

REAL PROPERTY TAX ASSESSMENTS:  
AN EXAMINATION OF THE CONSEQUENCES OF A  
DEPARTURE FROM THE SPECIFIED BASIS OF ASSESSMENT

by

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## ABSTRACT

The real property tax plays a significant part in the fiscal systems of the United Kingdom and Canada; and it is important that the burden of the tax is distributed according to the wishes of the legislature.. Generally, the liability to the tax varies with the 'value' of real property owned or occupied by the taxpayer; but 'value' is a term that requires definition. Where the interpretation of the term by the assessors differs from the legal definition, the distribution of the tax burden will differ from that desired. In addition, a conflict will exist with each new assessment between adopting the assessor's interpretation of the 'value' concept and adopting the legal definition.

The examination of these problems is not limited to the context of any one particular jurisdiction, but reference is made to the situation in England and Wales, and in Canada.

It is shown that the legislature has many alternatives available when adopting a basis of assessment and the bases adopted in British Columbia and England and Wales are examined as examples. If the current assessments differ from those required by law, the assessor has, in practice, a number of alternatives available for the maintenance of the roll between revaluations. These are considered. It is seen that only where there is a constant relationship between existing

assessments and those required by law, will the distribution of the tax burden be correct. In other cases inequality will result and measures of the extent of this inequality are proposed.

The conflict between the meanings of 'value' to be adopted for new assessments will depend on the definitions laid down by Statute and by the judiciary; on the meaning adopted by the assessor; and on the legal provisions for uniformity of treatment. Examples of the legal provisions for uniformity of treatment in England and Wales and in Canada are examined but no universal solution to the conflict is produced. Instead it is suggested that new properties be brought onto the roll at figures which would improve the distribution of the tax burden.

Finally in view of the imperfections in the real property tax, alternative treatments for its improvement are summarised.

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## CHAPTER I

INTRODUCTIONA. Statement and Justification of Problem

The real property tax plays an important part in the systems of public finance of both Great Britain and Canada,<sup>1</sup> and its significance can be appreciated by reference to Tables I and II which set out some selected statistics which relate to the two countries.

Between 1959 and 1965 the significance of the real property tax in Canada increased as a percentage of Gross National Product from 3.0% to 3.4%. However the percentage of Municipal Real Property tax receipts to Total Municipal Government Revenue decreased from 47.2% to 44.5%.<sup>2</sup> According to the Canada Year Book in 1961 Real Property Taxes (including personal property taxes in Manitoba and business taxes in Ontario and Saskatchewan) accounted for 84.8% of the total tax revenue and 65.3% of total gross ordinary revenue, of the Municipal Governments.

In the United Kingdom in the years 1959 and 1965 the real property tax yielded 3.3% and 4.0% of Gross National Product (as

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<sup>1</sup> New Sources of Local Revenue, A report of a Study Group of the Royal Institute of Public Administration (London: George Allen & Unwin Ltd., 1956); J.H. Perry, Taxation in Canada (Toronto: University of Toronto Press, 1961).

<sup>2</sup> Canada Year Book 1966 (Ottawa: Dominion Bureau of Statistics, 1966), Table 32, p. 1009, and Table 1, p. 961.

TABLE ICANADASELECTED FISCAL STATISTICS  
MILLIONS OF DOLLARS

(1)	<u>1959</u>	<u>1965</u>
Gross National Product	34,915	51,996
Total Federal Government Revenue	6,043	8,973
Total Provincial Government Revenue	3,120	6,336
Total Municipal Government Revenue	2,220	3,945
Total Government Revenue	11,383	19,254
Excluding Inter-govt. transfers	9,857	16,373
Provincial Real Property Tax	8	11
Municipal Real Property Tax	1,048	1,755

(1) At market prices.

Source: National Accounts: Income and Expenditure (D.B.S. 1965.)  
Tables 1, 9, 36, 40.

TABLE IIUNITED KINGDOMSELECTED FISCAL STATISTICS  
MILLIONS OF POUNDS STERLING

	<u>1959</u>	<u>1965</u>
(1) Gross National Product	21,389	30,904
(2) Central Government: Total Receipts	6,653	10,182
(3) Central Government: Tax Receipts	5,244	7,789
(4) Local Authorities: Total Receipts	1,802	3,128
(5) Local Authorities: Rates Receipts	714	1,230

(1) Total Gross National Expenditure at factor cost.

(2) On current account.

(3) Taxes on income and taxes on expenditure.

(4) On current account.

(5) In Great Britain the Real Property tax is known as "Rates".

Source: Great Britain. Central Statistical Office. Annual Abstract of Statistics. No. 103. (London: H.M.S.O., 1966), Tables 296, 299, 300.

defined) respectively and 39.7 and 39.3% of the total receipts of local authorities.

In 1965 the real property tax accounted for 9.17% of Total Government Revenue in Canada and 9.24% of the Total receipts of the Central Government and the Local Authorities in the U.K.

In both countries the assessors are required to ascertain the value of all property that is subject to the tax in accordance with the provisions of the taxing statute. Often however the assessors fail to comply with the requirements of the Statute and the basis of assessment generally adopted in the roll may differ from that required by the Statute:

The inquiry which we conducted among 267 urban municipalities showed that immoveable properties were quite often assessed well under real value, despite legal provisions to the contrary.<sup>3</sup>

Another Royal Commission commented

We are, however, aware of two cases, and we have no means of knowing if there are more, in which general revaluations are being made at a level of value which is significantly different from that laid down by legislation.<sup>4</sup>

It became apparent that such a situation existed in Great Britain between the passing of the Local Government Act of 1948 and

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<sup>3</sup> Report of the Royal Commission on Taxation. (Quebec: Government of Quebec, 1965), p. 271.

<sup>4</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick (Fredericton: The Queen's Printer, 1963), p. 224; See also F.H. Finnis, "Real Property Assessment in Canada" Canadian Tax Papers, No. 30. (Toronto: Canadian Tax Foundation, 1962) Chapter IV.

<sup>5</sup> 11 and 12. Geo. 6 c. 26.

the revaluation of all property for property tax purposes which came into effect in 1956. In this period, the discrepancy between assessed values (generally in terms of 1934-1939 values) and current market values was so great that the assessors sought to assess new and altered properties on the same level of value as had been adopted for existing assessments. This practice, known as valuing on the "tone of the list", was recognized by the Lands Tribunal, the body given final jurisdiction<sup>6</sup> over appeals against property assessments on questions of fact.

Whenever tone of the list assessments are employed a conflict will arise when assessing new or altered property, between the achievement of uniformity<sup>7</sup> at the existing level of assessment and the adoption of current market values in accordance with the legislative provisions. A similar conflict will arise where the Statute requires assessment on a basis of assessment other than current market value but where the assessors have failed to comply with the Statutory requirements and have adopted another basis of assessment.

In either case as long as the assessments bear a constant relationship with assessments in accordance with the Statutory require-

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<sup>6</sup> H.B. Williams et al. (ed.), Ryde on Rating; The Law and Practice (11th edition; London: Butterworth and Co. (Publishers) Ltd., 1963) p. 397. In Great Britain the assessment roll is known as the valuation list.

<sup>7</sup> "Uniformity" will here be given the same meaning as in the period between 1950 and 1956 in Great Britain i.e. assessments are to be made by reference to values current at the same time; a separate and proper valuation should be made of each property and the same evidence so far as is relevant should be employed in arriving at the value of comparable properties. Rating and Income Tax (London: Solicitors Law Stationery Soc. Ltd.) Vol. XLII (1949), 488, and Vol. XLV (1952), 675.

ments, the proportion of the total burden of the tax borne by each taxpayer will be that intended by the taxing statute. Equality of treatment<sup>8</sup> will thus be achieved by the use of tone of the list assessments.

For example, if each taxpayer is uniformly assessed at a quarter of the stipulated value of his property, the taxing authority would be required to levy a rate equal to four times that which would be levied on statutory assessments in order to raise the same amount of revenue, and each taxpayer's liability would be the same under either basis of assessment.

However, although there is no effect on the liability of each taxpayer within a taxing area, inequality could arise between different taxing areas if differing bases of assessment are adopted and the assessments then used for a common purpose such as grant allocation, or the raising of revenue for a superior authority. The achieving of equality between taxing areas is known as "equalisation" and can be simply obtained where the assessments in the roll bear a constant relationship to the statutory assessments. Equalisation has

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<sup>8</sup> "Equality of treatment" will be interpreted to mean the treatment of each individual in accordance with the intentions of the taxing statute i.e. it will be achieved when each taxpayer is bearing the same burden of taxation as if the assessments had been made in accordance with the statutory provisions. C.F. Rating and Income Tax. op. cit., XLV, 675.

been considered at length elsewhere and will not be dealt with  
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 here.

The problems resulting from the use of a basis of assessment other than that required by the statute will not be restricted to the conflict between the bases of assessment to be adopted for new assessments and the necessity of equalisation, but will involve the identification of the "tone of the list" (or rather "tones" of the list since different tones may be employed for different classes of property). The latter will be an extremely complex problem particularly where the assessments vary widely from the basis of assessment adopted by the assessors. In an unpublished M.B.A. Thesis, B.I. Ghert examined the statistical measures available for establishing the accuracy of the  
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 assessment roll and concluded  
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The results . . . indicate that as in all other problems associated with the valuation of property the measurement of assessment quality and uniformity<sup>12</sup> requires the exercise of judgement in a real world.

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<sup>9</sup> Guide for Assessment-Sales Ratio Studies. A report of the Committee on Sales Ratio Data of the National Association of Tax Administrators. (Chicago: The Federation of Tax Administrators, 1954); J.C. Bonbright The Valuation of Property (Charlottesville, Va.: The Mitchie Company, 1965) I, p. 504; D.H. Clark, W.J. Oliver, C.H. Chappell and F.H. Finnis, "Uniform Assessments" 1958 Conference Report (Toronto: Canadian Tax Foundation, 1959), pp. 140-171; "Report of the Committee on State Equalization of Local Property Tax Assessments" Proceedings of the Fifty-first Annual Conference (Harrisburg, Pa.: National Tax Association, 1959), pp. 315-357; State and Local Taxation of Property (New York: National Industrial Conference Board, 1930), Chapters II and III.

<sup>10</sup> "Measures of the Quality of Real Property Assessments: An examination of their validity." (The University of British Columbia. Vancouver, December 1965.)

<sup>11</sup> B.I. Ghert. op. cit., p. 134.

<sup>12</sup> In Mr. Ghert's terms "uniformity of assessment" requires that every assessable property be included in the list at its basis of assessment.

Consequently until more satisfactory measures are developed it must be left to the individual appraiser to establish which assessments are accurate and can be used in establishing the "tone" of the assessment roll. The accuracy of each assessment is thus a matter of opinion. In Great Britain between 1950 and 1956 the Lands Tribunal accepted evidence of other assessments but required an examination of their relevance to the 'tone of the list'.<sup>13</sup> Throughout this dissertation it will be assumed that the "tone" of the list can be discovered by examination of the existing assessments, and the discussion of this very real problem will be left to Mr. Ghert's thesis.

So far we have been concerned with problems arising out of the use of assessments which differ from, but bear a constant relationship with assessments in accordance with the statutory requirements. This constant relationship will not automatically exist, since it will be altered whenever there have been changes in circumstances between the time to which the assessments in the roll refer and that specified by statute, so that the values of different classes of property have been affected in different ways. Here the maintenance of equality of treatment of individual taxpayers will be more difficult. To ensure equality of treatment in accordance with the intention of the statute, the property assessments should be adjusted to maintain the same relationship with statutory assessments as previously existed.

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<sup>13</sup> Morrissey v. Morley. (1952) 45 R. and I.T. 282; Stringer v. Wilson. (1953) 46 R. and I.T. 431. See also Rating and Income Tax op. cit., XLIV, 115.

This would require the identification of all changes in property values, the identification of all properties affected by the changes in value and the devising of a new scale of values to accord with the new circumstances.

Such a task would present enormous problems and would probably be more complex than the maintenance of a legally correct assessment roll. However some of the difficulties and conflicts involved in assessing on the tone of the assessment roll instead of in accordance with the statutory requirements will be identified and examined.

The difficulties involved in maintaining the constant relationship between assessments in the roll and assessments based on the statutory provisions, where values are changing, would be magnified by the conflict between equality of treatment and the statutory requirements since each new assessment may be challenged on the grounds that it failed to comply with the statutory requirements. Should the assessor endeavour to revise the assessments in a piecemeal fashion, he may admit appeals against the revised assessments on the grounds of failure to achieve uniformity of treatment with unaltered assessments of similar properties which remained on the roll. Consequently each revision of the assessment roll must be complete in itself in order to prevent appeals against the revisions.

In some cases there may be an express requirement of uniformity or equality of treatment<sup>14</sup> or it may be implied.<sup>15</sup> Such an express provision may be strictly followed, providing authority for assessments on the tone of the list, in which event the conflict between equality of treatment and correct assessments may not occur. However, it may be interpreted to require uniformly correct assessments in which case the conflict will exist but with the requirement of assessment in accordance with the statutory provisions being given added<sup>16</sup> weight in law.

Alternatively the absence of such a provision may give strength to the opinion that the provisions of the statute should be strictly followed and that the achievement of equality of treatment should be left to the legislators.

In some cases the statute may fail to express unequivocally the basis of assessment to be adopted and if differing interpretations are placed on the statutory provisions by various authorities, the maintenance of equality of treatment may be hampered.

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<sup>14</sup> Assessment Equalization Act. R.S.B.C. 1960 c. 18 s. 46(1); and 1961 c. 3 s. 6.

<sup>15</sup> E.g. after the passing of the Local Government Act 1948 (11 and 12. Geo 6. c. 26.) when uniformity was removed as grounds for an objection against an assessment.

<sup>16</sup> See the line of cases following the decision in Ladies Hosiery and Underwear Ltd. v. West Middlesex A.C. /1932/ 2 K.B. 679.

Generally, the problems mentioned arise from the ability of the assessor to depart from the basis of assessment required by Statute and the desire to achieve equality of treatment of individual taxpayers once such a departure has been made. Clearly it is desirable to obtain assessment rolls on which all assessments accord with the statutory requirements, but in many cases these do not now exist:

It is . . . notorious that the assessment often bears little relation to the 'value' of the property.<sup>17</sup>

and it may be some time before such rolls exist since:

Anyone who contemplates the slow pace of property tax assessment reform in Canada or elsewhere cannot have any doubt that assessment is commonly regarded as a subordinate activity in the scheme of government.<sup>18</sup>

and further the rapid change in property values between revaluations will foster the use of tone of the list assessments in the interim period.<sup>19</sup> Whenever tone of the list assessments are used without statutory authority this conflicts will arise. If the conflict cannot be resolved an attempt should be made to achieve equality of treatment in accordance with the statutory provisions since the equal treatment of equals is a fundamental requirement of any tax,<sup>20</sup> and only assessment

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<sup>17</sup> Ewing J.A. in Re Withycombe Estate [1944] 1 W.W.R. 385, 397.

<sup>18</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick. op. cit., p. 206.

<sup>19</sup> For example the Local Government Act 1966. c. 42. ss. 17, 18.; See Appendix A.

<sup>20</sup> Adam Smith. An Enquiry into the Nature and Causes of the Wealth of Nations. (New York: The Modern Library, Random House Inc., 1937), Book V, Chapter II, Part II, p. 777.

in accordance with the statute will completely remove the conflict. If correct assessments, and therefore equality, cannot be achieved the fate of the real property tax should be reexamined and if necessary it should be replaced by another tax that is capable of producing equality of treatment.

#### B. Organization of Thesis.

Before examining the existing provisions concerning the use of tone of the list assessments the fundamental concepts will be examined. Firstly the principles underlying the use of the real property tax will be investigated since any consideration of the desirability of alternative policies that can be adopted will require the establishment of a criterion of quality. The quality of an assessment roll will depend on its ability to achieve the desired ends. However those ends, as expressed in legislation may differ from those inherent in the principles underlying the use of the real property tax. If they do there may be a conflict between compliance with the requirements of the law and complicity with the underlying principles. Although the conflict ought not arise in practice (the former being paramount) its existence must be recognised. The possible effects of a failure to achieve equality of treatment will be considered.

The possible bases of assessment that can be adopted will then be examined and in dealing with historic values the requirement of equality will be introduced so that the effect of maintaining a

roll on the basis of historic values and circumstances can be considered. It will be shown that the failure to revise assessments to accord with changed circumstances will result in inequality of treatment between taxpayers.

The legislative and judicial provisions relating to the basis of assessment of B.C. and the U.K. will be considered to illustrate the use of differing bases of assessment and the amount of discretion that is left with the assessor.

In Chapter IV examples of assessments on bases other than those required by statute will be illustrated and in Chapter V the existence and significance of statutory or judicial authorities for assessments in accordance with the "tone-of-the-list", or for uniformity of treatment, will be considered. Express legislative or judicial provisions may in certain circumstances remove the conflict between correct assessment and uniformity of treatment.

In the following Chapter the problems confronting the assessor will be considered. Since perfect adjustment of all assessments to accord with new circumstances may be impracticable the assessor will be confronted by the conflict whenever new properties are brought onto an imperfect roll or whenever existing assessments must be revised. The alternatives open to the assessor will be considered in the light of alternative policies for the maintenance of the assessment roll

between revaluations. In endeavouring to establish the relative merits of the alternatives, criteria by which assessment roll quality can be examined, will be considered. The effect of across-the-board percentage increases of existing assessments will be considered as will the difficulties facing the assessor who endeavours to revise the roll between revaluations.

Finally the initial problem, the conflict between correctness and uniformity will be examined in the light of the earlier discussion. A recommendation will be made for equitable rather than uniform or correct assessments. It will be shown that the existence of the conflict is an indication of unsatisfactory tax administration and policies for the future treatment of the real property tax will be outlined.

### C. Equality of Treatment

The real property tax is not collected from real property but is levied on individuals in respect of the property that they own (or in the U.K., occupy). Being impersonal, real estate cannot pay taxes since it has no capability, per se, to make any form of payment, neither has it the access to funds out of which the tax must be paid. Although the term 'property' is commonly used to refer to the physical aspects of real estate and other tangibles, it more correctly refers to the "bundle of rights"<sup>21</sup> possessed by individuals in those assets. The

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<sup>21</sup> K.E. Boulding. Principles of Economic Policy (Englewood Cliffs, N.J.: Prentice Hall, 1958), p. 30.

real property tax is consequently levied on individuals in respect of their rights of ownership over real assets. In the United Kingdom the tax (known as "rates") is levied on the occupiers of real estate and the basis of assessment is the annual rental value of the premises occupied. In Canada it is generally levied on the owners of real estate and the basis of assessment is its capital value.

Although the burden of the tax falls, in the first place, on the owner of a particular type of interest in real estate its effective incidence is difficult to determine, and its effects will be felt eventually, by the holder of every interest in real estate.

Since the real property tax is a tax on individuals, equality of treatment must be achieved between individuals and not between classes of real estate. As mentioned earlier, equality of treatment has been interpreted to mean the treatment of each individual in accordance with the intentions of the taxing statute; there is however another concept which must be implied into the words of the Statute.

<sup>24</sup> Bonbright refers to it as "uniformity" whilst the Carter Commission describes it as "equity" and comments

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<sup>22</sup> St. Johns, Newfoundland however uses rental values as its basis of assessment; F.H. Finnis "Real Property Assessment in Canada" op. cit., Chapter IV.

<sup>23</sup> U.K. Hicks. Public Finance (London: Cambridge University Press, 1956), Chapter XI; R.U. Ratcliff. Urban Land Economics (New York: McGraw-Hill Book Co. 1949), p. 422; R. Turvey, The Economics of Real Property (London: George Allen and Unwin, 1957) Chapter VI; J.F. Due. Government Finance (Homewood, Illinois: Richard D. Irwin, Inc., 1963) Chapter XXI.

<sup>24</sup> J.C. Bonbright. op. cit., p. 500.

Equity has two dimensions. Horizontal equity requires that individuals and families in similar circumstances bear the same taxes. Vertical equity requires that those in different circumstances bear appropriately different taxes.<sup>25</sup>

Two major problems are involved in the achievement of "horizontal equity" and "vertical equity". Firstly the criterion by which 'equals' are to be recognized must be established; and this will depend on the type of tax with which we are concerned since different principles of taxation can be applied to different taxes. Secondly the relative burdens which "unequals" are to bear must be specified, and this will depend on the criterion of equality adopted.

These problems have great significance for the real property tax, and the legislators' choice of basis of assessment will depend on their solutions to these questions. They are correctly value judgments, but the principles of taxation (if not the principles of Government Expenditure) should be considered in arriving at a decision.<sup>26</sup>

Although some sources have considered many theories of taxation<sup>27</sup> much of the discussion on the real property tax centres on the principles of ability to pay and benefits received.<sup>28</sup>

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<sup>25</sup> Report of the Royal Commission on Taxation (Ottawa): The Queen's Printer, 1966) Vol. I. pp. 4-5.

<sup>26</sup> A.M. Moore, A.I. Guttman and P.H. White. Financing Education in British Columbia (Vancouver: British Columbia School Trustees Association, 1965), Chapter II; J.C. Bonbright op. cit., Chapter XVII.

<sup>27</sup> H.A. Silverman. Taxation, Its Incidence and Effects (London: Macmillan and Co., 1931).

<sup>28</sup> J.F. Due. op. cit., Chapter VI; J.C. Bonbright. loc. cit.; E. Cannan. The History of Local Rates in England (second edition, London: P.S. King and Son, 1927), p. 159.

According to the principle of ability to pay, those with equal wealth should bear an equal amount of taxation. Wealth can be considered in terms of annual income or assets possessed. Originally, real property holdings were a good indication of wealth and the efficacy of the real property tax could be judged in the light of this criterion. Today however, in view of the number of forms in which assets can be held; including bonds, stocks, and personal tangible property; and in view of the essential nature of the shelter provided by houses and other accommodation, real property is no longer a good indicator of wealth, though some relationship may exist between annual income and the value of the premises occupied.

. . . in the opinion of most authorities in public finance the value of land and buildings is admittedly neither the sole nor the best test of ability to pay.<sup>29</sup>

Bonbright concluded

Certainly the ability to pay doctrine can no longer be adduced in support of a discriminatory burden on realty. Whatever force there may have once been in the argument that the total wealth of individuals corresponds roughly to the values of their houses and lots, has disappeared with changing economic conditions. If a real estate tax can be defended it must be on other grounds.<sup>30</sup>

Where the ability to pay principle is appropriate, discussion on the second problem has been concerned with the relationship between the taxpayer's ability and his liability to tax. Due<sup>31</sup> considers the

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<sup>29</sup> E.H. Spengler. "The Property Tax as a Benefit Tax" Property Taxes (New York: 1940), reprinted in H.M. Groves (ed.) Viewpoints on Public Finance (New York: Henry Holt and Co., 1947), p. 47.

<sup>30</sup> J.C. Bonbright. op. cit., p. 509.

<sup>31</sup> J.F. Due. op. cit., p. 113.

possibilities of progressive, proportional and regressive relationships between income (or wealth) and tax; together with their underlying principles of equal sacrifice, proportional sacrifice and minimum aggregate sacrifice.

Since the ability to pay principle is not applicable to the real property tax they need not be considered here.

The principle of benefits received, bears more relevance to the real property tax than the ability to pay principle. In outline it requires that the taxpayer should pay taxes that bear some relationship to the benefits received from the services provided out of those taxes. There are a number of sub-theories involved in this principle of taxation and without them the benefits received principle fails to provide an adequate basis of taxation.

The benefits concerned can be measured from the taxpayers' viewpoint in which event the tax payment could be equal to the benefit accruing to the taxpayer as a result of public services, in money terms; or it could be in terms of the taxpayer's opportunity cost, the amount he would have to spend on those services if they were not provided by the State. In these cases however the revenue to the State would be greater than its expenditure on the services concerned, (if this were not so there would be no advantage in the State's provision of these services), consequently it could be suggested that the taxpayer's

liability should equal the cost of providing the services from which he benefits, or alternatively that each taxpayer should bear the burden of that proportion of the total cost which is equal to the proportion of the total benefit which he enjoys.

All these sub-theories require subjective evaluations of the taxpayers' benefit and whilst this affects their usefulness as accurate measures of liability to taxation it does not destroy their validity as principles on which the liability to taxation is to be established.

The greatest amount of subjective evaluation is required in the implementation of the principle of marginal or incremental benefit. Buchanan describes it in the following terms:

A particular individual would be required to pay a "tax price" for each unit of given public service which is equal to the marginal or incremental benefit that he receives from a unit of this service. This appropriately set "tax price" would be independent of total benefit received from all units of the public service.<sup>32</sup>

By linking the marginal benefit and the marginal cost of the services provided, the optimum quantity of service could be established. However, Buchanan agrees that the usefulness of the marginal benefit theory is limited by the subjective element involved.

. . . When we come to consider real world fiscal systems the principle . . . provides little assistance. Decisions as to the total amount of expenditure and as to the distribution of taxes must be made and policy makers cannot "read" individual evaluations of public services.<sup>33</sup>

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<sup>32</sup> J. Buchanan. The Public Finances (Homewood, Illinois: Richard D. Irwin, Inc., 1960), Chapter XV. p. 171.

<sup>33</sup> J. Buchanan. op. cit., p. 172.

Another difficulty exists in the use of any of the benefit taxes. It is generally agreed that a tax, as distinguished from a fee or price is a payment for indiscriminate benefits.<sup>34</sup>

If this is so, the validity of the benefit principle must be restricted to those cases in which the effects of public services can be recognized (for example through increased values resulting from government services). This must apply to the totality of public services since if a charge is levied in respect of a particular service, the benefits of which are recognisable, it should be considered a fee or price and not a tax. Spengler comments

A compulsory contribution may be required by the Government from certain individuals or groups for defraying the general costs of public services in exchange for which the taxpayer is guaranteed no specific return; yet the handling of such revenues may be so directed that certain benefits are clearly traceable to the taxpayers in question. When such is the case the tax is evidently a general revenue device which partly because of public policy and partly for convenience in administration has been substituted for a more complicated series of special fees or prices . . . . Such revenues are not taxes in the "pure" sense but are hybrid or "quasi-tax" measures conforming in general to the definition of a tax but including certain features of the administrative fee or public price. In this category belongs the so-called "benefit tax".<sup>35</sup>

In both Canada and the United Kingdom the benefits received from services provided out of the real property tax are not "clearly traceable to the taxpayers in question".

<sup>34</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick. op. cit., p. 213; H.A. Silverman. op. cit., p. 66; E.H. Spengler. op. cit., pp. 44-45.

<sup>35</sup> E.H. Spengler. op. cit., p. 46.

Certain benefits may be so traceable, such as the use of the public library, but not so the benefit received from the totality of municipal services, and it is that with which we are concerned. The individual taxpayer will benefit from paved and lit streets patrolled by police and safeguarded by the fire brigade but the extent to which he benefits is indeterminate. The value of real estate does not provide a measure of those benefits. It is levied only on those inhabitants who own (or occupy) real estate, and even then there is no relationship between property values and benefits received. An old timber framed house may have the same value as a modern brick-built residence yet be a substantial fire hazard. If the former is inhabited by a large poor family relying on public facilities whilst the latter is occupied by a childless couple who spend most of their time out of the municipality the discrepancy is apparent. Only in one way can the value of property be used to estimate the benefits accruing to it, and that is by considering the differences in value that would exist if the public services were not provided. This would be as hypothetical and subjective an evaluation as an attempt to estimate directly the benefits received.

Thus although the real property tax is levied in respect of benefits received, those benefits are indeterminate and indiscriminate. Spengler, who considers the real property tax an "in rem levy" and

that benefits should be thought of primarily in terms of advantages  
 to the property taxed<sup>36</sup> concludes

It is vital to recognize that the broad collective interest with respect to such services is paramount, even though in some instances there is present a clear element of individual benefit. In other words, the principle of taxation should be retained even though it is a "benefit tax".<sup>37</sup>

Thus the use of the real property tax is founded neither on the principle of ability to pay nor on that of benefits received, but depends on expediency and practical considerations.<sup>38</sup> It provides the municipality with a form of revenue which is particularly local in character, easy to administer (once assessments have been made), relatively stable and difficult to evade.<sup>39</sup>

Since the real property tax is based on the principles of expediency and practicality, the criterion by which "equals" are to be judged cannot be dependent on the principles of ability to pay or benefits received, and the relationship between "unequals" will not be determined by their ability to pay nor by the benefits they receive. Instead the determination of "equals" must be left at the discretion of the legislators and once the decision has been made equals can only be

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<sup>36</sup> E.H. Spengler, op. cit., p. 47.

<sup>37</sup> Ibid., p. 48.

<sup>38</sup> M.A. Cameron. Property Taxation and School Finance in Canada. (Toronto: Canada and Newfoundland Education Association, 1945), pp. 20-21.

<sup>39</sup> J.R. Hicks, U.K. Hicks and C.E.V. Leser, The Problem of Valuation for Rating. National Institute of Economic and Social Research. Occasional Paper No. 7. (London: Cambridge University Press, 1944), pp. 6-11.

discovered by reference to their expressed intentions and we must therefore, adopt solely that criterion of equality that is specified in the legislation. In the case of the real property tax the basis of assessment is generally the "value" of property, and so individuals with real estate of similar "values" should bear similar taxes, and the liability to tax should be in direct proportion to the "value" of the real property.

Thus, equality of treatment will be achieved whenever each individual is taxed in respect of the "value" (as defined in the Statute) of the property he owns. Equality will still be achieved if each individual is taxed on a constant percentage of the "value" of his property since equality of treatment is concerned only with the relationship between taxpayers. If the relationship between taxpayers is the same as that which would result from compliance with the Statutory requirements equality of treatment will be achieved.

In order to maintain it, uniformity of assessment is required. However, uniformity will not of itself produce equality. According to the decisions of the Courts and Lands Tribunal in the United Kingdom, uniformity means

(i) all rateable hereditaments (assessable properties) dealt with should be assessed by reference to values current at the same time; (ii) a separate and proper valuation should be made of each individual hereditament; and (iii) the same evidence or kinds of evidence should be employed in the valuation of all hereditaments of a comparable class and the same weight should be attached to that evidence in each case.<sup>40</sup>

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<sup>40</sup> Rating and Income Tax. op. cit., Volume XLV, p. 675.

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Clark and Finnis adopt somewhat similar definitions.

Uniformity in accordance with this definition will only produce equality of treatment when the date to which the assessor refers is that specified in the statute, or one so close that no changes in values have taken place between the two. As mentioned, it is the relationship between taxpayers that is important and once the relationship between the values adopted by the assessor for different properties differs from that required by Statute inequality will result.

It is also essential that the basis of assessment adopted by the assessor is that specified by the Statute. "Value" has many meanings and the resultant figures of proper valuations of the same property can vary greatly as a result of differing interpretations of "value".

The real property tax is not an "ideal" tax but its imperfections are outweighed by its practical advantages.<sup>42</sup> However the failure to achieve equality of treatment may accentuate its imperfections to the point where the replacement of the tax becomes desirable.

The real property tax tends to be regressive in nature<sup>43</sup> (when examined against the ability principle) since shelter is

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<sup>41</sup> Clark, Oliver, Chappell and Finnis, "Uniform Assessments", op. cit. pp. 141, 149.

<sup>42</sup> Hicks, Hicks and Leser. op. cit., p. 7.

<sup>43</sup> Great Britain. Parliamentary Papers. Local Government Finance: England and Wales. Cmnd. 2923. (London: H.M.S.O., February 1966), p. 3; Report of the Royal Commission on Taxation. op. cit., Volume II. p. 245.

an essential commodity and expenditure on its provision decreases as a percentage of income as income increases. This is accentuated by existing inequalities of treatment since there is a tendency among assessors to undervalue the more expensive properties relative to the less expensive.<sup>44</sup>

In many cases exemptions from the real property tax are granted, and these are granted for various reasons and favour one class of property owner to the detriment of the others.<sup>45</sup> The ability to grant exemptions and reliefs should lie with the legislators and not with the assessors, yet de facto reliefs exist as a result of the actions of the assessors.

It seems reasonable to suppose that in general the discrimination in the levels of assessment between different classes of property is substantial.<sup>46</sup>

In the New Brunswick Report the median assessment to sales ratios in an urban municipality were given as Commercial and Industrial 152, Single-Family dwellings 100, Multi-family dwellings 98, and Residential lots 76.

This discrimination between classes of property indicates extreme inequality of treatment as between classes of taxpayers. The economic effects of such discrimination may be far-reaching since it

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<sup>44</sup> J.C. Bonbright. op. cit., p. 490; M.A. Cameron. op. cit., pp. 23-27; Moore, Guttman and White. op. cit., p. 141.

<sup>45</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick. op. cit., p. 212.

<sup>46</sup> Ibid., p. 227.

will influence demand of competing uses for land within the municipality and will affect the location of any particular land-use where the extent of the discrimination differs between municipalities. Thus it can affect the land use pattern within the municipality and the province, as well as the burden of taxation borne by different classes of taxpayer.

In conclusion the real property tax is inherently an imperfect tax. Equality of treatment cannot be defined without reference to the provisions of the statute. Departure from those provisions has both moral and material implications since the economic effects of incorrect assessments will be indiscriminate but far-reaching.

## CHAPTER II

BASES OF ASSESSMENT

We have seen that with a real property tax, equality of treatment can only be achieved by reference to the provisions of the taxing Statute. Generally, the basis of assessment is stated to be the "value" of the property and in some cases it is qualified by the use of such words as "actual", "fair" or "real".<sup>1</sup> This qualification does not enable the intentions of the legislators to be clearly interpreted since "value" alone, is an extremely vague term and capable of many meanings.<sup>2</sup> The word 'actual', 'fair' or 'real' add little to the understanding of value and in one case it has been stated that " "actual value", "fair market value" and "actual cash value" are synonymous terms meaning relatively the same thing."<sup>3</sup>

In order that the intentions of the legislators should be clearly understood the possible bases of assessment that can be adopted will be considered.<sup>4</sup> Since the incidence of the tax will differ with

<sup>1</sup> F.H. Finnis. "Real Property Assessment in Canada" op. cit., p. 16; K.G. Crawford. Canadian Municipal Government. (Toronto: University of Toronto Press, 1954), pp. 279-280.

<sup>2</sup> J.C. Bonbright. op. cit., Chapter II; P.F. Wendt. Real Estate Appraisal. (New York: Henry Holt & Co., 1956), Chapters I & II.

<sup>3</sup> Wootton J. in Re Rowan's Appeal (1962) 40 W.W.R. 627, 628-629.

<sup>4</sup> See J.C. Bonbright op. cit., pp. 3-97, and Chapter XVII. Also R.U. Ratcliff. Modern Real Estate Valuation (Madison, Wisc.: Democrat Press, 1965), Chapter III.

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the adoption of different bases of assessment it is important that the basis of assessment required by the legislature be used by the assessor if inequality of treatment is to be avoided.

a) Value is not Price.

A figure of value is the amount for which a piece of property would be expected to change hands. It is an estimation and not a historic fact; and as an estimation requires that certain assumptions be made as to the conditions of the transaction. The final figure of value will depend on the assumptions made.

Price, however, is the result of an accomplished transaction and in this case the amount for which the property has changed hands is an established fact. The conditions of the sale are determinate and although there may be difficulties in identifying the actual conditions no further assumptions can be made regarding them.

When market value is being found an estimate is made of the price that would be obtained for the property. In some cases however, the circumstances as they exist in the market are not presumed but an assumption is made as to conditions which might exist in a hypothetical  
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market. In this dissertation the term 'market value' will be interpreted

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<sup>5</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick. op. cit., p. 207.

<sup>6</sup> R.U. Ratcliff. A Restatement of Appraisal Theory. Wisconsin Commerce Reports Vol. VII, No. 1 (Madison: The University of Wisconsin, School of Commerce, 1963), pp. 35-37.

ted to mean the figure of value at which an informed observer of the market would expect a piece of property to change hands under the conditions of the actual market for that type of property. Those conditions would be established by reference to the representative transaction. Since value is an estimate, the determination of the representative transaction and the appropriate conditions will be made by the valuer. Where the market is large the conditions of the representative transaction should be readily apparent. However where they are not, they must be presumed. The market in real estate is not perfect (in the economic sense) and consequently the conditions of each sale may be different. Which will be the representative transaction will depend on the valuer's opinion of the market.

Therefore "market value" and price would correspond where the latter was the result of the representative transaction. However where the transaction was not representative, for example where the purchaser was particularly knowledgeable and the seller particularly gullible, the price might be expected to differ from the market value. Thus depending on the conditions of the transaction price may be above, below or equal to value.

As bases of assessment both price and value can be adopted. A 'price' basis of assessment would result in the assessment of each property at its last sale (or letting) price, whilst a 'value' basis of assessment would result in assessments at figures at which the properties would be expected to sell or let.

The 'price' basis of assessment would remove subjective estimations from the assessing procedure though it would require proof of sale (or letting) prices and might result in misrepresentation in conveyances for the purpose of evading taxation.

The 'price' basis of assessment has two major disadvantages which render it unsuitable as a basis of assessment on the grounds that it does not produce uniformity of assessment. Firstly in a period of changing values, property assessments will depend on the time at which the property last changed hands. The relative gains and losses will be discriminatory and random. Secondly since some prices (at any point in time) can be expected to differ from value as the result of different conditions of sale, so the assessments of similar properties sold at the same time can be expected to differ.

If the property has not yet been sold or let, some other basis of assessment would have to be adopted.

b) Value to the Owner.

Another value concept is value to the owner and for this an estimate is made of the worth of the property to a particular person. This is a very subjective concept and is incapable of accurate verification. When a property changes hands the value to seller is less than the sale price whilst the value to the purchaser is greater but the amount by which they differ from sale price is immeasurable.<sup>7</sup>

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<sup>7</sup> C.f. R. Turvey. op. cit., pp. 8-21.

Bonbright after discussing the concept of value to the owner concludes

Whenever "value" is not identified with market value (or with some hypothetical market value like "justified selling price") it properly refers to the value of the property to some specific person or group of persons. The same property would have very different values to different individuals, . . . Value to the owner is generally measured in terms of money, and is then set by the amount of money that would just compensate the owner for the loss of the property.<sup>8</sup>

The subjectivity of this concept makes it an unsuitable basis of assessment and it is rarely used. The term 'value' in taxing Acts is understood to mean market value. The estimate of market value may however, be influenced by this concept where the present owner is the only likely purchaser of the property.

c) The Assumptions of Market Value.

Market value has many interpretations depending on the assumptions made about the conditions of market; but they can be divided into two categories, market value where the conditions of the actual market are implied and value in a market where hypothetical conditions apply.

As mentioned earlier, market value (under actual market conditions) is an estimate of the price realised in the representative transaction. It is necessary for the date to be specified and that

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<sup>8</sup> J.C. Bonbright. op. cit., Chapter IV, p. 92.

can be in the past, present or future. In each case the market conditions must be those that exist at the appropriate time. Where a future (market) value has been estimated but the market conditions at the relevant date do not match those assumed, the valuation will fall into the second class. Due to changes in the property market and the difficulty of forecasting them, the estimation of a future value is better considered to be a valuation under conditions of a hypothetical market until proved by events to be a truly market value.

The hypothetical conditions can vary widely and the definition of market value used by the American Institute of Real Estate Appraisers is an example:

(1) As defined by the courts, is the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with the knowledge of all the uses to which it is adapted and for which it is capable of being used. (2) Frequently it is referred to as the price at which a willing seller would sell and a willing buyer would buy neither being under abnormal pressure. (3) It is the price expectable if a reasonable time is allowed to find a purchaser and if both seller and prospective buyer are fully informed.<sup>9</sup>

Ratcliff suggests it "requires that the appraiser accept an unreal hypothetical situation in which there is but one buyer, one seller and one property."<sup>10</sup>

Another example of a hypothetical market is apparent in the Rent Act 1965<sup>11</sup> which in specifying the meaning of a "fair rent" under a regulated tenancy states

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<sup>9</sup> R.U. Ratcliff. A Restatement of Appraisal Theory. loc. cit.

<sup>10</sup> Ibid.

<sup>11</sup> Eliz. 2 1965. c. 75. s. 27.

(1) . . . regard shall be had . . . to all the circumstances . . . and in particular to the age, character and locality of the dwellinghouse and its state of repair.

(2) . . . it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses . . . is not substantially greater than the number of such dwellinghouses in the locality which are available for letting on such terms.

(3) There shall be disregarded:-

(a) any disrepair . . . attributable to a failure by the tenant . . . to comply with any terms . . . (of the tenancy) and (b) any improvement . . . carried out by the tenant.

Although this provision does not refer to the real property tax it indicates how conditions unrelated to those existing in the actual market can be required to be considered.

Another concept of market value which depends on hypothetical conditions is known as Normal Value.<sup>12</sup> It takes value to be in the form of a trend over a period of time. We have seen that at any point in time prices can be expected to range around market value and where the concept of normal value is adopted it is expected that prices over a period of time will range around normal value. The estimation of normal value will be difficult since the period of time involved must be considered; and it is on this ground that Bonbright has advised against its use.<sup>13</sup>

Another concept of value, intrinsic value, is an entirely hypothetical concept being endowed with some of the notions of the

<sup>12</sup> Hicks, Hicks and Leser. op. cit., p. 8.; J.C. Bonbright. op. cit., p. 29.

<sup>13</sup> Cf. J.C. Bonbright. op. cit., p. 471.

mediaeval 'just price'<sup>14</sup> since it is concerned not with what the property will sell for but what it should<sup>15</sup> sell for. As such it is an extremely subjective figure of value.

The concepts of value considered in this section have been forms of market value in which there have been differences in the assumed market conditions. In some cases an attempt will be made to estimate market values by the use of irrelevant factors and the resultant figure will be a hypothetical value and not a figure of value under hypothetical market conditions. For example in Japan after the war the following basis of assessment was recommended.

The prewar rental values now on the ledgers should be multiplied by 200 . . . The result is a rough estimate of rental values in 1949 terms -- hypothetical free-market rental values, not the rentals actually received under rent control. This result should then be multiplied by 5 to put the estimate on a capital value basis. The result is a crude approximation of what the asset might be worth if it could be sold in a free market, or of what it would cost to reproduce the structure (after allowing for wear and tear).<sup>16</sup>

In choosing between an assumption of market conditions and one of hypothetical conditions the legislators will be guided by political considerations. Consequently they can use the possible variety of hypothetical conditions to create the tax structure they deem desirable.

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<sup>14</sup> Joan Robinson. Economic Philosophy (London: C.A. Watts, 1962), Chapter II, p. 26.; R.U. Ratcliff. Modern Real Estate Valuation, op. cit., pp. 45-51.

<sup>15</sup> J.C. Bonbright. op. cit., p. 27.

<sup>16</sup> Report on Japanese Taxation by the Shoup Mission (Tokyo: G.H.Q., Supreme Commander for the Allied Powers, 1949) Vol. II, p. 193.

However, where current market conditions are to be assumed the assessments can be readily checked by comparisons with recent sales, which are the best evidence of market value. As mentioned price need not equal market value but if no peculiarities can be discovered (such as inter-family transactions, etc.) then price can be expected to approximate market value. As mentioned previously, if the conditions of the sale are the same as those of the representative transaction, price and value are the same. However, the conditions of the transaction are not always identifiable and so it will be unjustifiable to assume that price and value are always identical. It may however be realistic to assume that the conditions of many of the market transactions are not far removed from those of the representative transaction and therefore that price approximates market value. A market value basis of assessment will be readily understandable to the taxpayers and the ability to check assessments will remove much of the existing apathy toward assessments and ignorance of assessment techniques.<sup>17</sup> It will also enable a more objective audit to be made of the quality of assessment (through the use of assessment-sales ratio studies)<sup>18</sup> and this should result in greater equality of treatment.

d) Existing Use Values and Values in Exchange.

In establishing the tax structure the legislators have a further choice between existing use values and values in exchange.<sup>19</sup>

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<sup>17</sup> H.L. Lutz, Public Finance (Fourth Edition, New York, D. Appleton-Century Co., Inc., 1947) pp. 392/393.

<sup>18</sup> Moore, Guttman and White, op. cit., p. 95; P.H. White "Concepts of Assessment Value" Report of the 1963 Conference (Toronto: Canadian Tax Foundation, 1964), p. 109, 113-114.

<sup>19</sup> These terms are not to be confused with the classical economic concepts of "value in use" and "value in exchange".

Existing use values are those figures of value which are appropriate if the use of the property is restricted to its existing use whilst values in exchange are those which result if the use were not restricted to that now existing. Where the property is in its highest and best use there will be no difference between the two, but where the use could be profitably changed, value in exchange will exceed value in use. If in every valuation the existence of lesser interests and other encumbrances is ignored, existing use value will be the lowest limit of value in exchange in all cases.

Clearly the incidence of the tax will change between the two bases of assessment since developable properties will benefit (relatively) when existing use values are employed. If values in exchange were used unrealized gains would fall to be taxed since increasing property values are not obtained until the property is sold. Thus, the inefficient use of land is penalised by the use of values in exchange and there will be a tendency for earlier development than if existing use values were adopted.

Furthermore the existing use value will, when it differs from the value in exchange, be a value under conditions of a hypothetical market and will consequently have the disadvantages of such.

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20 R. Turvey. op. cit., Chapter VII.

e) Rental Values or Capital Values.

In Canada the real property tax is generally levied on capital values whilst in the United Kingdom it is levied on the rental values of real estate.

The choice between these two will depend on whether market values or values under the conditions of a hypothetical market are to be adopted, and whether the tax is to be levied on values in exchange or on existing use values. It will not depend on whether the tax is to be levied on the owner or the occupier.

The employment of market values permits the use of market data as direct evidence of correct assessments and consequently it is rational to adopt that form of value, evidence of which is most readily available.

Logic would suggest that if the market place is to provide evidence of value, then assessments based on value in exchange should be made by reference to capital values; whereas if value in use is the desideratum rental values ought to be used.<sup>21</sup>

Rents taking into account the redevelopment potential (such as building leases) do exist and it would be possible to make value in exchange assessments based on rental values. However capital value transactions generally take into account all development potentialities

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<sup>21</sup> P.H. White. op. cit., p. 111.

(except where legal provisions prohibit redevelopment) and on practical grounds, since the majority of leases ignore (or prevent) redevelopment<sup>22</sup> existing use values are best illustrated by means of rental values, and values in exchange by capital values.

In choosing between capital and rental values both the number and average size of transaction ought to be considered, since the greater the evidence of market value that is available the more accurate should be the assessments.

Where hypothetical market conditions are to be presumed the significance of market evidence may be limited, and consequently the relevance of rental and capital values to existing use values and values in exchange, respectively, will be of less importance.

f) Date of Valuation.

In selecting the basis of assessment, attention should be paid to the date to which all properties are to be valued. The date of valuation need not be that at which the valuation is made but should be specified in order to ensure that the same assumptions are made when assessing different properties and that uniformity and equality of treatment is achieved.

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<sup>22</sup> J.E. Smyth and D.A. Soberman. The Law and Business Administration in Canada. (Toronto: Prentice-Hall of Canada Ltd., 1965), p. 403.

Where the values of different properties have altered over a period of time, but not uniformly, the choice of date of valuation will affect the liability to the tax. Thus if in a period of inflation Blackacre's market value has trebled, whilst Whiteacre has doubled in value over the same period, then Blackacre will bear 50% more tax relative to Whiteacre, if an end-of-period date is used, than if a start-of-period date of valuation is adopted. This will be true for all market value bases of assessment or for values under conditions of a hypothetical market.

Clearly inequality of treatment will result if the assessor adopts a date of valuation other than that required by Statute if there have been changes in relative values between the two dates.<sup>23</sup> If only changes in the general level of values have occurred so that the relationships between values remain unaltered, the assessments will be wrong but will not result in inequality of treatment.

If the legislators adopt historic (or future) values rather than current values, they have a choice between assessing each property as it stood at the date of valuation or assessing it with reference to conditions that existed at another time (such as present conditions) but using the levels of value that were current at the date of valuation. Thus, if mid-1939 is accepted as the date of valuation, it should be

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<sup>23</sup> U.K. Hicks. Public Finance. op. cit., pp. 240-241.; Moore, Guttman and White. op. cit., p. 96.

specified whether changes in circumstances (such as the addition of an extra room, or the increased popularity of the neighbourhood) should be considered, and if so, with relevance to what date.<sup>24</sup>

Only if the circumstances are relevant to the date of valuation can the figure of value be market value and it will be verifiable by reference to prices relevant at that time. In other cases it would be a value under hypothetical market conditions and incapable of verification in the actual market.

g) Cost.

In some cases cost has been utilised as a measure of value<sup>25</sup> however cost and market value are only in perpetual equivalence in a state of long-run static equilibrium.<sup>26</sup>

As bases of assessment, cost of construction or replacement cost could be adopted, though the latter has implied in it the largely subjective concept of depreciation<sup>27</sup> and is therefore undesirable as a basis of assessment.

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<sup>24</sup> F.H. Finnis. "Uniform Assessments". op. cit., p. 154.

<sup>25</sup> J.C. Bonbright. op. cit., p. 490.; Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick. op. cit., pp. 222-223.

<sup>26</sup> Alfred Marshall. Principles of Economics (eighth edition, London: Macmillan & Co. Ltd., 1962), p. 305.

<sup>27</sup> P.F. Wendt. op. cit., Chapter VIII.

Conclusion.

Some of the various bases of assessment have been considered and the alternatives relating to market values or value under hypothetical market conditions were examined.

The statutory basis of assessment has generally been interpreted to mean current market value and if equality of treatment is to be achieved, assessments in accordance with this interpretation (or a constant percentage thereof) must be made. If a percentage of current market value is used, or if an attempt is made at achieving equality of treatment whilst using another basis of assessment, it would be desirable to revise all the existing assessments to accord with statutory requirements, particularly as such valuations must be made to ensure overall equality of treatment.

In some cases the statutory requirements cannot be complied with, either as a result of inadequate assessing staff or as a consequence of the time required for revaluations when the statute requires current values as the basis of assessment.

Whenever the relationship between assessments differs from that required by statute, inequality of treatment will result. Since the incidence of the real property tax is indeterminate the effect of the inequality will be uncertain. Consequently any decision to increase expenditure so as to improve the quality of assessment or to replace the real property tax with another means of raising revenue must rely on political considerations.

## CHAPTER III

CURRENT LEGAL PROVISIONS FOR THE  
DETERMINATION OF VALUEA) England and Wales

The current statutory provisions relating to the determination of value for real property tax in England and Wales are contained in the Rating and Valuation Act 1925,<sup>1</sup> and subsequent legislation. Different provisions apply for Scotland and Northern Ireland and these will be ignored in this examination of two of the dissimilar bases of assessment which have been adopted by separate jurisdictions.

The 1925 legislation applies to most classes of real property, though certain utility property, railways and canals fall outside its general provisions.<sup>2</sup>

Agricultural land and buildings are exempt from the real property tax.<sup>3</sup> Whilst special provisions relate to agricultural dwelling houses.<sup>4</sup>

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<sup>1</sup> 15 and 16 Geo. 5, c. 90.

<sup>2</sup> Ryde on Rating. op. cit., p. 349.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid., p. 428.

Property, which is liable to the real property tax, and "consists of one or more houses or other non-industrial buildings"<sup>5</sup> etc. is valued to "gross value" which is defined in Section 68:

the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes, . . . and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent.<sup>6</sup>

The figures of gross value are reduced to net rental terms,<sup>7</sup> by means of a statutory deduction representing repairing expenses, and are then known as the "net annual value" of the premises.

Property that is not valued to its gross value is valued directly to its "net annual value":

the rent at which the hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes . . . and to bear the cost of the repairs and insurance and other expenses, if any, necessary to maintain the hereditament in a state to command that rent.<sup>8</sup>

The definition of gross value had been previously enacted in substantially similar form in the Union Assessment Committee Acts

<sup>5</sup> Rating and Valuation Act 1925, Sec. 22 (1) (a) as amended by the Rating and Valuation (Miscellaneous Provisions) Act 1955 and Rating and Valuation Act 1961.

<sup>6</sup> Ibid., Section 68 (1) as amended by the Tithe Act 1936 and Rating and Valuation Act 1961.

<sup>7</sup> Rating and Valuation Act 1925, 2nd schedule, Part I as amended by the Rating and Valuation Act 1961 and The Valuation (Statutory Deductions) Order 1962 (S.I. 1962, No. 940).

<sup>8</sup> Rating and Valuation Act 1925, Sec. 22 (1) (b) as amended by the Tithe Act 1936.



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tenancy to a hypothetical tenant. The hypothetical tenant is to be considered as neither a superlatively good occupier nor the worst of occupiers but "a sort of average between them",<sup>17</sup> and the existing owner<sup>18</sup> or occupier is to be included as a potential tenant.

Although the value of the occupation is to be estimated from<sup>19</sup> the tenant's viewpoint the criterion is not the value of the occupation to the existing owner (i.e., value to the owner) but the yearly<sup>20</sup> rent the hypothetical tenant would be willing to pay for the premises.

The statutory definition specifies a letting "from year to year" and thus has been contrasted with the assumption that the letting<sup>21</sup> is to be for only one year. As Lord Esher expressed it:

<sup>16</sup> R. v. West Middlesex Waterworks (1859) 1 E. & E. 716, 722; 120 E.R. 1078, 1081; 28 L.J.M.C. 135, 137; R. v. Sheffield United Gaslight Co. (1863) 4 B. & S. 135, 147; 122 E.R. 410, 415; 32 L.J.M.C. 169, 173.

<sup>17</sup> Cartwright v. Sculcoates Union. [1900] A.C. 150, 155.

<sup>18</sup> R. v. School Board for London. (1886) 17 Q.B.D. 738, 740, 741; and L.C.C. v. Erith and West Ham. [1893] A.C. 562, 588, 589.

<sup>19</sup> Poplar A.C. v. Roberts. [1922] 2 A.C. 93, 104, 116, 123; and P.L.A. v. A.C. of Orsett Union. [1920] A.C. 273, 288.

<sup>20</sup> Ibid. and Robinson Bros. (Brewers) Ltd. v. Houghton and Chester-le-Street A.C. [1937] 2 K.B. 445, 476; and East London Railway Joint Co. v. Greenwich Union A.C. . [1913] 1 K.B. 612, 620.

<sup>21</sup> Great Eastern Railway Co. v. The Overseers of Haughley. (1866) L.R. 1 Q.B. 666, 685; Consett Iron Co. Ltd. v. Durham A.C. [1931] A.C. 396, 405.

A tenant from year to year is not a tenant for one, two, three or four years but he is to be considered as a tenant capable of enjoying the property for an indefinite time, having a tenancy which it is expected will continue for more than a year but which is liable to be put an end to by notice.<sup>22</sup>

Such a tenant is unlikely to consider all the possible uses to which the premises could be put but, rather, would occupy them for the purpose for which they are adapted at the start of the tenancy,<sup>23</sup> and it has long been established that the premises are to be valued as they stand and as used and occupied when the assessment is made (Rebus sic stantibus)<sup>24</sup> together with all the natural and statutory privileges,<sup>25</sup> opportunities and disabilities.

Such a presumption has two connected implications. Firstly that the value to be found is an existing use value and that potentialities unconnected with the existing use should be ignored.

The Legislature intended that the rate should be made upon an estimate of the rent which would be given for the property—rebus sic stantibus. In the case of vacant ground near a

<sup>22</sup> R. v. South Staffordshire Waterworks Co. (1885) 16 Q.B.D. 359, 370; 40 J.P. 20, 21.

<sup>23</sup> See R. v. Mast. (1795) 6 T.R. 154. 101 E.R. 485.

<sup>24</sup> Great Western & Metropolitan Railway Cos. v. Kensington A.C. /1916/ 1 A.C. 23; North & South Western Junction Railway Co. v. Brentford Union A.C. (1888) 13 App. Cas. 592, 593-4; Staley v. Castleton (1864) 5 B. & S. 505; 112 E.R. 920; Cf. Townley Mill Co. (1919) Ltd. v. Oldham A.C. /1937/ A.C. 419; 1 All E.R. 11.

<sup>25</sup> P.L.A. v. A.C. of Orsett Union /1920/ A.C. 273, 305. Cf. Poplar v. Roberts. /1922/ 2 A.C. 93.

large town, likely to become building land, the test of the amount of the rate is not the rent at which it would let for a term of years . . . . The higher value which it may some day attain would probably be taken into account in estimating the selling price but cannot be regarded in estimating the rent on a letting from year to year. If there were a reasonable prospect that during the current year the hypothetical tenant would give a higher rent, the amount of that rise might be taken into account; but deferred and reversionary prospects cannot.<sup>26</sup>

Consequently the assessor must consider all those factors which would  
27  
affect the mind of a tenant from year to year, but nothing more.

Secondly, it has been recognised that the taxpayer's liability to rates will depend on the use he makes of his property;  
28  
and that he can, by his own actions, reduce this liability.

The date of the valuation is to be the date of the proposal  
29  
to alter the valuation list.

On a general revaluation; which should take place every five  
30  
years; current values should be employed. However as a consequence

<sup>26</sup> Blackburn J. Staley v. Castleton (1864) 5 B. & S. 505 at 513-4; 122 E.R. 920 at 923-4. But cf. Townley Mill Co. (1919) Ltd. v. Oldham A.C. [1937] A.C. 419 & Consett Iron Co. Ltd. v. Durham A.C. [1931] A.C. 396, 407-10.

<sup>27</sup> Cartwright v. Sculcoates Union. [1899] 1 Q.B.D. 667, 673; Robinson Bros (Brewers) Ltd. v. Houghton & Chester-le-Street A.C. [1937] 2 K.B. 445, 469, 471; Railway Assessment Authority v. Southern Rail. Co. [1936] A.C. 266, 285-6; Ryde on Rating. *op. cit.*, p. 385.

<sup>28</sup> R. v. St. Luke's Hospital (1760) 2 Burr. 1053, 1064; 97 E.R. 703, 709.

<sup>29</sup> Barratt and Russell's Gravesend Brewery Ltd. v. Gravesend A.C. [1941] 2 K.B. 107, 115.

<sup>30</sup> Rating and Valuation Act 1925, 15 and 16 Geo. 6 c. 90, s. 19 (1) as amended by the Local Government Act 1948 s. 34 (1) and the Rating and Valuation Act 1959, s. 1.

of the complex nature of the revaluation the values adopted will be two  
 or more years out of date at the introduction of the new list.<sup>31</sup>

This list will then remain valid until a new revaluation  
 occurs,<sup>32</sup> though each entry may be altered at any time during the  
 life of the list.

### England and Wales -- Conclusion

In England and Wales the assessor is by statute required to  
 establish the annual value of each property. The statutory definitions  
 of value have been amplified by the Courts and the assessor has no ef-  
 fective discretion in the selection of the basis of assessment.

The Courts have specified the assumed conditions of the tenancy,  
 the condition of the premises, the date and duration of the tenancy,  
 the repairing and other liabilities, and the range of factors influen-  
 cing the decisions of prospective tenants. The assessor is left with  
 the task of isolating the relevant elements affecting value and estab-  
 lishing their importance. He is also left with discretion as to the  
 method of valuation to be adopted (except in the case of public utility  
 undertakings).<sup>33</sup>

<sup>31</sup> R. v. Paddington Valuation Officer and another, ex parte  
 Peachey Property Corporation Limited /1964/ 3 All E.R. 200, 204, 214-6.

<sup>32</sup> Local Government Act 1948, s. 34 as enacted by Rating and  
 Valuation Act 1959, s. 1 and schedule.

<sup>33</sup> Earl of Halsbury, The Laws of England, ed. Lord Simons (third  
 edition; London: Butterworth & Co. (Publishers) Ltd., 1952), XXXII,  
 p. 76. Ryde on Rating, op. cit., p. 398. Robinson Bros. (Brewers) Ltd.  
 v. Houghton /1937/ 2 K.B. 445, 484; North & South Western Junction  
 Railway Co. v. Brentford Union A.C. (1888) 13 App. Cas. 592, 593.

These are however vital to the assessing function and whilst he is not required to make any assumptions as to the basis of assessment to be adopted, the assessor is given the freedom necessary for him to make his estimate of value under the market conditions specified by the Courts.

In some cases those specified conditions will be the same as those of the representative market transaction and the assessor will be determining market value. In all other cases he will be determining value under hypothetical market conditions (for example, large industrial complexes and suburban houses are rarely let on occupation leases). Sometimes minor alterations will have to be made to market rents to reduce them to the statutory terms (a full repairing and insuring lease of a shop is an example) whilst on other occasions the rent reserved may be of no significance (e.g., rent controlled premises).

#### England and Wales -- Recent Enactments

34

Sections 17 and 18 of the Local Government Act 1966 are applicable to proposals to alter the valuation list made after 2nd December 1965. The effect of these provisions is to require the assessor to value the premises by reference to the same state and occupation; and with reference to the amenities of the locality; as they existed at the date of the proposal, but with reference to the level of values adopted when the list came into force (April 1963).

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<sup>34</sup> Halsbury's Statutes (2nd ed.) -- Interim Service, c. 42. Reenacted in Section 20 of the General Rate Act 1967. Section 17 of the Local Government Act 1966 is set out in Appendix A.

These sections do not apply to public utility undertakings' premises which are valued by means of the profits basis.

The significance of these provisions will be discussed in Chapter V; but it can be seen that the basis of assessment to be adopted under the Local Government Act is one of rental values under hypothetical market conditions, and that market rental values are no longer of direct relevance.

#### B) British Columbia

In British Columbia real estate provides the tax base for the business tax and the real property tax. The business tax is levied on the basis of the rental value of premises occupied.<sup>35</sup>

The real property tax comprises two levies. The general rate which is used to finance municipal services and the school rate which is levied for public school purposes.<sup>36</sup> The latter is levied on a different tax base to that on which the general rate is levied; but the same basis of assessment is adopted.<sup>37</sup>

<sup>35</sup> Municipal Act, R.S.B.C. 1960, c. 255, s. 427 (1); Vancouver Charter 1953, c. 55, s. 280(a).

<sup>36</sup> Moore, Guttman and White, op. cit., p. 82.

<sup>37</sup> Taxation Act, R.S.B.C. 1960, c. 376, s. 2; Public Schools Act, R.S.B.C. 1960, c. 319, s. 2; Assessment Equalization Act, R.S.B.C. 1960, c. 18, s. 37 (3); Municipal Act R.S.B.C. 1960, c. 255, ss. 2, 206 (3); Vancouver Charter 1953 c. 55, s. 373.

Property tax assessments are one half of the "actual value"  
 38  
 of land and improvements and the tax is levied on 100% of the assess-  
 ment on the land and on 75% of the assessment on the improvements (a  
 smaller percentage of the assessment on improvements may in some cases  
 be adopted).

The Assessment Equalization Act is concerned with assess-  
 ments for school purposes but it has de facto authority over assess-  
 39  
 ments for general revenue purposes. Section 37(1) of the Act states:

The Assessor shall determine the actual value of land and  
 improvements. In determining the actual value, the Asses-  
 sor may give consideration to present use, location, original  
 cost, cost of replacement, revenue or rental value, and the  
 price that such land and improvements might reasonably be  
 expected to bring if offered for sale in the open market by  
 a solvent owner, and any other circumstances affecting the  
 value; and without limiting the application of the foregoing  
 considerations, where any industry, commercial undertaking,  
 public utility enterprise, or other operation is carried on,  
 the land and improvements so used shall be valued as the pro-  
 perty of a going concern.

Section 330(1) of the Municipal Act is in practically the  
 same form. At Section 338 it requires that premises of which the fee  
 simple cannot be assessed, are to be valued at the sum which a willing  
 buyer would be expected to pay a willing seller excluding the value  
 of any business or goodwill. This gives some indication of the con-  
 ditions of the transaction that are to be assumed. However it applies

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<sup>38</sup> Taxation Act, R.S.B.C. 1960, c. 376, s. 31 as amended by  
 1961, c. 61, s. 3; Assessment Equalization Act, R.S.B.C. 1960, c. 18,  
 s. 37(1); Municipal Act R.S.B.C. 1960, c. 255, s. 330(1); Vancouver  
Charter 1953, c. 55, s. 342; Public Schools Act R.S.B.C. 1960, c. 319,  
 ss. 31, 198.

<sup>39</sup> B. I. Ghert, op. cit., pp. 56-57.

only to those properties of which the fee simple is vested in the Crown or in a Municipality, but which are so occupied as to be liable for taxation.<sup>40</sup> Consequently it is limited in effect; and since it fails to specify the state of the market and certain of the terms of the transaction, such as financing, which are to be assumed, it provides an imperfect definition of value.

The Vancouver Charter requires that

In estimating the actual value of any parcel, the assessment commissioner shall be guided solely by his own judgement based upon his personal knowledge or the information furnished him by his staff.<sup>41</sup>

However reference is made to the provisions of the Assessment Equalization Act in the Vancouver Charter,<sup>42</sup> the Public Schools Act<sup>43</sup> and the Taxation Act.<sup>44</sup>

The Statutes of British Columbia are subject to constant revision and amendment and other bases of assessment have been enacted in earlier statutes.<sup>45</sup>

The current statutory provisions do not define "actual value" and their interpretation has often been considered by the Courts. Some

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<sup>40</sup> Municipal Act R.S.B.C. 1960, c. 255, ss. 336, 337.

<sup>41</sup> Vancouver Charter 1953, s. 345.

<sup>42</sup> s. 345 (2): Vancouver Charter Amendment Act 1962, c. 82, s. 14

<sup>43</sup> Sec. 2.

<sup>44</sup> Sec. 31.

<sup>45</sup> See Municipal Act 1914, c. 52, s. 199 and the Vancouver Incorporation Act 1921, c. 55, s. 39.

understanding of the basis of assessment to be adopted by the assessors can be obtained from their decisions.

### British Columbia -- Judicial Interpretation

As mentioned earlier, "actual value", "real value", "fair market value", and "actual cash value" are synonymous terms.<sup>46</sup>

They do not, however, mean the same thing for assessment purposes as for expropriation purposes, and for property taxation, "value" means<sup>47</sup>

exchangeable value -- the price which the subject will bring when exposed to the test of competition.<sup>48</sup>

The assessor has to determine a figure of value and the Courts have refused to accept sale prices without confirmation of their relevance to actual value.<sup>49</sup>

<sup>46</sup> Re Rowan's Appeal (1962) 40 W.W.R. 627, 628-9; Stock Exchange Building Corporation Ltd. v. Vancouver. /1945/ 2 W.W.R. 248, 250; See also Montreal Island Power Co. v. Town of Laval des Rapides (1935) S.C.R. 304, 305.

<sup>47</sup> City of Vancouver v. Vine Lodge Ltd. and another. (1964) unreported: Province of B.C. Stated Cases (Victoria: Office of the Assessment Commissioner) pp. 231, 234; applying, Sun Life Ass. Co. v. Montreal. /1950/ 2 D.L.R. 785, 788/9.

<sup>48</sup> Lord MacLaren in Lord Advocate v. Earl of Home. (1891) 28 Sc. L.R. 289, 293; as restated in Montreal Island Power Co. v. Town of Laval des Rapides. /1935/ S.C.R. 304, 305; and in Provincial Assessors of Comox, Cowichan & Nanaimo v. Crown Zellerbach Canada Ltd. et al. (1963) 39 D.L.R. (2d) 381, 396.

<sup>49</sup> Re Rowan's Appeal (1962) 40 W.W.R. 627, 628, 629; Re Crown Zellerbach Canada Ltd. (1959) 16 D.L.R. (2d) 144, 153; see H.E. Manning. Assessment and Rating (4th edition; Toronto: Canada Law Book Co. Ltd., 1962), p. 162.

Actual value is market determined and not a value to the  
 50  
 owner concept, but the conditions of the transaction and the nature  
 of the market are not specified in the Statutes. Section 37(1) of  
 the Assessment Equalization Act sets out certain factors which may be  
 considered by the assessor. Their consideration by the assessor is  
 51  
 not obligatory, and he may consider "any other circumstances" which  
 52  
 he feels are relevant.

Only the provision relating to the valuation of "any industry,  
 53  
 commercial undertaking," etc., as a going concern, is mandatory.

The term "going concern" however has been defined neither by  
 54  
 statute nor judicially, but in 1964 it was interpreted to mean

<sup>50</sup> Re Crown Zellerbach Canada Ltd. (1959) 16 D.L.R. (2d)  
 144; Re Appeals of Shell Oil Co. of Canada Ltd. and another (1962)  
 38 W.W.R. 695, 699/700; 33 D.L.R. (2d) 443, 447; Crown Zellerbach  
 Canada Ltd. and another v. A.D. of Comox and others (1963) 39 D.L.R.  
 (2d) 381; C.N.R. v. Vancouver City /1950/ 2 W.W.R. 337; Re Lefebvre  
 (1963) 37 D.L.R. (2d) 235, 238; Cf. Bishop of Victoria v. Victoria.  
 /1933/ 3 W.W.R. 332, 335, 345; See also Montreal Island Power Co. v.  
Town of Laval des Rapides /1935/ S.C.R. 304, 318; Sun Life Ass. Co.  
v. Montreal. /1950/ 2 D.L.R. 785, 802-803; /1952/ 2 D.L.R. 81, 90;  
C.f. Winnipeg v. Cross /1926/ 2 W.W.R. 868; /1926/ 3 W.W.R. 644.

<sup>51</sup> R. v. Penticton Sawmills Ltd. (1954) 11 W.W.R. (N.S.)  
 351; Vancouver v. Township of Richmond (1958) 17 D.L.R. (2d) 548.

<sup>52</sup> Vancouver v. Township of Richmond. (1958) 17 D.L.R. (2d)  
 548.

<sup>53</sup> See Canadian Collieries Resources Ltd. v. City of Port  
 Moody (1961) Stated Cases, op. cit., p. 106; C.P.R. v. City of Vancouver  
 (1965) 50 W.W.R. 302, 307; affirming Alkali Lake Ranch Ltd. v. Pro-  
 vincial Assessors, Quesnel Forks et al. (1964) 46 W.W.R. 528; (1964)  
 48 W.W.R. 120.

<sup>54</sup> Canadian Collieries Resources Ltd. v. City of Port Moody  
 (1961) Stated Cases, op. cit., p. 106; Re C.P.R. and Assessor of Port  
 Coquitlam (1957) 77 C.R.T.C. 95, 100; Vancouver v. Township of Richmond  
 (1958) 17 D.L.R. (2d) 548, 551.

that the main undertaking of which the land under assessment is a part is to be treated as still being operated and the land is not to be valued separately as bare land.<sup>55</sup>

These provisions do not admit a value to the owner concept and Mr. Justice Ruttan has said in the Supreme Court of B.C.

"Valued as the property of a going concern" does not mean "as the property of the going concern" and in the present case adds nothing not already included under the factor "present use."<sup>56</sup>

In determining actual value, the value to be ascertained is a value in exchange; with all future prospects considered

"Present use" here must mean present proper, and practicable use so that the speculator shall not escape proper taxation nor the developer be penalised.<sup>57</sup>

Since actual value is a value in exchange the effects of zoning regulations must be considered, but the relevance of agreements

<sup>55</sup> Norris J. Alkali Lake Ranch Ltd. v. Provincial Assessors, Quesnel Forks et al. (1964) 46 W.W.R. (N.S.) 528; 48 W.W.R. (N.S.) 120 at 123. (Court of Appeal of B.C.) See also Brown J. in Vancouver v. Township of Richmond. (1958) Stated Cases, op. cit., p. 53 at 54.

<sup>56</sup> Re Crown Zellerbach Canada Ltd. (1959) 16 D.L.R. (2d) 144, 152.

<sup>57</sup> Wilson J. Re C.P.R. & Assessor of Port Coquitlam (1957) 77 C.R.T.C. 95, 100; cited in Re Crown Zellerbach Canada Ltd. et al. (1958) 16 D.L.R. (2d) 144, 152; see also C.N.R. v. Vancouver /1950/ 2 W.W.R. 337, 340; Re Lefeaux (1963) 37 D.L.R. (2d) 235; Canadian Collieries Resources Ltd. v. Comox A.D. (1962) Stated Cases op. cit., p. 140; Coddington v. West Vancouver (1962) Stated Cases op. cit., p. 138; City of Vancouver v. Schenley Holdings Ltd. (1965) Stated Cases op. cit., p. 249..

<sup>58</sup> Re Desautel's Appeal (1959) 29 W.W.R. 665; Re Appeals of Shell Oil Co. of Canada Ltd. and another (1962) 38 W.W.R. 695; C.f. C.N.R. v. Vancouver /1950/ 2 W.W.R. 337.

restricting the use of land is less than clear. In C.N.R. v. Vancouver restrictions on the use of railway land (both by agreement with the City of Vancouver and by the needs of the railway) were held to be of major importance<sup>59</sup> whilst in Re Desautel's Appeal<sup>60</sup> a contractual obligation under the Veterans' Land Act 1942 was held to be irrelevant.<sup>61</sup> In Re Mercer v. Surrey<sup>61</sup> the future expiration of a lease without prospect of renewal was considered to be pertinent in valuing improvements on Indian land.

In considering possible uses to which the property could be put, a contrast must be drawn between the possibility of changing the use of the premises in the future and the assumption that the property is, at the date of valuation, developed or used to its utmost, regardless of its actual use. An example of the former is farm land to which particular value accrues as a result of the profitability of subdivision. This is a value in exchange and may be a market value figure. To assume that the land is already subdivided will result in a figure of value under hypothetical market conditions. This assumption has been rejected by the Courts in interpreting "actual value".<sup>62</sup>

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<sup>59</sup> /1950/ 2 W.W.R. 337, 340, 344.

<sup>60</sup> (1959) 29 W.W.R. 665.

<sup>61</sup> (1961). Unreported. Stated Cases op. cit., p. 83.

<sup>62</sup> See Bishop of Victoria v. Victoria /1933/ 3 W.W.R. 332; Grierson v. Edmonton /1917/ 2 W.W.R. 1138, 1142; Re Christie & Clarke's Appeal /1937/ 1 W.W.R. 81.

In the Sun Life Case the English principles were applied and The Chief Justice of Canada in discussing the words "actual value" stated:

In the yearly valuation of a property for purposes of municipal assessment there is no room for hypothesis as regards the future of the property. The assessor should not look at past or subsequent or potential value. The valuation must be based on conditions as he finds them at the date of assessment.<sup>64</sup>

This case was concerned with the provisions of the Charter of the City of Montreal but it was finally decided by the Judicial Committee of the Privy Council and consequently is binding in British Columbia. Despite this decision, the Courts in British Columbia are still adopting a value in exchange basis of assessment, and some conflict would appear to exist between adopting a value in exchange or an existing use value when implementing Section 37.

In endeavouring to establish the nature of the presumed transaction the Courts have used such conflicting phrases as "willing buyer -- willing seller," "prudent purchaser" and solvent owner.

<sup>63</sup> Sun Life Ass. Co. v. Montreal /1950/ 2 D.L.R. 785; /1952/ 2 D.L.R. 81; applied in Re Royalite Oil Co. Ltd. Assessment (1957) 11 D.L.R. (2d) 527.

<sup>64</sup> /1950/ S.C.R. 220, 224; see also Bishop of Victoria v. Victoria /1933/ 3 W.W.R. 332.

<sup>65</sup> Sun Life Ass. Co. v. Montreal. /1950/ 2 D.L.R. 785, 807; /1952/ 2 D.L.R. 81, 89; Stock Exchange Building Corp. Ltd. v. Vancouver. /1945/ 2 W.W.R. 248, 250; see also Butcher v. Vancouver /1950/ 1 W.W.R. 961, 969.

<sup>66</sup> Sun Life Ass. Co. v. Montreal. /1950/ 2 D.L.R. 785, 793 In Re Lions Gate Assessment Appeal /1940/ 1 W.W.R. 624, 625; Canadian Collieries Resources Ltd. v. Comox A.D. (1962) Stated Cases op. cit., 140, 143; Pearce v. Calgary. (1915) 9 W.W.R. 668, 672/3; C.f. Vancouver v. Vine Lodge Ltd. (1964) Stated Cases, op. cit., 231, 234.

Neither "willing" nor "prudent" are absolute descriptions and it is left to the assessor to determine the willingness of the vendor and purchaser; or the nature of the prudent purchaser. In some cases, as a result of special market conditions (such as periods of economic depression, whimsical changes in taste, etc.), a transaction between a prudent purchaser and solvent owner in an existing market-place would not be the same as the representative market transaction. Consequently the assessor must, subject to the contradictory requirements of the Judiciary, determine the importance of market evidence, and the wisdom and perspicacity of the prudent purchaser, or the willingness or anxiety of the willing seller and willing buyer.

It has however been determined that the price obtainable in a forced sale is not relevant; neither are speculative sale prices or excessively high or unduly low prices.<sup>68</sup> Values "on a normal footing"<sup>69</sup> have however, been held to be acceptable, but market prices,<sup>70</sup> on their own have been rejected as evidence of value.

<sup>67</sup> In Re Charleson Assessment (1915) 21 B.C.R. 281, 285 relating to the provisions of the Vancouver Incorporation Act 1900; Re Municipal Act; Gate's Case /1918/ 2 W.W.R. 930; Bishop of Victoria v. Victoria /1933/ 3 W.W.R. 332, 339.

<sup>68</sup> Stock Exchange Building Corp. Ltd. v. Vancouver /1945/ 2 W.W.R. 248, 249.

<sup>69</sup> In Re Charleson Assessment (1915) 21 B.C.R. 281.

<sup>70</sup> Supra, Footnote 48, p. 53.

71

An Assessment Manual is in use in British Columbia and although it is there accepted that the assessor has generally to determine market value<sup>72</sup> it states of actual value:

the precise meaning of "actual value" has been liberally argued in the Courts and the most consistent consensus is that it is the most current value attainable.<sup>73</sup>

The inadequacy of this description is indicative of the failure of the Courts to express unequivocally the basis of assessment to be adopted.

As in England and Wales the requirement is that the date of valuation is to be the time of the assessment,<sup>74</sup> but Finnis has commented that

All relevant legislation requires the assessment of real property to be based on "actual value". This term is strictly interpreted to mean current value which for practical purposes means that 1959 values were used for the 1961 roll and 1960 values for the 1962 roll and so on.<sup>75</sup>

Consequently the situation regarding the relevance of the assessments to current levels of value in British Columbia parallels that in Eng-

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<sup>71</sup> Section 7 (b) of the Assessment Equalization Act R.S.B.C. 1960, c. 18, empowers the Minister to "give advice and assistance to Assessors . . . ."

<sup>72</sup> Province of British Columbia, Appraisal Manual (2nd ed. /Victoria: Government of Province of B.C./), p. 403.

<sup>73</sup> Ibid., p. (v).

<sup>74</sup> Re Lefeaux (1963) 37 D.L.R. (2d) 235.

<sup>75</sup> "Real Property Assessment in Canada", op. cit., p. 24.

land and Wales, since in both cases the values on a new roll will be two years or so out of date.

The absence of limitation on the method of valuation to be adopted by the assessor in British Columbia <sup>76</sup> also parallels the situation in England and Wales.

### British Columbia -- Conclusion

Many taxes have real property as the tax base, and the real property tax has differing tax bases and bases of assessment. <sup>77</sup>

Where Section 37(1) of the Assessment Equalization Act applies, and the assessor is required to determine "actual value", considerable discretion is left with him regarding the basis of assessment to be adopted.

It is presumed from the wording of judicial decisions, and the absence of any requirement to determine rental value that the assessors are required to ascertain a capital value figure. <sup>78</sup>

<sup>76</sup> R. v. Penticton Sawmills Ltd. (1954) 11 W. W.R. (N.S.) 351, 353, 356; Provincial Assessors of Comox et al. v. Crown Zellerbach Canada Ltd. et al. (1963) 39 D.L.R. (2d) 381, 386.

<sup>77</sup> See the Municipal Act R.S.B.C. 1960, c. 255 (as amended) Sections 328 A., 331, 332 (4), 333 and 338; and the Assessment Equalization Act R.S.B.C. 1960 c. 18 (as amended) Sec. 37 (6) (d) and 37 (6) (e); and the Taxation Act R.S.B.C. 1960, c. 376 (as amended) secs. 7 and 8, for examples of bases of assessment other than "actual value" as specified in Sec. 37 (1) of the Assessment Equalization Act.

<sup>78</sup> See Stock Exchange Building Corporation Ltd. v. Vancouver /1945/ 2 W.W.R. 248, 249/251; Butcher v. Vancouver /1950/ 1 W.W.R. 961, 969 and c.f. Municipal Act R.S.B.C. 1960 s. 427 (1); see also J.H. Perry, Taxation in Canada (Toronto: University of Toronto Press, 1961), p. 260.

Whilst a value to the owner figure is not relevant, the provision that certain classes of real estate are to be valued as a going concern, requires the assessor to depart from "actual value" and value in accordance with a provision that has not been judicially defined.

A conflict exists between the employment of existing use values and values in exchange, and consequently "discretion as to which basis of assessment he will use is for the most part left with the assessor."<sup>79</sup>

The conditions of the transaction, and the market in which it takes place have been poorly defined, and whilst there is a presumption that a figure of value under actual market conditions is the objective, the Courts have discounted the use of sale prices alone as evidence of value and have required consideration of construction costs,<sup>80</sup> and normal values.

Thus despite the readiness of the Courts to consider, and comment on, the factors the assessor ought to have considered in any particular case, the basis of assessment has not been clearly established. This indicates a preoccupation with the means by which assessments are made rather than the nature of the final assessment.

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<sup>79</sup> P.H. White. "Concepts of Assessment Value", op. cit., p. 112; F.H. Finnis. "Real Property Assessment in Canada" op. cit., p. 17.

<sup>80</sup> See MacDonalld C.J.B.C. Bishop of Victoria v. Victoria. [1933] 3 W.W.R. 332, 334.

In such circumstances it is difficult to achieve equality of treatment, and the inability to identify the basis of assessment will create suspicion in the mind of the taxpayers as to the validity of their assessments.

## CHAPTER IV

THE EXISTENCE OF INCORRECT BASES OF ASSESSMENT

We have seen that the statutory provisions relating to the basis of assessment can fail to provide an unequivocal definition of value; that they may have to be interpreted in the light of judicial decisions; and that differing interpretations may be placed on specific provisions. However, inequality of treatment will arise whenever there is a lack of compliance with the intentions of the legislators (as interpreted by the judiciary where necessary). In this Chapter it will be shown that there have been departures from the legal requirements in both the United Kingdom and Canada.

Such a departure will create a conflict between uniformity of assessment and correctness of assessment with regard to new entries on the assessment roll. Since the existence of statutory or judicial provisions requiring the uniformity of treatment may affect the relative importance of correctness or uniformity an examination will be made in the next Chapter of those authorities in the United Kingdom and Canada requiring uniformity or equality of treatment.

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<sup>1</sup> "Correctness" and "correctness of assessment" refer to the proximity of each assessment to the correct figure which the law requires to be entered on a new roll, the existence of other assessments being ignored. They should be contrasted with the "correct burden of taxation", which is discussed later.

A) England and Wales.

In determining the rental value of premises the assessors are required to ignore the existence of statutory limitations on the amount of rent that can be charged,<sup>2</sup> but in the 1920's the assessments of most dwelling houses were made by reference to controlled rents despite the evidence of free market rents.<sup>3</sup> It would appear that reference to controlled rents was being made by the assessors as recently as 1961,<sup>4</sup> despite the requirement that the assessor determine the amount at which the premises "might reasonably be expected to let."

In 1950, the assessing function was taken out of the hands of the local authorities in England and Wales and given to valuation officers authorized and controlled by the Commissioners of Inland Revenue.<sup>5</sup> Until the first valuation lists made by the Inland Revenue's assessors came into effect in 1956 it was the official practice of the valuation officers to bring new and altered premises into the list at a level of value that accorded with the "tone of the list". This was generally accepted by the Lands Tribunal although it conflicted with the legal requirements of an assessment.<sup>6</sup>

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<sup>2</sup> Poplar A.C. v. Roberts. [1922] 2 A.C. 93.

<sup>3</sup> Hicks, Hicks and Leser op. cit., pp. 56/60. The free rents were not representative of the values of all houses since they were the result of a scarcity occasioned partly by the rent control provisions.

<sup>4</sup> Contrast the assessments and rental evidence given in R. v. Paddington Valuation Officer ex parte Peachey Property Corporation Ltd. [1964] 3. All. E.R. 200, and see [1965] 2 All E.R. 836, 850.

<sup>5</sup> Local Government Act 1948. 11 and 12. Geo. 6 c. 26. S.33: Ryde on Rating op. cit., p. 396.

<sup>6</sup> Ryde on Rating op. cit., pp. 396/397.

Such a policy was necessary as assessments in the lists were generally at 1934-1939 values and because of the substantial changes brought about by the Second World War it would have resulted in hardship to make new assessments at the then current level of values. Further, the Inland Revenue had taken over lists that had been made by the assessors of different authorities and uniformity did not exist as between different lists.

In 1960 the opinion was expressed by a member of the Lands Tribunal that these considerations were no longer appropriate and that each new assessment must be made according to the circumstances at the date of the proposal.<sup>7</sup> In other cases after the 1956 revaluation, however, reference has been made to the "tone" of other assessments when they did not conform with the rental evidence.<sup>8</sup>

It has also been declared that it is the policy of the Inland Revenue to assess new and altered premises in accordance with the level of values that was current when the valuation list came into force.<sup>9</sup>

<sup>7</sup> R.C.G. Fennel Esq. in Harrow Borough Council v. Betts. (1960) LT. 53 R. and I.T. 577, 578.

<sup>8</sup> Jones v. Small (V.O.) (1957) 50 R. and I.T. 725; Cotswold Electric, Ltd. v. Howard (V.O.) (1958) 51 R. and I.T. 125; Rawlinson and Co. Ltd. v. Pritchard. (1958) 52 R. and I.T. 182; See also British American Typewriters v. Hill (V.O.). (1962) 2 R.V.R. 374; 1962 R.A. 298 and Lotus and Delta Ltd. v. Holman (V.O.). (1963) 3 R.V.R. 296; 1963 R.A. 113; The Chartered Surveyor, Vol. VC, p. 648.

<sup>9</sup> Great Britain. Parliamentary Debates (Commons), fifth series, (London: Her Majesty's Stationery Office), DCIII (1959) 1165-6, Mr. H. Brook (Minister of Housing and Local Government); also DCCXXIX (1966) 1265, Mr. Crossman (Minister of Housing & Local Government); Great Britain. Parliamentary Debates (Lords), fifth series, (London: H.M.S.O.), CCXXXII (1961) 419, Earl Jellicoe; and CCLXXII (1966) 463, Lord Kennet.

Such a policy can be of considerable consequence since the  
 10 intended quinquennial revaluations are the exception and new valuation lists came into effect in 1956 and 1963 and the next is scheduled  
 11 for 1973. Thus the values in the list can be from two to eleven years out of date.

In view of the decision in the Ladies Hosiery and Underwear  
 12 case and that in Barratt v. Gravesend,  
 13 the practice of adopting the "tone of the list" for new assessments between revaluations is of extremely doubtful validity.  
 14 As mentioned in Chapter 3 this practice of the Inland Revenue has now been given statutory approval in the Local Government Act 1966 and the General Rate Act 1967.

In the 1963 revaluation it would appear that many of the houses in London were assessed by adopting multiples of the assessments in the  
 15 old list.

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10 Supra.

11 Local Government Act 1966, c. 42 s. 16.

12 [1932] 2 K.B. 679.

13 [1941] 2 K.B. 107.

14 Great Britain, Parliamentary Debates, op. cit., Mr. H. Brook ibid.; Earl Jellicoe ibid.; Harrow v. Betts (V.O.). (1960) 53 R. and I.T. 577, 578.

15 Great Britain. Accounts and Papers. Report of the Committee on Housing in Greater London (Sir Milner Holland: Chairman), Cmnd 2605. (London. Her Majesty's Stationery Office, March 1965). Appendix V, p. 349.

It is uncertain how representative this is of other areas.

Any correlation between the statutory figure of gross value and the 1956-1963 assessment would be largely fortuitous since the latter were related to 1939 rental values having, as a consequence of the passing of 24 years and World War II, little relationship with 1963 rents. Evidence on which to base the new assessments may have been scarce but the use of such multipliers is clearly contrary to the Statutory provisions, resulting in inequality of treatment.

B) Canada.

In Canada too there are indications that the assessors have in some cases adopted a basis of assessment other than current market value. In British Columbia cases have come before the Courts in which the assessors had taken a percentage of an estimate of value as "actual value".

<sup>16</sup> Valuation for Rating Act 1953, 1 and 2, Eliz 2. c. 42 S.2.

<sup>17</sup> See Report of the Committee on Housing in Greater London, op. cit., Table 34, p. 355.

<sup>18</sup> Ibid., p. 347-8. The use of controlled rents as evidence of rental values (supra) can be attributed to the same cause.

<sup>19</sup> R. v. Paddington V.O. [1965] 2 All E.R. 836, 842-843.

<sup>20</sup> Report of the Committee on Housing in Greater London, op. cit., p. 354. The average ratio of net rent to New Gross Value for various classes of residential property ranges from 0.83 to 2.72. Singly occupied unfurnished purpose-built flats have an average ratio of 1.00. But this ratio fails to reveal that the distribution from which it is derived is bimodal with a primary mode at 0.855 and a secondary mode at 1.255. Table 35.

<sup>21</sup> Evans Coleman and Evans and Gilley Bros. Ltd. v. City of Port of Coquitlam. (1957) Stated Cases op. cit., p. 44; Pearce v. City of New Westminster. (1958) Stated Cases op. cit., p. 49; See also Provincial Assessors of Comox et. al. v. Crown Zellerbach Canada Ltd. et. al. (1963) 39. D.L.R. (2d) 381.

Two assessment-sale price studies have been made in the  
<sup>22</sup>  
 Vancouver area but it is impossible to determine from them the cause  
 of any discrepancy between existing assessments and current sale prices.

Similar studies in other provinces have shown up far greater  
<sup>23</sup>  
 variations than were apparent in Vancouver. The Royal Commission in  
<sup>24</sup>  
 New Brunswick considered that a misunderstanding or misinterpreta-  
 tion of the basis of assessment contributed to the poor quality of the  
 assessments. The Saskatchewan Royal Commission's findings were incon-  
 clusive since the basis of assessment adopted is not a market value  
 figure but is dependent on established indices.

Urban land is assessed in Saskatchewan by reference to a  
 'base lot value' which is derived from an index dependent on the impor-  
 tance of the urban centre. Improvements' assessments are related to  
 their cost of reproduction with allowances for depreciation and obso-  
 lescence. These assessments relate to 1946 values, except in Saskatoon  
<sup>25</sup>  
 where 1950 values are appropriate.

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<sup>22</sup> Moore, Guttman and White, op. cit., p. 141. B.I. Ghert  
op. cit., p. 95.

<sup>23</sup> Report of the Royal Commission on Finance and Municipal Tax-  
 ation in New Brunswick, op. cit., pp. 223/224; Report of the Royal Com-  
 mission on Taxation (Regina: Province of Saskatchewan, 1965) pp.124/125.  
 See also D.H. Clark. "Uniform Assessments" op. cit., p. 143.

<sup>24</sup> Op. cit., pp. 222/223.

<sup>25</sup> Jack Vicq. Local Government Finance. Research Study No. 1.  
 for the (Saskatchewan) Royal Commission on Taxation (Regina: Royal  
 Commission on Taxation, 1965), Table 9 (viii).

The assessment of rural property is made on the assumption that

fair value must be derived from something more stable and constant than sale or current market value. Rather, value is related to the ability of the soil to produce an income for the property owner and this income is measured by means of long term production averages and price levels. The assessment system achieves this by measuring soil productivity . . . .<sup>26</sup>

In Saskatchewan the assessors are required to determine 'fair value'<sup>27</sup> subject to the provision that

In determining fair value . . . the assessor may take into consideration and be guided by any applicable formula rule or principle set forth in a manual prepared for the guidance of assessors and approved by the Minister.<sup>28</sup>

Although this provision is only permissive its provisions are extremely wide and it is doubted whether an assessment made in accordance with such a manual could be successfully challenged.

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<sup>26</sup> Local Government Continuing Committee. Local Government Finances in Saskatchewan. A technical reference document to the report Local Government in Saskatchewan submitted to the Government of Saskatchewan, March 1, 1961. /Regina, Government of the Province of Saskatchewan/ p. 91. See pp. 90-99.

<sup>27</sup> The document Local Government Finances in Saskatchewan describes it as "vaguely defined" ibid., p. 89.; See City Act R.S.S. 1965 c. 147 S. 456 (2); Town Act R.S.S. 1965 c. 148 S. 423 (2); Village Act R.S.S. 1965 c. 149 S. 293 (2); Rural Municipality Act R.S.S. 1965 c. 150 S. 292 (2).

<sup>28</sup> Underlining added. The City Act S. 456 (16). Also in the Village Act S. 293 (15), the Town Act S. 423 (14) and the Rural Municipality Act S. 292 (20).

In Alberta the Assessment Commissioner has greater discretion than is given in Saskatchewan. The Municipalities Assessment and Equalization Act provides

Upon the recommendation of the Commissioner the Minister may prescribe standards and methods of assessment and rules, regulations and forms for the guidance of all or any assessor in making assessments in municipalities.

Every standard (etc.) . . . made pursuant to this section has upon publication the same force and effect as if it has been enacted as part of this Act.<sup>29</sup>

The Assessment Act provides that

In determining value for assessment purposes the assessor shall apply the standards and methods of assessment prescribed pursuant to The Municipalities Assessment and Equalization Act and shall assess in accordance with any regulations made under that Act.<sup>30</sup>

and that

In determining the value of land the assessor shall have regard to: - . . . . .  
e) Such other considerations as the Assessment Commission may from time to time direct.<sup>31</sup>

The power given to the Minister and the Assessment Commissioner in Alberta is the power to establish the basis of assessment and is consequently a delegation of the legislative function, since, as we have seen, it is the function of the legislature to establish the basis of assessment and thereby the incidence of the tax. Once such a

<sup>29</sup> Statutes of Alberta 1957 c. 61 s.6 (1) and s.6(3) (as amended by 1958 c. 50).

<sup>30</sup> Statutes of Alberta 1960 C. 5. S. 8 (1).

<sup>31</sup> Ibid., S. 23. Underlining added.

delegation is made, no assessment made in accordance with the established principles, or with the manual, if that is in the form required by statute, can be declared incorrect.<sup>32</sup>

The Assessment Act also permits the assessor (subject to the authorization of the Town or Village Council) to use current assessments as the assessments for the next following year.<sup>33</sup> There is however a limit to the number of consecutive occasions on which this can be done.<sup>34</sup> This practice may be common even without such express authority.

Despite the wide powers of delegation, the Alberta Assessment Manual<sup>35</sup> fails to define 'fair actual value' and its meaning must be gathered from such statements as:

Basic values . . . are based on the assumption that, when stating the value of anything in terms of dollars, it is an expression that the thing valued is capable of being exchanged for the amount of dollars stated. This is called replacement or normal value.<sup>36</sup>

Willing informed sellers and willing informed buyers are assumed in the values adopted for the assessment of land<sup>37</sup> but replacement costs in Edmonton are used as the basis of the assessments of improvements.<sup>38</sup>

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<sup>32</sup> Providing that the legislature has the power to make this delegation.

<sup>33</sup> Statutes of Alberta, 1960 c5. s. 16 (1), s. 19.

<sup>34</sup> Ibid. s. 16 (2) as amended by 1963 c. 3 s. 7(b).

<sup>35</sup> Government of the Province of Alberta, Assessment Manual (Edmonton/ Department of Municipal Affairs, 1959).

<sup>36</sup> Ibid., p. 1.

<sup>37</sup> Ibid., Section 1, p. 4. ff. and p. 22.

<sup>38</sup> Ibid. Section 1, pp. 2, 33.

Although a distinction between market value and replacement  
<sup>39</sup>  
 cost is recognised by the manual, it is provided that where a compo-  
 site appraisal of land and buildings is inevitable the total is to be  
 split by deducting the estimated value of the improvements so as to leave  
<sup>40</sup>  
 the estimated value of the land. Clearly, hypothetical values are  
 preferred to market evidence since bare land changes hands on the mar-  
 ket but improvements without land do not.

Indices are given in the Manual for the benefit of the asses-  
 sor in determining the assessments of urban and semi-urban land and also  
 farmland. The assessment of the latter is dependent on the estimated  
<sup>41</sup>  
 productivity of the soil with allowances for proximity to markets,  
 urban facilities etc., whilst the assessment of the former is an attempt  
<sup>42</sup>  
 to estimate the nature and facilities of a municipality and is there-  
 fore an estimate of the demand for accomodation in the municipality.  
 In the absence of evidence of market value such indices will be desir-  
 able to ensure uniformity of assessment, though it would be advisable  
 to give the assessors the discretion to depart from such provisions  
<sup>43</sup>  
 when necessary and essential that the Manual be constantly revised  
 to ensure that such departures, made so as to achieve correctness, do

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<sup>39</sup> Ibid., Section 1, p. 2.

<sup>40</sup> Ibid., Section 1, p. 5, C.f. Turvey op. cit., p. 24.

<sup>41</sup> Ibid., Section 5.

<sup>42</sup> Ibid., Section 1, pp. 22 et seq.

<sup>43</sup> This is given -- Ibid., Section 1, p. 5.

not reduce the uniformity of the assessments. Uniform assessments at the correct level of assessment is the objective.

In Ontario the Minister is empowered to "prescribe rules . . .  
<sup>44</sup>  
 for the guidance of assessors" who are required to determine "ac-  
<sup>45</sup>  
 tual value".

The Ontario Manual of Assessment Values <sup>46</sup> states that:  
 It has been said that the actual value of any article, or piece of real estate is the amount a willing purchaser will pay a willing seller in the average year chosen from a period of the so-called good years and bad years.<sup>47</sup>  
 and despite this wording it appears, from a comment by a member at the  
<sup>48</sup>  
 1958 conference of the Canadian Tax Foundation, that assessments in Ontario vary widely from present values.

It has been said that,

In too many cases in the province it is found that assessors do not assess at full actual value as required by legislation but for some reason they assess at a percentage of value.<sup>49</sup>

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<sup>44</sup> Assessment Act R.S.O. 1960 c. 23, Ss. 21. 93.

<sup>45</sup> Ibid. S. 35 (1). Sections 35 (2) and 35 (4) lay down the factors which are to be considered in determining actual value.

<sup>46</sup> Government of Ontario. Manual of Assessment Values (second edition, Toronto: Department of Municipal Affairs, 1954).

<sup>47</sup> Ibid., p. 1. The assumption of the "average year" may result from the terms "normal rental value" and "normal sale value" in the earlier Assessment Act R.S.O. 1950 c. 24 Ss. 33(1) and 33(3).

<sup>48</sup> D.H. Clark and others. "Uniform Assessments" op. cit., p. 170. See also W.J. Oliver's remarks at p. 144.

<sup>49</sup> The Ontario Municipal Board in Chapman v. McLeod. [1949] O.W.N. 395 at 397.

Some explanation may be obtained from reference to the manual. From the definition of value and the acceptance of the income and cost approaches to valuation to the exclusion of the comparative approach<sup>50</sup> it would appear that there is an attempt to achieve a figure of normal value.

However, in arriving at that figure certain factors are taken into account which should not be considered by an assessor. W.J. Oliver, who was at the time a Supervisor of Municipal Assessments, stated at the 1958 conference

. . . as long as a building is normally well maintained and is still being used for the purpose for which it was constructed and is being used to capacity and advantage we may well find that there is very little loss in value for assessment purposes especially when we consider that the demand for local services such as fire protection may in some cases increase.<sup>51</sup>

Municipal services will clearly influence the value of real estate; since value is an expression of the worth of future benefits and the better are the services provided by the municipality and available to the landowner the greater will be the worth of his property to him, and to alternative landowners, (*ceteris paribus*). There is however no place in a valuation for an estimate of the cost to the municipality of providing services to the property. As shown earlier, the real property tax is not levied on the basis of benefits received and no consideration should be had to the scale of local services provided except as it would influence the mind of a prospective purchaser. Similarly when the manual states

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<sup>50</sup> Manual of Assessment Values, op. cit., p. 5.

<sup>51</sup> "Uniform Assessments", op. cit., p. 159 (underlining added).

Many municipalities are assessing the (summer) cottages on one basis only which is the amount of revenue received from the 2 or 3 months of occupancy disregarding the other considerations . . . such as the location replacement cost etc., and also overlooking such other angles as the equalization of values between all types of property in the municipality and the services rendered by the municipality for the taxes which are collected.<sup>52</sup>

If these services would influence the decision of a prospective purchaser regarding the amount he would pay for such a cottage, they should be correctly considered by the assessor, but he should ignore the relative demands of each parcel of property for municipal services.

In considering the assessment of farm lands the manual states that acreage-rating-values have been placed on a moderate basis because farms would otherwise be suffering considerable hardship. <sup>53</sup> Such a consideration is the prerogative of the legislature and it must not be left to the assessor to establish the incidence of taxation which he considers desirable. The manual is made under the authority of the Minister and although he may not be exceeding his authority in so establishing the rating values, such a provision in the manual may influence the assessors to depart from the statutory provisions.

In British Columbia the provincial Assessment Manual assists the assessor in determining market value. The manual restricts itself to explaining the use of; and the factors affecting; the income and cost approaches and to providing cost data. However, it leaves with

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<sup>52</sup> Manual of Assessment Values, op. cit., p. 51, (underlining added).

<sup>53</sup> Ibid., p. 29.

the assessor the selection of the correct method and discretion regarding the determination of value.

This discretion is required if the assessor is to execute  
 54  
 his functions correctly.

### Summary

In Canada the adopted basis of assessment may differ from a market value concept. Statistical investigations will not indicate the cause but it has been seen that an assessment manual can specify a different basis of assessment. Such manuals sometimes have the same force as legislation, the law making function having been delegated. In other cases, such as British Columbia it provides guidance to the assessor in carrying out the discretion given him by statute.

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<sup>54</sup> This is also a judicial requirement. See Dugas v. Macfarlane, (1911) 18. W.L.R. 701. Turnbull Real Estate Co. v. Sewell. /1937/2 D.L.R. 218. Re Assessment Act and Nelson and Fort Sheppard Railway Co. (1904) 10. B.C.R. 519. Sun Life Ass. Co. v. Montreal. /1952/2 D.L.R. 81, 100.

## CHAPTER V

UNIFORMITY OF TREATMENT

In order to ascertain the weight that ought to be accorded to each of the (possibly conflicting) requirements of conformity with the statutory provisions relating to the basis of assessment and the achievement of equality of treatment, the statutory and judicial provisions relating to equality and uniformity of treatment will be considered. The provisions relating to uniformity are relevant to equality as, in addition to the differing interpretations that can be placed on each of these phrases, it must be presumed that a statutory or judicial requirement of uniformity, without qualification, refers to uniformity at the statutory basis of assessment. In this case, equality of treatment and uniformity are synonymous.

Where no provision for uniformity or equality of treatment exists, each assessment ought to be made in accordance with the statutory basis of assessment and the achievement of equality will depend on the correctness of the assessments. In a case where there has been a departure from correctness, equality will only be achieved where each assessment is uniformly wrong. Each assessment will however, be liable to correction and the equality of the assessment roll will consequently be relatively unstable. Where statutory or judicial provision for uni-

formity of treatment exists, the judiciary, and the assessors (who must follow the decisions of the Courts if their assessments are to be acceptable on appeal), will be faced with these conflicting requirements. Where no such provision exists the judiciary, and technically, the assessors, would not be faced by this conflict. There only correctness is required.

A) England and Wales -- Statutory Provisions.

Until 1948 the achievement of uniformity of valuation was the expressed intention of Statutes relating to the property tax and the existence of inequality or unfairness in the assessments was a proper reason for an appeal.

In the Parochial Assessments Act 1836,<sup>1</sup> designed to achieve a "Uniform mode of Rating"<sup>2</sup> appeal to the Justices of the Petty Sessions, against a Rate, lay on the grounds of "inequality, unfairness or incorrectness" in the valuations. The Justices had the authority to enquire into the true value of the property and also into the fairness of the assessment.<sup>3</sup>

The Union Assessment Committee Act 1862<sup>4</sup> was enacted to secure "uniform and correct valuations"<sup>5</sup> which were to be achieved through

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<sup>1</sup> Great Britain. 76 Statutes At Large. 6 and 7. Will 4. c.96.

<sup>2</sup> Ibid. preamble.

<sup>3</sup> Ibid. s.6.

<sup>4</sup> Great Britain. 102 Statutes at Large. 25 and 26 Vict. c.103.

<sup>5</sup> Ibid. preamble.

the actions of the Assessment Committees.<sup>6</sup> Appeals could be made against the list by any Overseer or by "any Person who may feel himself aggrieved by any Valuation List on the Ground of Unfairness or Incorrectness . . .".<sup>7</sup>

Similar appeal provisions existed in the Valuation (Metropolis) Act 1869<sup>8</sup> which related to assessments in London.

The intention of the Rating and Valuation Act 1925<sup>9</sup> was also to "promote uniformity in the valuation of property for the purpose of rates"<sup>10</sup> and to that end the County Valuation Committees were required to take steps to promote "uniformity in the principles and practice of valuation"<sup>11</sup> and appeals against a draft list, or proposals to amend a current list could be made by "any person . . . aggrieved by the incorrectness or unfairness of any matter . . ." &c..<sup>12</sup>

Although the intention of this legislation was to achieve uniformity of assessment no preference was given to either uniformity

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<sup>6</sup> Ibid. s. 16.

<sup>7</sup> Ibid. s. 18.

<sup>8</sup> Great Britain L.R. Statutes. Vol. IV. 32 and 33 Vict. c. 67 s. 11.

<sup>9</sup> Great Britain. L.R. Statutes 15 and 16 Geo. 5. c. 90.

<sup>10</sup> Ibid. Title.

<sup>11</sup> Ibid. S. 18 (2).

<sup>12</sup> Ibid. Ss. 26 (1) and 37(1).

(unfairness) or correctness and it was left to the Courts to pronounce on their relative importance.

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In 1948 the Local Government Act reenacted these provisions. The words 'unfairness', 'incorrectness' or 'uniformity' do not now appear in the title or in the provisions relating to valuation or Rating Procedure.<sup>14</sup>

Consequently it is no longer sufficient for an appeal to be made on the grounds of unfairness or lack of uniformity. However, the Act of 1948 provides for the submission of a proposal for the alteration of an assessment by "any person who is aggrieved . . . by any value ascribed in the list . . .".<sup>15</sup> In effect, the provisions of the 1948 Act relating to appeals are as wide as those that existed prior to its enactment.

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Sections 17 and 18 of the Local Government Act 1966 introduced statutory authority for 'tone of the list' valuations. The text of these sections does not include the phrase "tone of the list", but it is provided that the value is not to exceed that which would be

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<sup>13</sup> Great Britain. L.R. Statutes 11 and 12 Geo. 6. c. 26.

<sup>14</sup> See Ss. 36(1) and 40(1).

<sup>15</sup> Ibid. S. 36 (1) (repealed) and S. 40(1).

<sup>16</sup> Halsbury's Statutes (2nd Ed.) Interim Service p. 69, c. 42. See Appendix A.

appropriate if the premises existed in the year prior to the introduction of the valuation list; and therefore fell to be valued with the rest of the premises in the list.

Whilst it was intended that the new assessment should be made on the same level of values as were adopted for other assessments,<sup>17</sup> the wording used will not ensure that result.

Section 17 specifies a maximum figure of value, and whilst it might achieve the desired objective in a time of increasing values, in a period of depression or in a particular area where values are falling it would enable the assessor to enter new or altered premises at a level of value below that existing for other assessments. More significantly, however, it does not resolve the conflict between uniformity and accuracy where assessments in the list differ from those that would have existed had each assessment been made in accordance with the prescribed basis of assessment at the date of the introduction of the list.

In such a case there will remain the original choice between the achievement of uniformity (which will be the result of assessing on the tone of the list), and the production of correct assessments (being assessments based on the level of values that ought to have been adopted at the introduction of the list).

The discrepancy of two or more years between the establishment of the level of values to be adopted and the introduction of the

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<sup>17</sup> See Mr. Crossman's remarks, Great Britain Parliamentary Debates (Commons) op. cit., DCCXXIX (1966) 1265; and Lord Kennet's comments, Great Britain, Parliamentary Debates (Lords) op. cit., CCLXXII (1966) 436.

list will make this conflict even more likely, particularly in periods of rapidly changing values.

Even if this conflict does not arise, and if the new assessment is at the same level of value as that in the list, identical adjoining premises may have different assessments. The Act requires that the current amenities of the locality be assumed, yet in certain areas they may have changed since the introduction of the list without re-  
 18  
 vision of the assessments. To consider those changes in the new assessment, but not in those already in the list would result in discriminatory treatment of new assessments.

B) England and Wales -- Judicial Provisions.

The removal in 1948 of the statutory provisions relating to unfairness has not been of great significance, since the Courts had previously decided cases concerning the conflict between correctness and uniformity and their decisions were followed after the enactment of the 1948 Act.

It has long been accepted by the Courts that equality of  
 19  
 treatment is a fundamental requirement of the real property tax,

<sup>18</sup> See, for example, Winkler v. Cowie. (1952) 45 R. and I.T. 504.

<sup>19</sup> R. v. Mast. (1795) 6 T.R. 154; 101 E.R. 485. See also, R. v. Adams (1832) 4 B. & Ad. 61, 66; 110 E.R. 378, 380; Double v. Southampton A.C. /1922/ 2 K.B. 213, 225; Poplar A.C. v. Roberts /1922/ 2 A.C. 93, 109, 119; Stirk and Sons Ltd. v. Halifax A.C. /1922/1 K.B. 264, 274; Ladies Hosiery & Underwear Ltd. v. West Middlesex A.C. /1932/ 2 K.B. 679, 688.

and in 1964 Mr. Justice Widgery expressed the opinion that an assessor should "hesitate to disturb the fairness and equality of his original list by giving effect to evidence of altered value which comes to him too late to be reflected in the list as a whole."<sup>20</sup>

In the light of the provisions of Local Government Act 1948 relating to appeals, the recognition by the Lands Tribunal of the principle of uniformity is apparent in their acceptance of tone of the list assessments between 1948 and 1956, and subsequently. In 1954 J.L. Milne Esq., a member of the Lands Tribunal commented

Equality of rating being a main object, a valuation officer, when preparing or revising his valuation list, should consider all such evidence as is available and then, by the exercise of his skill and judgement ascertain an assessment for each separate hereditament on a uniform basis.<sup>21</sup>

Previously, however, the Tribunal had decided that "unfairness" was no longer a statutory ground of objection to an assessment and that its duty was to found its decision on the provisions of the 1925 Act relating to gross value, "even if this may result in a figure in excess of the general tone of the list".<sup>22</sup>

<sup>20</sup> R. v. Paddington V.O., ex parte Peachey Property Corporation Ltd., [1964] 3 All E.R. 200, 216.

<sup>21</sup> Kimbells Ltd. v. Payne (V.O.) (1954) 47 R. and I.T. 255, 259.

<sup>22</sup> Erskine Symes Esq., and C.H. Bailey Esq., in Gloucester County Borough Council and Wessex Freeholds (Gloucester) Ltd. v. Trevail. (1952) 45 R. and I.T. 422, 426.

In order to be able to implement a policy of maintaining uniformity or equality of treatment, the Courts must have the power to consider assessments other than those under appeal. However, the ability to consider other assessments will not automatically imply an intention to achieve uniformity or equality.

The Courts have on many occasions recognized their ability to refer to the assessments of comparable properties, <sup>23</sup> and in Pointer's case, Lord Atkin expressed the opinion that

evidence of the rateable value must be admissible, and for two reasons. In the first place in cases in which both premises are in the same Union it is evidence against the Assessment Committee in the nature of an admission. And secondly it may be the only way in which you can get at the rent at which the appellant's premises are worth to be let by the year.<sup>24</sup>

The first of Lord Atkin's reasons may be more significant now that assessments are made by the Inland Revenue's Valuation Officers. Consequently comparisons will not be restricted to a single rating area, but an assessment can be considered an admission against <sup>25</sup> the Valuation Officer concerned and against all other Officers.

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<sup>23</sup> Pointer v. Norwich A.C. [1922] 2 K.B. 47, 471.; Ladies Hosiery and Underwear Ltd. v. West Middlesex A.C. [1932] 2 K.B. 679, 687; See also Hunter v. Swindon A.C. [1922] 2 K.B. 630; and Stockbridge Mill Co. Ltd. v. Central Land Board. [1954] 2 All E.R. 360. C.f. Mason v. C.L.B. (1952) 3 P. and C.R. 31; 46 R. and I.T. 314.

<sup>24</sup> Ibid., p. 477.

<sup>25</sup> Shrewsbury Schools v. Shrewsbury B.C. and Plumpton. (V.O.) (1960) 53 R. and I.T. 497, 500.

The second reason for referring to comparable assessments is based on the assumption that current assessments are representative of statutory values. If this is not the case the use of other assessments to establish the level of value for new assessments will result in tone of the list assessments.

In some cases it may be possible to test this assumption by the comparison of existing assessments and other evidence of statutory value. Where this evidence lends support to the assumption, there will be greater validity for the use of other assessments than where the evidence tends to disprove it or where there is no other evidence available. However, in the first case the use of assessments as evidence of value will be less essential since there is other better evidence available. In the second case the assessments should, if correctness is wanted, be disregarded. It is only in the third case, where no other satisfactory evidence is available, that there is a need to adopt assessments as evidence of value. Their adoption is however dependent on the unsubstantiated assumption that the assessments are representative of statutory value. If this were so the conflict between correctness and uniformity would not arise.

There is a third reason for considering other assessments and that is to ensure that there is uniformity of assessment. In this case, evidence of Statutory values is immaterial since only uniformity and not correctness is relevant.

The first and third reasons for considering other assessments are somewhat similar since the effect of both is to produce uniformity of treatment and since both may require that other available evidence be ignored. Yet different motives are involved. To consider other assessments as admissions by the assessor, indicates an attempt to discover statutory value. In so doing it is assumed that only one level of values can exist, and that that applies to all similar properties. By making an assessment the assessor is expressing his opinion of statutory value. If he does not amend it, it is presumed to be correct and he is prevented from impugning his own estimate of value. He cannot therefore bring evidence to show that it is incorrect. The aim is to establish statutory value, the result is to achieve uniformity.

The weight to be accorded to the assessments of other properties will depend on the purpose for which they are being considered, and on the circumstances of each case. This has been recognised by  
<sup>26</sup>  
the Courts.

Although the consideration of other assessments has been admitted, the importance of uniformity of treatment relative to that of correctness has been limited by decisions of the Courts.

It has been held that a taxing statute must not be univer-  
<sup>27</sup>  
sally misapplied to achieve fairness of treatment and that uniformity

<sup>26</sup> Pointer v. Norwich A.C. [1922] 2 K.B. 47, 471.; Ladies Hosiery and Underwear Ltd. v. West Middlesex A.C. [1932] 2 K.B. 679; Neath Sheet Steel and Galvanising Co. Ltd. v. Neath Area A.C. (1942) 36 R. and I.T. 50; 14. D.R.A. 65. See Rating and Income Tax. op. cit., XLV, 702.

<sup>27</sup> Trustees of Archdiocese of Cardiff v. Pontypridd A.C. (1930) 94 J.P. 246, 248; 12 R. and I.T. 275.

must be achieved by correcting inaccuracies. Correctness must not be sacrificed in order to ensure uniformity,<sup>28</sup> since, in the words of Slessor J.

. . . I find it quite impossible to hold that the mandatory requirements of the Rating and Valuation Act as to the assessment of gross value in a particular case can be avoided or modified by a consideration of unfairness.<sup>29</sup>

As the result of the decision in the Ladies Hosiery case and two subsequent decisions, unfairness between assessments of properties of the same class,<sup>30</sup> between assessments of different classes of property,<sup>31</sup> or between assessments in different districts<sup>32</sup> ceased to be of any practical benefit to ratepayers as the grounds for an appeal against a valuation list.<sup>33</sup>

Despite these provisions, the acceptance of the principle of the tone of the list by the Lands Tribunal indicates that there, at least, the conflict has not been resolved. In the High Court it may be that the decision of the Court of Appeal in the Ladies Hosiery Case (et. al.) and the provisions of the 1925 Act would be combined to exclude

<sup>28</sup> Ladies Hosiery and Underwear Ltd. v. West Middlesex A.C. /1932/ 2 K.B. 679, 688.

<sup>29</sup> Ibid., at p. 694.

<sup>30</sup> Ibid.

<sup>31</sup> Lilley and Skinner Ltd. v. Essex C.V.C. /1935/ All E.R. Rep. 54 C.f. Hunter v. Swindon A.C. /1922/ 2 K.B. 630; which is not applicable to the procedure under the 1925 Act.

<sup>32</sup> R. v. Cornwall C.V.C. Ex parte Falmouth R.A. /1937/ 2 K.B. 222, C.f. Double v. Southampton A.C. /1922/ 2 K.B. 213; which is not applicable to the procedure under the 1925 Act.

<sup>33</sup> Ryde on Rating op. cit., p. 393.

consideration of uniformity when it would be to the detriment of correctness. In the Lands Tribunal however there is no clear indication that either will predominate.

C) Canada -- Statutory Provisions.

Uniformity of treatment as between assessments is a common  
<sup>34</sup>  
 statutory requirement in Canada and reference to other assessments can generally be made on two grounds, the establishment of statutory value and the achievement of uniformity.

In British Columbia it is intended to achieve both uniformity and equalization of assessments and the Assessment Equalization Act makes provision for both. We are however, only concerned with those relating to uniformity. The Assessment Commissioner is empowered to give advice and assistance to Assessors for the purpose of securing  
<sup>36</sup>  
 uniformity in assessments.

On appeals against assessments, the Assessment Appeal Board is empowered to vary the appealed assessment where either

- (a) the value at which an individual parcel under consideration is assessed does not bear a fair and just relation to the value at which other land and improvements are assessed in the municipal corporation or rural area in which it is situate; or
- (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under Section 37.<sup>37</sup>

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<sup>34</sup> J.H. Perry op. cit. p. 265.

<sup>35</sup> Post.

<sup>36</sup> Assessment Equalization Act, R.S.B.C. 1960 c. 18 s. 7(b).

<sup>37</sup> Ibid. S. 46 (1) (as amended by 1961. c. 3. S. 6.).

There are thus two grounds of appeal against assessments in British Columbia; incorrectness and unfairness. The former is restricted to cases of overassessment whilst the latter is applicable to both assessments that exceed the general level of values and those that are below it. The two are independent of each other and it is not necessary to prove incorrectness in order to succeed on the ground of unfairness (and vice versa)<sup>38</sup> though on an appeal the revised assessment must be both fair and just in relation to the assessment of other like properties and not in excess of actual value.<sup>39</sup>

Similar provisions exist in The Municipal Act. The Courts of Revision are constituted to adjudicate on the assessment roll and thereby create assessments that are fair and equitable and fairly represent actual values.<sup>40</sup> Consequently it is enacted that,

The assessment of property complained against shall not be varied if the value at which it is assessed bears a fair and just relation to the value at which similar or neighbouring property in the municipality is assessed.<sup>41</sup>

<sup>38</sup> C.f. the wording of the Act of 1953 (2nd Sess. c. 32) and the decisions resulting therefrom: Pearce v. City of New Westminster. (1958) Stated Cases, op. cit., p. 49, 52; Vancouver v. Township of Richmond. (1958) 17 D.L.R. (2d) 548, 553; Home Coal Co. Ltd. v. Corporation of Delta. (1960) Stated Cases, op. cit., p. 80, 82.

<sup>39</sup> Re Rowan's Appeal (1962) 40 W.W.R. 627, 629.

<sup>40</sup> Municipal Act. R.S.B.C. 1960. c. 255 s. 356 (1) (b).

<sup>41</sup> Ibid. s. 356 (4).

These provisions are subject to those of the Assessment Equalization Act and it is specified that Section 46(1) of that Act (inter alia) applies to appeals to the Assessment Appeal Board under the Municipal Act and under the Vancouver Charter.

Other provinces have enacted provisions similar to those of British Columbia. Saskatchewan specifies that "the dominant and controlling factor in the assessment of land and buildings shall be equity," and that assessments shall not be varied on appeal, even though they appear to be more or less than the fair value; if the assessment "bears a fair and just proportion to the value at which other . . . (premises) are assessed."

Here it would appear that uniformity of assessment is paramount and that incorrectness alone is inadequate to support an appeal against an assessment.

In Alberta too it would appear that uniformity of assessment is paramount. The Assessment Act refers to standards, methods of

<sup>42</sup> Ibid., s. 361(3).

<sup>43</sup> Vancouver Charter Amendment Act 1964. c. 72 s. 13.

<sup>44</sup> The City Act R.S.S. 1965 c. 147 s. 456(1); The Town Act R.S.S. 1965 c. 148. s. 423(1); The Village Act R.S.S. 1965 c. 149. s. 293(1); Rural Municipality Act R.S.S. 1965. c. 150 s. 292(1).

<sup>45</sup> Ibid. Sections 456(12); 423(10); 293(11) and 292(16) respectively.

<sup>46</sup> C.f. Rosborough v. City of Regina. [1934] 2 W.W.R. 636 post.p. 96.

<sup>47</sup> Statutes of Alberta 1960 c. 5.

assessment and regulations prescribed by the Minister and Assessment  
 48  
 Commissioner as the basis of assessment. However in the absence of  
 such provisions the assessor is required to

assess in a manner that is equitable and uniform with assess-  
 ments of that and other kinds of property throughout the  
 municipality.<sup>49</sup>

This provision gives statutory authority for tone of the list assess-  
 ments in a different and more effective manner than that enacted for  
 England and Wales in the Local Government Act.

On appeal too, uniformity is paramount. It is enacted that

A Court of revision shall not vary the assessments of any  
 property where the value at which it is assessed is in fair  
 and just proportion with the values at which other property  
 in the municipality is assessed.<sup>50</sup>

The Alberta Provincial Assessment Manual which has the force  
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 of law describes the assessor's function as to "make a fair and  
 52  
 just evaluation for assessment purposes." This description is sig-  
 nificant in the absence of a clear definition of the basis of assess-  
 ment.

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<sup>48</sup> Supra.

<sup>49</sup> Statutes of Alberta 1960 c. 5. s. 8(2).

<sup>50</sup> Ibid., s. 42.

<sup>51</sup> Assessment Act 1960 c. 5 ss. 8(1), 23 (e); The Municipal-  
 ities Assessment and Equalization Act 1957 c. 61 s. 6. Supra.

<sup>52</sup> Government of the Province of Alberta. Assessment Manual  
op. cit., Section 1, p. 2.

In Ontario it is enacted that the

Judge, Board, or Court 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.<sup>53</sup>

This provision is permissive not mandatory. In Ontario, as in British Columbia the assessors are empowered to consider "any other circumstances<sup>54</sup> affecting the value" when determining actual value and the assessments of other premises are included in such a provision. They are however to be considered as just one item of evidence in ascertaining actual<sup>55</sup> value; and not to establish uniform but incorrect assessments.

Consequently the Court is given the power to look at the assessments of similar land for the purpose of establishing actual value but not for the purpose of achieving uniformity of assessment (other than at actual value). Appeals will therefore not be on the ground<sup>56</sup> of uniformity. In practice, however, these provisions may foster uniformity of assessment.

Assessments will not, in the short run, affect the value of properties except in so far as their burdens of taxation are affected

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<sup>53</sup> Assessment Act R.S.O. 1960 c. 23. s. 86(2).

<sup>54</sup> Ibid., Ss. 35 (2) and 35(4).

<sup>55</sup> Dreyfus v. Royds. [1921] 1 W.W.R. 769, 771, 776.

<sup>56</sup> Fran-Robert Ltd. v. City of Ottawa. [1956] O.W.N. 807, 808. See also Re Halifax Fire Ass. Co. and City of Toronto (1939) 9 F.L.J. 106. but c.f. Re Allen and Town of Miminco (1920) 19 O.W.N. 150 and Chapman v. McLeod. [1949] O.W.N. 395.

by the size of the assessments, and the bids of prospective occupiers are affected by size of anticipated tax bills. Consequently the reference to other assessments will be dependent on one of three assumptions. Firstly, that by referring to the relative tax burdens of different properties some indication of their effect on prospective purchasers' bids can be obtained. Secondly that the other assessments are representative of actual value or thirdly, that uniform assessments will be accepted without reference to their correctness.

The last assumption runs counter to the decisions of the Court, whilst the first endeavours to ascertain value from just one of its determinants, and will not, of itself, provide sufficient information for an estimate of value to be made. Consequently their validity must be suspect. The unconditional acceptance by the Court, and therefore by the assessors, of the second assumption that assessments are representative of actual value will result in the adoption of uniform  
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assessments.

In contrast to the Ontario provisions, the Nova Scotia Assessment Act contains a mandatory requirement of the consideration of other assessments for the purpose of ensuring that taxation falls in a uniform  
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manner upon all real and personal property.

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<sup>57</sup> Supra, p. 85.

<sup>58</sup> R.S.N.S. 1954 c. 15 s. 18, rule 2. (recast 1966 c. 3 s. 38). See Re Manning Assessment /1942/ 1 D.L.R. 383; Glance Bay v. Seaboard Power Corp. Ltd. /1952/ 2 D.L.R. 826; Mersey Paper Co. v. City of Queens (1959) 18 D.L.R. (2d) 19, 28-30.

D) Canada -- Judicial Provisions.

According to Finnis the Courts in Canada "have been more concerned with the equity of one property assessment when compared with another of the same classification rather than with the level of value itself"<sup>59</sup> but there is no clear indication in the decisions of the Courts as to the relative importance of correctness and uniformity. Mr. Justice Kerwin in the Supreme Court of Canada commented that

The assessors must of course proceed so as to cause no discrimination but it is also their duty to see that every ratepayer is assessed for its [sic] immoveables at their actual value.<sup>60</sup>

This comment is characteristic of the decisions of the Courts in Canada since it admits the existence of the conflict but fails to provide an authoritative guide to the policy to be followed.

In British Columbia evidence of other assessments can be considered under the provisions of Section 37(1) of the Assessment Equalization Act in arriving at actual value and consequently a measure of uniformity can be produced even disregarding the provisions of Section 46(1). Mr. Justice Sheppard in commenting that

It is not disputed that those adjoining lands, having been assessed "at their actual value" offer some evidence of the "actual value" of the lands in question and therefore were properly considered under the section as "other circumstances affecting the value".<sup>61</sup>

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<sup>59</sup> F.H. Finnis. "Uniform Assessments" op. cit., p. 149.

<sup>60</sup> Sun Life Ass. Co. Ltd. v. Montreal [1950] 2 D.L.R. 785, 795.

<sup>61</sup> Vancouver v. Township of Richmond. (1958) 17 D.L.R. (2d) 548, 551. See also In Re Municipal Act and Dixon (1939-40) 55 B.C.R. 546, 551-2.

has made explicit the inherent assumption involved in this procedure, but while he has stressed the permissive nature of the section, he omitted to comment whether such consideration could be made if the inherent assumption were disproved, or if the actual value of the property could be adequately estimated by reference to other sources of information.

In the earlier case of C.N.R. v. Vancouver it was decided that the assessor could not ignore valuations of other lands, but that "the fact that other railway lands are assessed at a certain figure is far from conclusive in itself."<sup>62</sup> Hence other assessments were acceptable as evidence but their usefulness in determining actual value had to be established.<sup>63</sup>

In contrast, in Bell Irving v. City of Vancouver<sup>64</sup> it was decided that under the express provisions of the Vancouver Incorporation Act 1921 (now repealed) appeals were limited to the question of uniformity of assessment and that the fair cash value of the property was immaterial.

The Saskatchewan case of C.P.R. v. Town of Breedenbury<sup>65</sup> resulted in a somewhat similar decision under the provisions of an earlier

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<sup>62</sup> /1950/ 2 W.W.R. 337 Headnote.

<sup>63</sup> C.f. Pointer v. Norwich A.C. /1922/ 2 K.B. 471.

<sup>64</sup> /1924/ 3 D.L.R. 31.

<sup>65</sup> /1922/ 3 W.W.R. 960.

<sup>66</sup>  
Town Act which required assessments which were a fair and just proportion to other assessments not to be varied on appeal unless there was a substantial departure from fair actual value.<sup>67</sup> The implicit requirement of uniformity had already been acknowledged at that time with regard to business assessments.<sup>68</sup>

<sup>69</sup>  
 In Rosborough v. City of Regina, the Local Government Board decided that the dominant factor was the requirement of assessing to fair value and not the provisions that prevented the alteration on appeal of an assessment that was "fair and just" with relation to other assessments. The provision "the dominant factor in the assessment of subjects of taxation shall be equity" was held not to alter the situation since it related to the various classes of property subject to tax and not specific premises.

If each premises must be assessed at fair value the provision relating to equity will refer to equity at correct assessment and will therefore be a reiteration and will be redundant. To provide for equity of assessment as between different classes will indicate the belief that fair value may have different interpretations for different classes

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<sup>66</sup> R.S.S. 1920. c 87. s. 392 (now repealed).

<sup>67</sup> See also Rogers Realty Co. v. Swift Current /1918/ 2 W.W.R. 214.

<sup>68</sup> Weyburn Hardware and Furniture Co. v. City of Weyburn and McKinnons Ltd. /1919/ 2 W.W.R. 42.

<sup>69</sup> /1934/ 2 W.W.R. 636.

of property and that the assessors are to utilize the discretion they have so as to achieve equity. In effect there should be no conflict between the correct assessments and uniformity (equity) since in the discretion given to the assessor is the ability to fix the basis of assessment for particular classes of property. The existence of an assessment that is not "fair and just" with another will indicate an incorrect assessment. Which is incorrect can only be determined by examining other assessments. To accept one as incorrect because it is not in accord with fair value will be to presume that fair value is determinate and consequently to deny that the assessors have been given the discretion to fix the basis of assessment.

On the other hand, if this discretion is denied, to make the provision relating to equity meaningful it must be assumed that it gives the authority to enter 'tone of the list assessments' onto an incorrect roll.

In Alberta, differing importance has been attached to correctness and uniformity. In Grierson v. Edmonton<sup>70</sup> it was determined that although under a statute the assessments of adjacent premises may be important in determining the relevant assessment such comparisons "cannot be resorted to as the proper test or standard where there has been in the assessment a gross over valuation in fact of particular lands beyond their 'fair actual value' ".<sup>71</sup> Thus such assessments are only con-

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<sup>70</sup> /1917/ 2 W.W.R. 1138, concerning the Charter of the City of Edmonton.

<sup>71</sup> Ibid., Davies J. at p. 1140.

sidered on the assumption that they represent fair actual value and not to achieve uniformity.

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However in Re Withycombe Estate, a case concerned with valuation for Succession Duty purposes, Ewing J.A. said of real property assessments

While the municipality is bound to assess at the fair market value this provision is subject to another provision viz: that the assessment is uniform with that of similarly situated properties. Thus the municipality is, in the result, compelled only to see that the assessments are uniform . . . . . it is, I think, notorious that the assessment often bears little relation to the "value" of the property.<sup>73</sup>

It would appear that he considered that the requirement of uniformity predominated over the requirement of correctness, and that this was the policy being implemented.

In Manitoba, as evidenced by the Courts' decisions concerning the City of Winnipeg, there were also conflicting judicial provisions concerning uniformity and correctness.

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In 1934 in Re Phillips Estate the argument for uniformity of assessment and for the consideration of the assessments of other properties was rejected on the ground that no provision for uniformity or equality existed in the Winnipeg Charter. In 1940 however, the Court

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<sup>72</sup> /1944/ 1 W.W.R. 385; 2 D.L.R. 189; /1945/ 2D.L.R. 283.

<sup>73</sup> /1944/ 1 W.W.R. 385, 397, (Underlining added).

<sup>74</sup> /1934/ 1 W.W.R. 449, 457-9.

of Appeal declined to reduce an assessment as no discrimination had been shown, stating

It must be shown that this property is bearing more than its proper share of the present taxes before relief can be given by a Court of Appeal.<sup>75</sup>

The following year, after the Winnipeg Charter was amended by the inclusion of a section permitting Appeal Courts to consider other assessments,<sup>76</sup> the Chief Justice of the Kings Bench extended and qualified the application of the principle of uniformity stating in T. Eaton v. Winnipeg

Where there is doubt or difficulty in ascertaining what the valuation should be on any one property the fundamental principle of equality of taxation between all ratepayers in the municipality is the proper guide and if that condition is arrived at no injustice is done to anyone.<sup>77</sup>

The effect of the section permitting the consideration of other assessments was subsequently described by Mr. Justice Major

I take it this section means that, on all such appeals the principle for the Board and the Courts to follow is that assessments of realty shall bear a fair and just relation to assessments of other property of the same class in the vicinity.<sup>78</sup>

The width of this interpretation and of the decisions in the T. Eaton and McCarthy cases exceeds those relating to a similar enactment in Ontario. 79

<sup>75</sup> Dennistoun J.A. in McCarthy v. City of Winnipeg. [1940] 1 D.L.R. 481, 483.

<sup>76</sup> Section 333 (enacted by 1940. c. 82, s. 8). It was similar to S. 86(2) of the Ontario Assessment Act supra.

<sup>77</sup> McPherson C.J.K.B. in T. Eaton v. Winnipeg. Unreported -- quoted in Curry Investments Ltd. v. Winnipeg [1946] 1 W.W.R. 17, at p. 25 (Underlining added).

<sup>78</sup> Re the City of Winnipeg and the T. Eaton Realty Co. Ltd. [1944] 2 W.W.R. 541, 550.

<sup>79</sup> Supra. pp. 92-93.

In Curry Investments Ltd. v. City of Winnipeg Mr. Justice

Major considered Chief Justice McPherson's words in T. Eaton v. Winnipeg but concluded, quoting an Ontario decision,

I find that the assessor was justified in referring to the assessment of other lands for the purpose only -- to quote the then Mr. Justice Duff in Dreyfus v. Royds case at p. 776 -- "as affording some evidence of the actual value but only for that purpose."<sup>81</sup>

The result of this decision was the same as that of Re Phillips Estate; other assessments were not to be introduced for the purpose of achieving uniformity of assessment. Instead objections were to be made against the assessments of other properties.<sup>82</sup>

### Conclusion

In both England and Canada the Courts have produced conflicting decisions regarding the use to which other assessments may be put and regarding the relative importance of uniformity and correctness.

In England a dichotomy is apparent in the decisions of the High Court and those of the Lands Tribunal. That such a distinction can exist is the result of the provisions which prevent appeals from being made against a rate to Quarter Sessions in cases where relief can be obtained by means of proposals to alter individual assessments;<sup>83</sup>

<sup>80</sup> /1946/ 1 W.W.R. 17.

<sup>81</sup> Ibid., p. 22-23.

<sup>82</sup> Ibid., p. 24.

<sup>83</sup> Local Government Act 1948, 11 and 12 Geo. 6. c. 26. s. 53 and Rating and Valuation (Miscellaneous Provisions) Act 1955 s. 15.

the Court's insistence on the proposal procedure, even where vast numbers of proposals are involved;<sup>84</sup> and the acceptance by the Valuation Officers of the principle of uniformity as between assessments, and their failure to appeal from the Lands Tribunal to the Court of Appeal against this dichotomy.

In Canada the various legislative provisions have resulted in differing interpretations of similar provisions in different provinces and in the same province. Whilst it is apparent that uniformity at the basis of assessment is the objective, it cannot be stated that there is authority for uniformity to the detriment of correctness in the absence of express statutory provisions.

The Statutory provisions themselves may place differing emphases on uniformity and correctness, but they may be differently interpreted in different courts; and their effect may be unpredictable.

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<sup>84</sup> R. v. Paddington V.O. ex parte Peachey Property Corp. Ltd.  
/1964/ 3 All E.R. 200 /1965/ 2 All E.R. 836.

## CHAPTER VI

THE MAINTENANCE OF ASSESSMENT ROLLS

The conflict between correctness and uniformity may exist when an assessment roll, or a portion of it, is not assessed in accordance with the statutory requirements. The departure from those requirements may be the result of a failure to update the assessments on an old roll, the result of incorrect assessments on a new roll, or the result of both. The conflict will arise when a new assessment has to be made, or a revision made of an existing one, and when the level of value adopted in the roll differs from that required by law. The probable consequence of departure from the statutory requirements will be the inequality of treatment of taxpayers.

Once there has been a departure from the legal requirements there are, in practice several courses of action open to the assessor. These alternatives will be examined so as to indicate the desirability of pursuing any one course of action.

The legality of their actions will not be considered since although compliance with the statutory and judicial provisions is of paramount importance -- and it is against this that the actions of the assessor must, in practice be judged -- departures from the statutory

provisions are not uncommon and their consequences must be recognised if any informed decision regarding the improvement of the property tax is to be made.

This decision does not lie with the individual assessor since his function is to assess in accordance with the legal requirements, but lies with the legislature or with someone to whom the legislature has delegated that authority. The adoption of differing practices by the assessors can itself result in individual taxpayers bearing an incorrect burden of the tax.

In evaluating the quality of an assessment roll it should be recognised that the adoption of the real property tax is on the grounds of expediency and practical considerations,<sup>1</sup> and consequently that compliance with the requirements of the legislators is the only criterion by which its efficacy can be judged. We have seen that alternative bases of assessment can be specified by the legislature and upon that choice will depend the distribution of the burden of the tax. The assessment roll can therefore be judged by its success in distributing the burden of the tax in the manner required by the legislature. It is this criterion which will be adopted as a measure of the quality of the assessment roll. Quality will therefore be a function of equality of treatment.

It is the nature of the real property tax that if all properties are subject to the same rate of tax (mill rate), the fraction of

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<sup>1</sup> Supra, p. 22.

the total tax borne by each taxpayer is equal to that portion of the total of the assessment roll that is represented by his assessment. By comparing the distribution of the burden imposed by any one assessment roll with the distribution of the burden imposed by a correct roll,<sup>2</sup> some measure of the quality of the roll can be obtained.

The usefulness of this criterion is limited in practice by the difficulty of establishing the correct assessment for all properties on the roll and the resultant difficulty in evaluating the quality of<sup>3</sup> different assessment rolls.

Between revaluations there are, in general, two classes of action open to the assessors. The correction or amendment of the existing assessments so as to revise the relationships of the tax burdens borne by individuals and classes of taxpayers, and the introduction of new assessments as a consequence of physical change in the property liable to tax. As the assessor has the choice whether to revise the existing assessments, so he has a choice regarding the level of value to be adopted for new assessments. Although these can be independent, complementary practices will be required if equality of treatment is to result.

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<sup>2</sup> See Appendix B.

<sup>3</sup> Whether the measures of assessment quality mentioned in Appendix B could be used to estimate the quality of an assessment roll from a sample is beyond the scope of this dissertation. It has been assumed that the entire roll is available for evaluation. See Ghert op. cit. and James Schwinden "Real Property Assessment Policy and Practice in Minnesota" (Unpublished Ph.D. Dissertation, Dept. of Agriculture, University of Minnesota ) 1961.

The former will only be open to an assessor where the period between revaluations is sufficiently long for changes in the level of value specified by law, to have occurred. Where there have been no such changes, the roll will, in general, be as equitable as when introduced and no alterations should be necessary. This will occur whenever revaluations are made sufficiently frequently, or whenever the law specifies a static level of values (such as historic circumstances and historic values, or an unaltered scheme of values in an assessment manual).

Where a new roll is introduced each year, as in British Columbia, corrections will be made when the new roll is introduced. At that time all properties should be reassessed and the roll should be correct. Any departures from correctness (other than those resulting from the inability to adopt current values) will be the consequence of errors by individual assessors. Examples of possible errors by the assessors are the adoption of an incorrect basis of assessment and the inability to achieve an adequate level of assessment quality. Where the roll is incorrect and the general level of value in any particular class is not the same as that required, the choice of level of value to be adopted for new assessments will remain, though there will be no revision of the roll between revaluations.

It will be necessary to contrast uniformity and equality of treatment, since the former, as defined,<sup>4</sup> says nothing of the relationship that is to exist between the assessments of different classes of property nor of the relationship between properties of the same class which are valued by differing techniques, such as rental evidence and a profits basis,<sup>5</sup> or market evidence and residual valuation methods.<sup>5</sup> Uniformity will not, of itself, produce equality of treatment. Equality is dependent on the specified basis of assessment<sup>6</sup> and it will require assessments to be at a constant percentage of the correct assessment. Uniformity however requires consistent assessing to a basis of assessment that need not be the correct one. It will therefore be necessary to distinguish between practices which result in uniformity alone and those that result in equality of treatment.

A) Unaltered Assessment Rolls.

On the grounds of simplicity and expediency, or in the absence of authority to the contrary, the assessors may leave unaltered the body of the assessment roll between periodic revaluations only making amendments on the introduction of new premises and the alteration of existing ones. General changes in value over the years would be ignored. This practice is not uncommon in England and Wales.<sup>7</sup>

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<sup>4</sup> Supra. Chapter 1, p. 23

<sup>5</sup> Great Britain Parliamentary Debates (Commons) op. cit., DCIII (1959) 1171, Mr. H. Brook; and also DCCXXIX (1966) 1264, Mr. Crossman.

<sup>6</sup> Supra, Chapter 1.

<sup>7</sup> Supra, p. 65 and see also, The Royal Institution of Chartered Surveyors' "Report on Rating" (London: The Institution, 1966) para. 52, reported in Rating and Valuation Reporter VI (April 1966) p. 280.

Over the life of such an assessment roll the correct values of the properties on it may increase or decrease. The changes may take place at different rates and in relation to each other the changes in value may be substantial. The more substantial are the changes the poorer will be the quality of the assessment roll since the burden imposed on individual taxpayers will vary to a greater extent from that imposed by a correct roll.

When a new or altered building falls to be assessed the assessor is required to assess it in accordance with the statutory basis of assessment. Such an assessment would not necessarily improve the quality of the assessment roll. The total effect on the quality of the roll will be made up of two parts, the correction of the relevant assessment and the resulting shift in the tax burden between that property and the others on the roll. If one assessment is increased both the total of all assessments and the burden carried by the property concerned, will increase. Consequently the amount of tax levied from all other properties on the roll will be reduced in proportion to the size of their assessment. It is uncertain whether the net result of these two forces will be an increase or decrease in the quality of the assessment roll. This can be seen from the following hypothetical example.

In a situation where each assessment is half the correct figure<sup>8</sup> the distribution of the burden will be correct. However if one

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<sup>8</sup> i.e. Each assessment on the roll is only half the figure that should have been entered. It is not the same situation as that required in British Columbia whereby assessed value is half 'actual value.' In such a case the correct assessment would be half 'actual value'.

assessment departs from that fraction, inequality will result. Thus in Table III a hypothetical roll is presumed where five of the six properties are assessed at half the correct figure, the sixth(F) is assessed at seventy-five percent of the correct figure. Columns (ii) and (iv) indicate the correct and actual burdens of taxation borne by each property, taken to four places of decimals. The inequality resulting from the sixth assessment appears in columns (v) and (vi), the latter showing the deviation as a fraction of the correct assessment. The similarity of the figures for properties A, B, C, D, E indicates that the reduction in the burden resulting from F's overassessment has been apportioned between the other properties in proportion to the size of their assessments.

Columns (vii),(viii), (ix) and (x) indicate the results of correcting assessment F. Although in both cases properties A, B, C, D, and E are affected in the same manner and by the same proportion as each other, the result of the correction has been to shift the burden of taxation between them and property F.

By the measures mentioned in Appendix B, the effect of correcting assessment F has been a decrease in the quality of the roll.

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<sup>9</sup> According to the measure  $\sum \sqrt{|x_i - y_i|} / \sqrt{y_i}$ , the roll has deteriorated, since its value has increased from 0.9375 to 1.6666. Similarly if the measure  $\sum \sqrt{(x_i - y_i)^2} / \sqrt{y_i}$  is employed. The first roll has a value of 0.0391 whilst the second has a value of 0.1234.

TABLE III

THE EFFECT OF CORRECTING A SINGLE ASSESSMENT ON A HYPOTHETICAL ROLL

Property	Correct Roll		Actual Roll				Corrected Roll			
	Assessment	Burden (yi)	Assessment	Burden (xi)	$\frac{ xi-yi }{ (iv)-(ii) }$	$\frac{ xi-yi }{\frac{yi}{(v)(ii)}}$	Assessment	Burden (Xi)	$\frac{ Xi-yi }{ (viii)-(ii) }$	$\frac{ Xi-yi }{\frac{yi}{(ix)(ii)}}$
	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)
	\$ .000		\$ .000				\$ .000			
A	4	.0476	2	.0417	.0059	.1250	2	.0370	.0106	.2222
B	8	.0952	4	.0833	.0119	.1250	4	.0741	.0212*	.2222
C	12	.1429	6	.1250	.0179	.1250	6	.1111	.0317*	.2222
D	16	.1905	8	.1667	.0238	.1250	8	.1481	.0423*	.2222
E	20	.2381	10	.2083	.0298	.1250	10	.1851	.0529*	.2222
F	24	.2857	18	.3750	.0893	.3125	24	.4444	.1587	.5556
	84	1.0000	48	1.0000	<u>.1786</u>		54	.9998	<u>.3174</u>	

\* Apparent error caused by rounding.

A situation can be imagined however, in which the correction of one assessment reduces the discrepancy between the actual burden carried and the correct burden and results in an improvement in the quality of the roll.<sup>10</sup>

One problem to be solved by an assessor who wishes to introduce into the roll assessments that are uniform with existing assessments will be whether to consider changes in circumstances occurring since the introduction of comparable assessments. Examples of such changes are increases or decreases in the popularity of a neighbourhood or class of accommodation; improvement in the amenities of a district etc. To consider those changes, whilst adopting the levels of value in the assessment roll<sup>11</sup> will result in indiscriminate gains and losses where the changes are not considered in the existing assessments. There will then be two, or more, bases of assessment in effect. The first, the original basis of assessment, historic circumstances and historic values, will apply to unaltered assessments, whilst the second, current circumstances and historic values will apply to new and revised assessments. The roll will therefore not be uniform.

If the assessor wishes to reduce the size of those indiscriminate gains and losses and produce uniformity he can either revise

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<sup>10</sup> It should be noted that we are here concerned with replacing the actual assessment with the correct one. It should be contrasted with the policy of introducing the assessment at a figure at which the burden of tax borne is the same as under a correct roll.

<sup>11</sup> The situation required by the tone of the list provisions of the Local Government Act 1966 c. 42. S. 17. See Appendix A.

the assessment roll to the extent that all those premises affected by the changed circumstances are revalued to accord with the new assessment, or he could assume the conditions that existed when the list was made when assessing the new or altered property. In the former case equality of treatment might exist within the classes of property that were reassessed since if all changed circumstances were considered, the individual properties might be carrying the same fraction of the tax burden borne by that class of property as under a correct roll, even if assessed at a different level of value. However it is unlikely that equality of treatment would also prevail as between different classes of property; since revisions would only occur when a new assessment had to be made. For certain classes of property no new assessments might be needed and consequently no revision would take place. For other classes the revisions may occur at different times and consequently different circumstances would be presumed. Therefore although uniformity would exist within each class, different bases of assessment would be in existence; and so, the relationships between classes of property would not represent the correct relationships.

Consequently it cannot be assumed that the properties within the reassessed class would be bearing the same burden of tax as under a correct list since that would only occur where the class of property (in total) was bearing the same percentage of the total tax burden as

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<sup>12</sup> i.e. Those existing in a correct assessment roll.

under a correct valuation list. This situation would be fortuitous where incorrect relationships exist between classes of property.

To the assessor who wishes to achieve equality of treatment on the introduction of new assessments there are two alternatives. Firstly he can subject the assessment roll to the tests mentioned in the Appendix B and from them, by trial and error determine the assessment which will yield the best distribution of the burden of the tax throughout the roll. However, to run the tests he would require the knowledge of the correct assessments, and given this information the correction of the roll must be presumed.

Alternatively he may assess each new premises at the same percentage of the correct assessment as that at which the existing premises are assessed. Where all assessments on the roll are at the same proportion of the correct assessment, equality will result. Where this is not the case, the adoption of the average percentage (the total of the actual roll, times one hundred, divided by the total of the correct roll) will result in the new property bearing the correct burden of the total tax.

It may be that by adopting a specific percentage of the correct assessment the assessor can achieve equality within the class of

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<sup>13</sup> If we multiply all assessments in the roll by the reciprocal of that percentage, both the total of the roll and the assessment of the new property will be at their correct levels.

property to which the new assessment belongs; or at least the bearing by the new property of the correct portion of the tax borne by the class. However it will only bear the correct burden of the total tax when the total of the class bears the correct relationship to the total of the roll.

In practice the calculation of the average percentage of the correct assessments adopted throughout the roll or merely within one class will be severely hampered by the requirement of the knowledge of correct assessments. Given this knowledge the correction of the roll must again be presumed.

In adopting levels of value for new assessments the assessor is not restricted to attempting to achieve equality or uniformity but can use other levels of value. In view of the conflict between the requirement of correctness and that of uniformity he may enter new assessments at a level of value between that used in the roll and the correct level of value.

Such a practice will prevent the objections which might be made by other taxpayers against a new assessment made on the same basis as their own when they consider the newer property to be more valuable; whilst reliance on the statutory and judicial provisions may defeat an objection by the owner of the revalued property based on the ground that he ought to be assessed at the same level as the existing assessments. Since it is possible for a correction of a uniform assessment

to reduce the quality of the roll, the adoption of an intermediate level for a new assessment can improve or reduce the quality of the roll.

B) Pro Rata Increases in Assessment.

To allow for changes since the introduction of the roll the assessors may make percentage increases to all assessments on the roll. 14  
Where changes other than changes in the value of money have occurred, so that relative values have altered, there will be inequality of treatment.

If only the value of money has altered the roll will not, prior to correction, be less equitable than when it was created since the burden on each property will not have altered. Consequently the uniform increase of assessments will correct each assessment but will not improve the quality of the roll.

If during the life of the roll, the values of properties have altered relative to each other, the roll will be of less than perfect quality. The uniform increase of each assessment will then leave un-  
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altered the burden borne by each property, and consequently will make no difference to the quality of the roll. The same considerations

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<sup>14</sup> E.G. Norwich Rating Authority v. Norwich A.C. [1941] 2 K.B. 326 and see the Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick, op. cit., p. 229.

<sup>15</sup> See Appendix D.

could therefore apply to such a roll as were applicable to an unaltered roll.

C) Revised Assessment Rolls.

In addition to leaving the body of the roll unaltered between revaluations and increasing the assessments by a uniform amount the assessor can endeavour to obtain equality of treatment by revising the assessment roll.

Where the revision transforms the roll into a correct one, equality will result and will continue until there is a relative change in values as between properties on the roll.

The assessor may attempt to achieve equality of treatment by revising assessments to allow for changes in circumstances but with reference to the original level of values. Equality of treatment will then exist when all assessments are a constant percentage of the correct figure. This will occur when all the changes in value, other than uniform shifts of all value figures resulting from a change in the value of money, are due to the changed circumstances considered by the assessor. In all other cases the roll would fail to alter over time in exactly the same way as the correct roll would change and inequality will be the consequence.

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<sup>16</sup> The actual amount of the movements is not here important but rather their direction and size relative to the original assessment.

Where changes in circumstances affecting the property of a particular class are recognised and adequate alterations made, equality of treatment within that class will exist, but the properties will only carry their correct burdens where the total of the assessments in the class bears the correct relationship to the total of all assessments on the roll. If the properties within a class do not bear the correct relationship to each other and if the total of assessments in that class does not bear the correct relationship to the total of all the assessments, the bearing of the correct burden by any of the properties in that class will be fortuitous.

It is considered that the achievement of equality of treatment within a class or property is more likely than the achievement of equality between classes, particularly where the assessments are not made with reference to current market values. On appeal, comparisons between assessments will be restricted to properties of the same class and this will emphasise the achievement of equality within classes in contrast to equality between classes.

In revising the assessment roll to allow for changes in circumstances the assessor will be confronted by a number of tests of his judgement and these and their severity ought to be recognised before such a course of action is adopted.

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<sup>17</sup> Re Appeals of Shell Oil Co. of Canada Ltd. and Standard Oil Co. of B.C. (1962) 38. W.W.R. 695; 33 D.L.R. (2d) 443.; Markham and Markham v. Blake. (V.O.) and Hendon Corp. (1953) 46. R. and I.T. 203, Hallifax v. Jackson. (1953) 46 R. and I.T. 214.

D) Problems Connected with the Revision of An Assessment Roll.1) Timing

Given the decision to make alterations to the assessment roll, the assessor must determine when to revise existing assessments. Since the aim is to achieve equality, the assessment roll should be revised whenever it becomes less than perfect. For this purpose, where the statutory basis of assessment is related to current circumstances, changes in values must be identified, since a departure of the assessments from the specified basis of assessment will result in inequality within the roll. In a dynamic economy circumstances affecting property values will be constantly changing and criteria can be established in order to determine when revision is necessary.

Periodic revaluations are feasible, and different periods of time between revaluations have been considered appropriate in different jurisdictions. <sup>18</sup> The optimal period will depend on the speed at which values change, and its consistency. It should also, in practice, be weighed against the minimum quality permissible and the facilities available for revision. Generally, the faster values change relative

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<sup>18</sup> Report of the Royal Commission on Finance and Municipal Taxation in New Brunswick, op. cit., p. 229; Report of the Royal Commission on Taxation (Regina: Government of the Province of Saskatchewan, 1965) para. 6:36; Report of the Manitoba Royal Commission on Local Government Organisation and Finance. (Winnipeg: The Queen's Printer, 1964), pp. 121-122.

to each other, the shorter should be the period between revaluations if a certain quality is to be maintained in the roll. The lower the permissible quality the longer can be the period, but if a high quality is required a short period between revaluations may be necessary if changes in values are likely to be spasmodic and severe. The minimum quality required, like the establishment of the tax base and basis of assessment, depends on political considerations. Generally, the greater the number of revaluations the larger need be the assessing machinery and consequently the greater its cost. This cost must be weighed against the quality required and the balance must be determined by the exercise of a value judgement.

It should be noted that revaluation requires the consideration of the value of all properties on the roll, even if it is decided that there has been no change in value. The reintroduction of an old roll without such consideration will not constitute a revaluation but rather the prolonging of an existing roll.

Revisions of the roll may be made when attention is drawn to discrepancies and changes in values by taxpayers who wish to object to particular assessments. Such a practice, except where appropriate to single assessments, is unsatisfactory. It leaves with the taxpayers the duty of ensuring that changes in values do not go unreflected in the roll. Since taxpayers are unlikely to object to their own assessments when they are too low; since by so doing they will increase their own tax bill; it will be left to them to protest their own overassessment

and others' underassessment. The latter is hardly likely to promote good neighbourliness and it is considered (and this is a value judgement) undesirable in existing Western Societies. It is possible that taxpayers objecting against other assessments will find their appeal defeated and their own assessment raised. Where this is so the willingness to appeal against other assessments will disappear and objections will be limited to cases of overassessment of the objector's premises, thereby permitting the roll to deteriorate.

Under our definitions uniformity is concerned with the relationship between assessments, since it requires that the assessments are made with reference to values current at a common date, and implicitly, to a common basis of assessment. The date and basis of assessment are not specified however, and only the similar treatment of comparable properties is material. Equality is however, concerned with the relationship between the existing assessments and the correct assessments. To leave with the taxpayers the duty of indicating changes in value may result in inequality going uncorrected because superficially uniformity is apparent. Further, inequality resulting from discrimination between classes of property is less likely to appear as a ground for an appeal than discrimination between properties of the same class.

The correction of existing assessments may be left to the point where inequality is apparent to the assessor. The success of this practice will, however, depend on the quality of the assessment machinery

since, without a regular check on the quality of the roll discrepancies may not be apparent until severe inequality has resulted. Where market value is the basis of assessment, market transactions will provide a check on the assessments. Some classes of property rarely change hands on the market, however, and for these periodic revaluations will be necessary. Where some other basis of assessment is adopted, the assessments can only be checked by periodic or occasional revaluations.

## 2) Extent of Revision

Once the need for revision has been ascertained the extent of the revision must be determined. It will be necessary to establish the properties whose values have changed sufficiently since the introduction of the roll to require revision. If this is to be done correctly each property ought be revalued and the correct and actual assessments compared. Such a course of action would however be impracticable since it would mean, in effect, a revaluation of the entire roll.

Instead, the assessor may establish, possibly through sampling techniques, those classes of property which require reassessment. Where a class of property is defined as those properties whose values are affected by the same forces, each of the changed circumstances which result in changes in values, will affect the values of all properties in the class. Consequently if it is seen that the value of one property in a class has changed significantly it must be apparent that there has been a change in the factors affecting the value of that and other properties in the class. Whether the other properties have been affec-

ted significantly cannot be predicted since value results from the interaction of many forces and their net effect may be different for different properties of a particular class.

Thus the assessor should revalue all the properties in a class affected by changed circumstances. The delineation of the various classes will however, be a matter of judgement. Residential, industrial, and commercial property clearly occupy separate classes but there will be different categories of each. Separate markets (albeit interconnected) exist, for example for house and apartment accommodation and consequently they form separate classes. Similarly single family suburban accommodation can possibly be contrasted with down-town accommodation. Even within a single area, properties of a similar type may be subject to differing competitive forces and therefore belong to different classes. Municipal dwellings whose allocation is at the will of the municipality may form a separate class to identical privately owned dwellings in the same area. In particular cases a class may consist of a single property.

The classification of properties will depend on the assessor's understanding of the forces at work in the market and on his ability to establish classes of property that are effected by the same market forces. The effect of misclassification may be the failure to revise a number of incorrect assessments because of their inclusion in a class which is considered to be of adequate quality; and consequently the obtaining of a lesser quality of roll than was desired.

The simultaneous revision of all the assessments in a class is desirable as partial revision will provide an opportunity for taxpayers to challenge the new assessments on the grounds of lack of uniformity. If they are successful the consequence will be inequality whilst if they are not, there will be dissatisfaction with the fairness of the roll.

The problem of classification will also arise when the assessor attempts to bring new assessments onto the roll at the "tone of the list".

The decision whether a class of property requires revision will depend on the size of the change in values since the introduction of the roll, and will be considered in the light of the political considerations mentioned above.

### 3) Establishment of new assessments.

Once the assessor has decided which properties require new assessments he must determine the level of value to be adopted.<sup>19</sup> Where the other properties are not assessed correctly, the adoption of correct assessments may result in inequality of treatment.

The class of property being reassessed will, in total, bear the correct burden of the tax when its total bears the correct relation-

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<sup>19</sup> According to law this problem should often not arise since the assessor is required to adopt current values in accordance with the basis of assessment. However, we are here concerned with the practical, not legal, considerations.

ship to the total of the roll. The burden of that portion of the tax will be correctly distributed when each assessment bears the correct relationship to the others in the class. Hence each property in the class will bear the correct burden of the tax when its assessment bears the correct relationship to the total of the roll. This will occur when the property is assessed at the same percentage of the correct assessment as the average percentage adopted throughout the roll.

To enter the new assessments at their correct figures would only mean that their burdens were correct where the sum of all existing assessments equals the sum of the appropriate assessments on a correct roll, though this may be achieved by the over assessment of some properties and the under assessment of others.

The effect on the quality of the roll will be dependent on the change in the burdens borne by the reassessed properties and the transference of burden between them and the other properties on the roll. It would appear that where the burdens borne by the reassessed properties lie closer to the correct burden than previously, the quality of the roll will be improved. This will result in two ways. Firstly the reassessed burdens lying closer to the correct burdens will tend to improve the quality of the roll. Secondly, where the reassessed class is the larger part (in dollar value) of the roll, their improvement will tend to improve the burdens of the rest of the roll, since the total burden must equal unity, and the improvement of one half must, on the average

tend to improve the other half. However, where the class represents a small part of the roll it would seem that there is a possibility of the shift in burden aggravating the inequality of other assessments, and thereby reducing the quality of the roll. In fact, the effect of the shifted burden, apportioned amongst the other assessments, will tend to be outweighed by the improvement in the correct class.

E) British Columbia.

Generally in British Columbia, a new assessment roll must be deposited every year <sup>20</sup> and consequently there is no opportunity or need to revise the roll between revaluations. However, where the roll is of an unsatisfactory quality <sup>21</sup> a choice may exist between the achievement of uniformity of assessment with comparable properties of the same class, and the making of a correct assessment. This will occur whenever the level of values, or the basis of assessment adopted by the assessor, differs from those specified. Where the assessor has, in general, adopted the correct level of value but, as a result of an imperfect assessing machine, individual assessments are incorrect, the conflict will not exist. In this case, uniformity (the assessing in accordance

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<sup>20</sup> Assessment Equalization Act R.S.B.C. 1960 c. 18. s. 38(1); Municipal Act R.S.B.C. 1960. c. 255 s. 343(1), G.f. s. 365.

<sup>21</sup> Moore, Guttman and White. op. cit., p. 142.

with the general level of values throughout the roll, or the general level of value within the class) will be the same as correctness. To identify this situation will require the identification of the general level of values from a series of inaccurate assessments.

When a new assessment is made correctly, the premises will only be bearing the correct burden of taxation where the total of the assessments on the roll is the same as the total of the correct roll. Where the totals are not the same, the new property will be bearing the correct burden where the average percentage of the correct assessment is adopted.

For school purposes (and if so decided, for general rate purposes), the assessor is limited to increasing any assessment by a maximum of five per-cent in one year, except where physical alterations have taken place.<sup>22</sup> This provision may result in arbitrary benefits and losses for certain taxpayers. Property values can change (both upward and downward) by more than 5% in any one year and this provision will benefit those whose property had increased in value by more than 5%, whilst it will not limit the saving experienced by those whose properties have decreased in value by a similar percentage. Furthermore, it will benefit the owner of existing premises, but not the owner of new premises. Thus if a house increased in value by ten per-cent in one year as a result

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<sup>22</sup> Assessment Equalization Act R.S.B.C. 1960. c. 18 s. 37A. (enacted by 1966 c. 45 s. 3.), and see, Municipal Act R.S.B.C. 1960. c. 255 s. 339(2). Another exception is where the Assessment Commissioner has ordered a revaluation.

of a shift in demand, and if during the year an identical house were built nearby, the latter should be assessed at half its "actual value" whilst the former should be about five per-cent below that figure. Where a particular class of landowner receives such favourable treatment the appropriate burden is borne by all other real property-taxpayers.

These provisions form part of the basis of assessment and as such must be followed by the assessors. However, it is possible that some assessors, recognising the anomalies involved, may endeavour to limit all assessment increases (and possibly decreases,) to a similar percentage and to assess all new premises at the same level of value as existing premises. Such a course of action would result in tone of the list assessments, and would introduce the conflict between uniformity and correctness. In this case, correctness would be the entry of new premises, and those whose value had declined, at their "actual value" (assessed value being one half "actual value"), whilst uniformity would be the limiting of the figures to those appropriate to existing premises and to 95% of the previous assessment, respectively.

The factors considered earlier would then be appropriate to this conflict between uniformity and correctness.

### Summary

In this Chapter we have examined the practical difficulties and alternatives facing an assessor whose assessment roll departs from the judicial and statutory requirements. Generally, two questions arise;

how to assess new and altered premises? and whether to amend the assessments between full scale revaluations, in order to adjust for changes in value? They were discussed in that order.

It was shown that some indication of the quality of an assessment roll can be obtained by examining the distribution of the tax burden under the actual and correct rolls.<sup>23</sup> Possible measures were indicated though their usefulness under all situations was not investigated. They required the knowledge of the correct assessments and consequently have only limited application, particularly as their validity with regard to sampling techniques and estimations was not established.

In examining the question regarding the introduction of new assessments, three practices concerning the amendment of assessment rolls were considered. They were the maintenance of the original roll without alteration; its percentage increase and its revision to adjust for changes in values. It was with regard to the last that the problems inherent in the maintenance of assessment rolls were discussed. These were particularly, the timing of any adjustments, the extent of the alterations to be made and the establishment of the level of value to be adopted in order to produce equality of treatment.

It can be seen that equality and uniformity<sup>24</sup> are different and

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<sup>23</sup> See Appendix B.

<sup>24</sup> According to our definitions, Q.v.

it was shown that the introduction of a correct assessment into a roll can in certain circumstances, reduce its equality. Under other circumstances it may improve the quality of the roll.

In view of the inability to forecast accurately the effect of any particular course of action, no definite conclusions could be drawn but it was noted that (1) the choice between the four measures will be based on a value judgement; (2) political considerations are involved in the assessors' decisions regarding the quality of roll to be maintained; (3) the alteration of existing assessments so as to bring the burden borne by those properties closer to the correct burden is likely to improve the quality of the assessment roll.

## CHAPTER VII

CONCLUSIONS

The problems connected with the use of 'tone of the list' assessments as encountered in the United Kingdom between 1950 and 1956 can still exist both there and in Canada. Wherever the general levels of values in the assessment roll differ from those required by law either as the result of an inadequate definition of the basis of assessment, or as the result of an inadequate assessing machine, the assessor, when making new assessments may be faced with a choice between achieving correctness or uniformity. Wherever the level of value required by law to be adopted, changes between revaluations, he may also have a choice concerning the maintenance of the roll between revaluations.

Clearly the assessor is required to assess all properties in accordance with the legal provisions. However, where the statutory and judicial provisions conflict, or where the basis of assessment is inadequately defined, so that it cannot be unequivocally established, the identification of the correct assessment will be difficult. Its identification is a legal problem and should not be left to the assessors since they are not equipped to resolve a conflict between differing legal provisions. The assessors, who must implement those provisions however, may be required to identify and explain the conflicts. Until

the conflicts are resolved the assessors will be forced to interpret the provisions in order to produce new assessments. Their interpretations should however be consistent as between assessors, and between different classes of property, if the confidence of the taxpayers in the fairness of the roll is to be maintained.

If, when the conflict is resolved and the basis of assessment established, there is a difference between the correct basis of assessment and that previously adopted by the assessor, then the choice between correctness and uniformity will arise until a new roll is introduced.

In some cases, where uniformity of assessment is part of the basis of assessment no conflict will exist since there uniformity and correctness are synonymous. However in other cases the provisions relating to uniformity will be supplementary to the legal basis of assessment, and it is there that a conflict may arise. As in the situation where there are differing provisions relating to the basis of assessment, the conflict must be resolved by the judiciary with the aid of assessors and real estate experts.

As we have seen there are both statutory and judicial authorities for uniformity of assessment. The former may be interpreted differently in different jurisdictions and even within a single jurisdiction

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<sup>1</sup> See for example, Assessment Act R.S.N.S. 1954 c. 15. s. 18. rule 2 (recast 1966 c.3. s.38.).

the courts may place differing interpretations on the relative importance of uniformity and correctness.

The use of the real property tax is dependent on practical considerations and hence no fundamental principle of taxation can be called in aid to determine which should predominate. Instead we are restricted to consideration of the intentions of the legislature, as expressed by statute, and to their judicial interpretation. No universal solution is feasible as in each jurisdiction the basis of assessment may be different; the quality of its definition may differ; and the legal provisions relating to uniform assessments may vary. Furthermore the current judicial authorities on the relative importance of correctness and uniformity in different jurisdictions may contradict one another. In addition, the principles and practices adopted in each area will have been affected by the earlier provisions. These may differ as between different jurisdictions and may in time have been repealed.

Since no universal solution is feasible the conflict between uniformity and correctness must be separately resolved in each jurisdiction.

In addition to uniformity and correctness, equality of treatment should be considered when assessing on a roll on which the levels of value differ from those required by law. We have seen that equality of treatment is the objective for which the assessor should strive; but that under certain conditions the correct assessment of new pre-

mises may reduce the quality of the roll. Under other circumstances it may improve the quality of the roll. Only where all premises are correctly assessed will correctness, uniformity and equality be synonymous. If all assessments are a constant percentage of the correct figure correctness will differ from uniformity and equality.

We have seen that the concept of equality of treatment provides us with criteria by which to compare the quality of different assessment rolls. It also provides us with a policy that can be employed for introduction of new assessments onto the roll.

Clearly all taxpayers should be treated in the same way and the taxpayer whose premises are altered or who appeals against his assessment should not be penalised. He will be treated correctly if the tax burden he bears is the same as that which he would have borne if all properties were correctly assessed. This situation will result where his assessment is at the same percentage of the correct assessment as the average percentage adopted for all assessments on the roll.<sup>2</sup> At the same time the quality of the roll generally will tend to be improved.

Alternatively, the new assessment may be at the average percentage adopted for assessments of properties of the same class as

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<sup>2</sup> Supra, p. 113.

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that being introduced, in which case less equality of treatment is likely to result than if the overall percentage is adopted.

The implementation of such a course of action is dependent on the knowledge of the total of the correct assessments of all properties on the roll. This is unlikely; but it may be possible to estimate this figure by means of sampling techniques.

Legally, this policy has little to recommend it. The new assessment would be neither correct nor uniform; as the latter was understood in the Lands Tribunal,<sup>4</sup> and would be open to attack on both grounds. It is likely that the use of the average percentage appropriate for that class of property alone would result in an assessment with a greater appearance of uniformity than would the use of the overall average percentage, since the consideration of the percentage of the correct assessment adopted for other classes would bring the new assessment away from the level of values adopted in the appropriate class.

Although the new assessment may in some cases give the appearance of uniformity, the method by which it was obtained may not be acceptable to the Courts. Whether the expression "fair and just relation to the value at which other land and improvements are assessed"<sup>5</sup>

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<sup>3</sup> Supra, pp. 113-114.

<sup>4</sup> See also Pearce v. City of New Westminster. (1958) Stated Cases, op. cit., p. 49.

<sup>5</sup> Assessment Equalization Act R.S.B.C. 1960 c. 18. s. 46(1). (as amended by 1961 c.3 s.6).

would be applicable to such an assessment must be argued before the Courts, but it may permit the admission of such assessments.

We consequently have a situation whereby the assessor when entering a new or altered property on the roll can in some cases, select one of three assessments for each property.<sup>6</sup> Two can generally be defended with some validity before the Courts whilst the third, having no legal authority, creates the situation required by the law. The existence of such a choice is the result of the adoption of levels of values different from those required by the legal provisions. It is an indication of the inability to administer the real property tax satisfactorily.

It is a fundamental principle of taxation that the tax liability be certain and not be at the discretion of the tax gatherer.<sup>7</sup> The existence of the choices open to the assessor indicates that this canon of taxation is not being obeyed. It may be that the basis of assessment specified cannot be satisfactorily implemented because of the difficulty of establishing the required figures of value, or

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<sup>6</sup> Even in British Columbia, where there is little evidence of the general use of an incorrect basis of assessment, the conflict between uniformity and correctness can arise from incorrect assessing techniques. The tendency to overassess less valuable property relative to the more valuable, may, at both ends of the scale of value, result in a distinction between uniform and correct assessments.

<sup>7</sup> Adam Smith, op. cit., p. 778.

because of the work involved compared with the facilities available. However, the tax is adopted because of practical considerations and the basis of assessment is selected to produce the required distribution of the tax burden. If the basis of assessment specified is difficult to ascertain (or by its nature is open to a wide margin of error when estimated); or if the basis of assessment requires a large assessing machine to maintain up to date assessments; then these practical considerations must be weighed against those which make the real property tax desirable. Adam Smith's fourth canon of taxation, regarding the cost of tax collection must be kept in mind.

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Where a specified distribution of the tax burden is required, and where that cannot be satisfactorily achieved by the real property tax except at great expense, alternative sources of revenue must be considered.

Where a cheap, local tax is required but a specified distribution of the burden is not essential, a more satisfactory course of action might be the adoption of a basis of assessment that is relatively easy to establish and maintain. In either case the decision will be dependent on political considerations. The same factors should then determine the relationship between the quality of the rolls and the cost of assessments once that decision has been made.

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<sup>8</sup> i.e. Formal incidence of the tax. As mentioned earlier, the effective incidence is indeterminate.

If the assessor's departure from the legal requirements is the result of an ambiguous definition of the basis of assessment or conflicting statutory or judicial provisions, the solution lies with the legislature. If however it is the fault of the assessment machine, the solution is in the hands of the Administration. In each case the taxpayers' elected representatives may be required to draw the conflicts to the attention of the Legislature or Administration.

#### Further Study

In this paper, which has been concerned with the problems inherent in the assessor's departure from the legal provisions and in particular the conflict between correctness and uniformity, certain problems have become apparent which, whilst beyond the scope of this study, are worthy of attention.

Where the assessor has departed from the legal requirements, the departure will be apparent. However, the identification of the basis of assessment he has adopted will not be so apparent, particularly as some error in assessing can be anticipated. Either the basis of assessment, or the "tone" of the list on its own, must be established if tone of the list or uniform assessments are to be introduced and verified by the taxpayer. The problem is the need to identify those assessments which accurately reflect the level of value adopted in the roll, coupled with the desire to express that level of value in a form which can be used for future assessments.

In dealing with the criteria by which the quality of an assessment roll can be judged only limited consideration was paid to the relative merits of the measures contained in Appendix B. It is felt that a better measure might be developed out of these, particularly one that is amenable to statistical techniques. Such a measure would be useful as it might permit estimations of assessment roll quality to be made from only a sample of the properties on the roll. From such a measure, or from a similar one, it may be possible to estimate the total of the correct assessment roll from a sample of the actual existing roll. Unless such a figure is available the policy proposed in this Chapter cannot be implemented.

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## APPENDICES

## APPENDIX A

## LOCAL GOVERNMENT ACT 1966, c. 42

(Halsbury's Statutes (2nd Edn.)--Interim Service)

17. Valuation according to tone of list.--(1) For the purposes of any alteration of a valuation list to be made in respect of a hereditament in pursuance of a proposal served on or made by the valuation officer after the passing of this Act, the value or altered value to be ascribed to the hereditament shall not exceed the value which would have been ascribed thereto in that list if the hereditament had been subsisting throughout the year before that in which the valuation list came into force, on the assumptions that at the time by reference to which that value would have been ascertained --

- (a) the hereditament was in the same state as at the time of valuation and any relevant factors (as defined by subsection (2) of this section) were those subsisting at the last-mentioned time; and
- (b) the locality in which the hereditament is situated was in the same state, so far as concerns the other premises situated in that locality and the occupation and use of those premises, the transport services and other facilities available in the locality, and other matters affecting the amenities of the locality, as at the time of valuation.

(2) In this section --

"relevant factors" means any of the following, so far as material to the valuation of a hereditament, namely the mode or category of occupation of the hereditament, the quantity of minerals or other substances in or extracted from the hereditament or, in the case of a public house, the volume of trade or business carried on at the hereditament; and

"public house" means a hereditament being or comprising premises licensed for the sale of intoxicating liquor for consumption on the premises where the sale of such liquor is, or is apart from any other trade or business ancillary or incidental to it, the only trade or business carried on at the hereditament.

(3) References in this section to the time of valuation are references to the time by reference to which the valuation of a hereditament would have fallen to be ascertained if this section had not been enacted.

(4) This section does not apply to a hereditament which is occupied by a public utility undertaking and of which the value falls to be ascertained by reference to the profits of the undertaking carried on therein.

## APPENDIX B

As defined, the quality of an assessment roll is a function of equality of treatment, and equality of treatment is achieved when the distribution of the tax burden is the same as that resulting from a correct assessment roll. Consequently any measure of assessment roll quality must indicate the proximity of the distribution of the tax burden resulting from an actual roll to that resulting from a correct roll.

For each property, the burden of the tax can be calculated by dividing the assessment by the total of all properties on the roll. The "true" burden will be found by dividing the appropriate correct assessment by the total of the correct roll, whilst the "actual" burden can be determined by dividing the actual assessment by the total of the actual roll.

Algebraically, if the actual roll comprises  $n$  assessments  $a_i$  ( $i = 1, 2, 3, \dots, n$ ), and if the correct roll comprises  $n$  assessments  $c_i$  ( $i = 1, 2, 3, \dots, n$ ), then for any property ( $j$ ), the true burden may be calculated thus:  $y_j = \frac{c_j}{\sum c_i}$  and the actual burden,  $x_j = \frac{a_j}{\sum a_i}$ . For the roll in general the true and actual burdens will be represented by  $y_i$  and  $x_i$  ( $i = 1, 2, 3, \dots, n$ ) respectively.

These calculations are however dependent on the knowledge of the actual assessment, the appropriate correct assessment and of the

total of the correct roll. Since we are presuming that the whole roll is available for evaluation, it is assumed that all the correct assessments are known.

The simplest measure of the quality of the roll is the sum of the absolute differences between the correct burdens and the actual burdens. Alternatively the sum of the squares of the actual differences may be employed. Algebraically they may be expressed as  $\sum_{i=1}^n |x_i - y_i|$  and  $\sum_{i=1}^n (x_i - y_i)^2$ . The smaller are the measures the better is the quality of the roll. Both of these measures sum the differences between the two distributions, though for the former absolute values are used, whilst for the latter, the differences are squared to remove the sign. Consequently greater weight is given to the larger deviations in the latter measure.

The choice between these two measures will then depend on the weight to be accorded to the larger deviations compared with the smaller. It will be a value judgement.

It is considered that a better measure than those mentioned, is one that reflects the deviations as fractions or percentages of the correct assessments. One such measure is:  $\sum_{i=1}^n \frac{|x_i - y_i|}{y_i}$ . This measure reflects both the relative over (or under) assessment of each property and also, through the size of the  $y_i$ 's, the relative importance of each assessment to the roll. The sums of the  $x_i$  and  $y_i$  will both be

equal to 1, and consequently the size of each  $x_i$  and  $y_i$  will depend on the number and size of the assessments on the roll, and also on the size of each correct and actual assessment when compared against the total size of the correct and actual rolls. An alternative expression of this concept is  $\sum_{i=1}^n \frac{(x_i - y_i)^2}{y_i}$ . As before, the smaller is the value of these measures the better is the quality of the roll.

In the second measure however, the numerator is squared to remove the sign, and the effect is to give more weight to the larger differences particularly when they are a greater percentage of the correct burden. As before, the choice between these two measures, and between them and the two measures mentioned previously, will be based on a value judgement.

It should be noted that although the latter two measures indicate the inequality of the assessment roll by summing percentage deviations, they are not themselves percentages, but are merely measures enabling a comparison to be made between different rolls.

Since we are concerned with the goodness-of-fit of the two distributions, it might be considered that correlation analysis or chi-square analysis could be used. However they appear to be unsuitable in these circumstances.

The coefficient of correlation indicates the amount of the total variance of the data that is explained by a trend line. Although a trend line representing a correct roll can be produced, (it is a 45°

line on a scatter diagram where the axes, true burden and actual burden, have the same scale), consideration of the total variance within the distribution of 'actual burdens', renders the coefficient of correlation an unsatisfactory measure since the quality of a roll is dependent on the proximity of the  $x_i$  to the  $y_i$  and not to the mean.

Similarly as the chi-square analysis is intended to examine the goodness of fit of frequency distributions, it appears to be an unsuitable measure of the goodness of fit of the actual tax-burden distribution to that resulting from a correct roll. The data with which we are dealing cannot be meaningfully grouped into a frequency distribution and submitted to a chi-square analysis. This is apparent when it is seen that if each movement of an entry from one interval to another were matched by a movement of another entry in the opposite direction, the distribution would indicate no irregularities despite the possible existence of gross inequalities.

A contrast should be drawn between a chi-square analysis and the fourth measure mentioned above (  $\sum_{i=1}^n \frac{(x_i - y_i)^2}{y_i}$  ) which has the same formula as that used for chi-square.

### Conclusions

1. The measures  $\sum_{i=1}^n (x_i - y_i)^2$ ;  $\sum_{i=1}^n |x_i - y_i|$  can be used as measures of the goodness of fit, the lower is their value, the better is the fit. However, their use as absolute measures of the quality of different rolls may be limited.

2. The measures  $\sum_{i=1}^n ( |x_i - y_i| / y_i )$ ;  $\sum_{i=1}^n \bar{y} (x_i - y_i)^2 / \bar{y_i}$  appear to be of greater significance than the previous measures when comparing different rolls, since allowance is made for the relative size of each assessment and thereby also the number of assessments on the roll.

3. The choice between these measures will be based on a value judgement as to the nature of the weighting (if any) to be assigned to the larger deviations.

4. The coefficient of correlation and chi-square analysis appear to be imperfect measures of the goodness of fit of the distribution of the tax burden under an actual roll to that under a correct roll.

## APPENDIX C

It can be seen algebraically that a uniform change in all assessments will leave unaltered the distribution of the burden of the tax.

Where a roll exists comprising  $n$  assessments,  $x_i$ , so that the total of all assessments is  $\sum_{i=1}^n x_i$  then the burden borne by each assessment (represented by the  $j$ th assessment) will be  $x_j / \sum x_i$ .

If each assessment is increased by a fraction  $a$ ., the total of all assessments would increase to  $\sum x_i \cdot a$  which is the same as  $a \cdot \sum x_i$ . Since each assessment increases by  $a$ , the burden borne by each will be  $\frac{x_j \cdot a}{a \sum x_i}$ . The  $a$ 's cancel out leaving  $x_j / \sum x_i$  as before. Thus there is no change in the distribution of the burden of the tax, as a result of a uniform change in all assessments.