

## The following version is for informational purposes only

SC 108 Nelson v. Braybrook and Hickman

### NELSON ASSESSMENT AREA

v.

**WILLIAM J. BRAYBROOK and  
NORMAN BRUCE HICKMAN**

Supreme Court of British Columbia (No. A771794)

Before: MR. JUSTICE H.E. HUTCHEON

Vancouver, December 1, 1977

R.B. Hutchison for the Appellant

B.I. Cohen for the Respondents

### Reasons for Judgment

December 6, 1977

There are three appeals before me. All of them involve the correctness of the decision of McKay, J. in the case of *The Assessor .for the Surrey/White Rock Assessment Area v. Norco Developments Ltd. et al.*, Victoria Registry No. 1088/76, November 3, 1976.

In that case it was held that the assessor was required for the purposes of the assessment roll to be returned on December 31 to assess land and improvements as at November 30 of each year. In two of the three cases before me the Board of Revision has refused to follow the law laid down in the *Norco Developments* case. In the third case the assessor did not advise the Board of Revision of a change of circumstances after November 30. The Assessment Appeal Board has requested the opinion of this Court on the following question:

"Should the improvements on the land hereinbefore described be assessed as they stood on the 30th day of November, 1976, or as they stood on the 31st day of December, 1976?"

The significance of the dates is that in two of the three cases including this one the building on the land was damaged by fire. In this case the destruction was partial. In the *Hotel Barclay Ltd.* case (A771795) the destruction was total. In the *Northland Navigation* case (A771796) the lease held by Northland Navigation from the non-taxable Federal Crown was terminated on December 30, 1976.

There is no specific provision in the *Assessment Act* which requires the assessor to arrive at the assessed value as of a particular date. In the *Norco Developments Ltd.* case the decision was that the language of section 3 (1) and section 3 (3) required the assessor to assess as of November 30 in each year.

"3. (1) The assessor shall, not later than the thirty-first day of December in each year, complete a new assessment roll and give to every person named in the assessment roll a notice of assessment.

...

3. (3) For the purposes of subsection (1), the assessor shall make reference to the records of the Land Registry Office as those records stood on the thirtieth day of November in the year referred to in subsection (1)."

There was not cited in argument in the *Norco Developments Ltd.* case the law set forth in several cases from Ontario where the scheme of the legislation was very close to that in this Province. That law is that the assessor is required to certify to the best of his ability and knowledge to the circumstances at the date of the certificate which he is required by statute to attach to the assessment roll which he delivers to the clerk of the municipality on December 31. In British Columbia by reason of an amendment in 1977 the roll may be returned "on or before the thirtyfirst day of December", but I do not consider that the amendment, confusing as it may be, changes the principle of law that the certificate of the assessor speaks, to the best of his ability, as of the date the roll is returned.

The cases which were cited by Mr. Cohen, but as I say not cited to McKay, J. , are persuasive and compelling authority. The earliest of these is *Re McCulloch* (1875) 45 U.C.R. 449. The clearest in expression is *Re Bayack* (1929) 3 D.L.R. 480 (Ont. C.A.) from which I quote the words of Master, J.A. at p. 486:

". . . the roll is intended to be a true statement of the situation and facts as they existed at the moment when the assessor's affidavit was sworn."

This principle was affirmed in *Caven v. Ottawa* (1932) 3 D.L.R. 42 and in *Ottawa v. Wilson* (1933) 1 D.L.R. 273.

In the words of those cases the form of the roll is progressive. The assessor is required by section 10 to bring all errors and omissions in the roll to the Court of Revision for correction. The Court of Revision may direct the roll to be altered under section 37 (7) or may give its consent to the assessor making changes in the completed assessment under section 10 (2).

I quote again from *Re Bayack* at p. 486:

". . . Prior to its delivery to the clerk (the assessor) has power to make alterations in his tentative assessment, and in the entries which he has made in his roll. If he becomes aware of any error, it is his duty to correct it, and this power and duty continues down to the time when the completed roll verified by the assessor's affidavit, is delivered to the clerk."

The answer that I am compelled by longstanding law to give is that the improvements on the land be assessed as they stood on the 31st day of December 1976.