National Valuation and Legal Symposium
Cross-Canada Legal Panel: British Columbia Update

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NATIONAL VALUATION AND LEGAL SYMPOSIUM

CROSS-CANADA LEGAL PANEL

BRITISH COLUMBIA UPDATE

"Is the tax system becoming more or less equitable and transparent?"

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1. INTRODUCTION

I am grateful to have the opportunity to give you the British Columbia perspective on the question for the Panel today – are our governments moving towards or away from equitable distribution of property taxes?

Keeping in mind that equity is a relative term, and that perspectives differ between taxpayer interest groups, I attempt here to touch on recent B.C. developments in assessment and taxation equity, with a view to encouraging debate at this Conference and perhaps helping to set the stage for further discussion at the Quebec Conference.

2. EQUITY IN B.C.

Equity in Assessment and Tax Rates

Traditionally, a discussion of equity focussed on equity in assessment, which it was thought ought to lead naturally to equity in taxation. However the recent *Catalyst* decisions (discussed below) have introduced the notion of equity in the setting of tax rates between classes. There is no question that in B.C., equity in assessment is a legally enforceable right. The Court in *Catalyst* sidestepped the interesting question of whether equity applies in setting municipal tax rates by treating the argument as another way of saying the tax rates were unreasonable. Whether the notion of equity in tax rates will catch hold here is a question for another day, perhaps to be addressed by the Court of Appeal in the *Catalyst* decisions.

What the *Catalyst* cases make clear is that courts consider municipal rate setting to be a political, not a legal issue. Courts will defer to municipal discretion so long as there is transparency, rationality and reasonableness in the underlying tax rate policies and in the resulting tax rates, and so long as the bylaws themselves are made in accordance with proper procedures.

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[1] Jim is a Partner in Lawson Lundell LLP's Vancouver office. This paper represents a general overview of equity in British Columbia. Readers are advised to seek legal advice with respect to specific legal issues.

I turn here to an overview of the current law in B.C. on equity in assessment, and then to the *Catalyst* and *TimberWest* decisions as they bear on reasonableness and equity in tax rates.

(a) *Equitable Assessment - Board Power to Ensure Equity*

The Board's power to ensure equity is founded in the following words in s.57 of the *Assessment Act*:

> **Powers and duties of board in an appeal**
>
> **57** (1) In an appeal under this Part, the board
>
> (a) may reopen the whole question of the property's assessment ***to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality***, treaty lands of the taxing treaty first nation or other rural area, and
>
> (b) when considering whether land or improvements are assessed at actual value, must consider the total assessed value of the land and improvements together.
>
> (2) Nothing in subsection (1) (a) empowers the board to determine an assessment of a property other than the property that is the subject of the appeal, except to the extent permitted under subsection (3).
>
> (3) If the property referred to in subsection (1) includes a building or other improvement that extends over one or more contiguous parcels of land that actually abut that property but the other parcels were not originally the subject of the appeal, the board may, if the board considers it necessary to accurately determine the assessment of the property referred to in subsection (1), include those parcels in its determinations.
>
> (4) The board ***may order the assessment authority to reassess at actual value land and improvements in all or part of a municipality, the treaty lands of a taxing treaty first nation or another rural area, whether or not they are the subject of the appeal, if the board finds***
>
> ***(a) that the assessments in the municipality, treaty lands or rural area, or in part of any of them, are above their actual value, or***
>
> ***(b) that the assessment appealed against is at actual value but that the assessments of similar land and improvements in the municipality, treaty lands or rural area, or in part of any of them, are below their actual value***.
>
> (5) Despite section 12 (6), the assessor must enter any reassessments ordered under subsection (4) of this section on a supplementary assessment roll.

On the "plus side", the Board and Courts have interpreted this provision as applying to value, classification and exemptions so that at least in theory, equitable assessment is assured for all aspects of an assessment.

On the "minus" side, there are some practical restrictions on the application of assessment equity, including for example, that:

- equity applies only within taxing jurisdictions, not across the Province (*C&C Holdings* 2003, BCSC 230). This means that you cannot refer to your competitor's assessment as part of the equity set even if he is across the street and assessed by the same office, if he is in a different municipality or rural area. This seems at odds both with BC Assessment's mandate to establish and maintain assessments that are uniform in the whole of B.C. under s.9 of the *Assessment Authority Act,* and with the fact that some 25 to 35% of a tax bill is provincial school taxes, with rates that are uniform for each class across the Province;

- it is not enough to point to one or two of your competitors or neighbours to establish inequity – you must prove that most similar properties in the taxing jurisdiction are treated differently;

- likewise, a mere difference in value from your neighbour doesn't count, if it is within "appraisal tolerance";

- equity applies to the valuation of a property as a whole, not to independent factors that drive value (eg. cap rates standing alone);

- an equity argument has no practical outcome unless the equity set properties are not under appeal, and

- the Board has the power to respond to an equity argument by ordering reassessment of the equity set under s.57(4).

The Board continues to refine (and in the process, generally to further confine) the scope of situations where a practical equity remedy is available. Nevertheless, I gather from the Board that equity arises more and more frequently, and occupies a significant amount of Board time.

It is difficult to gauge whether we are moving closer to or further from equitable taxation in B.C. Suffice to say that the principle is alive and well, the tools are becoming more clearly defined and better understood, and equity arguments are playing an increasingly important role in all manner of appeals.

I turn now to "equity" in the distribution of the municipal tax burden.

(b) *Equitable Distribution of Tax Burden*

As I mentioned earlier, when people speak of equity in B.C. it usually means equity in assessments. The notion of equity in the setting of tax rates is a novel concept, because it would seem contrary to the basic notion that the Legislature has specifically permitted inequitable discrimination in tax rates between classes. As the Court in *Catalyst* observed, the argument for equitable tax rates between

classes seems more akin to argument for reasonableness in the rates. Call it what you may, I think we would all agree that a fair distribution of the tax burden between property classes is a cornerstone of rationale and sustainable taxation.

I briefly review how municipalities set tax rates in B.C., then discuss mechanisms to influence the setting of rates, culminating in a discussion of the recent "tax revolt" decisions in *Catalyst* and *TimberWest.*

Setting of Municipal Tax Rates

Municipal councils have the statutory discretion to set different tax rates for different property classes. Those classes are defined in the *Prescribed Classes of Property Regulation*, B.C. Reg. 438/81 as:

Class 1 – Residential

Class 2 – Utility

Class 3 – Supportive Housing

Class 4 – Major Industry

Class 5 – Light Industry

Class 6 – Business & Other

Class 7 – Managed Forest Land

Class 8 – Recreational Property / Non-Profit

Class 9 – Farm

Class 10 – Split Class

Tax rate bylaws must be passed by May 15 each year, and must reflect the policy on distribution of tax load amongst different classes as set out in the 5 year financial plan prepared earlier in the spring (*Community Charter* s.165). Councils determine rates for each class by simply dividing the proportion of the total municipal budget allocated to each class by the total taxable value in each class.

Taxpayers have limited opportunities to influence the outcome of rate setting. Lobbying at the municipal council level must commence sufficiently early to influence decisions on allocation of taxes, usually years in advance of those changes occurring. Decisions made by council of the day cannot bind a new council after a municipal election.

As can be seen from the *TimberWest* decision, councils sometimes depart from acceptable process in setting their rates. In the rare case where this occurs and can be demonstrated, the taxpayer may have a judicial remedy. Courts will otherwise leave the discretionary function of rate setting to council.

Provincial Cabinet maintains the right under *Community Charter* s.199 to make regulations fixing rates and relationships between rates where it sees fit. The limited frequency with which this has occurred (as discussed in the *Catalyst* decisions) reflects the provincial government's preference to leave local rate setting to municipal councils.

Legal Challenges of Tax Rate Bylaws – the "B.C. Tax Revolt"

"*Forest Companies Gain Legal Traction for Tax Revolt*", proclaimed the Globe and Mail on January 2, 2010, in the wake of the TimberWest decision quashing Campbell River's 2009 managed forest land tax rate bylaw and sending it back for reconsideration by council.

While catchy, the headline is, frankly, misleading. Catalyst Paper Corporation filed 4 petitions to quash 2009 tax rate bylaws in Campbell River, Powell River, Port Alberni and North Cowichan, where its mills are located. Catalyst's goal was to set aside the Class 4 Major Industry rates because the relationship between Class 4 rates with the cost of services consumed was so far out of step with the equivalent relationship between Class 1 Residential rates and the cost of services consumed by that class that they must be considered irrational and unreasonable. As set out in more detail below, the Court disagreed, and dismissed the petitions on the grounds that the rates were transparent, rational and reasonable, and that it was council's job, not the Court's, to effect change. TimberWest's challenge of Campbell River's 2009 managed forest land rate succeeded not because the Court was prepared to declare the rate unreasonable, but because the Court found that council had used the massive rate increase that year to attempt to force TimberWest to move lands out of managed forest class into another class, or in other words, for the improper purpose of land use control, and because the ratio between regional district levies of managed forest to residential far exceed legislated limits.

The *Catalyst* decisions are under appeal, and we will no doubt hear more on this from the Court of Appeal. Meanwhile, I do not think it is correct to say that the forest companies have gained traction from the *TimberWest* decision, since the Courts have essentially declined to second guess municipal rate setting absent illegality in the passage of the bylaws themselves.

A more fulsome review of these decisions is set out in the attached appendix. The challenges brought by several other B.C. forestry companies appear to be in limbo. It is reported that Zelstoff Celgar, who had challenged Celgar's tax rate bylaw, has agreed to pay its 2009 taxes. West Fraser Timber's challenge of Kitimat's tax rates on its Eurocan mill will no doubt be affected by its recent announcement of its intent to close that mill.

As noted above, reconciliation of the *Catalyst* decisions with the *TimberWest* decision appears to lie in the different remedies sought. Catalyst unsuccessfully challenged the substance of the tax rate bylaws, without challenging the Cities' powers to pass them. The Court was not prepared to take the rate setting function out of municipal councillors' hands. TimberWest, on the other hand, successfully challenged the process by which the tax rate bylaws were passed, by persuading the Court that Campbell River had passed the bylaws for the improper purpose of attempting to effectively rezone TimberWest's lands, and by setting regional district rates in proportions contrary to the legislation. The Court did not consider whether the rates themselves were reasonable. In light of the result in *Catalyst*, it is questionable whether the Court would have been prepared to do so. I suspect not.

Subject to further word from the Court of Appeal, these decisions reflect a judicial reluctance to interfere with the political decisions that underlie apportionment of municipal taxes between property classes, where councils have followed proper procedures and without ulterior motives in fixing relative tax rates. This underscores the point that equity in tax rates is a fight to be fought at first instance at the municipal council and Cabinet level, and that it is important to keep a close eye on the process leading to the setting of tax rates, as irregularity in the process may provide the only basis for judicial intervention.

Conclusion

Returning to my opening remark, equity in assessment and taxation is in the eye of the beholder. Insofar as it usually results in a transfer of tax burden from one group to another, it seems likely that somebody will always claim that they are not being fairly treated. Whether or not we can proclaim that we are moving closer to or further from equity, we can say that it is on the radar screens of most British Columbians, who have shown a willingness to push the boundaries for change.

This concludes my overview of the B.C. perspective on achievement of equity in this Symposium.

Appendix

Catalyst Paper Corporation v. The Corporation of the District of North Cowichan, October 16, 2009, 2009 BCSC 1420

Catalyst Paper Corporation v. City of Port Alberni, December 21, 2009, BCSC 1751

Catalyst Paper Corporation v. City of Campbell River, December 21, 2009, BCSC 1752

Catalyst Paper Corporation v. City of Powell River, December 21, 2009, BCSC 1753

Catalyst paper operates mills in four coastal communities – Powell River, North Cowichan, Port Alberni and Campbell River. In 2009, Catalyst challenged by judicial review the tax rates bylaws passed by each municipal council imposing tax on Catalyst's mills as Class 4 – Major Industry properties. The petitions were argued together, and the Court issued reasons first on the North Cowichan case, followed by the other three cases.

In the result, the Court dismissed all four petitions so far as Catalyst was seeking to strike down the municipal tax rate bylaws relating to Class 4 taxes. In the Campbell River case, the Court struck down the regional district levy as creating a ratio between Class 1 and Class 4 rates of 10.28 : 1, greater than the maximum ration of 3.4:1 permitted under s.4 of the *Municipal Tax Regulation*, B.C. Reg 426/2003.

Since the Court's reasoning in the four petitions is similar, I focus here on the analysis in the first of the four decisions, involving North Cowichan.

Catalyst said that in North Cowichan, it had paid about $6.50 in tax for every $1.00 of municipal services received. Moreover, while Class 4 properties made up on 3.7% of the total tax base, their taxes made up 37% of the municipal tax load. By comparison, residential properties made up almost 90% of the tax base but paid only 40% of the tax load. Referring to the 2004 Bish study "Property Taxes on Business and Industrial Property in B.C.", Catalyst noted that major industry taxes in some B.C. communities were the highest in North America. The increasing gap between Class 1 – Residential and Class 4 – Major Industry tax rates was explored further in a 2009 report prepared for the Vancouver Island Economic Alliance, which noted that between 1992 and 2007:

- The total assessed value in Class 1 Residential increased by 271% while Class 4 decreased by 26%

- The weighted average municipal tax rates for Class 1 decreased by 38%, while equivalent rates for Class 4 increased by 21%, and

- The weighted average ratio of Class 4 to Class 1 municipal tax rates nearly doubled from 7.7% to 14.9%

Following years of attempts to persuade municipal councils and Provincial politicians to shift the balance to alleviate their taxes, Catalyst commissioned a series of reports from consultants (including our past President Norm Stickleman) studying the relationship between Class 4 rates and the cost of municipal services consumed by Catalyst's mills, and proposing that a sustainable level of taxation

would result in relative proportionality between net consumption and taxation, with each class paying taxes roughly equivalent to the net value of services they consume. The Model put forward by the reports concluded that Catalyst paid about $1 million in services in 2008, and Catalyst proposed to pay $1.5 million of the $6.8 million Class 4 taxes assessed to its North Cowichan property in 2009, arguing that the 2009 tax rate bylaw ought to be set aside as unreasonable given that the tax rates bore no relationship to the cost of relative consumption of services.

Catalyst did not claim that North Cowichan's bylaw was *ultra vires* its discretion to set rates, but that it was unreasonable. The Court observed that this analysis was correct – although the Province used s.199 of the Community Charter to regulate the municipal discretion to set tax rates, this in no way fetters municipal discretion to set rates. The Court decided that to succeed, Catalyst must meet the standard of review of "reasonableness". Catalyst said the bylaw was unreasonable both because the decision making process of council underlying the bylaw failed to explain any rational basis for the Class 4 rates, and because those rates were so excessive as to be unreasonable.

As to the first argument, the Court found that council must explain some of the factors and considerations underlying its tax rate bylaw, so that the Court can review that decision if necessary, and there must be some evidence to suggest that the rate setting is policy based. The Court found that the statutory scheme, requiring open council meetings, public consultation before adoption of the financial plan and public access to council meeting minutes, ensured transparency in the process.

On the merits, Catalyst drew attention to various provisions of the Community Charter and Local Government Act which it said focus on the consumption of services as an important factor in the exercise of tax rate setting powers. The Court however found that "a single-minded reliance on a consumption model is inconsistent with the nature of the decision making exercise contemplated by s.165 and s.197 of the Community Charter". The Court was not persuaded that the empirical tax Model proposed by Catalyst satisfied the task required by the Act, commenting as follows:

> *[89] Furthermore, apart from lacking any jurisdictional basis, a single-minded reliance on a consumption model is inconsistent with the nature of the decision making exercise contemplated by s. 165 and s. 197 of the Community Charter. The significant ostensible benefit of the Model, repeatedly referred to by Catalyst in its affidavits and its submissions, is that it provides Council with an "empirical basis" or a "concrete assessment" for its decision making. There is an apparent effort to conflate "empirical" with "rational". The petitioner's emphasis on the Model seeks to ascribe a precision and to impose a rigor that is not consonant with the nature of decision making under s. 197. A review of s. 165 and s. 197, as well as a consideration of the actual exercise undertaken by Council in adopting a financial plan and the taxing bylaw that is to give effect to that plan, reveals that the exercise is not, at core, empirical. Instead it reflects the application of judgment based on a knowledge of the community, the community's needs, the economic challenges it faces, the adequacy of the services it provides, and myriad other considerations. It involves a weighing of multiple competing interests. Though it is an exercise that is not amenable to precise calculations or "concrete assessments", it remains nevertheless a rational exercise.*
>
> *[90] In a similar vein, the application of a consumption model contemplates a linear, or roughly linear, relationship with property taxes. The more services the members of a property class use, the higher the taxes of the class. This formulation is, however, at odds with the entitlement of a municipality to discriminate in fixing property tax rates. The very essence of a right to discriminate is that Council can*

deviate, albeit for relevant purposes, from such a linear relationship or from the need to treat members of different classes in the same way.

[91] The fact that the adoption of the Bylaw reflects the agreement of several members of Council is also significant. These individuals are likely to weigh the benefits and factors relevant to the Bylaw differently. The likely differences in their respective opinions, while leading to consensus on the Bylaw, also belies both the value and tenability of relying on a model that has a single focus – that of consumption – to establish the property tax rates for different property classes within a municipality.

[92] Finally, imposing a requirement to establish property tax rates with reference to the consumption patterns of different property classes gives rise to various practical problems. The Model generated by Catalyst is a serious piece of work. It would have been time consuming and expensive to prepare. Elevating the importance of consumption and the relevance of such models would require municipalities, in the absence of an explicit statutory requirement, to undertake such studies. In addition, though the Model appears to give rise to a credible analysis, I expect that different experts undertaking a similar exercise could arrive at somewhat different results. This, in turn, has the prospect of giving rise to future challenges that would be based on the accuracy or validity of the model relied on by Council.

[93] Ultimately, in my view, the actual levels of municipal services consumed by a given class is a potentially relevant factor which can be considered by Council in fixing property tax rates. In instances where such information actually exists, Council is likely required to consider the information. The weight or significance given to such consumption data is a matter for Council alone. It is up to Council to fit and weigh such information, together with other categories of relevant information, into its decision-making matrix in the way that it considers appropriate.

The upshot is that while considering the relative cost of services consumed by a municipal taxpayer a relevant factor, and one that, if available, probably must be taken into consideration, the Court was not prepared to bless a tax model based entirely on this factor.

In finding that the tax rate bylaw was not unreasonable, the Court said this:

[108] Based on the foregoing information it is clear that Council had before it and considered many diverse factors relevant to the Bylaw and in particular to Class 4 tax rates. I do not believe it can be said that the types of information or the multiple competing objectives before Council were not intelligible, transparent, rational or that they were not properly relevant to the task faced by Council in exercising its power under s. 197 of the Community Charter. To the extent that Catalyst complains that the respondent has not explained how it weighed or balanced both the information and the competing objectives before it, or how Class 4 tax rates were established, I do not believe this is correct. This is not a case where the respondent has been "sphinx like" in its position. Its letter of May 11, 2009 provides some insight into the considerations and reasoning that underlie the Bylaw. Furthermore, the obligations I've referred to which rest on the respondent to ensure that there is information in the record before the court from which the court can glean the factors Council considered in its deliberations has been satisfied. Council had a great deal of relevant information available to it, all of which was rationally connected to the exercise it faced. Finally, and most importantly, the inherent nature of Council's decision making exercise under s. 197 in relation to the Bylaw is one in which there are multiple competing objectives and policies, where the respective merits of these competing objectives are not easily quantified or measured and in respect of which no precise expression, which would capture the disparate views of Council, can be expected.

Nor was the Court persuaded, despite evidence that the Class 4 rates under the bylaw were outside the range of rates found elsewhere, that the rates were outside the range of possible and acceptable outcomes:

> *[109] Catalyst referred to much data to establish that historical Class 4 tax rates in North Cowichan as well as the Class 4 tax rates under the Bylaw are outside of the range of such tax rates elsewhere. The ratio of Class 4 to Class 1 rates in North Cowichan was the highest in the province in 2008. It remains amongst the highest today. Residential tax rates, in an affluent community, remain the lowest on Vancouver Island today. They are likely the lowest amongst North Cowichan's "peer group" municipalities in the province. Furthermore, property tax rates, as a percentage of cost of production, are markedly higher in British Columbia than elsewhere in Western Canada or in Ontario. Class 4 municipal tax rates in British Columbia are also markedly higher than in other jurisdictions.*
>
> *[110] I do not believe any such evidence advances Catalyst in this proceeding. Some of the evidence goes to broad structural difficulties associated with major industry doing business in British Columbia or in Canada as opposed to in other jurisdictions. These are matters properly addressed by different levels of government and not by the courts.*
>
> *[111] To the extent that such evidence compares Class 4 tax rates under the Bylaw with such rates in other municipalities, the language of the courts in Kruse, Wedensbury and Lehndorff United Properties is directly relevant. The fact that the Class 4 to Class 1 tax rate ratio established by the Bylaw when compared to other municipalities is at the far end of the spectrum does not mean the result is not a possible or acceptable outcome. In any instance where a number of decision makers address the same question there will be a range of outcomes. The fact that each of Mr. Frame, the Tax Restructuring Committee which included the Mayor, and Council came to three different outcomes for 2009 Class 4 tax rates reflects this. There will always be outliers in the data. Such outliers are not, of necessity or even on a persuasive basis, unacceptable outcomes.*
>
> *[112] All of this statistical information was before Council when it made its decision. The comments of Hall J. in O'Flanagan are apposite:*
>
> > *[23] As to the argument that the Bylaw should be seen as encouraging development rather than taxing parcels that can or will benefit from the service, I consider that submission as being beyond the purview of a reviewing court. The ultimate effects of a bylaw are proper considerations for a municipal council concerned with policy issues. I fail to see how a court could properly address such concerns. I would not accede to this argument.*
>
> *[113] I am of the view that the Bylaw is rationally supported and that the effects or outcomes it creates are within the range of permissible outcomes. Accordingly the Bylaw is reasonable.*

Catalyst also argued that, despite the legislation permitting discrimination between classes of property, the Class 4 tax rates were so disparate as to be inequitable. The Court did not accept this novel characterization of equity, observing that:

> *[119] While Catalyst accepts that the respondent has the jurisdiction to impose different tax rates on different property classes, it says the differences must be rational and equitable. Here it say that the "massive disparity between classes demonstrates that the tax rates set under the Bylaw are outside of the equitable range of values". In emphasizing the importance of rationality and "an equitable range of*

values", and in again relying on evidence of comparable rates in other municipalities in British Columbia or in other jurisdictions, Catalyst does no more than restate, in modestly modified terms, its submissions in relation to the reasonableness of the Bylaw.

[120] For the reasons I have expressed, I do not believe the Bylaw is inequitable either because it is irrational or because the Class 4 rates it generates are outside of an acceptable range of values.

In the result, the Court was simply loath to interfere with North Cowichan's broad discretion to set tax rates as it sees fit. The Court was not unsympathetic, however, to Catalyst's plight, and the following passage reflects the Court's acknowledgment of the problem with excessive Class 4 rates, and the need for municipalities to continue to address it:

[114] This is not a case where an irritated corporate taxpayer rushes to court to challenge its tax rates. Catalyst has been trying for more than a half decade to address a structural issue which is widely recognized to be a problem. The third party studies I have referred to as well as the materials filed by the respondent recognize that existing Class 4 tax rates in North Cowichan are at undesirable and unsustainable levels. The work of the Tax Restructuring Committee, the various reports of Mr. Frame, and the Financial Planning Bylaw all recognized that existing Class 4 tax rates are significantly higher than they should be. Mr. Frame comments "they have gotten off track". The expressly acknowledged corollary of this is that Class 1 residential rates are lower than they should be. Leaving aside the technical issue of whether such comments can properly be considered to reflect the views of the respondent, such acknowledgements are not admissions that the bylaws are legally "unreasonable". Municipal recognition that Class 4 tax rates are "too high" is an acknowledgement that Council accepts the importance of reducing those rates. The pace at which and extent to which that reduction is to take place is a matter that lies within Council's discretion. The wisdom of that decision is a matter that a court will not interfere with.

TimberWest Forest Corp et al v. City of Campbell River, December 31, 2009, 2009 BCSC 1804

TimberWest owns about 7,000 acres of managed forest lands in the City of Campbell River. About 3,200 of these are within the provincial Agricultural Land Reserve and subject to the Agricultural Land Commission.

In 2004 Campbell River adopted an action plan designed to reduce the share of its municipal taxes taken from major industrial property. This meant shifting taxes to other classes. In 2009 it faced a $4.4 million budget shortfall which it dealt with in party through reduced expenses and in part through a property tax increase applicable to all other classes but Class 4. The May 12, 2009 tax rate bylaw increased the rate for managed forest land applicable to TimberWest as the sole managed forest land owner in the City from $16.87 per $1,000 of assessed value, to $178.24 per $1,000. TimberWest was not told about this until April, 2009. It would have had to apply to remove its property from the class by September 30, 2008 to avoid the tax increase.

Campbell River said that TimberWest was estopped from challenging the tax rate bylaw based on an agreement between the City and TimberWest. The Court found that the City's notes of a crucial meeting with TimberWest in fact showed the contrary – that TimberWest reserved its right to challenge the increase if it could not be resolved through other means, and threw out this defence.

The Court found that the correct standard of review to determine if the City acted within its authority in passing the bylaw was correctness, and to determine if the bylaw ought to be otherwise set aside was reasonableness (as had the Court in the Catalyst decision).

The Court then found that the City's conduct of council meetings dealing with the question of the tax increase behind closed doors violated s.89 of the *Community Charter*, undermining the integrity of the process and lessening the amount of deference to be given Council in its final decisions based on those meetings.

On the merits, the Court found that the City's tax increase was implemented for the improper purpose of attempting to cause TimberWest to withdraw at least some of its land from managed forest class and convert them to a use desired by the City, or in other words, to use the tax increase to force TimberWest to rezone its lands. This was also contrary to the intent of the *Private Managed Forest Land Act* which, together with the *Assessment Act* and *Assessment Act Regulation* intended to encourage managed forest land owners to practice sustainable forestry in exchange for reduced tax rates. Campbell River argued that so long as the attempt to encourage TimberWest to remove lands from managed forest class was not the thrust of the bylaw, but merely a corollary intention, it should not be declared invalid. The Court however found that there was no other purpose in raising the taxes to an uneconomic level than to force TimberWest to remove the lands and convert them to a non-forestry use, which was an improper purpose at law, and outside the City's powers. The Court therefore found the bylaw to be *ultra vires* the City's powers under the *Community Charter* and declared it illegal.

Applying the Court's reasoning in *Catalyst v. North Cowichan*, the Court also agreed with TimberWest that by setting the managed forest rate at 37.9 times the residential rate, the tax bylaw violated the maximum 3:1 ratio prescribed by the *Municipal Tax Regulation*, and declared the portion of the bylaw setting tax rates for regional district purposes *ultra vires*. Having decided to strike the bylaws down on these grounds, the Court declined to consider if the bylaws were also unreasonable.

In the result, the Court quashed the portions of the tax rate bylaws setting rates for managed forest lands for municipal and regional district levies, and sent them back to Campbell River council for reconsideration and resetting of managed forest land rates.

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