window.

Quantum of Relief

Taxes reduced and prorated to effective date of the event.

- Refund issued if required

In most cases, the amount of relief is based on building/land apportionment from MPAC.

Where a razed building is subsequently reconstructed or repaired (ii) in the same taxation year, subsection (13) allows Council to restore taxes to the roll.

Generally handled by supplementary

Important for the owner to know that this is not a multi-year solution and they should monitor the following year's roll, pursue adjustment/correction as necessary.

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Subclause (d)(ii)

Building Damaged — Substantially Unusable

Eligibility

The damage must have been severe enough to genuinely preclude the building's normal use for its prior purpose.

Threshold should be tested on the basis of evidence:

- What was the building used for before the damage?
- What damage was sustained?
- To what degree has that damage impaired the ability to serve that use?

For multi-year or staged demolitions municipalities (and owners) are urged to track what has been addressed in prior applications and check for corresponding roll updates.

Quantum of Relief

Basis of calculation may vary depending on circumstances. Most common assessment/value inputs tend to be:

- Value apportionment for damaged area/building portion
- Notional (post damage) value

Degree of impairment is a critical measure in regard to the amount of, and approach to relief:

- Complete uninhabitability: full assessed building value for the period of impairment
- Partial loss or decommissioning of a defined portion may indicate vacancy-style apportionment for the affected area

MPAC no longer updates the roll for the following year as a matter of course.

This was an important process update for a host of reasons, but it does place some onus back onto property owners in some circumstances to ensure permanent or persistent changes to a property's state or condition are reflected going forward.

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Clause (e)

Mobile Unit Removed

Eligibility	Quantum of Relief
A mobile unit has been permanently removed from the land between roll return and December 31. Relief is only available in respect of assessed value that was actually attributed to the unit. An improvement that was not assessed has no bearing on the tax liability. The threshold question at intake: was the unit assessed? Confirm on GRAD or with MPAC before any further analysis proceeds. If it was not assessed, no relief is available regardless of the removal.	Portion of tax attributable to CVA of assessed mobile unit. Relief is prorated from the later of: • Date of removal, or • January 1st of the taxation year. Land value and the value of any remaining improvements play no part in the calculation.

It is not uncommon for mobile units on commercial or construction sites to go unassessed due to their temporary use.

Mobile homes in managed parks/areas tend to be reflected on the roll and updated regularly.

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Group B — Active Repairs or Renovations

This "group" covers the single circumstance in which ongoing improvement work to the property has prevented its normal use for the required period.

(g) Repairs or Renovations are Preventing "Normal Use

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Clause (g)

Repairs or Renovations Preventing Normal Use

Eligibility	Quantum of Relief
Repairs or renovations must be ACTIVE, not merely needed, planned, or suspended. Normal use must have been genuinely prevented, not impaired or inconvenienced Three-month minimum measured independently within each the taxation year Not available where the property is eligible for a vacant unit rebate under section 364 Commercial tenant applications, where a leasehold interest bars a section 364 claim, are allowable	As there is no prescribed or inferred formula the municipality must establish and apply its own approach • Section 364, vacancy-style apportionment is a familiar and a solid approach, particularly for commercial and industrial sites. • A notional value approach can be more appropriate for residential renovations. Municipalities should confirm that deteriorated condition is not already reflected. MPAC will provide apportionments but no longer generate notional values proactively.

Documenting approach and consistent application are critical to equity and defensibility of relief outcomes.

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(d)(ii) and (g) — The Contested Boundary

The Renovation Problem

Applications framing deliberate renovation activity as damage to access clause (d)(ii) rather than clause (g) are problematic

Subclause (d)(ii) — Damage	Clause (g) — Deliberate Improvement
Contemplates an event that impairs function typically involuntarily, an unavoidable consequence of necessary remediation or partial demolition. ***Read As: An Event Rendering a Fundamental Change*** The damage must have rendered the building substantially unusable for its prior purpose.	Contemplates active and ongoing repair or renovation work that, as a consequence, prevents normal use for at least three consecutive months. ***Read As: Deliberate Ongoing Improvements/Repairs*** Removing store fixtures or dividing walls as part of a renovation does not constitute damage to a building.

Requiring evidentiary materials at intake — building permits, photographs, affidavits, input from building and fire officials, the sequence of events

Maintaining a documented policy on where the (d)(ii)/(g) boundary lies and applying it consistently…

Case-by-case review and discretion are most often necessary due to the nature of the circumstances, but subjective judgment should be applied within a consistent framework.

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Group C — Overcharges Due to Gross or Manifest Error

This group covers circumstances in which a clerical or factual error has resulted in an overcharge.

Spanning two sections of the Act, this group addresses provisions under both 357 and 358

- 357 (1)(f) Error in the Calculation of Taxes or Preparation of the Tax Roll
- 358(1)(a) Error in the preparation of the Assessment Roll
- 358(1)(b) Error in Supplementary or Omitted Assessment

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Clause (f)

Overcharge Due to Gross or Manifest Error — Tax Roll

Eligibility	Quantum of Relief
A person was overcharged due to a gross or manifest error that is clerical or factual in nature including transposition of figures, typographical errors, and similar mistakes. The error must be objectively apparent and demonstrable, not a matter of interpretive disagreement. Errors in judgment in assessing the property are excluded and belong under the Assessment Act. Where the error originates on the assessment roll, section 358 is the primary mechanism.	Full correction of the overcharge. The error must have actually resulted in an overcharge. A data discrepancy that had no bearing on the tax liability, even if factually incorrect, does not support a clause (f) application. Penalties and interest levied as a direct result of the error are reversed. *(This is a general requirement, not 357 specific)* No adjustment to P&I calculated on portion of the taxes that remain owing.

While 357 (1)(f) does not explicitly preclude errors on the assessment roll, it is reasonable to go on the basis that you use the primary mechanism first.

Even if not formally converted to a 358 application, the protocol whereby MPAC must confirm an eligible error was made in preparation of the assessment roll should be followed if application relates to such an error.

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Section 358

Purpose and Scope

Section 358 provides for the cancellation, reduction, or refund of taxes where a gross or manifest clerical or factual error in the preparation of the assessment roll has resulted in an overcharge.

- It is a targeted and narrow tool, focused on factual correctness on the roll itself.
- It is not a general challenge to assessed value, and it is not an end-run around the assessment appeal process.

Where successful, and application will trigger a correction that flows forward.

- This is the more durable remedy compared to a one-time tax adjustment under clause (f) of section 357.

Qualifies:
Typographical errors, transposition of figures, data entry mistakes, and objectively apparent, demonstrable errors of a clerical or factual nature.

Does not qualify:
Errors in judgment in assessing the property; disagreements with market value or methodology; changes in circumstance after roll return.

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Section 358

MPAC's Gatekeeper Role

Council cannot hear an application under section 358 unless MPAC confirms that a qualifying gross or manifest error exists on the assessment roll.

- This is a statutory precondition, not an advisory step.
- While MPAC plays an important role in 357 applications, there is no comparable requirement under that section.

The process:

1. Application received and a copy sent to MPAC at intake
2. MPAC investigates and may conduct a site inspection
3. MPAC formally confirms or denies the error
4. Only where MPAC confirms does the municipality proceed to schedule a Council meeting and consider quantum
5. Where MPAC denies, the applicant is notified that no hearing will be held

Finality: Section 358 decisions are generally final and there is no program specific right of appeal embedded in the section. As such, judicial review is the recourse.

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Section 358

Quantum of Relief and the Overcharge Requirement

Quantum: Fix the Error — Nothing More

Relief under section 358 is limited to correcting the specific overcharge produced by the error.

The amount should restore the taxpayer to the position they would have been in had the error not been made.

Adjustments are made across all affected years within the eligible window.

Directly attributable penalties and interest are reversed.

The Overcharge Requirement in Practice

A data discrepancy on the assessment roll, even one that is clearly factual and objectively wrong, does not support a section 358 application unless it actually affected the tax liability.

Example: an incorrect bedroom count in MPAC's property data may be a genuine factual error.

If it had no bearing on the assessed value, there is no overcharge and no basis for relief.

Where a qualifying error is identified, the amount of relief is largely objectively defined by the corrected roll details

The practical and operational inference is that the municipality has no discretion in the amount of relief provided

The lack of subjectivity may be why the legislature did not include appeal provisions for this section

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Section 358

Timing and In-Year Error Correction Options

Errors on the Returned Roll

Applications can be made between March 1 and December 31

If the timing for roll return is extended, no application can be made until 61 days after the roll is returned

An application can apply to the year in which it is made and the two preceding years.

Supplementary and Omitted Assessment Errors

A different and potentially longer deadline applies: On or before December 31 of the second year following the year in which the Supp/Omit was made

The correction may apply to taxes levied for any year to which that supplementary or omitted assessment applied

An 33/34 error could carry forward as a roll error for a subsequent year.

Where an in-year error is identified, a correction through a Property Roll Amendment Notice (PRAN) may be available.

PRAN requirements generally follow those of 358 for errors on the roll, but are limited to current year.

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Group D — Sickness and Extreme Poverty

The only provision under section 357 that has nothing to do with the physical property, its assessed value, or any change to either.

Two conditions must both be satisfied:

1) The applicant must be genuinely unable to pay their taxes, and
2) That inability must be caused by sickness or extreme poverty.

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Clause (d.1)

Sickness or Extreme Poverty

- The standard is specific and demanding: it is not general financial hardship, insufficient income, or cash flow difficulty
- A thorough financial assessment is generally required: income, assets, equity in the property, access to credit, rental potential, other program eligibility….. the full picture, not just current income.
  - While poverty and sickness are separated, extreme financial hardship is a requirement under both due to the overriding requirement of an inability to pay the taxes.
- This provision addresses extraordinary and unanticipated circumstances and municipalities are urged to be wary of circumstances that reflect chronic financial insufficiency or an inability to prioritize tax payments among competing demands
- It is recommended that Council's judgment be exercised within a documented policy framework, proportionate to the financial assessment
- Delegation to the ARB is strongly recommended due to the unavoidable dynamic before elected officials
  - A sympathetic personal narrative in a public hearing makes consistent application of the eligibility standard genuinely difficult; the ARB is better equipped to apply it at arm's length

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Wrapping Up & Open Discussion

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Summary and Highlights

- Eligibility and quantum are separate questions; both require a documented answer, including where quantum is nil
- The timing rules are a deliberate boundary, not a technicality.
- Applications that belong in the assessment process should be redirected there
- MPAC engagement should be deliberate and specific — the quality of what comes back depends on the specificity of what is asked
- The provisions that require the most judgment *(clause (g), clause (d)(ii) renovation scenarios, clause (d.1))* are the ones most in need of documented, consistent policy before the difficult applications arrive
- Under section 358, MPAC confirmation of an error is necessary but not sufficient — the error must have produced a material overcharge

Informed judgment applied to the specific facts of each application is always the final step; no framework substitutes for that.

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Precision is not to be Confused with Limitation or Curtailment

These provisions exist for specific and legitimate purposes. A precise and rigorous approach to eligibility and quantum is not (and should not be) a strategy for limiting the intended relief.

- Where the eligible event is real and the quantum is material, a well-administered program grants relief efficiently and without unnecessary friction
- Where eligibility is not established, denying relief is not curtailment, it is the correct outcome, and it protects the integrity of the program for the applicants it is designed to serve

Due diligence and evidentiary rigour are not obstacles to relief; the objective is accuracy, not restriction

Applicants and practitioners alike should understand that distinction clearly.

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Questions Discussions Feedback

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