CROWN ZELLERBACH CANADA LIMITED
and
CROWN ZELLERBACH BUILDING MATERIALS LIMITED

v.

ASSESSMENT DISTRICTS OF COMOX, COWICHAN & NANAIMO

Supreme Court of British Columbia (No. X688/62)

Before: MR. JUSTICE J.G. RUTTAN

Victoria, September 4, 27 and 28, 1962

Arthur J.F. Johnson and D.S.D. Hossie for the Appellant Companies
W.R. McIntyre and J.D. Edgar for the Provincial Assessors of the respondent jurisdictions

Case Stated by Assessment Appeal Board

1. The lands forming the subject of these appeals are Crown-granted lands owned by the appellants situate in Taxation Department Zone "D" of the Vancouver Forest District.

2. There are two distinct appeals, namely:-

(a) The appellants complain against the supplementary assessment for the year 1961 made by the Assessors pursuant to section 76 of the *Taxation Act*, chapter 376, R.S.B.C. 1960, of certain blocks of their timberlands - namely, Blocks 140, 145, 1100, 137, 138, 139, 1098, and 1099 - on October 11, 1961.

(b) The appellants complain against the method of determining the assessed value of all their lands in the said Taxation Zone "D" (including the aforesaid blocks mentioned in paragraph 2 (a) hereof) for assessment purposes in the year 1962.

These two appeals will hereafter be dealt with separately in this statement of facts under the headings "1962 Supplementary Assessment" and "1962 Assessment."

1961 Supplementary Assessment

3. In 1961 the appellants appealed to the Board the Main Roll assessments for that year on all their blocks of land in Taxation Department Zone "D" of the Vancouver Forest District, including the aforesaid Blocks 140, 145, 1100, 137, 138, 139, 1098, and 1099.

4. Following the hearing before the Board of the appeal of the appellants mentioned in paragraph 3 hereof, the Board, by its findings dated the 15th day of June, 1961, found, *inter alia*:

(a) "That the volume of timber on the lands in question as estimated by the Assessors is certainly less than the actual quantity in existence."

(b) "That the fairest way to assess such timberland is to take into consideration all sales within the area involved, regardless of whether they may be sales of E. & N. timber or sales at upset prices"; and the Board directed "that the proper assessments be made having regard for the volumes as found by the appraiser in his evidence."

5. Following recalculation of the assessments pursuant to the directions of the Board in its findings mentioned in paragraph 4 hereof, dated the 15th day of June, 1961, it became apparent that the assessments on Blocks 140, 145, 1100, 137, 138, 139, 1098, and 1099 would be in excess of the original assessments for 1961 made by the Assessors on these blocks. In the case of all other revised assessments based on the Board's findings of June 15, 1961, on the appellants' lands in Taxation Zone "D," the revised assessments were less than the original assessments for the year 1961. The appellants maintained that the revised assessments could not be greater than the original assessments in any instance, and there resulted a further hearing before the Board to determine this question.

The Board, by its findings dated the 28th of July, 1961, following such further hearing, directed, *inter alia*, that:

(a) "The third objection was that the assessed values on a number of parcels exceeded the original assessment as a result of the Board's decision of June 15, 1961. It was strenuously argued by counsel for the respondents that the Board had power, under section 47 of the *Assessment Equalization Act*, to direct such increase. The Board is of the opinion that the language of the section should not be stretched for such a purpose, particularly in view of the more explicit provisions of section 76 of the *Taxation Act*."

(b) "The valuation will accordingly be based on the evidence given to the Board as to volumes existing in 1960 and will be calculated on a weighted arithmetic mean average of all sales in 1955 with a division of species determined in accordance with the latest official cruises available."

(c) "In no case shall the assessment upon a parcel be higher than the original assessment fixed for the 1961 taxation year."

6. Later in 1961, in accordance with the provisions of section 76 of the *Taxation Act* after delivery of the Board's findings, dated July 28, 1961, the respondents levied supplementary assessments on the said Blocks 140, 145, 1100, 137,138, 139, 1098, and 1099 for 1961, notices for which were mailed on the 11th day of October, 1961. The supplementary assessments thus made were in the case of each of the aforesaid blocks in an amount equal to the difference between the original 1961 Main Roll assessment confirmed by the Board in its findings dated July 28, 1961, and the increased assessment indicated by the calculations made in accordance with the Board's findings dated the 15th day of June, 1961.

7. By its findings dated the 28th of June, 1962, the Board confirmed the supplementary assessments aforesaid and stated, *inter alia*, "in the Board's opinion the appeal in 1961 was directed against the valuation of the 1961 roll. To that extent, and subject to any appeal on a question of law, the Board's decision is final. This does not preclude assessment under section 76 as cited, and in view of the fact that special provision is made for appeals from assessments made on a supplementary roll in the following year, it is considered that the finality of the Board's decision applies only to the 1961 roll under appeal at that time."

8. The appellants contend that the supplementary assessments made by the Assessors for the year 1961 on the aforesaid Blocks 140, 145, 1100, 137, 138, 139, 1098, and 1099 are invalid.

1962 Assessment

9. The Assessors assessed all the lands of the appellants in Taxation Department Zone "D" of Vancouver Forest District for the year 1962 pursuant to section 31 of the *Taxation Act*, being chapter 376 of the Revised Statutes of British Columbia, 1960, on the basis of volumes of timber on the said lands which are not disputed by the appellants and on the basis of determining the assessed value at 50 per cent of the actual value derived from the weighted average stump age prices of all sales of timber and timberlands sold in the said Zone "D" during the year ending July 31, 1961. Such assessments were reduced by a regional discount of 8 per cent of the actual value, to which further reference is made hereafter.

10. The appellants do not object to or dispute the principle of determining actual value of their lands on the basis of weighted average stump age prices calculated by taking into account all sales of timber and timberlands including Crown timber in said Taxation Zone "D" and timberlands owned by the Esquimalt and Nanaimo Railway Company. The Assessors, in determining weighted average stumpage prices for the year 1962 in respect of said Taxation Zone "D," added to the actual amounts received by the Esquimalt and Nanaimo Railway Company on the sale of its timberlands a sum equivalent to 25 per cent thereof, being the amount of tax payable pursuant to section 3 of the *Esquimalt and Nanaimo Railway Belt Land Tax Act*, being chapter 133, *Revised Statutes of British Columbia, 1960*. In the 1961 and previous taxation-years the Assessors did not make such addition in assessing timberland as defined by section 2 of the *Taxation Act* of such sum. In the 1962 taxation-year the Assessors made such addition to the E. & N. sale prices on the basis that the actual value of the lands sold by the E. & N. is not only the price paid by a purchaser to the company therefor, but such price plus the assessed amount of the 25-per-cent tax since the total of the purchase price plus the 25-percent tax represents the true price the purchaser is prepared to pay to acquire the lands purchased by him or it from the E. & N.

11. By section 3 of the *Esquimalt and Nanaimo Railway Belt Land Tax Act* the owner in fee-simple of the land when alienated by the E. & N. shall thereupon be assessed and taxed on such alienated land and is liable for the payment of the tax. The tax may be paid by the purchaser of the E. & N. land in either one of the manners allowed by section 9 of the Act.

12. In the taxation-years 1956 to 1961, inclusive, the Assessors allowed in respect of Crown-granted timberlands elsewhere in the Province, other than said Zone "D," a discount from the actual value of parcels of land determined by the application of the weighted average stumpage prices for the particular zone and taxation-year. This discount was based on the estimated term of years over which the total Crown-granted timber outside of the said Zone "D" of an owner of timberlands would be harvested. This discount was based essentially on what is known as the Rotherey principle of valuing timberlands for assessment purposes and is sometimes known as the "wholesale concept." The rate of discount is determined primarily by the estimated term of the harvesting period. The longer the harvesting period is, the greater the discount. The discount in principle is allowed to give weight, in determining the present value of standing timber, to the risks and costs of holding timber unharvested over a long term of years and to the fact that future income has a present value less than its actual value at the time it is earned in the future. The discount was allowed in the 1961 taxation-year (save in Zone "D") on the basis of individual owners' holdings of Crown-granted timber; for example, an individual owner holding timber which would not be fully harvested for 40 years was allowed a greater rate of discount than an owner holding timber which would be fully harvested, say, in 20 years.

13. The "wholesale concept" discount was not allowed in respect of timberlands in Zone "D" in 1961 or any previous year for the reason given by the Assessors that in determining the weighted average stumpage prices in the said Zone "D" for assessment purposes, the 25-per-cent E. & N. severance tax was not in 1961 and in prior years added to the actual sale prices of E. & N. lands, and that the policy of the Assessors in the 1961 assessment-year and prior years in not adding the 25-per-cent E. & N. severance tax to determine weighted average stumpage prices for the said Zone "D" was equivalent to or in lieu of allowing a "wholesale concept" discount in the said

Zone "D." This matter is referred to in Exhibit 7 filed at the hearing before the Board on June 5th and 6th of 1962.

14. In 1962 the Assessors changed the "wholesale concept" discount or "owner discount" in respect of all assessments of Crown-granted timberlands in the Province of British Columbia and adopted to a regional discount basis under which the rate of discount allowed is based not on the estimated term of harvesting of an individual owner's timber, but the estimated term of harvesting all assessable timber which does not include Crown owned timber or unalienated timberlands of the Esquimalt and Nanaimo Railway Company which are not assessable in the zone. Thus the discount allowed in each zone has been extended to and is the same for all owners of Crown-granted timberlands in the zone regardless of the extent of any owner's holding, or any owner's particular plans for harvest of his timber crop. This aspect is referred to in part of the circular letter from the Surveyor of Taxes dated December 18, 1961, forming part of Exhibit 6 filed at the hearing before the Board on the 5th and 6th of June, 1962.

15. In determining the rate of discount allowed in respect of Crown-granted timberland in Taxation Zone "D," the Assessors excluded from the calculation of the estimated term of harvesting timber in Taxation Zone "D" not only timber held by the Crown (as they did also in all other zones), but also timberlands owned by the E. & N. in the said Zone "D" on the ground that such lands are not assessable. The rate of discount in the said Zone "D" allowed in 1962 was 8 per cent. The discount allowed in all zones in the Province other than Zone "D" is shown by Exhibit 6 as quoted aforesaid.

Wherefore the following questions are humbly submitted for the opinion of this Honourable Court:-

> "Firstly, as to the 1961 supplementary assessment, was the Board correct in finding valid the supplementary assessments on timberlands of the appellants made by the Assessors in 1961 under section 76 of the *Taxation Act*, being chapter 376 of the *Revised Statutes of British Columbia, 1960*?
>
> "Secondly, as to the 1962 assessment:-
>
> "1. In determining the actual value of the appellants' lands for assessment purposes, should there be added to the price received by the Esquimalt and Nanaimo Railway Company on the sale of its timberlands any amount in respect of taxes payable under the provisions of section 3 of the *Esquimalt and Nanaimo Railway Belt Land Tax Act*, being chapter 133 of the *Revised Statutes of British Columbia, 1960*?
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> "2. If the answer to Question 1 is in the affirmative, was the Board correct in finding that no consideration should be given to the 10-per-cent discount allowed by section 9 of the *Esquimalt and Nanaimo Railway Belt Land Tax Act* or to the right of the taxpayer to pay the tax assessed under the said Act without interest by instalments as provided by said section 9 of the said Act?
>
> "3. If the answer to Question 2 is in the negative, what consideration should be given to the provisions of section 9 of the *Esquimalt and Nanaimo Railway Belt Land Tax Act*?
>
> "4. Was the Board correct in finding that the former policy of the Assessors in allowing a discount in determining assessed value of timberlands, known as the 'wholesale concept,' resulted in assessment on the basis of value to the particular owner, but in reverse?
>
> "5. Was the Board correct in finding that the method of allowing a discount on a regional basis adopted in the 1962 taxation-year is a correct method to adopt in determining the value of the appellants' lands for assessment purposes?

"6. If the answer to Question 5 is in the affirmative, was the Board right in finding the exclusion of the timberlands still owned by the Esquimalt and Nanaimo Railway Company from the calculation of the discount allowed in respect of Taxation Department Zone 'D' of the Vancouver Forest District for the taxation-year 1962 to be correct? "

Reasons for Judgment

On the opening of this appeal, counsel for the appellants took certain objections to the form in which the case was stated by the Assessment Appeal Board. Thus in certain paragraphs of the statement of fact and of the questions submitted the Board uses the phrase "actual value" where counsel claims the phrase should read "purported actual value," since the entire appeal proceeds on the proposition that because of the use of wrong principles the true actual value was never reached. But I think it fair to find that where this phrase "actual value" is employed, the Board intended to be implied the additional words "as determined by the Assessors."

However, with respect to the members of the Board, I must agree with Mr. Johnson that they do not appear to have defined clearly the distinction between actual values and values for assessment purposes. By section 37, subsection (2), of the *Assessment Equalization Act*, as amended in 1961, chapter 3, section 4, the Assessors are required to make a 50-per-cent discount from their calculated actual value to arrive at the figure to be placed on the assessment rolls. For clarity's sake, I will call this figure "the assessment value." This is the last calculation and the only one that may be done once the actual value has been arrived at. In the case filed by the Board, certain statements appear to suggest that the Assessors arrived at the actual value first, then make the statutory 50-per-cent discount, and then took a further regional discount off this assessment value. Thus paragraph 9 at page 5 of the statement reads as follows:

> 9. The Assessors assessed all the lands of the appellants in Taxation Department Zone "D" of Vancouver Forest District for the year 1962 pursuant to section 31 of the *Taxation Act*, being chapter 376 of the *Revised Statutes of British Columbia, 1960*, on the basis of volumes of timber on the said lands which are not disputed by the appellants and on the basis of determining the assessed value at 50 per cent of the actual value derived from the weighted average stumpage prices of all sales of timber and timberlands sold in the said Zone "D" during the year ending July 31, 1961. Such assessments were reduced by a regional discount of 8 per cent of the actual value, to which further reference is made hereafter. [My underlining.]

If this statement accurately reflects the procedure followed by the Assessors, then the answer to Question 5 must obviously be "no." Question 5 reads as follows:

> "5. Was the Board correct in finding that the method of allowing a discount on a regional basis adopted in the 1962 taxation-year is a correct method to adopt in determining the value of the appellants' lands for assessment purposes?"

The method could hardly have been correct if it is illegal as a breach of the statutory requirements.

But it is apparent from a perusal of the transcript of evidence presented to the Assessment Appeal Board that the Assessors took the regional discount off before and not after deducting the 50-per-cent statutory allowance. Thus the Assessor, Mr. Malcolm, says at page 117 of the transcript:

> . . . so we used as our sales criterion of stumpage in the E. and N. belt, 92 per cent of the 100 per cent stumpage value. . . 92 per cent of the 20.40 for Douglas fir. Then, by Statute, we took 50 per cent of that, under the terms of the *Assessment Equalization Act*. In effect you have an assessment ratio of 50 per cent of 92 per cent, which is, I think, an assessment ratio of 46 per cent in the E. and N. belt.

I am aware that Mr. MaIcolm also says that to him actual value is synonymous with current market value. Nonetheless, there is no doubt he did apply this corrective regional discount to arrive at 92 per cent of the market value before he made the statutory 50-per-cent deduction.

In paragraph 12 of the stated case it is again suggested that the "actual value" was reached first and then a discount figure taken off. The statement there reads in part:-

> . . . in the taxation-years 1956 to 1961, inclusive, the Assessors allowed in respect of Crown-granted timberlands elsewhere in the Province, other than the said Zone "D," a discount from the actual value of parcels of land determined by the application of the weighted average stumpage prices for the particular zone and taxation year.

Farther down in the same paragraph, however, it is clear that this discount was employed to arrive at the actual value, thus the statement continues:-

> The rate of discount is determined primarily by the estimated term of the harvesting period. The longer the harvesting period is, the greater the discount. The discount in principle is allowed to give weight, in determining the present value of standing timber, to the risks and costs of holding timber unharvested over a long term of years and to the fact that future income has a present value less than its actual value at the time it is earned in the future.

In correcting what appears to me misreading of the Assessors' own statement of their valuation procedure, I do not find it necessary to refer the statement back to the Board for amendment in accordance with subsection (6) of section 51 of the Act. The issues propounded remain the same, and the appellants are not embarrassed or prejudiced in their appeal.

Counsel have agreed that I need only answer the question concerning the 1961 supplementary assessment and Questions 4, 5, and 6 as to the 1962 assessment. I turn now to consider them:

> "Firstly, as to the 1961 supplementary assessment, was the Board correct in finding valid the supplementary assessments on timberlands of the appellants made by the Assessors in 1961 under section 76 of the *Taxation Act*, being chapter 376 of the *Revised Statutes of British Columbia. 1960*?"

This question is concerned solely with the proper interpretation to be placed on certain sections of the *Taxation Act* and the *Assessment Equalization Act* to determine whether or not the Assessors have the power to impose a supplementary assessment for the current year after the main assessment roll has been completely closed.

My answer to this question is "yes" for the reasons given in paragraph 7 of the statement of the case. I should add that counsel for the appellants has submitted that if section 76 of the *Taxation Act* is to be interpreted as the Board has done, then there never would be any finality to the appeal provisions of that Act, which would put it in direct conflict with section 50, subsection (2), of the *Assessment Equalization Act*, which reads as follows:

> (2) The assessment as thus finally completed and signed is, subject to further appeal from the Board permitted by this Act on a point of law, final and conclusive.

But I agree with Mr. McIntyre that section 50, subsection (2), refers only to the main and any supplementary roll already settled and does not impose finality on those rolls which by reason of supplementary assessment the rights of appeal have not been exhausted.

Question 4 reads as follows:-

> "4. Was the Board correct in finding that the former policy of the Assessors in allowing a discount in determining assessed value of timberlands, known as the 'wholesale concept,' resulted in assessment on the basis of value to the particular owner, but in reverse?"

The "wholesale concept" was a method used for calculating the discount figure to be applied to current market prices per unit timber lot as sold in particular timber zones, so as to arrive at a value for assessment purposes. This is how the Board describes the procedure:

> This discount was based on the estimated term of years over which the total Crown-granted timber outside of the said Zone "D" of an owner of timberlands would be harvested. This discount was based essentially on what is known as the Rothery principle of valuing timberlands for assessment purposes and is sometimes known as the "wholesale concept." The rate of discount is determined primarily by the estimated term of the harvesting period. The longer the harvesting period is, the greater the discount. The discount in principle is allowed to give weight, in determining the present value of standing timber, to the risks and costs of holding timber unharvested over a long term of years and to the fact that future income has a present value less than its actual value at the time it is earned in the future. The discount was allowed in the 1961 taxation-year (save in Zone "D") on the basis of individual owners' holdings of Crown-granted timber; for example, an individual owner holding timber which would not be fully harvested for 40 years was allowed a greater rate of discount than an owner holding timber which would be fully harvested, say, in 20 years.

"Wholesale" is a misnomer as applied to timber valuations, for in the logging industry on this coast there is nothing wholesale about the nature of dealings in large holdings. The phrase, as I understand it, originally was coined to refer to a method employed in the State of Maine, where it has long been the custom for timberland owners to buy fair-sized blocks of timber at wholesale, and retail them to customers in small cuts over a period of years at a higher unit rate. A group of these land-owners attempted to convince the Bureau of Internal Revenue of the United States of America that for depletion purposes the full unit price received annually for small volumes sold was applicable to the entire reserve as fair market value. But these owners, of course, were seeking to fix a maximum value for the purpose of income-tax depletion calculations, and the Bureau of Internal Revenue held the aggregate of unit prices for stumpage or merchantable timber did not represent the value of an entire tract. The case was used by Mr. Rothery, in his little book dealing with forest taxation in the Pacific Northwest, to illustrate the fallacy of calculating assessments for holdings on the basis of their future yield rather than their present worth. As a further illustration he referred to the so-called "cemetery cases," where for income-tax purposes the owners attempted to set a value on a great number of unsold lots by simply multiplying the number of unsold lots by the unit prices received for those sold. "Precisely the error," says Rothery, "which keeps bobbing up in timber valuations."

The Rothery principle was thus based on the proposition that present value of substantial holdings is not to be determined solely by present market price on a unit basis without applying a weight or discount arrived at by calculating factors of present worth of capital, taxes, cost of maintenance and insurance, and generally the hazards of physical and market risks to standing timber over a period of years. Rothery points out that not only is such a concept equitable but realistic, for it governs the judgment of the purchaser who comes into the market looking for substantial holdings before going into operation on the same magnitude as, for example, the present appellant.

Proof of Rothery's theory is to be found in the history of the formula as used for assessments in this Province for the years 1956 to 1961. In working out the formula, as Stafford points out in his evidence before the Board (page 63 of the transcript), the industry supplied information on prices paid on sales of large blocks, and these figures were used to work out the table of discounts. Here is what he said at page 63:-

> The way the original-the present wholesale concept was allowed by the Taxation Department was as a result of the industry getting together and supplying information on acquisitions of timber areas exceeding 50 million feet for each block. This information was channelled to a chartered accountant. and it was confidential information, and it showed the purchase price of those particular blocks. It is on the basis of his findings that there was in fact a lesser price paid for very large blocks of timber than the current short term timber sale prices that the Provincial Government was obtaining, and it gave rise to the wholesale concept. [My underlining.]

Why then has the "wholesale concept" been abandoned for this year's assessments? The answer is given in Question 4; i.e., that use of the "wholesale concept" to assess on the basis of each owner's cutting plan invokes the personal factor of value to the particular owner, thus reducing the assessment of his property below that of the market price and giving him an unfair advantage in lower taxes.

In the past, Assessors have been censured by Appeal Boards and by Judges for confusing valuations for assessment purposes with those employed on expropriations, and by using subjective features of special value to a particular owner to arrive at an assessment that places a greater burden of taxation on him than on his neighbour. I had occasion myself to support this Appeal Board when it made such a ruling for an assessment involving these same appellants (see *In the Matter of the Appeal of Crown Zellerbach Canada Ltd. et al.* (1958) 16 D.L.R. 844). To avoid erring in this direction, Assessors and the Appeal Board now seem to have gone to the opposite extreme. To avoid any suggestion of subjective features in assessments, the Assessor starts from the premise that all timber lots must have the same per unit value irrespective of ownership or quantity of holding, since each lot can only be employed for one purpose-the harvesting of the timber crop. The value he says is the current market price per unit. But the Assessor is not limited to assessment solely on the basis of the worth of each lot having a certain volume of timber thereon without consideration of how the lot fits into the use of a larger operation. In section 37 (1) of the *Assessment Equalization Act*, which defines the principles to be employed in making assessments, it is provided that "in determining the actual value, the Assessor may give consideration to present use. . . 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 property of a going concern." The Assessor should not confine his review to the particular manner in which the appellant operates his business, for, as my former brother Wilson said in *Canadian Pacific Railway Company* v. *The Assessor for the City of Port Coquitlam* (No. 511/57, Vancouver Registry):-

> "Present use" here must mean present, proper, practical use so that the speculator shall not escape proper taxation nor the developer be penalized.
>
> "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."

But he may consider that company's method of operations as an indication of the manner in which all such enterprises operate. No doubt there are not many companies operating on this coast on the same scale as the appellant with its timber reserves of 4½ billion board-feet and a plan to apportion the cut over 40 years. It is safe to say, however, that anyone of the half-dozen or so comparable corporations who might come on to the appellant's limits would produce a harvest plan of substantially the same duration. The factors which dictate the extent and nature of the operation exist outside and beyond the control of what counsel for the defendant has called "the individual idiosyncrasies" of the particular operator.

The present Provincial Assessor, Mr. Malcolm, himself has agreed that the factors referred to by Rothery have some significance in determining market price, but said that these factors are taken

into consideration by the purchasers when they come into the market to buy. At page 115 of the transcript appears this comment:

> Q.-You don't agree, then, in determining market value you must give some consideration to the fact that this time or a lot of this timber will not be cut for some years in the future? A.-Well, to answer that question, I would say that the people who buy timber consider those things when they purchase the timber. They anticipate an income and risk and carrying charges when they make the purchases. That is why market evidence is so valuable. It also takes into account the law of supply and demand - competition which is a very legitimate part of value. That is why market price is one of the best approaches to value on timberlands.

But Malcolm is here talking about the day-to-day market price, governing the volume of transactions where small blocks are sold. The individual operator who purchases a small number of units obviously does not consider the same factors as the large operator. In particular he is not concerned with long-term planning and the costs involved in such a large-scale operation. So the people who "make the market," as Mr. Malcolm says, are not the same people who make the large block purchases referred to by Mr. Stafford in his earlier discussion at page 63 of the transcript. There is no justification to use a market price which is not comparable to the properties in issue. This very point was considered by the Supreme Court of Canada in the case of *The King* v. *Jones et al.* (1950) S.C.R. at page 286. There the Assessors apparently had arrived at a figure of $5 an acre from their local knowledge of sales of small holdings such as 100-acre lots. Commenting on this method, Mr. Justice Rand, giving the judgment of the Court, said at page 289:

> It was said that these sales ran from $3 to $8 an acre, and that $5 was, therefore, a fair valuation. In this the assessors were undoubtedly wrong. Each taxpayer is entitled to have the value of his property separately ascertained. The difference in the prices used might possibly have arisen from differences in time and market conditions rather than in real marketable worth, in which case the propriety of the amount would depend upon equivalence in value, in the absence of which throughout the parish an average figure could not be used. But such a figure is obviously to be distinguished from an average valuation of a large tract of land belonging to one taxpayer and exhibiting wide variations in the value of its several parts.

It is only fair to add that Mr. Justice Rand also stated the estimate arising from the experience of the market price is more preferable to the more artificial estimate arrived at by a formula based entirely on factors of risk, periodic fluctuations, etc. He says at page 288:

> These considerations are indeed relevant to real value but, as all the judges below have held, the task placed upon the assessors, as men of ordinary understanding and knowledge, is of a much simpler and practical, though possibly much rougher, nature. They are to regard these elusive variables and uncertainties not directly but what they sum up to in the minds of people who actually or theoretically buy and sell woodlands. Those elements, consciously or unconsciously, operate on the business mind and determine the business judgment; but to employ them as factors in the manner submitted, and on the evidence presented, would substitute an imperfect and artificial estimate for that arising from the experience of the market place.

There can be no quarrel with the proposition that where evidence of comparable market sales exist that is the best evidence upon which to base an assessment. Apparently such sales on a basis of large scale are more prevalent in the Province of New Brunswick than here in British Columbia, for in the case of *Rex* v. *Jones* the appellate Judge who reviewed the assessments was able to refer to a large number of sizeable transactions, and found that the $5 valuation fixed per acre was not in excess of the fair value of the land.

Without evidence of current large-scale transactions, the "wholesale concept" method appears to be the best one yet devised. I have found it does not allow in the factor of value to the particular owner, so my answer to Question 4 must be "no."

In Question 5 is outlined the current assessment formula. While acknowledging the need for some discount to be applied to current market prices, the Assessor has tried to use a completely objective one. The regional discount set up is a constant rate for every lot in the particular zone, and is based not on each owner's estimated rate of cut, but on a depletion figure of 10 years, which is the time estimated by the Assessor to strip off all the merchantable timber now standing in Zone "D." He arrives at this figure by dividing gross volume by gross annual cut. The over-all volume of the timber reserves now being worked is given as 4½ billion b.m. and the current annual cut is 450 million b.m. But there is no assurance the annual cut will remain constant for 10 years. Included in the present cut is the output from the small operations which deplete at a maximum rate and exhaust their holdings in a few years. When that happens the annual cut could well be halved, but the area will continue to produce timber for the balance of the time contemplated before the appellants' holdings are exhausted, and perhaps forever on a sustained-yield programme.

In all logic, since the Assessor bases his valuation on a maximum utilization within 10 years, after that time no tax should be imposed on these lands. If such an assurance could be given, perhaps the appellant would not pursue this appeal. This conclusion is absurd, but serves only to show the inherent weakness of a formula which seeks to strike a constant average when no such calculation can be made. Moreover, the object to equalize assessment throughout the zone will not be met. The operator who governs his cut to last exactly 10 years will be fairly assessed. For the small operator who takes only a year or two, the assessment can only provide a bonus, while the large-scale operator will be penalized for taking too much time.

In answering Question 4, I held the Assessor need not be afraid of "value to the owner" in accepting the cutting programmes submitted by each owner. This is not to say that he could not search for another formula, but he certainly has not found it in applying the discount described in Question 5. Not only does this discount not truly reflect the normal use and development of the property in this or in other zones, but continued employment of the formula may well have the unfortunate result of encouraging all operators to increase their yearly cut at a time when the policy of the Forestry Branch is to control cut and develop perpetual sustained-yield forests.

The answer to Question 5 is in the negative, and I accordingly am not required to answer Question 6.