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THE PROSPECTS OF EQUITY IN PROPERTY ASSESSMENT

Can you tell if the assessed value of your home or business is fair in comparison with the value put on properties of other types in your municipality — residential, resort, farm, commercial or industrial? If you think that the relationship is unjust, what are your chances of successful appeal? In this bulletin, the Institute discusses these questions and points out that both assessment law and assessment practice in this country give little promise of equity in real property assessment, particularly as between different kinds or classes of properties. At present, no legislation demands a yardstick of equity. But taxpayers are entitled to one and assessors should use one. This bulletin suggests what such a yardstick should be and how it can be developed and brought into general use.

IN all provinces of Canada real property is the most important measure of a person's responsibility to pay taxes at the municipal level. There are other forms of municipal revenue-raising of course — sales, amusement and poll taxes, business licenses, utility rates and fares — but historically real property has always borne the main burden of local taxation and it seems likely to continue in this role.

The Institute has discussed in earlier bulletins the problems of municipal finance generally and the narrowness of the local tax base in particular. The importance of the assessor's work in municipal finance has also been stressed. This bulletin questions the fairness of the allegedly uniform assessment methods applied in most municipalities and examines the citizens' chance of successfully appealing valuations made under these systems.

PROVINCIAL REQUIREMENTS

First of all, let us see what the legislation in the various provinces has to say on the subject of value as defined for assessment purposes, and what direction, if any, it gives to municipal assessors to help them to arrive at an equitable level of valuation.

In British Columbia, Ontario and Newfoundland "actual value" is the statutory basis for assessment; Quebec and Prince Edward Island favour "real value", while in Manitoba, municipal assessors are required to assess at "their value" all lands and buildings subject to assessment for local taxation purposes. Alberta, Saskatchewan, New Brunswick and Nova Scotia go their individual ways with the use of "fair actual value", "fair value", "real and true value" and "actual cash value" respectively.

Except in the cases of Quebec, New Brunswick and Prince Edward Island some further guidance on how the assessor is to determine the value of property is given in all the statutes. The assessment acts of Ontario and Newfoundland are probably the most voluble in this respect. They make it mandatory for assessors to consider present use, location, cost of replacement (if buildings are being valued), rental value, sale value and other circumstances affecting the value. Saskatchewan contents itself with asserting that equity is the dominant and controlling factor but the remaining provinces follow along in some measure with the provisions found in the legislation of Ontario. British Columbia is unique in including "historical cost" as a factor for consideration while Nova Scotia rather quaintly refers the assessor to the amount that would in his own opinion be realized "at auction after reasonable notice"!

At first sight this apparent variety of "values" required in the different provinces would seem to prohibit any possibility of uniformity in the level of assessed values across Canada but the courts have demon-

strated that all these terms really mean the same thing. According to the Supreme Court of Canada "value" means exchangeable value — the price which the subject will bring when exposed to the test of competition.[1] Other definitions by the same authority are "market value" or "value in exchange" or "what the building will command in terms of money in the open market".[2] In the words of Sir Lyman Duff, in referring to such definitions in the Supreme Court of Canada, "when used for the purpose of defining valuation of property for taxation purposes, the courts have in this country and, generally speaking, on this continent, accepted this view of the term 'value' ".

One would be tempted to assume from these decisions of the Supreme Court that assessed values across the country would all be approximately representative of the local market value. The Institute, however, has pointed out before now that little uniformity of either assessment methods or of value levels has yet been achieved between municipalities within most provinces let alone between one province and another. The strange fact seems to be that, despite the decisions of the Supreme Court, very little attempt has been made at the provincial level to bring assessed values up to a realistic and easily understandable level in line with judicial thinking and then to keep them there. Some provinces have, however, been attempting to produce greater uniformity of method throughout the province.

As we look across Canada a rather confused picture greets us. On the east and west coasts we find Newfoundland and British Columbia industriously engaged in determined efforts to assess on a more realistic level based as closely as possible on current values. Both have adopted a system of provincial control and both make the use of a standard manual compulsory in an attempt to standardize the level of value and to make uniform the methods used. Both have their problems.

In Newfoundland, real property assessment beyond the boundaries of St. John's, is a comparative innovation and is openly resented by some communities as an infringement of their rights. Money to speed the programme is not plentiful, trained personnel are at a premium and the province itself has been tardy in passing effective legislation that would assist and guide the provincial assessment department in its work. In British Columbia the main problem is one of trained personnel. Experienced personnel are scarce in British Columbia as they are elsewhere — a problem this province is now tackling by offering a one-week course of instruction each year to all municipal assessors.

The three Prairie Provinces do not base their assessments on such up-to-date value levels as those used in British Columbia but they all have and use a provincial manual. In Alberta, the reproduction costs in the provincial manual are based on 1942 costs. In Saskatchewan, the year is 1947 while in Manitoba the assessed values are not claimed to be based on any particular year but are said to conform reasonably close to fifty per cent of present day values.

In general, the assessment in most Ontario municipalities is based on the level of values that prevailed in 1940. A provincial manual is issued by the province but its use is not compulsory. In Quebec, Nova Scotia and Prince Edward Island no particular year seems to be favoured as a base and no guidance is given through the publication of a provincial manual. New Brunswick, however, is considered to follow the 1940 value levels fairly closely but, so far, in this province no authoritative manual is available to assessors.

The references in this bulletin to value levels and percentages of assessments refer only to the provisions of general legislation applying to the majority of municipalities in each province. In some provinces, notably in Quebec and New Brunswick, many urban communities assess according to their own individual charters which may be quite at variance with provincial legislation of general application. Assessment procedures and levels in these places can vary widely between one municipality and another.

LOW LEVEL ASSESSMENT VALUES

Some of the Supreme Court decisions and definitions on value previously mentioned in this bulletin have been on the records for nearly twenty-five years. But up to this moment only two provinces have made any serious effort to comply — British Columbia and Newfoundland. Seven of the ten provinces have provincial directors of assessment, yet value levels in at least five of these provinces are based on those prevailing ten or more years ago. In the opinion of the Institute, today's picture of "value" whether it be qualified by "actual", "real" or any other legislative adjective cannot be equitably translated in terms so long in the past.

It is obvious that current prices are much higher than in 1940 but rising prices alone would not distort the equity of valuations based on a past and lower level of values if all prices and costs rose proportionately. Unfortunately costs of labour and materials do not alter in proportion. Nor do the different types of materials or kinds of labour maintain the same cost relationship to one another. The relationship of finished products to one another also varies. Frame houses, for example, in many parts of Canada cost about the same to build today as brick houses. But most cost schedules and value levels based on, say, 1940, would show that frame dwellings were generally less costly to construct and presumably, therefore, of less value than those of a similar size but built of brick.

One further example within the experience of the Institute well illustrates the dangers of using an out-of-date base year upon which to predicate value levels. A rapidly growing urban area was being re-assessed on a 1940 base. In one secluded corner stood two or three streets of fine old masonry two-storey and attic homes which were built around 1925-1928. In 1940 they were still very acceptable as single-family dwellings and, according to the records, they sold for about $12,500 at that time. Near to them the more usual development

[1] Montreal Island Power Co. v. the Town of Laval des Rapides (1935) S.C.R.

[2] Sun Life v. City of Montreal (1950) S.C.R.

had taken place of two-storey brick homes of approximately 600 to 650 square feet ground floor area. These were mostly built in 1930 and by 1940 were selling at $4,500 to $5,000. But the market values of both types of properties when the re-assessment was made in the 1950's bore no relation whatever to the 1940 values. People's tastes had changed but zoning and land use by-laws remained the same, restricting all the residential land to single family use. The ranch style bungalow had become popular and the plumbing and decor of 1925 was no longer acceptable to the potential purchasers of the more spacious type of home. At the time of re-assessment, the market values of those two types of properties stood at $24,000 for the large old home and $18,000 for the more compact and still acceptably styled smaller home. The assessments, however, were based on 1940 levels and accurately recorded the values of those times. As a result, the large homes were assessed at approximately $12,500 and the smaller homes at around $4,500 to $5,000.

The obvious inequities of such an assessment as that described in the previous paragraph need hardly be laboured; but the resulting confusion and inconvenience to the tax-payer should not be overlooked. The average man in the street has no clear idea of the price at which various properties sold twenty years ago nor has he much chance of finding out, and even though he could show that, by comparison with current market values, the assessed values on some types of properties were out of line he would not stand much chance of appealing successfully. The courts would be likely to uphold the assessor's values in order to preserve the "uniformity" of the system. Such inequities will not be quickly remedied unless public demand calls for a change. Elected civic officials can hardly be expected to take the initiative in disturbing the systems set up by their appointed officials.

It is very tempting for an assessor to keep assessed values low. Low assessments suggest to the average tax-payer that he may be getting away with something. Complacency, therefore, is likely to develop when assessments are much below current values and rather than raise the curiosity of tax-payers by re-assessing on a more up-to-date basis the assessor may very easily build around himself an aura almost of mysticism as he places on properties meaningless values in what would seem to be direct contradiction of the various provincial acts.

By not following the law, assessors help to perpetuate bad law and make a mockery of good law. It is not the duty of an assessor to decide whether or not to carry out the law. His duty is to carry it out to the letter even though he may be convinced that certain regulations produce injustices. There will soon be a clamour to alter a law if injustices are apparent when it is enforced. No law can stand for long against the wishes of the people. But if a law is virtually ignored and honoured more in the breach than in the observance by those who should support the law, it may stand on the statute books for years weakening the whole legislative structure.

In selecting some such year as 1940 as a base upon which to predicate the level of values an assessor will often justify his choice by saying that 1940 was a year of more "normal" values than the present time. While value is something real it is not a factual concrete thing which can be determined and proven once and for all. It is the result of all the forces of the market place, including the opinions of buyers and sellers. The values that were regarded as normal in any one year have no current meaning when that year is gone. They have become history. If a value is placed upon a property by an assessor or by a valuator the final figure represents only that man's opinion. But the opinion should be based on verifiable, transmittable evidence which in itself can be proven and possibly supported also by other informed opinions.

THE OBSTACLES TO SUCCESSFUL APPEAL

A property or any other commodity has value only because people think it has value. And what people thought in 1940 was likely to be very different from what they think today. In the Institute's opinion, no assessor should assess property without drawing evidence of value from the conditions which actually prevail in his own municipality. What is more, no system of assessment should be considered adequate unless it recognizes and takes account of the fact that these conditions are constantly changing. As a minimum, a continuing check of local sales is necessary for the purpose of ensuring that assessments and market values do not get out of line. This repeated checking of sales against assessments is referred to as an "assessment/sales ratio system". Its use immediately discloses if any particular classifications of property are assessed relatively too high or too low when compared with present day values. Although prudence will warn against precipitous changes in valuation levels, assessment/sales ratios would be invaluable in helping the assessor to watch the trend of values in the various categories of property for which he is responsible.

What is more, it is highly desirable that the percentages which the assessed values bear to current values in all municipalities should be common knowledge so that they can be used as a yardstick of equity. If, for example, a municipality had to declare on its assessment notices that the assessed value represented approximately eighty-five per cent of the average level of value for that type of property in the three-year period immediately preceding, a tax-payer would have a means of gauging the equity of his own assessment. At present he has no yardstick whatever. In fact, it is far too difficult for the ordinary man to find out how his property is assessed let alone to try to come to an intelligent conclusion on the equity of his assessment.

Under present law, his only recourse is to compare his assessment with that of a similar property. Yet he cannot inspect or measure up a property which he considers to be closely comparable. If a manual of costs has been used by the assessor the chances are that comparable properties will, within reason, bear very similar assessments. But, without some yardstick of equity such as assessment/sales ratios, he cannot possibly tell if his

property, which let us say is a single family residence, in assessed too high or too low in relation to multi-family, commercial, industrial or farm properties in the municipality. The use of a manual alone does not guarantee equity of valuations between different types of property.

The only challenge to an assessor's valuations is the court of original appeal and, where allowable, the process of appeal from the decisions of that court. When it can be shown that there has been no mechanical error and that the method of assessment has been uniformly applied throughout a particular area it is difficult, if not impossible, to secure an adjustment of values even though the basis of assessment may be inadequate and predicated on a level of values of seventeen years or more ago. And, judging from a recent case, it would seem that even the Supreme Court has no right to probe beyond mere conformity of system and comparability of value amongst similar classes of property.

The case referred to is that of Fran Robert Ltd. v. the City of Ottawa which was heard before the Supreme Court of Ontario in September, 1956. The assessor had been able to show the Court of Revision, the county judge and the Ontario Municipal Board that the property in question was assessed uniformly with other similar properties. On the point of law that the assessor had not assessed at actual value as required by the Act, W. D. Roach, J.S., said "Section 33 (1) requires that the land shall be assessed at its actual value. On the evidence adduced on behalf of the appellant it is clear that the actual value of these lands in 1954 was considerably in excess of $13,650.00. (The amount of the assessment.) *Therefore, even if it could be said that the assessor of the Board had failed to apply the indices specified in section 33 (3) that omission could not be said to have affected the appellant adversely.*" The underlining, of course is ours. But the only assumption can be that until provincial legislation requires the production of some measure of equity by the assessing authority the tax-payer has no assurance of re-dress no matter how inequitable his assessment may be just so long as his property is assessed below current market value and the valuation is comparable with other similar properties.

The Ontario Assessment Act in laying down the powers of the court of revision is typical of other provincial legislation in providing an "out" for the assessor while tying the hands of the court. Section 69, subsection 16, reads "and the courts may, in determining the value at which any land shall be assessed, have reference to the value *at which similar land in the vicinity* is assessed." There is no direction to the court to see if the different classes of property are also equitably assessed one with another and no legislation calls for any sort of measure or standard by which this information could be deduced. Surely the only fair standard is the relationship existing between assessed values and current values.

UNIFORMITY WITHOUT EQUITY

Earlier this year the Institute had occasion to check the assessments of several Ontario municipalities against actual sales. Only those sales were studied which were considered locally to be soundly representative of value. In three of these municipalities the identical manual was employed but each municipality engaged its own assessor to determine the values. In these three municipalities, farms were assessed from a low of 29½ per cent of current value to a high of almost 39 per cent. Residential properties varied from twenty-four per cent to thirty per cent of present worth and businesses ranged from 19¼ per cent to 24¾ per cent.

The fact that there is a range in the ratios for similar properties located in different municipalities is not so remarkable. What should cause real consternation, however, is the spread of these ratios between properties of different types within a single municipality. In one municipality, for example, in which farms were assessed at almost thirty-nine per cent of current value, business properties were assessed at only 19.36 per cent and the assessments of residential properties represented approximately twenty-four per cent of present worth. Surely in this municipality the farmers at least would have good cause for complaint. But they do not know the situation and even if they did, they would not appear to have solid legal grounds for complaint under present legislation!

THE REMEDY

The problem of equity is of much greater consequence and the lack of equity is much more in evidence than the elected representatives at either the provincial or municipal levels generally realize. An early remedy is plainly warranted.

The Institutes contends that provincial legislation should provide for some yardstick of equity such as assessment/sales ratios already described. Any unreasonable discrepancy between the ratios of the different property classifications should be grounds for finding the assessment invalid. It is the Institute's contention that tax-payers need to be aware of the percentage of current values at which they are assessed. Assessment/sales ratios will supply this need. Moreover, if assessment/-sales ratios had to be prepared and published, more assessors would very quickly start complying with the law by incorporating in their valuation systems a proper consideration of market values. Only then should we be likely to obtain equity as well as conformity in our "uniform" assessments.

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