NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Assessment) v. van Driel, 2010 NSCA 87

Date: 20101116
Docket: CA 319648
Registry: Halifax

Between:

Director of Assessment

Appellant

v.

Menno van Driel and Linda van Driel
Attorney General of Nova Scotia
Nova Scotia Utility and Review Board

Respondents

Judges:	Oland, Fichaud, Farrar, JJ.A.
Appeal Heard:	September 20, 2010, in Halifax, Nova Scotia
Held:	Appeal is dismissed without costs.
Counsel:	Robert W. Andrews, for the appellant R. Lester Jesudason and S. Bruce Outhouse, Q.C., for the respondent, Nova Scotia Utility and Review Board Edward Gores, Q.C., for the respondent, Attorney General of Nova Scotia Menno and Linda van Driel, not appearing

Reasons for judgment:

[1] This is an appeal from a property tax assessment decision of the Utility and Review Board.

Background

[2] Mr. and Mrs. van Driel's home in Hammonds Plains, Halifax Regional Municipality (HRM) was assessed at $499,600 for 2005 municipal taxes. They appealed under s. 62 of the *Assessment Act*, R.S.N.S. 1989, c. 23 as amended (*Act*). Under s. 68, the Director of Assessment (Director) reduced the assessment to $459,700 because of a square footage adjustment. The van Driels continued their appeal to the Regional Assessment Appeal Court (RAAC) which, by a decision of December 14, 2005, confirmed the $459,700 assessment.

[3] The van Driels appealed again to the Nova Scotia Utility and Review Board (Board) under s. 85 of the *Act*. The Board heard the appeal in May 2007 and, with the parties, conducted site visits to the van Driels' property and comparable properties on June 4, 2007. In August 2007, the Board requested further information from the Director, to which the Director objected. The requests, related to uniformity, were litigated in a similar case, *Nova Scotia (Director of Assessment) v. Wolfson*, 2008 NSCA 120 - decision issued on December 19, 2008. After *Wolfson*, the Director provided information for the van Driel appeal on March 13, 2009. Final production occurred on May 29, 2009 and written submissions concluded on June 12, 2009. The Board issued a decision on October 8, 2009 (2009 NSUARB 146), allowing the van Driels' appeal and reducing the 2005 assessment to $323,014. The Board preferred a market data approach to the Director's replacement cost analysis and applied a slightly lower general level of assessment (GLA) to achieve uniformity.

[4] The Director appeals to the Court of Appeal under s. 30(1) of the *Utility and Review Board Act*, S.N.S. 1992, c. 11 (*URB Act*). Section 30(1) permits an appeal only on questions of law or jurisdiction. The appeal was argued in September, 2010, along with four companion appeals from assessment rulings of the Board [*Nova Scotia (Assessment) v. Creelman*, *Crane*, *Schrader*, *Aucoin*, whose decisions are released concurrently with this one 2010 NSCA numbers 88, 89, 90 and 91].

Issues

[5] The Director's factum stated the issues as follows:

> 12. Accordingly, the Director submits that the issues to be determined by this Honourable Court are as follows:
>
> a. Did the Board err in law or jurisdiction or both by making findings and issuing directives outside the scope of s. 74 and s. 87 of the *Assessment Act*, specifically with respect to the manner in which the Director fulfills her statutory mandate?
>
> b. Did the Board err in law or jurisdiction or both by ignoring the burden of proof such that it acted on irrelevant considerations or ignored relevant evidence?

[6] The Director's submissions centered on the Board's treatment of mass appraisal techniques and uniformity.

[7] I will arrange the Director's submissions into three issues:

(1) Did the Board err in its treatment of mass appraisal?

(2) Did the Board err respecting uniformity or the general level of assessment?

(3) Did the Board err by misapplying the burden of proof or violate procedural fairness?

The first and second questions involve the Director's submissions that the Board acted outside its statutory mandate, issue (a) in the Director's factum. The third question addresses the Director's issue (b). In addition, the Director requests the opportunity to adduce new evidence, the issue I will address first.

New Evidence

[8] As I will discuss, a significant aspect of the Director's submission relates to the Board's treatment of uniformity in assessment under s. 42(1) of the *Act*. During the hearing in the Court of Appeal, the Director's counsel began by explaining the Director's approach to the application of the uniformity principle. Then, in reply to the Board's submission, the Director's counsel altered his earlier statement of the Director's approach. Later, still in the hearing, the Director's counsel qualified his position again.

[9] This vacillation led the court to send a letter to counsel after the Court of Appeal's hearing, requesting that the parties in writing, and after consulting their clients, answer specific questions respecting the method of calculating and applying the GLA to achieve uniformity under s. 42(1). The Director's written reply once more altered the Director's courtroom explanation of how the Director applies the uniformity principle. The Director's reply requested an opportunity to lead new evidence in the Court of Appeal on the Director's approach to uniformity. The Board objects to the introduction of new evidence.

[10] I would dismiss the Director's motion to add fresh evidence.

[11] *Civil Procedure Rule* 90.47(1) permits the Court of Appeal "on special grounds" to authorize fresh evidence on the appeal. Those special grounds include the condition that "the proposed evidence could not have been discovered by reasonable diligence before the conclusion of the trial": *Fort Developments Ltd. v. Ryder* (1977), 18 N.S.R. (2d) 629, ¶ 2, under the predecessor to *Rule* 90.47(1) in the former *Rules*. Later authorities such as *Quigley v. Willmore*, 2008 NSCA 33, ¶ 7 and *Murphy v. Wulkowicz*, 2005 NSCA 147, ¶ 14, and *S.S. v. D.S.*, 2010 NSCA 74, ¶ 3, have applied the tests in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 ¶ 105. *Palmer*'s first test is that the new "evidence generally should not be admitted if, by due diligence, it could have been adduced at trial".

[12] The uniformity issue, involving the GLA, was squarely before the Board. I discuss this later (¶ 44-51). The Board's decision (¶ 193) said that "[e]xtensive evidence was provided by the Director on the calculation of the GLA". The Director reasonably and by due diligence could have adduced all the Director's

pertinent evidence on the Director's methods for the application of the GLA to satisfy the uniformity principle. There is no basis now, after the hearing in the Court of Appeal, to reopen the evidence on that matter.

Standard of Review

[13] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, ¶ 54, 57, 62, Justices Bastarache and LeBel, for five justices, said that if existing jurisprudence has established the standard of review, the analysis may be abridged.

[14] In *Wolfson*, ¶ 11-17, this court analyzed the court's standard of review, under *Dunsmuir*'s principles, to an assessment decision of the Utility and Review Board. Following *Nova Scotia (Director of Assessment) v. Knickle*, 2007 NSCA 104, ¶ 9-12, the court held that correctness applied to the Board's rulings on general issues of law outside the Board's core expertise, including whether the Board misdefined the burden of proof. Also attracting correctness are true jurisdictional issues, defined by *Dunsmuir* (¶ 59) as implicating jurisdiction "in the narrow sense of whether the tribunal had the authority to make the inquiry". Reasonableness governs the Board's use of its institutional expertise to apply and administer its home statutes, including the *Assessment Act*.

[15] This court must also respect the limited scope of appeal permitted by s. 30(1) of the *UARB Act*. The court may consider only issues of jurisdiction or law. See *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, ¶ 18, 36, 51 and *Young v. WCAT*, 2009 NSCA 35, ¶ 19-20 for the relationship between statutory grounds of appeal and the standard of review.

[16] I will address the standard of review more specifically as I come to each of the Director's submissions on this appeal. (¶ 22, 31, 40, 43)

First Issue - Mass Appraisal

[17] The Director assesses properties using "mass appraisal" - a computer assisted approach involving primarily replacement cost less depreciation with some sales validation (discussed in ¶ 96-105 of the Board’s decision). The Board (¶ 317-320) described the Director's mass appraisal technique as "simplistic, rudimentary", and having “ nothing to do with what a willing buyer may be

prepared to pay for the home to a willing seller". The Director submits that the Board has rejected mass appraisal, not just in the van Driel appeal but generally, even at the level of the Director's initial assessments, and that this exceeds the Board's jurisdiction. The Director says the Board's jurisdiction is confined to deciding the appeal at hand, and does not include issuing directives about how the Director may carry out her powers of municipal assessment.

[18] The Director is not a public utility. The Board does not review the Director's plan of operations as the Board does at rate hearings for Nova Scotia Power or the water commissions. Neither is the Board authorized to promulgate legislative directives to govern how the Director performs the first level of assessment. But the *Assessment* and *URB Acts* permit the Board to hear assessment appeals. In the Board's reasons to determine an appeal, the Board of course may state principles that have precedential value in later appeals.

[19] The Director assesses about 575,000 properties annually. The Director cannot practically perform a gold standard appraisal for each property before each annual assessment roll. So the Director uses computerized mass appraisal.

[20] The Board's "judgment" is the order, not the reasons. The van Driel order, resulting from the reasons, says simply that the "appeal is allowed" and resets the assessment at $323,014. The order says nothing about the Director's use of mass appraisal. I disagree with the Director that the Board has promulgated a quasi-legislative directive. The Board just explained, in its reasons, why the Board reached its assessment conclusion on the van Driel appeal. These reasons likely will have precedential value in a later appeal. That dynamic inheres in the Board's quasi-judicial process. It is not the exercise of a legislative function by the Board.

[21] I do not read the Board's reasons as precluding the Director's use of mass appraisal at the initial assessment stage. The Board's reasons apply to an appealed assessment. A taxpayer who appeals has set course for an adjudicated assessment of the taxpayer's property, not the other 574,999 properties. The appeal process entitles the taxpayer to the best determination of his individual assessment that the adversary system permits, given the constraints of reasonable cost and expedition. The Board found that, in this appeal for the van Driels' residence, an individually analyzed valuation based on sales data of comparable properties was more persuasive than a mass appraisal based on formulaic replacement cost less

depreciation. That the Director may face this precedent on a future assessment appeal does not mean the Board has usurped a legislative function.

[22] The Board's conclusion exhibits no error of law or jurisdiction within s. 30(1) of the *URB Act* and no error that this court analyzes for correctness under the standard of review. The Board's analysis of market data is squarely within the Board's wheelhouse of institutional expertise for assessment appeals, and its conclusion was reasonable under the reasonableness standard of review. The Director's factum acknowledges:

> 54 ...In the instant case as indicated above, the Board member's finding that the van Driels made their case with respect to "actual cash value" using comparable properties preferred by the Board member is reasonable.

[23] I would dismiss the Director's ground of appeal related to mass appraisal.

Second Issue - Uniformity

[24] The Board (¶ 290) relied on the direct comparison approach to find that the market value of the van Driels' property was $337,000. The Board then turned to the uniformity principle.

[25] Section 42(1) of the *Assessment Act* says:

> 42 (1) All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor ***shall have regard to the assessment of other properties*** in the municipality so as ***to ensure that***, subject to Section 45A, ***taxation falls in a uniform manner*** upon all residential and resource property and in a uniform manner upon all commercial property in the municipality. [emphasis added]

[26] The Board (¶ 25) had earlier referred to the longstanding principles and methodology enunciated by this court respecting uniformity under s. 42(1) and its predecessor s. 38 of the former *Assessment Act*. These principles were summarized in *Wolfson*, ¶ 3:

> [3] ... This court has approved the principle that "[t]he dominant consideration is uniformity" and that uniformity is determined as stated by Chief Justice MacKeigan in *Hebb v. Director of Assessment and Town of Lunenburg* (1979), 32 N.S.R. (2d) 427 (SCAD) at p 436:
>
> > A county court judge in an assessment trial *de novo* should apply the s. 38 (now 42(1)) rules as directed by Chief Justice Ilsley. He should, I suggest, first ascertain the actual cash value of the property under appeal and determine the ratio of the assessment to that value. He then should determine the 'general level of assessment' relative to the actual cash values of properties in the town or municipality generally. To do so he should ascertain on the evidence before him whether the general assessment ratio is what the assessor states it is or whether it is a different ratio. In most cases lack of other evidence may compel him to accept the assessor's ratio. If the ratio is thus higher, the judge should reduce the appealed assessment to confirm with the general ratio.
>
> See: *Director of Assessment (NS) v. Doucette* (1992), 112 NSR (2d) 326 (CA) at ¶ 12-14; *Nova Scotia (Director of Assessment) v. Homco Realty Fund (20) Limited Partnership*, 2006 NSCA 66 at ¶ 14.

See also the authorities cited below (¶ 50)

[27] In applying uniformity to the van Driels' property, the Board said:

> [291] Having determined the market value for the van Driels' property, the Board is now required to multiply this value by the GLA pursuant to the Court of Appeal's directives. The assessment value of the van Driels' property is to be the same proportion to its market value as determined by the GLA.

[28] The Board determined that the GLA in HRM for the 2005 assessment year was 95.85 %. This differed from the Director's GLA of 96.17 %. The difference principally reflects the Board's disagreement with the Director's trimming from the GLA database of what the Director treated as "outliers".

[29] In a passage to which the Director takes exception on this appeal, the Board said:

> [311] The GLA is a snapshot. That is, at one moment in time the GLA considers the assessment process and analyzes the assessment values to the purchase prices. The IAAO Standards referred to the timing of the calculation of

> the GLA in relation to the purposes for which it will be used and also its purpose in relation to the legislation which mandates the assessment process. For the purposes of the Assessment Act in Nova Scotia, the Board finds the GLA must reflect the final assessment values on the assessment roll and to compare those with the purchase prices. Consequently, the calculation of the GLA must occur at the end of its process and not part way through. After the final assessment values have been forwarded to the clerks pursuant to s. 52, the Director may calculate the GLA for the 2005 taxation year.
>
> (5) Documentation and Description
>
> [312] Most important, as the IAAO Standards state, an accurate description of the calculation of the GLA, including the facts that assessment values had been trimmed and some altered after its calculation needed to be included in the description and provided to the Board. For example, as noted in the IAAO quote above: "If a trimming method has been used to reject ratios from the sample, this fact must be stated".
>
> 313 Secondly, the IAAO Standards also require assessment services to maintain documentation as to why a sale has been excluded from the GLA. This was not done.
>
> 314 The Board directs that any report, provided to the Board, shall more accurately describe the process of calculating the GLA, including the timing of the calculation, the outliner trimming, and trimming limits. Furthermore, the above information including the reasons for unqualifying any property sale must be maintained, even if there is another change to the computer system or other alteration to the processes.

[30] The Director emphasizes the Board's statements (¶ 311) that the GLA “must reflect the final assessment values”, that the GLA's calculation “must occur at the end of its process” and (¶ 314) that the Director should better describe the GLA calculation. The Director says that this is a quasi-legislative directive, purporting to govern future cases, and outside the Board's jurisdiction to adjudicate the disputed issue in the appeal before the Board.

[31] I reiterate my earlier comments on the Director’s similar submission related to the mass appraisal issue. The Board's jurisdiction was adjudicative. The Board is not empowered to enact an inchoate regulation in mid-adjudication, to govern the Director's conduct in future cases. But the Board here has not overstepped its jurisdiction.

[32] Nothing in the Board’s van Driel order - the Board’s enforceable instrument of judgment - mentions GLA methodology. There is no promulgated “direction” to the Director on anything, except to reduce the van Driels’ 2005 assessment. In its van Driel reasons, the Board commented on the issues that arose in the appeal. The Board's comments may have persuasive value in a later case. That is for the Board to decide in the later case. This process is normal for an adjudicatory tribunal, like the Board, that develops its own body of precedent.

[33] I digress to add that there might be a benefit from properly enacted regulations to streamline a process for the GLA in assessment appeals. Uniformity is the dominant principle of assessment, as stated in the wording that I have italicized from s. 42(1) (above ¶ 25) and the authorities (¶ 26, 50). Uniformity cannot be ignored. But property owners now may watch the Board and Director wring out the same GLA in each case. Mr. van Driel has real estate experience and handled his own appeal. In other cases, the lawyers' or appraisers' hourly rates may be running. The van Driels appealed to the Board from a decision of the RAAC written almost five years ago. Much of the delay since is attributable to the GLA issue. The result was a Board adjustment to the GLA from 96.17 % to 95.85 % , involving a tax swing of under $100. In another HRM residential assessment appeal for the same taxation year, the GLA process might be repeated, to reach the same GLA, while another taxpayer pays his hourly-rated professionals.

[34] The Director next submits that the Board erred in its application of the GLA. The Director refers to the Board's statement (¶ 311) that "the calculation of the GLA must occur at the end of its process" and "[a]fter the final assessment values have been forwarded to the clerks pursuant to s. 52, the Director may calculate the GLA".

[35] The Director refers to s. 52(2) of the *Act*, stating that the assessment shall reflect "the state of the property as it existed on the first day of December immediately preceding the filing of the roll". This is the "state date" . So changes to the physical state of the van Driels' property after December 1, 2004 would not be reflected in their 2005 assessment.

[36] The Director also refers to s. 42(2), authorizing the Director to prescribe a past date for "the determination of the market value of the property" for the

assessment. The Director has prescribed January 1, two years before the filing of the assessment roll - i.e. January 1, 2003 for the 2005 assessment - as the base valuation date ("base date").

[37] Sections 52(1) and (5) require the Director to file the assessment roll by December 31 for the following assessment year [subject to extension under ss. 52(3) and (4)]. This was December 31, 2004 for the 2005 assessment year. The Director interprets the Board's ¶ 311 as a direction that the Director must use data after the filing of the assessment roll to determine the GLA. According to the Director's interpretation of the Board's ¶ 311, the Director would be required to calculate the GLA in a manner, or with data, that would be inconsistent with the earlier statutory state date or prescribed base date.

[38] I disagree with the Director's interpretation of the Board's decision. Paragraph 311 did not implicate the statutory state date or the prescribed base date.

[39] The post hearing written submissions of the Director and Board (after counsel had the opportunity to consult their clients) to this court say:

> (1) Director:
>
> ... the GLA is the outcome of dividing the ***new (finalized) assessment values placed on the assessment roll*** (in the same condition as at the time of sale) by the base date sale prices from two years prior to the roll. [emphasis added]
>
> (2) Board:
>
> the GLA for any given assessment year is calculated by dividing the aggregate sale prices of "qualified sales" occurring in the period six months before and after the base date of January 1st, two years prior, into the aggregate assessed values for the same subset of properties ***on the assessment roll to be issued for the current assessment year***. [emphasis added]

[40] There is no material difference between the formulae in these two statements. Nothing in the Board's ¶ 311 contradicts either statement of the GLA formula. The Board just stated the sequence - i.e. the calculation of the GLA follows the determination of the assessments in the municipality. The Director's definition says the municipality's GLA is a ratio of sales prices to "the new

(finalized) assessment values placed on the assessment roll". This involves the same sequence that the Board recited in ¶ 311. The Board's ¶ 311 did not contravene the *Act*'s designation of the state date or base date, otherwise err in law, or transgress any standard of review.

[41] I would dismiss the Director's grounds of appeal that relate to the GLA or uniformity.

Third Issue - Onus of Proof

[42] The Director submits that the van Driels' appeal to the Board involved just issues of market value, and the Board injected the GLA issue on its own initiative. This, the Director's factum says, "crossed the line of procedural fairness and effectively ignored the onus on the question of accuracy of the GLA".

[43] First, a comment on the standard of review. As I have discussed (¶ 14), an alleged misdefinition of the onus of proof is reviewed for correctness. Procedural fairness by the tribunal under appeal is considered by this court as an issue of first instance, without any "standard of review"; but deference may inhere in this court's definition of the applicable procedural fairness principle: *Communications, Energy and Paperworkers Union of Canad, Local 141 v. Bowater Mersey Paper Co. Ltd.*, 2010 NSCA 19, ¶ 30-32 and cases there cited.

[44] Moving to the Director's submission itself, I reject the Director's premise. Both the van Driels and the Director raised the GLA/uniformity issue before the Board.

[45] The van Driels' Notice of Appeal to the Board said "The assessment is too high." The assessment involves the determination of market value to which the GLA is applied to ensure uniformity. In *Wolfson*, this court rejected the Director's similar argument:

> [3] Ms. Wolfson's appeal engaged the assessment principles stated in s. 42(1) of the *Assessment Act.* Section 42(1) says that "all property shall be assessed at its market value ... but ... the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that ... taxation falls in a uniform manner upon all residential ... property ..." This court has approved the principle that "[t]he dominant consideration is uniformity" and that uniformity is

determined as stated by Chief Justice MacKeigan in *Hebb v. Director of Assessment and Town of Lunenburg* (1979), 32 N.S.R. (2d) 427 (SCAD) at p 436:

> A county court judge in an assessment trial *de novo* should apply the s. 38 (now 42(1)) rules as directed by Chief Justice Ilsley. He should, I suggest, first ascertain the actual cash value of the property under appeal and determine the ratio of the assessment to that value. He then should determine the 'general level of assessment' relative to the actual cash values of properties in the town or municipality generally. To do so he should ascertain on the evidence before him whether the general assessment ratio is what the assessor states it is or whether it is a different ratio. In most cases lack of other evidence may compel him to accept the assessor's ratio. If the ratio is thus higher, the judge should reduce the appealed assessment to confirm with the general ratio.

See: *Director of Assessment (NS) v. Doucette* (1992), 112 NSR (2d) 326 (CA) at ¶ 12-14; *Nova Scotia (Director of Assessment) v. Homco Realty Fund Limited Partnership*, 2006 NSCA 66 at ¶ 14.

. . .

[20] Ms. Wolfson's notice of appeal said the "matter of appeal" was: "Assessment is too high." Section 42(1) of the *Assessment Act*, as interpreted by the authorities, says that the assessment is the market value adjusted according to the dominant principle of uniformity. Uniformity, under this court's repeated rulings, requires the application of the GLA. (Authorities above, ¶ 3).

By appealing that "The assessment is too high", the van Driels pleaded the uniformity issue.

[46] The Director's expert witness before the Board, Mr. Terrrance Naugle, presented evidence on the GLA in his report:

> The General Level of assessment is calculated as the ratio of total assessed values to total corresponding sales values, for the municipality for each assessment year. The on-line Appraisal and Statistical Information System, (Oasis), is targeted for a 100% level of assessment to market value for residential and resource properties, within a minimum acceptable standard of no less than 95% and no greater than 105%. The General Level of Assessment for residential property in Halifax Regional Municipality is 96.17% for 2005.

. . .

> The Level of Assessment for the subject Municipal Unit for the year 2005 is 96.17%.
>
> The Assessment Services Division regards the Level of Assessment as being represented in every assessment value published in the yearly Assessment Roll.
>
> The Level of Assessment is provided above for the consideration of the assessment value in this report, and to give recognition to the current case law.

[47] The Board's decision said:

> 193 Extensive evidence was provided by the Director on the calculation of the GLA.

Mr. van Driel cross examined Mr. Naugle on the GLA (transcript pp. 520-4 in Appeal Book vol. II pp. 552-6).

[48] Mr. Naugle's report (above ¶ 46) regarded "the Level of Assessment as being represented in every assessment value published in the yearly Assessment Roll". The Director's affidavit to the Board attached as Exhibit "A" a "Summary of Practice", with the following interpretation of the uniformity principle:

> **REQUIREMENT FOR UNIFORMITY**
>
> 16. Section 42 of the Act requires that the assessment function is performed in a manner to ensure that "*taxation falls in a uniform manner . . .*". The Director is guided by two meanings of uniformity while undertaking the function of assessment in the Province of Nova Scotia; namely, uniformity in the approach used to value all properties, both sold and unsold, is the vehicle by which the statistical uniformity, required by the Act, is achieved.
>
> 17. First, *uniformity of assessment is achieved statistically* through the mass appraisal process conducted pursuant to internationally accepted standards, the explanation of which is the objective of this document.
>
> 18. Secondly, the application of a *consistent mass appraisal approach* to the valuation of all taxable properties in the Province of Nova

> Scotia is the means by which statistical uniformity is achieved. The benefits of applying a consistent and uniform approach to the valuation process for both sold and unsold properties guides the Director's reliance on mass appraisal. [Director's italics]
>
> [Ex. V-7, Tab 4, para. 16-18]

[49] The Board was entitled to consider whether Mr. Naugle and the Director were correct in their views of uniformity and the GLA that they expressed in their evidence to the Board. By considering the matter, the Board was not upending the onus, injecting a rogue issue or violating procedural fairness.

[50] The Director's evidence, in her affidavit and with Mr. Naugle's report, was that the statistical approach of mass appraisal achieves uniformity. So there would be no need to multiply the GLA by any individual assessment. The Board disagreed. There is no error in the Board's conclusion. For over half a century, Nova Scotia's courts have ruled that (1) uniformity is the dominant principle of assessment under s. 42(1) and its predecessors, (2) consistent use of the same appraisal method - and, to be clear, that includes the mass appraisal method - does not suffice to achieve uniformity, and (3) uniformity is achieved by multiplying the GLA (calculated as discussed above ¶ 39) by the particular assessment in issue. These principles remain the law today. For the Director's benefit, I recite the line of authorities on these points:

(1) *Re Mindamar Metals Corp. Ltd.* (1953), 33 M.P.R. 75 (N.S.S.C. *in banco*) page 78;

(2) *Re Mersey Paper Co.* (1959), 42 M.P.R. 297, (N.S.S.C. *in banco*), pages 309-312;

(3) *Morash v. The Municipality of Chester* (1961), 28 D.L.R. (2d) 428 (N.S.S.C. *in banco*), page 429;

(4) *Municipality of the County of Halifax v. Halifax Power and Pulp Co. Ltd.*, (1963), 48 M.P.R. 414 *(*N.S.S.C. *in banco*), pages 419, 426;

(5) *Lehndorff Management Ltd. v. City of Dartmouth* (1975), 15 N.S.R. (2d) 40 (S.C.A.D.) ¶ 20-22;

(6) *McGray v. The Municipality of the District of Yarmouth* (1976), 18 N.S.R. (2d) 11 (S.C.A.D.), ¶ 17-19, 39-41;

(7) *Morgan v. City of Halifax* (1976), 20 N.S.R. (2d) 356 (C.Ct.), ¶ 2-4;

(8) *Donovan v. Director of Assessment for the City of Halifax* (1977), 41 N.S.R. (2d) 534 (C.Ct.), ¶ 3, 13;

(9) *Olivet Development Ltd. v. Town of Antigonish* (1978), 30 N.S.R. (2d) 191 (C.Ct.), ¶ 31-32;

(10) *Gateway Realty Ltd. v. Town of Bridgewater* (1978), 30 N.S.R. (2d) 438 (S.C.A.D.), ¶ 6-11;

(11) *Hebb v. Town of Lunenburg* (1979), 32 N.S.R. (2d) 427 (S.C.A.D.), ¶ 18-24;

(12) *Bowater Mersey Paper Co. Ltd. v. Digby Municipality* (1979), 33 N.S.R. (2d) 181 (S.C.A.D.), ¶ 5;

(13) *Canso Seafoods Ltd. v. Town of Canso* (1980), 43 N.S.R. (2d) 651 (S.C.A.D.), ¶ 19;

(14) *Halifax Developments Ltd. v. Director of Assessment* (1983), 55 N.S.R. (2d) 455 (C.Ct.), ¶ 15, 66;

(15) *Director of Assessment (N.S.) v. Doucette* (1992), 112 N.S.R. (2d) 326 (S.C.A.D.), ¶ 11-15;

(16) *Director of Assessment (N.S.) v. Wandlyn Inns Ltd.* (1996), 150 N.S.R. (2d) 177 (C.A.), ¶ 58;

(17) *Nova Scotia (Assessment) v. Homco Realty Fund (20) Limited Partnership*, 2006 NSCA 66 ¶ 14;

(18) *Nova Scotia (Director of Assessment) v. Wolfson*, 2008 NSCA 120, ¶ 3.

[51] I would dismiss this ground of appeal.

Conclusion

[52] I would dismiss the Director's appeal without costs.

Fichaud, J.A.

Concurred in:

Oland, J.A.

Farrar, J.A.