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Note: The text of this decision has been amended by an amending order of the Supreme Court issued September 23, 2005.

YOUNG LIFE

v.

ASSESSOR OF AREA 08 – NORTH SHORE/SQUAMISH VALLEY

SUPREME COURT OF BRITISH COLUMBIA (L050530) Vancouver Registry

Before the HONOURABLE JUSTICE E.A. ARNOLD-BAILEY
Date and Place of Hearing: May 18, 19 and 20, 2005, Vancouver, BC

J.D. Fraser for the Appellant
G.P. Holeksa for the Respondent

Reasons for Judgment July 19, 2005

Introduction:

[1] This is an appeal by way of Stated Case, requested by the Appellant, Young Life and the Respondent, Assessor of Area 08 – North Shore/Squamish Valley (the "Assessor"), pursuant to section 64(1) of the *Assessment Act*, R.S.B.C. 1996, c. 20, from an interim decision of the Property Assessment Appeal Board of British Columbia (the "Board") dated January 6, 2005 (the "Exemption Decision").

[2] The appeal before the Board was from the 2003 decision of the Property Assessment Review Panel with respect to nine folios (the "properties") owned or occupied by Young Life.

[3] Young Life is a non-profit organization whose purpose is the presentation of the Gospel of Jesus Christ to youth. The properties are divided into three distinct locations and used for the operation of a Christian youth camp known as the Malibu Club, a youth wilderness hiking and kayaking program known as Beyond Malibu, and an administration headquarters known as the Headquarters and Landing.

[4] The first location is the main camp, Club Malibu. It consists of fairly extensive permanent buildings and facilities, located at the mouth to Princess Louisa Inlet from Jervis Inlet, about 30 nautical miles from Egmont, on the inland coast of B.C. It is comprised of about 638 acres of land, and 4.517 acres of water lot leases and licenses. It is a very remote location, accessible only by water or float plane, with no other human habitation in the vicinity, apart from several logging camps about 5 miles down Jervis Inlet. In excess of 2000 campers and staff volunteers attended this camp in the summer of 2002. Many outdoor sports and other activities occur here, in the overall context of promoting the campers' relationship with Jesus Christ.

[5] The facilities at Club Malibu include an outdoor swimming pool, water access, a gymnasium, and a large dining room, where group worship takes place. The Camp Malibu website invites youth to attend the camp, usually for one week sessions, "as a great place to get away from it all, enjoy exciting water sports, and be encouraged in your faith". Other than staff and campers in the summer season, its permanent residents are limited to two couples who care-take the property during the off-season.

[6] Three miles beyond Camp Malibu to the north-west, located on about 80 acres of land, is the second location, Beyond Malibu Basecamp. This is a more rudimentary type of camp with nine permanent buildings and a dock. Between June and early September, Young Life operates a wilderness camping and kayaking program for youth aged 15 and older at this location. These programs run for a week at a time and

accommodate 70 to 90 campers who hike and camp on land owned by Young Life and the Crown, using Beyond Malibu as a base camp. Twenty to thirty volunteers, who facilitate the operation of these programs, are resident at this base camp for the summer months only.

[7] The third location is the Egmont property, located in the small community of Egmont on the Sechelt Peninsula. Egmont has approximately 150 permanent residents. At the Egmont property, Young Life operates an administration and staging operation for the remote camps, which are accessed by boat. This property, called the Malibu Club and Beyond Malibu Headquarters and Landing, is comprised of 16.15 acres of land (upon which are located an office building, a warehouse and a parking lot), and a foreshore lease of 1.964 acres that contains a dock. A sea kayaking program is also run by Young Life from this location. Approximately nine full-time staff work year round in the office facilities on the Egmont property, and are resident in the surrounding area. Guides for the sea kayaking tours live at this location for the summer months, which can also accommodate groups of 20 to 30 kayakers. The staff participates in devotional bible study, scripture reading, and prayer on this property during the summer and winter months.

[8] From the Egmont property Young Life operates Malibu Yacht Charters, a B.C. registered company that owns and operates two vessels (the 126 ft. ship – the "Malibu Princess" and a smaller 40 passenger vessel – the "Malibu Papoose") for the purpose of transporting campers, staff and supplies to Camp Malibu and Beyond Malibu Basecamp. Local residents are employed to operate these vessels. In order to offset the costs of operating and maintaining the Malibu Princess, Malibu Yacht Charters conducts private yacht charters, which occurred 12 times during the 2002 summer season.

[9] The issues to be considered in this Stated Case are whether or not Young Life's use of the properties for an evangelist-Christian summer camp, and their many outdoor sports and related activities, may properly be characterized as "public worship" occurring in "places of public worship" (s. 15(1)(d) of the *Taxation (Rural Area) Act*, R.S.B.C. 1996, c. 448), or are "of demonstrable benefit to all members of the community where the land is located" (s. 15(1)(q) of the same *Act*). A characterization under at least one of the two categories is necessary for Young Life to maintain an exemption from property taxes for the year of 2003.

[10] Within the error of law standard of review set out by the governing statute, Young Life submits that the Board misinterpreted the applicable statutory provisions, misapplied them, or took an unreasonable view of the facts. Young Life also argues for an expanded ambit of judicial review to include questions of mixed fact and law having precedential value, based on *British Columbia Assessor of Area No. 27 – Peace River* v. *Burlington Resources Canada*, 2005 BCCA 72.

[11] The Respondent Assessor submits the Board's interpretations of the statutory provisions at issue were completed in a legally correct manner, and then applied in a correct way to the evidence heard by the Board. Alternatively, counsel for the Assessor submits that any application of the statutory provisions or legal principles to the facts in this case is, at a minimum, reasonable, which it submits is the correct standard of review.

Prior Proceedings:

[12] In 2003, the properties were granted an exemption from taxation under section 15(1)(q) of the *Taxation (Rural Area) Act*, as land and improvements owned or occupied and used exclusively by a non-profit organization for activities that are of "demonstrable benefit to all members of the community where the land is located". The Assessor appealed to the Board, submitting that the properties did not qualify for the exemption. Young Life defended the exemption for the properties, with the exception of one folio leased from the Sechelt Indian Band, on the basis that the land and improvements comprising the properties are entitled to an exemption from taxation, either under section 15(1)(q) of the *Taxation (Rural Area) Act*, or alternatively, under section 15(1)(d) of the *Taxation (Rural Area) Act* as a "place of public worship".

[13] The issue before the Board, therefore, was whether the properties were entitled to an exemption from taxation under either section 15(1)(d) or 15(1)(q) of the *Taxation (Rural Area) Act*. In its Exemption Decision, the Board found that none of the properties were entitled to exemption from taxation under either

provision. The appeal to this court by way of Stated Case was filed at the request of both Young Life and the Assessor.

The Relevant Legislation:

[14] The relevant provision of the *Assessment Act*, which deals with a Stated Case in relation to an interim decision of the Board, is section 64. Section 64(1) reads as follows:

> At any stage of a proceeding before it, the board, on its own initiative or at the request of one or more of the persons affected by the appeal, may refer *a question of law* arising in the proceeding, in the form of a stated case, to the Supreme Court. [Emphasis added.)

[15] Section 64(2) indicates that the Stated Case must be in writing and must include a statement of the facts and all evidence material to it. Section 64(3) requires the Board to suspend the proceeding and reserve its decision until the opinion of this court is given, and then to decide the appeal in accordance with the opinion. The Stated Case must be brought on for hearing within one month from the date of filing and the court must give its decision within two months of the hearing (s. 64(4) and (5)). Section 64(6) permits the court to send the Stated Case back to the Board for amendment, which the Board must do promptly and then return the Stated Case to the court for its opinion. Section 65 of the *Assessment Act* sets out a similar process for final decisions, and section 65(9) permits an appeal of a final decision of this court to the Court of Appeal "on a question of law", with leave of a justice of the Court of Appeal.

[16] The relevant portions of s. 15(1) of the *Taxation (Rural Area) Act* are:

> The following property is exempt from taxation:
>
> ...
>
> (d) every place of public worship;
>
> (d.1) land used exclusively for a public burying ground or cemetery, not exceeding 2.023 ha;
>
> ...
>
> (q) land and improvements if the land and improvements are
>
> (i) owned or occupied, and
>
> (ii) used exclusively
>
> by a nonprofit organization for activities that are of demonstrable benefit to all members of the community where the land is located;
>
> ...

The Questions referred to this Court:

[17] The questions upon which the opinion of this court is sought are as follows:

1. Did the Board err in law by misinterpreting or misapplying section 15(1)(d) of the *Taxation (Rural Area) Act*, or act upon a view of the facts that cannot reasonably be entertained, in finding that the worship that occurs at the properties is not "public worship" and that the properties are not "places of public worship", both within the meaning of section 15(1)(d) of the *Taxation (Rural Area) Act*, and therefore, that the properties are not entitled to an exemption from taxation pursuant to section 15(1)(d) of the *Taxation (Rural Area) Act*?

2. Did the Board err in law by misinterpreting or misapplying section 15(1)(q) of the *Taxation (Rural Area) Act*, or act upon a view of the facts that cannot reasonably be entertained, in finding that the properties are not exclusively used for "activities that are of demonstrable benefit to all members of the community where the land is located", within the meaning of section 15(1)(q) of the *Taxation (Rural Area) Act*, and therefore, that the properties are not entitled to an exemption from taxation pursuant to section 15(1)(q) of the *Taxation (Rural Area) Act*?

[18] As previously indicated, Young Life also submitted that an expanded scope of review by the court was appropriate.

The Agreed Facts:

[19] In addition to the factual information contained in the "Introduction" (derived from the agreed facts as set out in the Stated Case), it is appropriate to set out a brief further summary of relevant facts from the same source (paragraph references as noted), to put the decision of the Board in the appropriate context, particularly in view of the scope of review sought by Young Life.

[20] Young Life is an international, non-denominational, non-profit Christian organization established in 1941 for the purpose of presenting the gospel of Jesus Christ to youth. It is a Texas non-profit corporation, headquartered in Colorado Springs, and since 1988, has been registered in B.C. as an extra-provincial, non-profit society (para 2.). Young Life is organized exclusively for religious purposes. It operates 15 national camps (including Malibu Club), 4 regional camps, and 3 wilderness programs (including Beyond Malibu), at various camp properties throughout North America. All these camps are operated in furtherance of its purpose "to promote an evangelistic Christian testimony among adolescents", its target age group being youth from Grades 6 to 12 (para. 4).

[21] Young Life places no restrictions on admissions, apart from age-appropriate limitations, and actively seeks to encourage non-Christian teenagers to attend its camps, including Malibu Club and Beyond Malibu. Any young person who falls within the correct age range and expresses a sincere and genuine desire to attend is eligible. There are no requirements with respect to religious affiliation, attendance at other Young Life meetings, or membership or involvement in a church. Young Life does not discriminate on the basis of race, national origin, sex, or any belief or conviction (para 5). Malibu Club and Beyond Malibu are publicized to North Americans through Young Life's comprehensive websites and brochures. The Malibu Club website describes Malibu Club as "one of 25 camps owned and operated by Young Life" and "as a great place to get away from it all, enjoy exciting water sports and be encouraged in your faith" (para. 6). Teens interested in attending Malibu Club can only do so with a Young Life leader from their city or local area. Beyond Malibu groups (predominantly high school-aged teens, and some adults) are also usually accompanied by a Young Life leader, although Beyond Malibu can accommodate individuals. All Beyond Malibu participants are accompanied by two instructors qualified and experienced in mountain hiking or sea kayaking, and spiritual guidance. Young Life leaders, who attend with the teens for whom they are responsible, work to facilitate the presentation of the gospel to the campers throughout the camping experience, commencing with pre-trip discussion and planning, through to post-trip follow-up (para. 7).

[22] Young Life camp activities can be classified into three categories: all-camp events, cabin events, and free-time events. All-camp events are big events scheduled in the mornings and evenings, and may include rodeos, regattas, etc.... They also include Club Talk, during which a speaker will speak on topics about Christ, sin, and how to become a Christian. Cabin events include activities at each camp that campers and leaders do together as a cabin. These activities may include horseback riding, para-sailing, water skiing, rappelling, or rock climbing. Free time events are initiated by leaders when nothing else is scheduled, and include various primarily outdoor activities. All the activities are designed to break down barriers with the campers, introduce them to Jesus Christ, and encourage a continuing relationship with Jesus Christ (para. 8).

[23] A number of different people serve and work at these Young Life camps. The staff and volunteer positions include speakers, program directors, head leaders, work crew bosses, summer staff bosses, and

the camp manager. The property team is comprised of two couples, who work at the camp all year long as on-site caretakers. The work crew is the team of volunteer teenagers who serve for a month by serving campers meals, cleaning cabins, maintaining the landscape and doing other manual camp labour. These volunteers serve at the camp for a month and then leave. The summer staff includes university or college students who run the ropes course, lifeguard at the pool, staff the snack bar, and store and staff a number of other specialized areas of camp (para. 9).

[24] Revenue to support Young Life's camping program comes from a variety of donors and other sources, including camping fees, proceeds from an annual "lost and found" sale in Sechelt of unclaimed camper items, and rental of Malibu Club to other groups (para. 10). In 2002, Malibu Club camp fees were $340 (U.S.) per camper. It is Young Life's policy that no adolescent shall be denied an opportunity to attend a Young Life camp, including Malibu Club or Beyond Malibu, because of an inability to pay the camp fee, and no individual has ever been excluded due to lack of funds (para. 11).

[25] Campers, volunteers and staff for Malibu Club and Beyond Malibu arrive at the Headquarters and Landing in Egmont by bus. The Malibu Princess makes two round trips between the landing and headquarters and Malibu Club each Friday during the summer camping season with approximately 350 campers, staff and leaders on board, for the three hour boat ride to Malibu Club. Devotional group meetings, group and individual prayer, singing and Bible study all occur daily amongst staff, campers, and kayakers, at the Landing, on the kayaking trips, and in the context of the arrival and departure of Malibu Club and Beyond Malibu campers (para. 27).

[26] Every three to four weeks, the approximately 120 volunteers and staff at the Malibu Club return to Egmont to be replaced by a new group of volunteers and staff (para. 24). Campers are taken to and from the Beyond Malibu Basecamp from Egmont each Saturday by the Malibu Papoose, as well as by rented water taxis (para. 25).

[27] Due to its remote location and timing of school vacations, Malibu Club operates for 13 weeks during the summer months, commencing May 31 through to the end of the first week of September. Over the past several years it has operated at over 100% occupancy (para. 29). In June, the campers are all from the United States as Canadian teens are still in school. During July and August, Canadian teens also attend (para. 30).

[28] In 2002, during the 8 week camping season in July and August when Canadian teens could attend, a total of 2,090 campers attended Malibu Club. Of these: 8, or 0.4%, were from the Sunshine Coast; 115, or 6%, were from the North Shore; 393, or 19%, were from the Vancouver area; 531, or 25%, were from B.C.; 849, or 41%, were from Canada; and the balance, 1,241 or 59% were from the U.S. (para. 31).

[29] Malibu Club, the largest facility, can accommodate up to 350 people at once during the summer camping season (para. 32). Campers and staff participate in group meetings, group and individual prayer, singing, bible study, and services. Leaders intentionally use all activities, including recreational activities, discussion groups, and encourage study and reflection, as a way of introducing teens to, and exploring their relationship with, Jesus Christ. Leaders spend free time with individuals or small groups to talk to them about what they have heard at the larger group sessions (para. 34).

[30] The acknowledged purpose of the Beyond Malibu program, operated at the more rudimentary camp property, is to encourage staff and trip participants to grow in their relationship with Jesus Christ. Beyond Malibu seeks to achieve this through the many activities engaged in by staff and participants on the hiking trails, and in Basecamp. On the trail, each activity is designed to facilitate an opportunity for participants to reflect on their relationship with Jesus Christ, and to make commitments to grow in that relationship (para. 47). Each day starts with devotion, a form of worship involving scripture readings, Bible study and prayer. This is done around the meal table in or near the main building, followed by an hour for personal reflection. During this time, staff and campers spread throughout the Basecamp (para. 48). Time is also spent after the evening meal to sing and worship. Each week there are two sessions for the study of scripture and other worship. These events are held in one of the two general meeting buildings or, if the weather is nice, on the grassy shore of the property. Prayer time occurs weekly, during which the staff

break into small groups and spread through the Basecamp. Also, during the week, staff persons conduct spontaneous small group prayer. On Friday night, there is an all-camp worship time. On Saturday morning, there is an all-staff worship time at the end of meal time, done around the meal table or around the barn, depending on the weather (para. 49).

[31] Besides youth camps, Malibu Club serves Young Life with occasional adult camps, a U.S. leadership camp and the Canadian National Young Life conference every year (para. 36). In 2002, 185 men attended Men's Malibu Club. Of these: 30, or 16%, were from the North Shore; 127, or 69%, were from the Vancouver area; 158, or 85%, were from B.C.; 173, or 94%, were from Canada; and the balance, 12 or 6%, were from the U.S. (para. 37). Also in 2002, 173 women attended Women's Malibu Club. Of these: 27, or 6%, were from the North Shore; 90, or 52%, were from the Vancouver area; 154, or 89%, were from B.C.; 168, or 97%, were from Canada; and the balance, 5 or 3%, were from the U.S. (para. 38).

[32] During the camping season, Young Life also makes its Malibu Club facilities available for guided tours for interested boaters touring Princess Louisa Inlet, and provides a concession for their enjoyment, and, if needed, provides the services of a full-time doctor resident at the camp. Any yachters are warmly welcomed and shown hospitality. Yachters are also welcome to attend Club Talk (para. 39).

[33] Further, Malibu Club is used as the base for search and rescue operations in the surrounding area, including the rescue of boaters, because of its accessibility for helicopters and its satellite-telephone links. Medical emergencies where Malibu Club gets involved usually occur about 2-3 times a year. Incidents of boaters needing mechanical help or fuel from Malibu Club usually occur every 10 days or so during the summer. Fuel will occasionally be sold to boaters if someone is in need, although it is not policy to do so. Visitors are accompanied by Malibu Club staff while at Malibu Club, due to safety concerns with youth campers (para. 40).

[34] Finally, on the facts presented, the properties and the facilities located on them are very rarely used for programs unrelated to Young Life. The exception in 2002 was Artesia Tours, which conducted two 3-day arts retreats at Malibu Club for Sunshine Coast artists. Artesia paid Young Life $36,000.00 in camp fees and $14,000.00 in Malibu Princess charter fees. The retreats accounted for 4.3% of Malibu Club's total 139 camper days, and 1.3% of Malibu Club's revenues from all sources that year. 50% of Artesia's profits from the retreats were used to benefit Sunshine Coast artists (para. 41).

Analysis and Findings:

[35] It is necessary to consider three issues in this case:

(a) the scope and standard of review;

(b) whether or not Young Life is entitled to an exemption from property taxes by virtue of being a "place of public worship" in relation to Question 1 as posed on the Stated Case; and

(c) whether or not Young Life is entitled to an exemption from property taxes by virtue of the properties being exclusively used for "activities that are of demonstrable benefit to all members of the community where the land is located" in relation to Question 2 as posed on the Stated Case.

A. Scope and Applicable Standard of Review:

[36] Section 64(1) of the *Assessment Act* limits the standard of review in this case to an error in law. Counsel for Young Life seeks a broader review by characterizing the application of the legal tests to the facts in this case, generally regarded to be questions of mixed law and fact, as errors in law, based on the approach taken by our Court of Appeal in *Burlington, supra*, at paras. 25-26.

[37] Turning to what is at issue here, the interpretation of what constitutes a "place of public worship" and within that phrase, what constitutes "worship" and "public worship" within the accepted "invitation test", are clearly questions of law that arise from the interpretation of a statutory provision. The same is true for the

phrase "of demonstrable benefit to all members of the community". This also includes, to my mind, whether or not "of demonstrable benefit" includes an element of sufficiency and directness in relation to members of the community.

[38] Assuming for the moment that the Board is correct in its interpretation of those matters, Young Life seeks to characterize the Board's application of the legal tests to the facts of the case as errors in law, reviewable to a standard of correctness, on the basis that the points in question are so general as to have precedential value in the application to future cases, to borrow the language in *Burlington, supra*, at para 25.

[39] Counsel for the Assessor submits that the Board was correct in its statutory interpretation of the relevant portions of section 15 of the *Taxation (Rural Area) Act*, and applied the provisions correctly. Further, counsel submits that, in any event, the application of the statutory provisions to the facts is a matter of mixed law and fact and, therefore, not reviewable, absent what may properly be characterized as an error in law.

[40] In *Burlington,* the issue was the proper classification of a natural gas pipeline for property assessment purposes. The court review was pursuant to s. 65 of the *Assessment Act*, which permits an appeal of a final decision of the Board to the Supreme Court on a question of law alone. In this case, the appeal is a reference on questions of law arising in the proceeding, pursuant to section 64(1) of the *Assessment Act*. Apart from the latter's interim nature, both are procedures limited by statute to questions of law. As to the correct characterization of matters of law and mixed law and fact, a number of passages in the reasons of Smith J.A., for the five-person court, in *Burlington, supra*, at paras. 24-27, are instructive:

> Questions that ask what are the applicable legal principles are questions of law. Thus, whether the Board misinterpreted the effect of the *Cominco [Nelson/Trail* v. *Cominco Ltd.* (1997), 48 B.C.L.R. (3d) 371 (C.A.)] decision and whether it gave the words in s-s. 2(b)(i) of the *Regulation* incorrect meanings are questions of law...
>
> Questions that ask whether the facts satisfy the applicable legal tests are questions of mixed fact and law. Thus, the second questions contained in Questions 1 and 2, alleging misapplication of legal principles, are *prima facie* questions of mixed fact and law. However, as Iacobucci J. went on to say in *Southam [Canada (Director of Investigation and Research, Competition Act)* v. *Southam Inc.,* [1977] 1 S.C.R. 748], at paras. 35-37, in remarks following the passage quoted by the chambers judge, not every application of legal principle to facts will be a question of mixed fact and law. Rather, where the point in question is so general that the decision may have importance in determination of future cases, the decision will raise a question of law: see *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, paras. 36-37; *Housen* v. *Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33, para. 28.
>
> The two questions alleging misapplication of principle do not arise if the Board applied incorrect legal tests. On the other hand, if the Board's interpretation of s-s. 2(b)(i) of the *Regulation*, as informed by the decision in *Cominco*, is correct, the application of the Board's interpretation to this pipeline may have precedential value in future cases involving the classification of oil and gas pipelines. It may also apply in cases involving other properties, including those dealing with the production, transmission, transportation, and distribution of other products, such as electricity and telecommunications. Accordingly, the questions alleging misapplication of legal principle are also questions of law for the purposes of this review.
>
> I digress to observe that, while the description of questions of law set out in the *Cal Investments [British Columbia (Assessor of Area No. 26 – Prince George)* v. *Cal Investments Ltd.*, [1993] B.C.J. No. 93 (S.C.)] decision, on which the chambers judge relied (para. 18) above, is a useful list of examples, questions alleging the misapplication of legal principle will not always be questions of law. Such questions must be examined carefully to determine whether they are actually questions of law or whether they are truly questions of mixed fact and law.

[41] Therefore, in relation to the determinations the Board was required to make in this case, I must ask is there anything about this particular case or the legal tests the Board had to apply that elevates what would otherwise be findings of mixed law and fact to an application of general principle of precedential value?

[42] I am of the view there is not. While the facts in this case give rise to an interesting application of the statutory provisions in relation to large tracts of property, each case of this sort is obviously going to be factually unique, even in terms of other religious summer camps, given the nature of the place and the kind of activity that occurs on it, including the sort of worship that occurs, who engages in it and who is invited to attend. To elevate the questions of mixed law and fact, as decided by the Board in this case, to reviewable errors in law as occurred in *Burlington*, would in essence provide a full review by the court of each of the Board's decisions, which was clearly not the intention of the Legislature, as evidenced in section 64(1) of the *Assessment Act*.

[43] Therefore, I find only the interpretation of the relevant statutory provisions as to their definitions, and the applications of any general legal principles, to be matters of law, and therefore reviewable by the court, by virtue of section 64(1) of the *Assessment Act*. In this regard, I note it is admitted the Board is correct in its interpretation of the "invitation test", as it relates to "public worship".

[44] As to the correct standard of review, the following comments of Smith J.A. for the court in *Burlington, supra*, at paras. 30-34, are instructive:

> The proper standard of review, whether by way of judicial review or appeal, depends upon the level of deference intended by the legislature to be afforded to the decision-maker. That intention is to be discerned by examining the question in the context of four factors: the presence or absence of a privative clause or a statutory right of appeal; the relative expertise of the tribunal on the issue in question; the purpose of the legislation and the provision in particular; and the nature of the question – whether it is a question of law, fact or mixed law and fact: *Ryan* v. *Law Society (New Brunswick)*, 2003 1 S.C.R. 247, 2003 SCC 20, para. 21; *Dr. Q. [Dr. Q* v. *College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226] para. 21. This approach has been labelled "the pragmatic and functional approach". The chambers judge did not employ the pragmatic and functional approach. He erred in failing to do so.
>
> The pivotal questions on this appeal are those asking whether the Board misinterpreted the words in s-s. 2(b)(i) of the *Regulation*... Necessarily, the meanings must be ascertained of the underlined words and phrases in the locution...
>
> The proper standard of review for these questions must be determined in the context of the factors comprising the pragmatic and functional approach. There is no privative clause in the *Act*. However, there is a right of appeal, which is narrowly confined by s-ss. 65(1) and (9) to stated questions of law. Statutory interpretation and the application of principles of general law are questions of law that have traditionally been considered to lie exclusively within the expertise of the courts, while the expertise of the Board lies in the application of the provisions of the *Regulation* to property for purposes of classification for assessment purposes. Further, the purpose of the appeal procedures set out in s. 50 (to the Board) and s. 65 (to the courts) of the [*Assessment*] *Act* is to provide a scheme for the resolution of bilateral disputes between the Assessor and individual taxpayers. In this respect, the scheme resembles the court process.
>
> These contextual factors identify a legislative intention that the questions of law raised in this case should be reviewed on a correctness standard with no deference afforded to the decision of the Board. The meaning of the regulatory provision is a question of pure statutory interpretation and, as McLachlin, C.J.C. said, speaking for the court in *Haida Nation* v. *British Columbia (Minister of Forests)*, 2004 SCC 73,
>
> > [61] ...to the extent that the issue is one of pure law, and can be isolated from the issues of fact, the standard is correctness...

> Since the chambers judge applied the standard of patent unreasonableness to his review of the stated questions, we must re-examine them in light of the correctness standard.

[45] Applying the "pragmatic and functional approach" to the matters at hand, the standard of review is correctness. Specifically, given that the statutory scheme here is the same scheme as discussed in *Burlington* at para. 32, the Board has an expertise recognized by the Court of Appeal in terms applying the provisions of property tax legislation to properties for assessment purposes. To the extent the Board is fulfilling that function, absent errors in law, its findings are not reviewable under the present legislative scheme. In terms of statutory interpretation, what constitutes a "place of public worship" and what constitutes "activities that are of demonstrable benefit to all members of the community" are matters of pure law, and the Board is to be held to a standard of correctness. In terms of the application of those terms to the facts of this case in accordance with the provisions of section 15(1) of the *Taxation (Rural Area) Act*, I find they give rise to questions of mixed fact and law that are not reviewable, unless they fit within the exception recognized in *Burlington*, or the Board has acted without any evidence, or has acted on a view of the facts that could not be reasonably entertained: *British Columbia (Assessor of Area No. 26 – Prince George)* v. *Cal Investments Ltd.*, [1993] B.C.J. No. 93 (Q.L.) (S.C.), apprvd. *Gemex Developments Corp* v. *Assessor of Area 12 – Coquitlam* (1999), 62 B.C.L.R. (3d) 354 (C.A.) at para. 18. This is in keeping with the "pragmatic and functional approach" recognized by the Court of Appeal in *Burlington*, and the substance of the task faced by the Board in assessing these properties owned or occupied by Young Life.

[46] As to what properly may be considered to be a matter of law as opposed to mixed law and fact, counsel for the Assessor cited the helpful comments of Lord Sterndale in *Currie v. Inland Revenue Commissioner*, [1921] 2 K.B. 332 (C.A.) at pp. 335-6:

> The first question that has been debated before us is this: Is the question whether a man is carrying on a profession or not a matter of law or a matter of fact? I do not know that it is possible to give a positive answer to that question; it must depend upon the circumstances with which the Court is dealing. There may be circumstances in which nobody could arrive at any other conclusion than that what the man was doing was carrying on a profession; and therefore, looking at the matter from the point of view of a judge directing a jury, the judge would be bound to direct them that on the facts they could only find that he was carrying on a profession. That reduces it to a question of law. On the other hand, there may be facts on which the direction would have to be given the other way. But between those two extremes there is a very large tract of country in which the matter becomes a question of degree; and where that is the case the question is undoubtedly, in my opinion, one of fact; and if the Commissioners came to a conclusion of fact without having applied any wrong principle, then their decision is final upon the matter.

[47] The above quotation was referred to in approval in *Delsom Estates Ltd.* v. *British Columbia (Assessor of Area 11 – Richmond/Delta)*, [2000] B.C.J. No. 331 (S.C.). In *Delsom*, the owner of six parcels of land appealed by way of Stated Case various determinations and findings of the Assessment Appeal Board. The appeal was dismissed as the court found that the owner was seeking a rehearing, whereas the jurisdiction of the court was limited to a review of errors in law only. As the Board had before it evidence upon which its findings could be sustained, the court found it could not intervene. Hood J., in *Delsom*, stated the following at para. 36:

> The scope of review on appeal by way of Stated Case is a very limited one, being confined strictly to questions of law. In performing its tasks the Board, like the Court of Revision and the Assessor before it, of necessity, has a very wide discretion. Like any fact finder, the Board will consider and weigh many factors, and make many lessor or secondary decisions before reaching its final or primary decisions. Almost every decision made by the Board involves some discretionary judgment, and each constitutes a finding of fact...

[48] A similar rationale was applied in *The Manufacturers Life Insurance Company* v. *Assessor of Area 09 – Vancouver*, (1996) B.C.J. No. 3046 (S.C.)

[49] In *Sci Canada Limited* v. *British Columbia (Assessor of Area 09 – Vancouver)*, [1995] B.C.J. No. 1320 (S.C.); affirmed [1996] B.C.J. No. 2498 (C.A.), a case involving somewhat similar issues to the case at bar, Dillon J. upheld the finding of the Board that the activities at a funeral chapel on certain property were worship, but not public worship. The Court of Appeal dismissed the appeal and stated at para. 4:

> The issues before the court below raised largely questions of fact or mixed fact and law. We are asked on this appeal to take a different view of the evidence and its weight than did the Board. This we cannot do. There was ample evidence to support the conclusion arrived at by the Assessment Appeal Board and by the learned trial judge and this Court should not interfere.

[50] These authorities make it clear that, in context of the property assessment scheme set out in the *Assessment Act*, the court has not been prepared to review findings of fact or mixed fact and law, or substitute its own views as to the evidence and application of the relevant statutory provisions for those of the Board, provided it acted reasonably. It is on this basis that I proceed to review the questions posed to this court by way of Stated Case.

B. Question 1: Did the Board err in law by misinterpreting or misapplying s. 15(1)(d) of the *Taxation (Rural Area) Act*, or by acting upon a view of the facts that cannot reasonably be entertained, in finding that the worship that occurred on the properties is not "public worship" and that the properties are not "places of public worship" and, therefore, that the properties are not entitled to an exemption from taxation?

[51] Given that the proper scope of review for this court is limited to an error in law, an error in the application of a general legal principle, or a finding that is unreasonable on the evidence, I turn to the findings of the Board in the Exemption Decision regarding the section 15(1)(d) exemption for a "place of public worship", and whether what occurs on the Young Life properties constitutes "public worship":

> "[58] In the Young Life context, *I find that corporate worship occurs in the form of large gatherings such as Club Talk, and in smaller gatherings of staff, leaders or campers meeting together for the purpose of prayer and praise. Corporate worship involving staff, leaders, and campers happens at various times throughout the day and week, in various locations at Egmont, Malibu Club, and Beyond Malibu. Corporate worship happens principally during the summer months when Malibu Club and Beyond Malibu are operational.* Corporate (and individual) worship happens throughout the year at Egmont in the form of group bible study, prayer and devotion by the year round staff working in the administration offices. Worship also occurs throughout the year by the resident caretakers in their residences at Malibu Club.
>
> [59] I find that individual worship takes place in the form of private devotion or prayer at various times throughout the summer camp experience in various locations at Egmont, Malibu Club and Beyond Malibu. I find that all of the camping activities at Egmont, Malibu Club and Beyond Malibu are intended to evangelize youth and promote and present the gospel of Jesus Christ to youth. Whether individual campers approach activities, beyond corporate worship activities, as a worshipful event or experience them as such, will depend on the frame of mind of the camper.
>
> ...
>
> [66] I have no doubt that worship happens, both in an individual and corporate way, at the Properties. But are the Properties and each of them a "place of public worship" within the meaning of the *Taxation (Rural Area) Act*? It is not enough that worship happens at a particular location to transform a property into a "place of public worship" entitling it to an exemption from taxation. *If practically anything a person of faith does with the intention of praising and glorifying God is worship, then worship happens everywhere and anywhere as people of faith pray or offer praise in the privacy of their own homes, or go about their daily work and activities in the spirit of glorifying god. Any place can be a place of worship, depending on how it is used and the intent of the people using it. It cannot have been the intention of the legislature to exempt from taxation any place where worship happens.*

[67] *The exemption is for a "place of public worship". The phrase not only implies that the worship must be of a public nature, but that it is a place, set aside or specifically and principally used for the purpose of public worship.* The exemption will be available to "places of public worship" so set aside and used in the context of any faith tradition.

...

[73] From the above authorities I conclude that the phrase "place of public worship" must be interpreted in its ordinary sense. The dictionary definitions all define "worship" in terms such as: reverence or adoration of a deity through acts, rites or ceremony. *I conclude that for "worship" to be "public" it must involve the coming together of people in a corporate event to which members of the public are given notice that they are invited to attend and to which members of the public feel invited.*

[74] Turning to the facts of this case, certainly corporate as well as individual private worship occurs at the Properties. *I find the individual private worship is not public worship. Some of the corporate worship, for example, Club Talk, is open to the public in the sense that if a boater came by and wanted to participate they would be permitted to stay. But there is no evidence that the facility is advertised as a place of public worship, or that the public generally is invited to attend public worship events.* The evidence is that attendance by people other than campers, leaders or staff at worship events such as Club Talk is infrequent. *That members of the public are welcome to participate in worship in the minds of the gathered community, does not make it "public worship" (**SCI, supra; Broxtowe, supra).***

[75] *Malibu Club is advertised as a summer camp where youth are introduced to the gospel of Christ and participate in a variety of recreational activities. The website advises youth that the only way to attend is to contact a Young Life leader in their local community. The evidence was that youth are "brought to camp" and must be invited to attend with a leader. While the evidence is that Young Life does not discriminate in who may attend their camps, and that no one who shows a genuine interest is excluded for any reason including the ability to pay, that does not turn what is private property into public property or change the nature of the events that occur on the property from the events of registered campers and their leaders into public events. The fact that corporate worship events take place at the camp, and that a passing member of the public may occasionally attend some of those events, does not transform the worship event into public worship. Nor does it transform what is essentially private property used as religious summer camp attended by registered paying campers and guests of Young Life, its staff and volunteers, into a "place of public worship".*

[76] I find the worship that occurs daily by staff and leaders is more akin to private family worship than public worship. These are not worship events to which the public are invited, even if a person would not be excluded if they happened to show up and want to participate.

[77] During the summer months, the Properties are used as a youth summer camp and for a youth wilderness adventure program. *It is a youth summer camp and adventure program with a religious purpose, but I find that that purpose does not transform the Properties into places of public worship. While I find worship occurs in various forms throughout the day and throughout the camp during the summer months, I find it is not "public worship" within the meaning of the Taxation (Rural Area) Act and the Properties are not "places of public worship" within the meaning of that Act..."* (Emphasis added.)

[52] Young Life submits that the Board erred in law by misinterpreting the meaning of "public" in the phrase "every place of public worship". According to the submissions made on behalf of Young Life, this error occurred because the Board failed to attribute the plain and ordinary meaning to the word "public", when it found that none of the corporate worship, which occurs at various times throughout the day and week in various locations at Egmont, Malibu Club and Beyond Malibu, was "public" worship and, therefore, that none of the properties constituted "places of public worship". Specifically, it is submitted that the Board erred in two respects: by failing to characterize the campers as "public"; and by failing to find that they were "invited" to worship at the corporate worship events on the properties, based on its plain and ordinary meaning.

Do the campers constitute the public?

[53] Young Life submits the Board first erred in mischaracterizing the campers who attend these camps and programs as part of a core group of "private worshippers" who use the properties for inherently "private worship", to the exclusion of the "public". Young Life submits that the principal invitation to the "public" (in the sense of the "general public"), within the meaning of section 15(1)(d), is its invitation to youth generally to worship as campers. Further, in the context of the Board's finding that Young Life did not invite the public to participate in public worship, Young Life submits that the Board failed to properly interpret the word "invite" in its ordinary sense. According to Young Life, it clearly invites the campers as the "public" to attend the corporate worship events that take place on the properties.

[54] In the submissions made on behalf of Young Life, counsel accepted as correct, the "invitation test" as described by the English Court of Appeal in *Broxtowe Borough Council* v. *Birch and others*, [1983] 1 All E.R. 641 (C.A.), and referred to in *Sci Canada Ltd., supra*. The "invitation test" is intended to exclude from the benefit of a taxation exemption, facilities on private property that are owned or occupied, and used regularly and on an ongoing basis, by a core group of worshippers sharing a common religious affiliation. This core group of worshippers, by their actions, expressly or impliedly, and intentionally or unintentionally, "exclude the general public" or the "outside world" from joining in the worship events.

[55] However, Young Life submits it was an error to characterize the Malibu Club and Beyond Malibu campers as part of a "private" worship community. It is submitted that section 15(1)(d) is not intended, as was the result here, to exclude from the benefit of taxation exemption, private facilities, like those located on these properties, which are specially offered to and used by any youth (here, the relevant category of the general public), who wish to attend, and where corporate worship is a core activity. According to Young Life, its evangelism programs are, themselves, an objective invitation to youth, regardless of religious affiliation, to accept the Christian gospel. Further, the evangelistic youth worship that occurs on the properties is the antithesis of "private worship" as contemplated by the invitation test, which is incorporated into the property tax exemption contained in section 15(1)(d). The Board, therefore, erred by failing to characterize the campers as the relevant "public", and further, by concluding that Young Life had not extended an invitation to campers as the "public".

[56] Counsel for the Assessor approached the issues somewhat differently, arguing first that the Board correctly found that the properties were not a church, synagogue, mosque, or similar place, but a summer camp, and, in any event, the worship that occurs on the properties is not public. Counsel submitted that the Board correctly summarized the law when it concluded at para. 73 "that for 'worship' to be 'public', it must involve the coming together of people in a corporate event to which members of the public are given notice that they are invited to attend and to which members of the public feel invited." He noted the submissions made on behalf of Young Life were solely addressed to the issue of the "invitation test", avoiding the first and fundamental issue as to whether, on the facts of this case, a summer camp may be found to be a "place of public worship."

[57] Before turning to the issue of "place of public worship", I will deal with the issues of whether the Board erred in failing to characterize the campers as the "public", and whether its manner of inviting them to participate in corporate worship on the properties, including its methods of advertising and enrolment, constitute an invitation to the campers as the "public".

[58] Young Life submits that the Board erred by interpreting "public" as requiring that, viewed objectively, every member of the public objectively must feel invited to participate in worship at the properties to satisfy the "invitation test". As Slade L.J. noted in *Broxtowe Borough Council, supra*, at p. 657, it is "the particular section of the public who are most concerned, [who] are given some notice that they will not be treated as trespassers or intruders, if they seek to enter the premises and attend the meeting". Given the remote location of the camps, Young Life submits the campers who chose to attend and participate must be viewed as the members of the relevant portion of the "public" or "outside world". For the invitation to the outside world to have some practical meaning, it is submitted that the nature of the programs and the remote nature of the camps lend themselves to the kind of institutional invitation extended by Young Life to interested

youth. Therefore, Young Life submits the Board erred in concluding there was no invitation to the public to attend public worship on the properties, and in doing so misinterpreted section 15(1)(d).

[59] The "invitation test" is settled law and I find it was correctly articulated by the Board. Its application to the facts in this case is a question of mixed law and fact and is therefore not reviewable, on the basis I have previously set out. I find that the Board's findings in this regard are reasonable and based on evidence before it.

[60] However, I do note, in terms of the reasonableness of those findings, that in declining to find the campers to be the "public", the evidence before the Board included the fact that their attendance was restricted by age; that attendance at the camp (including any worship that takes place at that camp) costs approximately $400 per camper, unless the camper has those fees waived; and most significantly, campers must have a pre-existing relationship with a Young Life leader prior to attending the camp. Applying the "core community" analogy referred to in the *Broxtowe Borough Council* decision, I am of the view that by the time the campers attend the camps, they are already part of the core community, as opposed to members of the public.

[61] The submission that the Board erred by failing to properly interpret the word "invite" in its ordinary sense, in terms of Young Life's invitation to the campers as the public to attend corporate worship events taking place on the properties, must fail for essentially the same reason. In my view, there was no error in the Board's interpretation or use of the word "invite". Specifically, on the evidence before it, the Board, in correctly interpreting "the invitation test", was entitled to find that the campers were not members of the public. Therefore, any invitation to the campers to attend worship once on the properties was to attend private worship. Any invitation by Young Life to campers to come to the camp, extended to them before they arrived, was to attend the camp "as a great place to get away from it all, enjoy exciting water sports, and be encouraged in your faith". The invitation was to attend a recreational summer camp, as opposed to services of worship. In any event, by the time the campers arrived at camp the Board found them to constitute part of the "core community", which is a reasonable finding.

[62] Moreover, it does not advance Young Life's argument to submit that because the Board did not find the campers who attended the camp to constitute the "public", it must have misinterpreted "the invitation test", by requiring that every member of the public, viewed objectively, feel invited to participate in worship at the properties. There is simply no evidence that the Board misinterpreted the test in this way. I find to the contrary.

Does the attendance of passing members of the public constitute the "public"?

[63] In order to be reviewable, the Board must have erred in law in interpreting the word "public" in the phrase "place of public worship".

[64] In the alternative, Young Life submitted that even if the correct standard for the "invitation test" is the "general public" beyond the youth campers, the Board erred by failing to attribute the ordinary meaning to the word "invite", and by failing to find on the evidence that the "general public" were invited to Malibu Club. Counsel submitted that Malibu Club was open to the public as its docks were accessible to the boating public, guided tours were available to interested boaters, and a concession stand and a doctor were available to tourists and boaters. Further, counsel submitted the fact that Malibu Club staff welcomed such people and invited them to attend Club Talk constituted evidence of an invitation to worship being extended to members of the "general public".

[65] On the evidence, the Board noted that attendance at worship events "by people other than campers, leaders or staff ...is infrequent" (para. 27). The Board noted that Young Life did not advertise its services, or extend a specific invitation to members of the public to attend worship services, which were, given the location, likely to be boaters, tourists to the area, or residents of Egmont. The evidence was that when boaters or tourists arrived at Camp Malibu, they were permitted limited use of specified facilities, and were permitted to tour the facilities in the company of a Young Life staff person or leader. Should a boater wish to stay for corporate worship, he or she was permitted to do so. Insofar as it is a matter of law, I find that

the Board was correct in its finding, at para. 75, "that a passing member of the public may occasionally attend some of those [corporate worship] events, does not transform the worship event into public worship", considering that there was no evidence "the facility is advertised as a place of public worship, or that the public generally is invited to attend public worship events" (para. 74). Further, I agree with the Board's statement, at para. 74, that:

> That members of the public are welcome to participate in worship in the minds of the gathered community, does not make it "public worship" (*SCI, supra, Broxtowe, supra*).

[66] Therefore, I find the Board correctly interpreted "the invitation test" in its finding that the worship that occurred on the properties was not "public worship".

The Concept of "place" in "place of public worship":

[67] Counsel for the Assessor submitted that the concept of "place" in the phrase "every place of public worship" is a key component of the exemption contained in section 15(1)(d). In the various cases referred to, he pointed out that the concept of place is usually not dealt with because the issue is usually not the "place" *per se*, but the secondary characteristics of the property. However, he submitted the Board must analyze the principal purpose of the property and, in so doing, the Board here concluded that the properties were recreational summer camps, and the fact that Young Life sought to use the camping opportunity to evangelize the campers did not change their fundamental characterization.

[68] I agree that the concept of "place" is integral to the nature of the tax exemption sought. It is the concept of the "place" on property that is used for "public worship" that grounds the exemption from property taxes. This is not a new concept. It was first considered by the English Court of Appeal in *R.* v. *Registrar General*, [1970] 3 All E.R. 886 (C.A.). The discussion may be summarized in several quotations from the judgment of Lord Denning, first at p. 887:

> We are here concerned with an estate at Saint Hill Manor, East Grinstead, in Sussex. It is occupied by a group of persons who call themselves the Church of Scientology. There is a building on the grounds which they describe as a chapel. It is separate from the other buildings....
>
> This group of persons desire to register this building, which they describe as a chapel, as a 'place of meeting for religious worship'. If it is so registered, they will obtain considerable privileges. They will have taken one step toward getting a licence to celebrate marriages there; they will be outside the jurisdiction of the Charity Commissioners; and the building itself may become exempt from paying rates. All of this depends on whether it is properly a 'place of meeting for religious worship'.

Later, at pp. 889-890, Lord Denning continued:

> We have had much discussion on the meaning of the word 'religion' and of the word 'worship', taken separately, but I think that we should take the combined phrase 'place of meeting for religious worship' as used in the Act of 1855. *It connotes to my mind a place of which the principal use is as a place where people come together as a congregation or assembly to do reverence to God...*
>
> Turning to the creed of the Church of Scientology, I must say that it seems to me to be more a *philosophy* of the existence of man or of life, rather than a *religion*. Religious worship means reverence or veneration of God or of a supreme being. I do not find any such reverence or veneration in the creed of this church, or indeed, in the affidavit of Mr. Segerdal....
>
> I do not think that this evidence is sufficient to bear out the contention that this is a place of meeting for religious worship. (Emphasis added.)

[69] It is clearly correct to take into account the principal use of the properties in considering the context of "place". The Board did not err in law in doing so, or in concluding, based on the evidence before it, that the principal use of the properties was for a recreational summer camp. That is a finding of mixed fact and law

that is entirely reasonable on the evidence, and is within the domain of the Board's expertise. The fact that an incidental use includes "public worship", if the worship that is carried out on the properties may properly be so characterized, does not change their principal use. It must be noted that on the properties (in total approximately 734 acres of land, and approximately 6.5 acres of water lot and foreshore leases) there is no building or "place" set aside for the predominant use of conducting religious services.

[70] The example of a dining hall is apt, particularly as that is where, at Camp Malibu, Young Life holds the religious evangelistic "Club Talk", which the Board characterized as corporate worship. The dining hall is used to serve meals, and whereas prayer or other devotional activities may also take place at mealtimes, its principle use is and remains as a dining hall where meals are served and eaten. The Board was thus correct in its analysis of the principle use of the place for which the exemption is claimed.

[71] Furthermore, whereas a "place of public worship" may include a new and novel location, previously unrecognized as such (for example, not readily identifiable as a church, mosque, synagogue, or similar place), it must be recognizable as a place having as its principal use "as a place where people come together as a congregation or assembly to do reverence to God", to employ the definition articulated by Lord Denning in the *Registrar General* case, and also include an invitation to members of the public, within the accepted meaning of the "invitation test".

[72] The concept of a place of "public worship" was considered in *Bishop of Vancouver Island* v. *City of Victoria*, [1920] 3 W.W.R. 493 (B.C.C.A.), in the context of a municipal tax exemption conferred by the phrase "Every building set apart and in use for public worship of God". A majority of the Court of Appeal held that the exemption included the land under such a building. In his reasons, Martin J.A. had occasion to consider the phrase "Every place of public worship" in an earlier statute, and stated at p. 496:

> Now the expression "place" of public worship in ... is as wide as it is indefinite, and would, without more, include a building with the adjoining land necessary for due enjoyment, and it might mean either a building or piece of land, open or enclosed, without any building or even an altar where people congregated according to their religious inclinations for public worship, with seats or benches, or without, just as they did, for example, in the early days in Victoria under a fine oak tree called the "Gospel Oak", which until a few months ago was still standing on Fort Street, between Douglas and Blanshard Streets, within a few yards of the cathedral now in question...

[73] Therefore, while I accept the submission by Young Life that worship in a natural setting may attract the exemption in section 15(1)(d), as opposed to in a building designated for such a purpose, the fluid concept of "place" is inexorably tied to its principal use for the activity of "public worship". It was in relation to the latter requirement that the Board analyzed the use of the properties.

[74] Thus, I find that the finding of the Board that the properties Young Life used for its youth summer camp operations do not constitute "places of public worship" is correct in law, and is reasonably supported by the evidence. Therefore, the answer to Question 1 as posed is "No".

C. Question 2: Did the Board err in law by misinterpreting or misapplying section 15(1)(q) of the *Taxation (Rural Area) Act*, or by acting on a view of the facts that cannot reasonably be entertained, in finding that the properties are not exclusively used for "activities that are of demonstrable benefit to all members of the community where the land is located", and therefore, are not entitled to an exemption from taxation?

[75] Given that the proper scope of review for this court is limited to an error in law, and error in the application of a general legal principle, or a finding that is unreasonable on the evidence, I now turn to the findings of the Board in the Exemption Decision regarding the properties used by Young Life and the exemption from property taxes permitted by section 15(1)(q) of the *Taxation (Rural Area) Act*. This subsection exempts "land and improvements if the land and improvements are (i) owned or occupied, and (ii) used exclusively by a nonprofit organization for activities that are of demonstrable benefit to all members of the community where the land is located".

[76] The findings of the Board in relation to the properties and requirements of section 15(1)(q) are as follows:

"*The community*

[78] Young Life described the relevant community as Egmont and *environs*. The Assessor described it as either the town of Egmont or, alternatively, the rural areas of the Sunshine Coast. *I find the relevant community is the town of Egmont and the surrounding rural areas of the Sunshine Coast, Jervis Inlet and Princess Louisa Inlet.*

[79] *It is not necessary that every member of the community benefit from the use of the Properties, but that the use is of benefit to the community or society at large* (*The Pentecostal Assemblies of Canada* v. *Assessor of Area 5 – Port Alberni* (1981), Stated Case 160 (S.C.B.C.)).

...

Demonstrable Benefit

[82] *A general benefit, whether economic or social, to the community at large from the activities on the property in question will attract the exemption* (*Williams Lake, supra*). A review of decisions dealing with the issue of demonstrable benefit is helpful to determine what kinds of activities have or have not been considered to be of demonstrable benefit to the community.

...

[84] In *Pentecostal Assemblies, supra*, the Court granted the exemption to property used as a summer camp. The Board had found the property was used for activities of demonstrable benefit to those who actually attended the camps but was not persuaded that the property was used for activities of demonstrable benefit to *all* members of Vancouver Island, the relevant community (emphasis added) (A.A.B. July 16, 1981). On appeal by way of Stated Case, the Court found the Board had erred in not finding the property was wholly exempt from taxation and in its interpretation of the meaning of the words "activities which are of demonstrable benefit to all members of the community" and that *all* members of the community did not need to benefit, just society at large. The Court did not provide reasons for its decision, and there is no discussion by the Board or Court of the nature of the benefit to the community.

...

[91] In *Williams Lake, supra*, property operated as an airport was found to be used for activities of demonstrable benefit to the community. The Court specifically disagrees with an earlier decision in *Nanaimo Airport Commission* v. *Assessor of Area 04 – Nanaimo/Cowichan* (1995), Stated Case 378 (S.C.B.C.) denying the exemption to property used as an airport because the operation of the airport was not of "demonstrable moral, intellectual, or social benefit" to the community. *The Court finds that "any general benefit to the community brings the land within the exemption."* The Court reasons that as the airport is a public facility, needed for the overall benefit, both economic and social, of the community it serves, that it is of "demonstrable benefit" to the community. Again, *there is a sense of the property being used to fill a need in the community*.

[92] It is difficult to extract any definitive principles from the cases as to what will constitute a demonstrable benefit to the community, *but is seems that facilities that are public and used by members of the community, or that are used for the general public good by filling a need in the community will qualify for the exemption.*

[93] *Young Life contends that, at all material times, it used the Properties to achieve its purpose and objective to operate a youth and adult camp and hiking and kayaking program to further its non-*

denominational Christian outreach goal. Young Life submits the activities conducted on the properties provide specific, demonstrable, moral, social and economic benefits including:

a. the invitation and opportunity for youth and adults to participate in non-denominational Christian evangelical programs in conjunction with outdoor recreational activities;

b. year round employment of local residents;

c. enhancement of tourism opportunities on the Sunshine Coast;

d. public accessibility to the facilities as a tour destination for boaters, and access if desired to parts of the Malibu program including worship; and

e. a safe haven for boaters in the region.

[94] Turning to each point in turn, *I fail to see how the invitation and opportunity to participate in non-denominational Christian evangelical programs (or any other religious based program) in conjunction with outdoor activities, without any other manifestation of actual benefit to the community from that invitation and opportunity, is of demonstrable benefit to the community.* The activities themselves may be of benefit to those who participate, but there is no evidence of benefit to the community at large. The evidence is that, during 2002, in the eight weeks of the summer when Canadians were able to attend, less than 1% of the campers attending Malibu Club were from the Sunshine Coast. The vast majority of the youth attending the Young Life camping programs at these properties are not from the community in which these properties are located and *there is no evidence that any benefit they may receive from attending the summer camp program either directly or indirectly provides benefit to the community at large.*

[95] As to other events such as men's Malibu and Women's Malibu, there is no evidence that these events are attended by members of the Sunshine Coast community or that the attendance by others at these events benefits the Sunshine Coast community.

[96] It is evident from the fact that there are so few campers from the local area that, *although the camping programs are well attended and are obviously meeting a wider need for that experience, the camping programs themselves do not fill a public need in the community where the property is located.*

[97] The campers, leaders and staff attending Malibu Club are confined to Malibu Club. The activities for the most part do not involve members of the community beyond the registered campers, leaders and staff. The campers, leaders and staff attending Beyond Malibu are either confined to the basecamps at Beyond Malibu or Egmont and otherwise are out kayaking or hiking in the wilderness without contact with other members of the community.

[98] I find that the *Pentecostal Assemblies and Main River* decisions do not provide binding or even persuasive authority that property used as a summer camp for youth is necessarily of demonstrable benefit to the community in which the property is located. It may be on the particular facts and circumstances of any case. But in the circumstances of this case, *I find that the evidence does not demonstrate that the activities on the property providing a summer camp experience, while in all likelihood for many attendants living up to the advertised claim that it "will be the best week of their lives", are of demonstrable benefit to the community in which the property is located.*

[99] As to year round employment of local residents, the evidence is that Young Life employs nine people at Egmont who are Canadians resident on the Sunshine Coast. *This is approximately 6% of the population of the town of Egmont*. I have no evidence with respect to the population of the entire Sunshine Coast but it is likely that Young Life would not be considered a major employer for the community. *The employment of local residents is, in any event, incidental to the activities that take place on the property. It is the actual activities on the property and the use to which the property is put*

that must provide the demonstrable benefit. The incidental employment of a few local residents does not render the activities on the property of demonstrable benefit to the community at large.

[100] Young Life says the community benefits by enhancement of tourism opportunities on the Sunshine Coast through extensive publicity of the Sunshine Coast, and particularly Egmont and Princess Louisa Inlet, to North Americans, and to local residents and visitors through Charter cruises. Young Life says Malibu and Beyond Malibu literally put Egmont on the map. The publicity in evidence is the Young Life and Malibu Club websites, and the brochures advertising Men's Malibu and Women's Malibu. While this publicity is certainly effusive with respect to the beauty of the area, *there is no evidence that this publicity translates into enhanced tourism to the area. The publicity would appear to be effective in that Malibu Club and Beyond Malibu are fully subscribed, but there is no evidence that the publicity for Malibu Club and Beyond Malibu brings tourists generally to the area, or that the Properties are themselves a major tourist destination for others besides registered campers, the leaders and staff*. There is no doubt that the area in which these properties are located is a beautiful area that in itself would attract boaters. *There is no evidence, however, that either the publicity for Malibu and Beyond Malibu or the activities on the Properties attract tourists to the area thus benefiting the community at large.*

[101] *I find the use of the Malibu Princess for charter tours of Princess Louisa Inlet is incidental and insufficient to constitute a demonstrable benefit to the community*. There is no evidence that the availability of the Malibu Princess for charter tours attracts significant numbers of tourists to the area so as to constitute a demonstrable benefit to the community. *The use of Malibu Club by Artesia Tours for arts retreats benefits the community through the donation by Artesia of profits to benefit Sunshine Coast artists. This benefit is incidental to Young Life's principle use of the Properties and insufficient to constitute a demonstrable benefit to the community as it represents such a small use of the Malibu Club in the overall context.* In any event, the benefit is provided by Artesia Tours by the donation of their profits, and not by Young Life.

[102] As to public accessibility to the facilities as a tour destination for boaters, the evidence is that boaters are welcome to tour the facility accompanied by a host and are welcomed and shown hospitality. Boaters are welcome to attend Club Talk and the evidence is that occasionally, probably not very often, some boaters do attend Club Talk. *I find that the use of Malibu Club for tours for yachters is incidental and not such a significant use as to be considered of demonstrable benefit to the community.*

[103] As to a safe haven for boaters, *while Young Life no doubt provides an important and necessary service to boaters in distress, I find the use of the Properties in this regard is incidental and insufficient in itself to constitute a demonstrable benefit to the community.* Young Life is only doing what any good citizen would do to help someone in distress. *There is no doubt that it is helpful that boaters in distress have somewhere to go in what is a remote and unpopulated area. But the fact that the doctor in residence at Malibu Club during the summer months may assist with two medical emergencies in a year involving boaters, and that Young Life may provide occasional assistance to boaters in distress does not render the activities on the Properties of demonstrable benefit to the community. While these activities may benefit a few individual members of the community, the activities as well as the benefit are minor in the context of all the other activities at the Properties, and insufficient to attract the exemption.*

[104] I find that the Properties are not exclusively used for "activities that are of demonstrable benefit to all members of the community where the land is located" within the meaning of section 15(1)(q) of the *Taxation (Rural Area) Act*. *While the camp programming may be of benefit to the persons attending the programs, there is minimal participation in these activities by members of the local community, and no evidence that the participation in these programs by those that do participate actually benefits the local community. There is no evidence that the activities on the Properties attract people to the local area, other than to attend the camping programs, in significant numbers so as to constitute a demonstrable benefit to the community. Other activities of benefit to boaters are incidental and insufficient to constitute a demonstrable benefit to all members of the community."*

(Emphasis added.)

[77] Counsel for Young Life submits the Board committed four errors in law in the course of its determination that the activities carried out on the properties did not constitute "a demonstrable benefit to all the members of the community where the land is located" pursuant to section 15(1)(q). I will consider each in turn.

Is the advancement of religion through evangelism *per se* a "demonstrable benefit"?

[78] First, counsel for Young Life submits that the Board erred by failing to interpret "demonstrable benefit" as used in section 15(1)(q) to include the intangible societal benefit of the advancement of religion through youth evangelism. Young Life submits the need for religion in a community, and the benefits afforded to society as a whole, are established societal norms recognized by law. Further, counsel for Young Life argued that English and Canadian courts have recognized, in the context of charitable trusts, the advancement of religion as a societal benefit.

[79] Counsel for the Assessor submits that the words of section 15(1)(q) require the Board to consider the actual effect of the use of the property on the community, and that implicit in granting an exemption to a non-profit organization is the "demonstrable benefit" to the community from the activities carried out by the organization. Further, he submits that to find that religious evangelism directed at youth is "a demonstrable benefit" *per se* to the community, would be to incorrectly interpret the section, and remove from the Board any consideration and review of the actual "demonstrable benefit" to the community, because, by definition, any form of religious evangelism would automatically attract the tax exemption. This, he submits, was clearly not the intention of the Legislature.

[80] Part of Young Life's submission is that the Board committed an error in law, in declining to follow a prior decision of this court *The Pentecostal Assemblies of Canada* v. *Assessor of Area 5 – Port Alberni* (14 September, 1981), Victoria 81/1508 (S.C.), on the basis that there was no discussion by the Court of what may constitute "a demonstrable benefit to all members of the community" in relation to a church camp operated on Vancouver Island. The reported summary of that case, which considered the same wording in then section 13(q) of the *Taxation (Rural Area) Act*, states:

> Appeal allowed. The Board erred in interpretation of the words of the section, and the words "benefit to all members of the community" do not mean benefit to every individual therein, but if there is benefit to society at large it can well be affected by benefit to some, and indirectly, therefore, all of the community. The Court did not issue written reasons.

[81] In reaching its decision in that case, the Assessment Appeal Board, at pp. 5-6, found the following:

> The evidence discloses that while admission to the camp is not restricted, the availability of admission is not made known to all the residents of Vancouver Island. As noted earlier, the only form of publication of the camp's activities is through the distribution of the brochures in member churches and through the Department of Human Resources. In addition, the objects and purposes of the Nanoose Bay Pentecostal Camp found in Article 4 of the Constitution clearly reiterate that the objects of the society are designed primarily for people connected with the Vancouver Island Pentecostal Assemblies of Canada churches. The evidence further discloses that the camp is, itself, marked with a private sign which tends to support the somewhat restrictive use of the camp.
>
> In applying the principles as enunciated by Mr. Justice Fulton in the *Piers Island* case, the Board is not persuaded that the subject land and buildings are used for activities which are of demonstrable benefit to all members of Vancouver Island. Accordingly, the Board finds that the subject property should not be exempt pursuant to the provisions of Section 13(q) of the *Taxation (Rural Area) Act*.

[82] Having reviewed both of these decisions, I find that the Board did not err in failing to follow the decision of the Court as previously set out. Within the context of determining what may constitute "a demonstrable benefit", the question of what constitutes "all members of the community where the land is located" within the context of section 15(1)(q) has been subsequently considered by the Court of Appeal in *Williams Lake*

(City) v. *British Columbia (Assessor of Area 24 – Cariboo)*, 2002 BCCA 352. It thus remains for the Board to consider whether the activities of any particular summer camp, including their programs and outreach, religious or otherwise, constitute "a demonstrable benefit" to the community.

[83] I turn to consider Young Life's submission that the Board erred in failing to recognize the social benefit of Young Life's Christian youth evangelism as "a demonstrable benefit". It is undisputed that charitable trusts may be for the relief of poverty, the advancement of education, the advancement of religion, or for other purposes beneficial to the community, as found by the House of Lords in *Commissioners for Special Purposes of Income Tax* v. *Pemsel*, [1891] A.C. 531. It is also undisputed that this definition of charitable trusts has been accepted as part of the law in Canada: *Guaranty Trust Company of Canada* v. *Canada (Minister of National Revenue)*, [1967] S.C.R. 133. The advancement of religion as a societal benefit includes the promotion of spiritual teaching: *Re MacKay Estate*, [1947] 1 D.L.R. 477, (B.C.C.A.); rev'd on other grounds [1948] S.C.R. 500. It is submitted, on behalf of Young Life, that the Christian youth evangelism carried on in the various activities on the properties constitutes a societal benefit to the community, worthy of tax exemption, without the need for any further manifestation of "demonstrable benefit".

[84] I find, in considering the phrase "activities which are a demonstrable benefit to all members of the community where the land is located", that the concept of community as defined by McFarlance J.A. in *Piers Island Association* v. *Saanich and the Islands Assessment District*, [1977] B.C.J. No. 796, (C.A.), at para. 11 is instructive:

> It is clear to me that "community" within the meaning of this statutory provision must mean an area of land which must be defined in specific cases as a matter of fact, having regard to all of the circumstances of geography, ownership and use. It is clearly not intended that the benefits from the use and activities of the land should extend to all members of the community of the Province of British Columbia. The legislature must therefore have intended that in each case the area which is to be considered a community for the purposes of the subsection would be determined substantially as a matter of fact.

[85] Were I to accept Young Life's submission that Christian youth evangelism, in and of itself, ought to be considered of "a demonstrable benefit" to the community, then the specific nature of the community, having regard to its "geography, ownership and use", would have no place in the analysis of the nature and extent of the activities carried out on the property, which may result in the subject property being exempt from property taxes. I thus find that the general benefit of the advancement of religion, which is accepted in the law of charitable trusts, has no direct and meaningful application to the interpretation of section 15(1)(q) of the *Taxation (Rural Area) Act*. It is clear that the legislature intended that the Board, in each case, consider the tangible benefits to the community where the land is located, in order to determine whether or not the benefit afforded to the community was such that an exemption from property taxes was appropriate. Many different beneficial endeavours in the areas of philanthropy, religion, education, and others, advance the good of humankind. The law relating to charitable trusts recognizes this. However, the exemption permitted by section 15(1)(q) requires "a demonstrable benefit" accrue to the local community, as that may be determined in each case.

How to assess what is of "demonstrable benefit" to the community?

[86] Second, counsel for Young Life submits the Board erred by imposing a standard of "directness" and "sufficiency" when assessing "demonstrable benefit" in section 15(1)(q), where no such standard exists. To assess the related benefits as "incidental" or "insufficient", or both, is to fall into legal error, according to Young Life.

[87] Counsel for the Assessor submits that implicit in the phrase "demonstrable benefit to all members of the community where the land is located" is the requirement that the benefit be sufficiently significant so as to be apparent and recognized by the Board as the finder of fact. The Assessor submits that to interpret this phrase so as to remove the evaluative aspect of the Board's function is contrary to common sense and the applicable general principles of statutory interpretation.

[88] I find that using common sense and applying the plain and ordinary meaning rule to the words "demonstrable benefit", both require the trier of fact to engage in an assessment of the sufficiency of any purported benefit to the community, and also its "real and direct" nature.

[89] "Demonstrable" is defined by the *Concise Oxford Dictionary*, 8th ed., s.v. "demonstrable", as "capable of being shown or logically proved". In the context of section 15(1)(q) I find for a purported activity to be capable of being shown, it must be sufficient in degree. Alternatively, it must be sufficiently real and directly linked, so as to be capable of being logically proved. "Benefit" is defined by the *Concise Oxford Dictionary*, 8th ed., s.v., "benefit", as "a favourable or helpful factor or circumstance; advantage, profit". I note that in that definition there is an evaluative component such that the trier of fact must determine what may be favourable or helpful to the community.

[90] I turn to the Board's determination as to what may be of "demonstrable benefit" to the community in question. In para. 82 of its decision the Board stated, "A general benefit, whether economic or social, to the community at large from the activities on the property in question will attract the exemption (*Williams Lake*, *supra*)." The Board then reviewed various decisions dealing with the issue, and concluded as follows, at para. 92:

> It is difficult to extract any definitive principles from the cases as to what will constitute a demonstrable benefit to the community, but it seems that facilities that are public and used by members of the community, or that are used for the general public good by filling a need in the community will qualify for the exemption.

[91] The Board's definition is broadly cast, and in keeping with the plain and ordinary meaning of the words in section 15(1)(q). It also takes into account the various decided cases that have considered the same phrase, and the modified meaning of the phrase "all members of the community where the land is located", in accordance with the decision of the Court of Appeal in *Williams Lake, supra*. I find it cannot be said that the Board erred by importing into its evaluation of what activities may be of "demonstrable benefit" to the community, aspects of sufficiency and directness. To the extent that an evaluation by the Board as to the sufficiency and direct nature of any purported benefit to the community from activities carried out on the properties constitutes a "threshold" for a tax exemption based on section 15(1)(q), it is permitted by the words of the section. Therefore, the submission by Young Life on this point fails.

Did the Board err in law by considering each activity of potential "demonstrable benefit" disjunctively?

[92] Counsel for Young Life also submits that the Board erred in law by analyzing the various activities carried on by Young Life, in terms of their potential "demonstrative benefit", disjunctively instead of cumulatively, after finding each to be incidental or insufficient, or both.

[93] In response, counsel for the Assessor submits that the Board considered the various activities carried out on the properties by Young Life, and found each one to be insufficient or incidental, or both, in terms of their benefit to the community, given the principal use of the properties as a summer camp. Further, he submits that although the Board could have been clearer in its consideration of the cumulative effect of all the various activities in its ultimate determination that the activities were not of sufficient "demonstrable benefit" to the community, it is obvious from the Board's reasons that the various activities, considered individually or cumulatively, did not meet the test, as correctly applied by the Board.

[94] Considering the reasons of the Board, at paras. 93 to 103 inclusive, I find that it employed the correct test in considering whether or not the activities carried out on the properties constituted "a demonstrable benefit" to the community. Further, I find that it is clear in paras. 103-104, and to some extent from para. 93 onwards, that the Board considered the cumulative effect of all the various activities that could be considered to be of "a demonstrable benefit" to the community and found them lacking. In my view, while the Board could have been more articulate in relation to its consideration of the cumulative effect of the

various activities referred to as occurring on the properties, its consideration and determination of the matter is sufficiently clear. Therefore, Young Life is unsuccessful in relation to this point.

Did the Board err in law insofar as its finding that tourism did not constitute "a demonstrable benefit" is unreasonable?

[95] Young Life submits the Board erred by not finding that the activities of Young Life in bringing large numbers of campers to the area, constituted evidence of tourism as "a demonstrable benefit" to the community. Counsel for Young Life submits that, given the Board's finding that the "vast majority" of campers came from outside the community, their presence at a remote location raised the profile of the local community. To the extent the Board failed to consider relevant evidence, Young Life submits that its findings are unreasonable, and therefore constitute an error in law, subject to review.

[96] Counsel for the Assessor submits that raising the profile of the community does not constitute "a demonstrable benefit to all members of the community". He submits the Board came to a reasonable decision based on the evidence before it, which was that while the publicity generated by Young Life brought campers to Camp Malibu and Beyond Malibu, the destination was the properties themselves, and there was no evidence that Young Life's publicity of the beauty of the area or that its activities on the properties translated into enhanced tourism benefiting the community.

[97] I find the Board's reasons on the issue of benefits to the community through enhanced tourism, at para. 100, to be reasonable and based on evidence before the Board. The Board's finding that the publicity generated for Club Malibu and Beyond Malibu (which Young Life submitted put Egmont and Princess Louisa Inlet literally "on the map"), did not translate into enhanced tourism for the community, is not an unreasonable finding based on all of the evidence. Further, given that the majority of the campers came from out of the area, and many from out of the country, and were transported to Egmont by but with their prearranged Young Life leader, such a finding is clearly reasonable. This is particularly so, in the absence of tangible evidence of increased tourism attributable to the campers or their friends or families, at the time of their initial visit or thereafter. Therefore, I find there is no error in law in this finding of the Board.

[98] In conclusion, I find the answer to Question 2 as posed in this Stated Case is also "No".

Costs:

[99] I understand the parties to have resolved the matter of costs by agreement. In the event this is incorrect, an application may be brought before me within 60 days of the filing of these reasons.

Madam Justice Arnold-Bailey