



## **Real Property Assessment 2005 Equity and Consistency in Assessments**

By

[James D. Fraser](#)

*May 17, 2005*

*This paper was prepared for the Continuing Legal Education Society of British Columbia  
for the Real Property Assessment Conference on April 21, 2005*

*This is a general overview of the subject matter and should not be relied upon as legal advice or opinion.  
For specific legal advice on the information provided and related topics,  
please contact the author or any member of the Property Tax Law Group.*

*Copyright © 2005, Lawson Lundell LLP  
All Rights Reserved*



## **REAL PROPERTY ASSESSMENT—2005**

### **EQUITY AND CONSISTENCY IN ASSESSMENTS**

This paper was prepared for the Continuing Legal Education Society of British Columbia for the Real Property Assessment Conference on April 21, 2005.

# EQUITY AND CONSISTENCY IN ASSESSMENTS

I.	General Principles of Equity.....	1
II.	Statutory Basis of Equity .....	1
	A. Duty to Assess Uniformly.....	2
	B. Board Power to Reopen Assessment for Accuracy and Consistency.....	2
	C. Board Power to Order Reassessment of Neighbouring Properties to Achieve Equity in Value.....	3
III.	Equity in Classification and Exemptions .....	3
	A. Equity in Classification.....	3
	B. Equity in Exemptions.....	4
IV.	Practical Considerations .....	4

## I. General Principles of Equity

A hallmark of the assessment and taxation of property in B.C. is the principle of equity: *taxing authorities must deal even-handedly with all taxpayers in a municipality or rural area, and all taxpayers with a class must be treated in the same way.*

Equity in the context of the property assessment in B.C. has its roots in the common law principles of equity and consistency explored by the Supreme Court of Canada in *Jonas v. Gilbert* (1881), 5 S.C.R. 356 that “a power to discriminate must be expressly authorized by law, and cannot be inferred from general words.”

B.C. courts have interpreted the provisions of the B.C. *Assessment Act*, R.S.B.C. 1996, c. 20 (the “*Assessment Act*”) and the Prescribed Classes of Property Regulation, B.C. Reg. 438/81 (the “*Classification Regulation*”) as a statutory basis for discrimination between property classes. As a result, equitable principles apply to *classes of property of similar attributes*. As set out further below, the assessor and the Board have duties and attendant powers to ensure that properties with identifiable, similar attributes within a class are assessed for taxation (e.g., classified, valued and subject to exemptions from assessment and taxation) consistently, within a municipality or rural area.

The author’s goal is to provide a brief overview of the statutory basis of these duties and powers in the context of recent developments in the case law concerning the application of equity in assessments, and some practical observations on the use of equity in an assessment appeal.

## II. Statutory Basis of Equity

B.C. courts have on a number of occasions (*Bramalea Ltd. (Trizec Equities Ltd.) v. Assessor of Area 9 – Vancouver* (1991), S.C. 277 (B.C.C.A.); *Assessor of Area #09 – Vancouver v. Lount* (1995), S.C. 353 (B.C.C.A.); and most recently, *Weyerhaeuser, C&C Holdings et al. v. Assessor of Area #04 – Nanaimo/Cowichan* (2003), S.C. 463 (S.C.)), observed that the statutory scheme in B.C. reflects the common law principles of equity and consistency.

Three statutory provisions provide the basis for the duties and powers of the assessor and the Board to ensure equity in assessments. These are discussed below.

## A. Duty to Assess Uniformly

The duty of the assessor to achieve consistency in assessment is embodied in s. 9 of the B.C. *Assessment Authority Act*, R.S.B.C. 1996, c. 21 (the “*Assessment Authority Act*”) which provides as follows:

### **Purpose of the Authority**

9. The purpose of the authority is to establish and maintain assessments that are uniform in the whole of British Columbia in accordance with the *Assessment Act*.

While on its face this provision appears to require uniformity in assessment of properties with similar attributes province-wide (as opposed to within municipal or rural area taxation boundaries), the B.C. Supreme Court has interpreted the duty set out in s. 9 as constrained by the provisions of s. 57 of the *Assessment Act*, which (as set out below) expressly limit the Board’s powers (and, therefore, the assessor’s duty) to ensure equity in assessment to properties within a municipal taxing jurisdiction or rural area ( see *C&C Holdings, supra*).

The second and third statutory bases of equity and consistency are set out in ss. 57(1)(a) and (4) of the *Assessment Act* which provide that:

5(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 or rural area, and

...

(4) The board may order the commissioner to reassess at actual value land and improvements in all or part of a municipality or rural area, whether or not they are the subject of the appeal, if the board finds

- (a) that the assessments in the municipality or rural area, or in part or either 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 or rural area, or in part of them, are below their actual value.”

These provisions essentially empower the Board to:

- (1) order the reassessment of a property under appeal, regardless of the grounds of appeal identified in the notice of appeal or in pre-hearing management, to ensure accuracy (correctness) of the assessment itself, and equity (consistency) amongst similar neighbouring properties, and
- (2) order the reassessment of all other similar properties, whether appealed to the Board or not, to achieve equity in value.

Each of these powers is discussed below.

## B. Board Power to Reopen Assessment for Accuracy and Consistency

The Board’s broad power to reopen an entire assessment to ensure accuracy and consistency despite the grounds of appeal identified in the notice of appeal under ss. 32, 33 and 50 of the *Assessment Act* positions the Board as an inquisitor, as opposed to merely an adjudicator.

The ramifications of this power in the context of an appeal are very important: the Board can, if satisfied that it is appropriate in the circumstances, review and order changes in the identity of the assessed owner or occupier, the inventory, the value, the classification or entitlement of the property to exemptions. Although the Board’s power to achieve accuracy and equity is typically called upon by the property owner dissatisfied with some aspect of the assessment, property owners and tax advisors must nevertheless be aware in embarking on an appeal that once the appeal is filed, there is a risk that the assessment may, depending on the nature and scope of issues raised before the Board in pre-hearing management (or discovered during a site

visit), increase significantly, with potentially devastating tax consequences to the owner. Appeals cannot be withdrawn as of right—the Board must agree, and can order the appeal to proceed over the objections of either or both of the owner and assessor. Approval of withdrawal of an appeal is less likely if the Board is aware of potential inaccuracies in the assessment and the withdrawal is opposed by the Assessor.

### C. Board Power to Order Reassessment of Neighbouring Properties to Achieve Equity in Value

In addition to its power to reopen the subject property's assessment, the Board has the extraordinary power, seldom exercised, to achieve equity between the value of the subject property and the values of similar neighbouring properties within a taxing jurisdiction, by ordering the Commissioner to reassess some or all of the neighbouring properties, *despite not having been appealed by their owners*, at a value determined by the Board in the context of the subject appeal.

The Board may invoke this power if, in the context of the appeal, it finds some or all of the neighbouring properties are either overvalued, or undervalued, relative to the property under appeal. As a practical matter, the Board will not be in a position to invoke this power without evidence of the assessments of the neighbouring properties. The author questions whether it is incumbent on the Board to notify the owners of the neighbouring properties that it is considering ordering their reassessment under this provision to avoid challenges on the basis of procedural unfairness. This does not appear to have been the subject of a decision by the court.

A recent example of the rare exercise of this power appears in the Board decision in *CH Golf Ltd. v. Assessor of Area #19 – Kelowna* (2004), PAABBC 20030888. CH Golf appealed 250 of 495 of its strata lots in an RV development. The Board determined that the entire subdivision was assessed higher than its actual value (and each lot higher than its actual median value), and ordered the reassessment (and reduction in value) of all 495 lots under s. 57(4) of the *Assessment Act*.

## III. Equity in Classification and Exemptions

Equity comes into play most often in the context of valuation issues. However, as noted, it is also relevant to classification and exemptions.

### A. Equity in Classification

Although equity has traditionally been acknowledged as applying to classification of properties (see *St. Helen's Hotel (Vancouver) Ltd. v. Assessor of Area #09-Vancouver*, S.C. 189 (B.C.S.C.)), any lingering question about this was removed by the recent amendment to the definition of “assessment” in s. 1(1) of the *Assessment Act*, deeming it to include both the valuation and classification of the property. The question of equity in classification was recently addressed by the Board and the Supreme Court in *C&C Holdings, infra*. In this case, the appellants contended that remanufacturing plants situated in adjacent taxing jurisdictions had been classified inequitably (inconsistently) under the Exemption from Industrial Improvements Regulation, B.C. Reg. 97/88, and sought equitable classification (e.g., exclusion from major industry) on the criteria applied to the neighbouring reman plants which were classified as light industry under this regulation.

Without pronouncing on whether an inequity had been established, the Board found that its powers to achieve equity in assessment under s. 57(1) of the *Assessment Act* did not extend beyond properties within the same municipal or rural area taxing jurisdiction, despite approximately 25% of the appellants' taxes being paid to the province on the basis of province-wide school tax rates. The Supreme Court upheld the Board's decision, confirming that the assessor and Board have a duty to ensure consistency in classification of similar properties in a class, but that these duties are confined to properties within a municipality or rural area on the words of s. 57(1).

The Board had occasion to address equity in classification again in *Shaw Cablesystems Ltd. v. Assessor of Area #04 – Cowichan* (2004), PAABBC 200404651. Shaw sought reclassification of its Nanaimo facilities from split-classification between utilities/business to business only, relying on the assessment of its other Nanaimo facility as entirely business class for an equity argument. Applying the decision in *C&C Holdings* and considering its previous decision in *Assessor of Area #10 – Burnaby/New Westminster v. 2725321 Canada Inc.* (2001), PAABBC 20014320, the Board found that it is not sufficient to base an equity argument on the treatment of only one other property in the class, where, as was the case, the subject property was assessed consistently with four other properties in the equity class. The Board distinguished its decision in *2725321 Canada Inc.* on the basis that in that case, most of the properties in the equity class were classified differently (and more favourably) than the subject property, creating an inequity that could only be addressed by reclassification of the subject property to the class that resulted in the lower tax consequences.

## B. Equity in Exemptions

Generally speaking, exemptions from taxation and assessment are an aspect of the “accuracy” of an assessment and must be administered by the Assessor and the Board consistently amongst similar properties in a taxing jurisdiction. Thus, in *Fletcher Challenge Canada Ltd. v. Assessors of Area #04, #06* (A.A.B.), October 16, 1996, the Board granted a pollution abatement exemption for the appellant’s expansion of its pulp and paper mill chlorine dioxide facility in part because a similar exemption had been granted to similar systems.

However, in *Norske Skog Canada v. Area #06* (2003), PAABBC 20030456, the Board held that it had no power to achieve equity and consistency in the treatment of underground SET piping amongst pulp mills in the face of the grandfathering provisions precluding new pollution abatement exemptions under the *Community Charter*, R.S.B.C. 2003, c. 26 that were not in place on the assessment roll as of 1996.

## IV. Practical Considerations

Equity can prove effective in achieving a favourable result in an assessment appeal, depending on the circumstances and timing. Equity issues raised in the context of discussions with the assessor in setting the original assessment, or in the context of an appeal to the Property Assessment Review Panel (“PARP”) generally will not result in a taxpayer achieving a more favourable assessment in comparison with other properties that are inaccurately assessed, because it is open to the assessor to issue supplementary assessments for the comparable properties or to correct their assessments at PARP if under appeal.

The most effective equity case arises in the context of an appeal for a previous year, in which:

- (1) a class of properties can be identified within the taxing jurisdiction with similar relevant attributes. Identification of the equity class and gathering of cogent evidence with respect to the assessment of the comparable properties can be time consuming and challenging, but is fundamental to success before the Board (as previous decisions indicate). The question of what is a comparable property is a question of fact which must be specifically raised before the Board in an appeal, and which the Courts have declined to review on stated case (see *Concord Pacific Developments Ltd. v. Assessor of Area #09 – Vancouver*, [1999] B.C.J. No. 687 (S.C.); *Farrell Estates Ltd. v. Assessor of Area #11 – Richmond/Delta* (2003), S.C. 472 (B.C.S.C.)). The Court of Appeal recently ruled that similarity is a spectrum, in which points of similarity and dissimilarity will lead to different value responses in the market. In this context, the Court upheld the Board’s ruling that zoning is a relevant distinction between otherwise similar properties for equity comparisons (*Ross v. Assessor of Area #10 – Burnaby/New Westminster* (2000), S.C. 419 (B.C.C.A.));
- (2) most or all of the properties in the equity class have received more favourable treatment than the subject property (see *Shaw Cablesystems*). The Court of Appeal recently held, in the context of the Board’s rulings on capitalization rates, that where an inconsistency is revealed that can only prejudice a party who does not complain of the result, equity is not necessarily brought into play (*Assessor of Area #09-Vancouver v. Cadillac Fairview Corp.*, [2004] B.C.J. No. 92 (C.A.)), and

- (3) few if any of the properties in the equity class:
- (a) are under appeal for the year in question, and, therefore, open to reassessment to cure the inequity in a manner unfavourable to the appellant, or
  - (b) may be subject to retroactive supplementary assessment (to correct the inequity) under s. 12(3) of the *Assessment Act* (e.g., where the owner has failed to reporting or misreported material facts).

In these circumstances, if an inequity can be demonstrated, the Board must, regardless of whether the subject property's assessment is objectively inaccurate, order the reassessment of the subject property in a manner consistent with the rest of the equity class (see, for example, in the context of equity in classification, *2725321 Canada Inc., supra*). If the issue is equity in classification or exemption, there is no power in the Board to order the reassessment of the rest of the equity class, where not already under appeal, to ensure both accuracy and equity. As noted, if the issue is equity in value, the Board can invoke its s. 57(4) power to order the reassessment of the balance of the equity class.

In closing, the author notes that property owners and tax advisors should keep in mind that equity as a tool to achieve the benefit of a more favourable, albeit inaccurate, assessment will only be effective for historic appeals. It should be anticipated that the assessor will correct inaccuracies in all properties in the equity class going forward.

**Vancouver**

1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
Canada V6C 3L2  
Telephone 604.685.3456  
Facsimile 604.669.1620

**Calgary**

3700, 205-5<sup>th</sup> Avenue SW  
Bow Valley Square 2  
Calgary, Alberta  
Canada T2P 2V7  
Telephone 403.269.6900  
Facsimile 403.269.9494

**Yellowknife**

P.O. Box 818  
200, 4915 – 48 Street  
YK Centre East  
Yellowknife, Northwest Territories  
Canada X1A 2N6  
Telephone 867.669.5500  
Toll Free 1.888.465.7608  
Facsimile 867.920.2206

[genmail@lawsonlundell.com](mailto:genmail@lawsonlundell.com)  
[www.lawsonlundell.com](http://www.lawsonlundell.com)

