June 8, 2011

LG-GL-Consultation@gnb.ca

Local Government
Attention: Local Governance Consultation
PO Box 6000
Fredericton, New Brunswick E3B 5H1

Dear Sirs:

Re: Canadian Property Tax Association ("CPTA")

The CPTA submits this brief regarding property assessment in New Brunswick in response to the invitation extended by the Government of New Brunswick as part of the provincial consultation on enhancing local governance.

The CPTA is a not-for-profit organization incorporated in 1967 under the provisions of Part 2 of the Canada Corporations Act by Letters Patent. Membership in the CPTA is limited to persons, associations, firms or companies interested in furthering the purposes of the CPTA and whose applications for admission as members have received the approval of the Board of Directors.

It is a basic policy principle of the CPTA that legislative changes impacting the assessment and taxation of real property should be implemented only after substantial consultation with private sector representatives and properties affected by the proposed changes. The CPTA welcomes the consultations with the Government of New Brunswick and appreciates the opportunity to have this brief considered.

It is a very important principle adopted by the CPTA that assessment of real property should be based on market value, provide fairness, equity, simplicity, and predictability, and be economic to administer.

The utilization of ad valorem property tax based on market value has been adopted throughout the developed world. Although the New Brunswick Assessment Act provides that a property's assessed value means its "real and true value" as of January 1st of the year for which the assessment is made, the term "real and true value" is not defined in the legislation.
This lack of definition is often a source of confusion within the taxing community and subject of the vagaries of judicial interpretation. The “real and true value” must be an objective standard based on value in exchange. We urge the Government to consider adoption of a definition which provides that market value is an objective standard based on value in exchange.

We enclose as Schedule “A” to this brief various definitions of value from assessment legislation in Nova Scotia, Newfoundland and Labrador, Ontario, and British Columbia to illustrate the possibilities.

We have found no requirement in the New Brunswick Assessment Act which requires assessments to be equitable. We submit that equity in assessment leads to equity in taxation; and that equity in assessment is a fundamental taxpayer expectation and right. Homeowners then expect assessments to be equitable with their neighbors. Business owners expect their assessments to be equitable with their competition. The general principle with respect to equitable treatment was enunciated by Ritchie J. of the Supreme Court of Canada in Jonas v. Gilbert (1881), 5 S.C.R. 356 at p.366:

“Unless the legislative authority or otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal, and that no one class of individuals, or one species of property, shall be equally or unduly assessed”.

The history of equity has been the subject of much litigation over the years. The British Columbia Court of Appeal in Bramlea Ltd. v. British Columbia (Assessor of Area No. 09 - Vancouver) (1990), 76 D.L.R. (4th) 53 (B.C.C.A.), leave to appeal to S.C.C. refused 79 D.L.R. (4th) vi, concluded that:

“Although the determination of “actual value” is the dominant consideration, a taxpayer’s land cannot be assessed at an actual value which results in an assessment significantly higher than would be a fair and just relationship to assessments on other similar properties as a whole”.

The Alberta Court of Appeal subsequently adopted the same position with respect to the Alberta Municipal Taxation Act. (Strathcona No. 20 (County) v. Alberta (Assessment Appeal Board) (1995), 89 W.A.C. 300).

The principle pronounced in Jonas v. Gilbert “that a power to discriminate must be expressly authorized by law and cannot be inferred from general words” is still the law today. Unfortunately, this principle has not been incorporated into the Assessment Act of New Brunswick. Most, if not all provinces have incorporated the equitable principle of assessment into their assessment legislation. Schedule “A” attached references extracts from assessment legislation in Nova Scotia, Newfoundland & Labrador, British Columbia, and Ontario which statutorily prescribes equitable assessments.

It is our submission that the absence of legislative guidance in the Assessment Act of New Brunswick with respect to a requirement for equitable assessments would be the most significant and important improvement to the New Brunswick provincial assessment legislation arising from these consultations. We urge the Provincial Government to consider doing this and appreciate the opportunity to be heard.
Finally, the New Brunswick Assessment Act allows annual appeals of assessments. Section 25(1) of the Assessment Act requires all requests for review be filed within 30 days of receiving the notice of assessment and a further 21 days to appeal upon receipt of the Director’s decision. Most provinces permit a substantially greater amount of time to file for review and appeals in order to permit proper audit and review of the assessment before filing a request for review and an appeal. This reduces the risk of erroneous requests and permits a more efficient administration of the review and appeal process. We urge the province to allow a 120 day period to request reviews of assessments and would appreciate the opportunity to be heard.

Yours very truly,

CANADIAN PROPERTY TAX ASSOCIATION

J. Bradford Nixon, (VP Administration, National)

Jason George (VP Policy - Ontario)

Mathieu Maillet (Member - New Brunswick)

Encls:
Schedule “A”:

1. Nova Scotia - Assessment Act, R.S.N.S. 1989, c.23, s. 42(1)

2. Newfoundland & Labrador - Assessment Act, 2006 c. A.18.1, s. 2(a), 17(1), (3), and 37(1)


4. Ontario - Assessment Act, R.S.O. 1990, c. A.31, as amended, s. 1 “current value”, 19(1), and 44(3)
SCHEDULE “A”

1. Nova Scotia - Assessment Act, R.S.N.S. 1989, c.23, s. 42(1):

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

2. Newfoundland & Labrador - Assessment Act, 2006 c. A.18.1, s. 2(a), 17(1), (3), and 37(1)

2 (a) "actual value" means that value being the market value of the fee simple interest in the real property;

17. (1) An assessor shall assess real property at actual value.

(3) In forming an assessment for the purpose of subsection (1) an assessor shall have regard to the assessment of other properties in the city or municipality being assessed to ensure that the taxation falls in a uniform manner upon the real property that is subject to taxation in the city or municipality.

37. (1) A commissioner, after hearing the evidence, shall confirm or amend the assessment appealed against by increasing or decreasing it but the commissioner shall not amend an assessment only on the ground that it is above or below the actual value if the assessment bears a just and fair relation to the value at which other properties are assessed in the city or a municipality.

3. British Columbia - Assessment Act, R.S.B.C. 1996, c.20, s.19(1) “actual value”, and 57(4)

19 (1) "actual value" means the market value of the fee simple interest in land and improvements;

57(4) The board may order the assessment authority to reassess at actual value land and improvements in all or part of a municipality, the treaty lands of a taxing treaty first nation or another rural area, whether or not they are the subject of the appeal, if the board finds

(a) that the assessments in the municipality, treaty lands or rural area, or in part of any of them, are above their actual value, or

(b) that the assessment appealed against is at actual value but that the assessments of similar land and improvements in the municipality, treaty lands or rural area, or in part of any of them, are below their actual value.
4. **Ontario - Assessment Act, R.S.O. 1990, c. A.31, as amended, s. 1 “current value”, 19(1), and 44(3)**

1. “current value” means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm’s length by a willing seller to a willing buyer; (“ Valeur actuelle”).

19(1) The assessment of land shall be based on its current value.

44(3) For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,

(a) determine the current value of the land; and

(b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a reduction of the assessment of the land.