



CANADA - September 2017

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NEW BRUNSWICK - N.B. property owners continue to get reductions on inflated tax bills

A trio of Fredericton apartment buildings that got substantial assessment and tax increases despite being slated for demolition are among the latest group of properties to successfully challenge inflated property tax bills issued by the province by the thousands this spring.

"It was crazy. I don't know what they did," said Fredericton developer George Georges on Thursday about the tax bills he originally got from Service New Brunswick on the three rundown structures he owns on Connaught Street.

The trio of buildings is slated to be torn down next year to make room for a new apartment complex but still got hit with 86 per cent assessment and tax increases that Georges has been disputing for the past six months.

Last week he finally won a \$472,300 assessment reduction on the buildings and a \$12,338.36 refund on his tax bill.

"All I know, it was a big mistake," he said. "Those buildings are a dump. They're 60 or 70 years old."

Reductions continue

Property owners like Georges continue to win impressive reductions in their tax assessments and bills, victories that come with a mounting cost to the province and which undermine early government claims that a new property assessment system it rushed into service this year was less error prone than earlier methods.

Last April, Premier Brian Gallant acknowledged the new assessment system had its problems but said it had still generated just 3,000 errors overall, a fraction of the number committed in previous years.

"We were told the error rate has gone down substantially," Gallant said about Service New Brunswick's evaluation of the success of its new method.

"From 2011 to 2014 there were an average of 9,000 errors per year."

International Property Tax Institute

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But those claims of minor mistakes in assessments and tax bills this year have not held up through the summer.

Database updated

On Tuesday, Service New Brunswick updated its assessment data base that revealed it had to cut faulty assessments on several hundred properties over the last month, including on those three Fredericton apartment buildings.

Also winning substantial reductions in those latest revisions were Costco, which protested a \$250,000 assessment increase on its Moncton store and won a \$487,000 reduction and JD Irving Ltd., which got 95 per cent of a \$141,000 assessment increase on its private airplane hanger in Saint John wiped out.

Updated assessment database		
Municipality	Inflated Assessments Fixed	Tax refunds
Saint John	1,432	\$1,247,000
Fredericton	926	\$744,000
Moncton	631	\$873,000
Dieppe	576	\$428,000
Rothesay	332	\$189,000
Quispamsis	277	\$185,000
Bathurst	132	\$191,000
Tracadie	99	\$71,000
Miramichi	85	\$246,000

Service New Brunswick did not respond to questions about its current error rate on Thursday but following those Tuesday revisions, the total number of assessment and tax errors it has been forced to fix since bills were issued in March and documented in changes to its data base passed the 14,000 mark.

That's 55 per cent more than the average of previous years — with several thousand disputed tax bills still to be evaluated.

Over, 5,800 of the errors have been related to improper tax rates being charged to property owners but the majority, over 8,000, have been inflated property assessments — mostly generated by the new assessment system.

Service New Brunswick has been forced to reduce each one and the province has had to refund excess taxes charged, even in cases where the extra amount billed went to a municipality.

"We just eat it as a province," Gallant explained last spring about how property tax refunds work.

More than \$6 million in tax refunds are owed to property owners because of inflated assessments, with the largest number of errors detected in Saint John.

NEW BRUNSWICK - Three major N.B. cities reject governments proposed solution to tax assessment freeze

The Tri-Cities Partnership, an organization consisting of the municipal governments of Moncton, Fredericton, and Saint John, has come out strongly against the province's proposed solution to a property assessment freeze — and called for a stronger dialogue between municipalities and the province.

On Tuesday, New Brunswick's minister of local government announced the province would provide financial assistance to any municipalities that face a decrease in revenues caused by the province's decision to freeze property tax assessments.

Serge Rousselle said his department will work with each local government on a case-by-case basis.

But the three cities say that's just not good enough.

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“Due to the wide reach of assessment freeze impacts, the assistance offer should benefit all communities and not be delivered on a case-by-case basis,” the Tri-Cities Partnership wrote in an open letter.

Municipalities often rely on the figures from property tax assessments to calculate their own budgets as well as make long-term plans.

“All municipalities in New Brunswick will have to make difficult decisions during the 2018 budget process,” wrote the organization.

The province’s Liberal government announced the freeze in June, hoping to contain a festering scandal involving what the premier said were thousands of errors that started in 2011.

A whistleblower alleged in March that more than 2,000 property owners were given improper and inflated tax bills – some double the amount from the previous year.

Auditor general Kim MacPherson is reviewing the system and is expected to release a report later this year.

NEW BRUNSWICK - Saint John hamstrung by provincial tax rules, report says

Report to Saint John council claims there is little wiggle room for property tax changes

A report commissioned by Saint John council shows the city's industrial properties may enjoy much lower property tax assessments than similar properties in other Canadian cities, but there's not much the municipal government can do about it.

"There is not much that Saint John can do on its own to improve the fairness and equity of the property tax because property tax policy is governed by provincial legislation," concludes the report which was jointly written by Ontario academics Harry Kitchen and Enid Slack.

The two were hired last winter to look at the overall "fairness" of property taxes in Saint John but found little wiggle room for city hall to shift the property tax burden around even if it wanted to.

For the last two years a number of Saint John city councillors including Gerry Lowe, Shirley McAlary and Donna Reardon, have been questioning why the city brings in less tax revenue from its large industries than other Canadian cities seem to.

Other provinces

This year the oil refinery in Regina, Sask., paid more property taxes than the Irving Oil refinery in Saint John, even though it's less than half the size.

The report says New Brunswick, like Ontario, exempts most "machinery and equipment" from property tax, while other provinces like Newfoundland and Labrador, Quebec, Saskatchewan, Alberta and British Columbia do not.

And because an oil refinery is mostly machinery and equipment, the exemption has a major effect on tax revenue.

In Regina its oil refinery was assessed for taxes this year to be worth \$290.3 million, while in Saint John the Irving refinery, which is more than 100 per cent larger, was assessed to be worth \$98.6 million.

Although many Canadian cities can get around a low assessment by setting a higher tax rate for an industry like oil refining, New Brunswick does not allow municipalities that flexibility.

New Brunswick cites are only permitted to set a residential tax rate. Then by provincial law, commercial and industrial rates are automatically set 50 per cent higher.

According to the report, Canadian cities with big industries including Sarnia and Sudbury, Ont., Prince George, B.C. and Strathcona County, Alta., charge tax rates between 98 and 502 per cent higher on some properties than others — an option not available in New Brunswick.

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The only solution

The only way for a city like Saint John to raise taxes on an industry it feels is under-assessed, is to raise them on every property owner at the same time.

Kitchen and Slack say much higher growth rates in the low tax bedroom communities around Saint John in recent years, suggest the city cannot raise its base residential property tax rate any further without losing more people to suburbs.

With no room to raise taxes generally on all property owners and no direct way to raise taxes just on one or two industries, Kitchen and Slack say the city should look to raise revenue through user fees like garbage collection and push the province for changes in property tax laws.

The report is scheduled to be presented to council on Monday evening.

NEW BRUNSWICK - Property tax scandal bills pile up as N.B. sets aside \$2.6M to compensate municipalities

48 local governments expect to suffer net revenue decline next year because of property assessment freeze

The Brian Gallant government is setting aside an estimated \$2.6 million to partially compensate New Brunswick municipalities it expects to suffer a net revenue decline next year because of the province-wide property assessment freeze it plans to implement.

"We will work with local governments that will see a decrease in revenue ... due to the freeze," Local Government Minister Serge Rousselle told reporters in Fredericton on Tuesday morning.

"However, this will not apply to local governments whose revenues will increase from a growing tax base."

All 107 New Brunswick municipalities will be affected by the assessment freeze, but Rousselle said most should be able to grow revenues since property sales and properties undergoing new construction are exempt from the freeze.

But current estimates are that 48 municipalities will experience negative growth in tax revenue because of the freeze and the province is prepared to spend what is needed to eliminate those losses, which he said are estimated to be \$2.6 million.

"These are only projections and we will only know by the end of October," said Rousselle.

Several municipalities and municipal associations expressed concern with plans for the assessment freeze following its announcement in June because it will apply only to increases and not decreases.

That will have significant impacts on communities where property values are adjusted constantly.

On streets like Saint John's Westminster Court this year, overall tax revenues to the city barely changed, even though 18 homes on it had an assessment decrease.

That's because 13 other homes had assessment increases to balance out those losses.

Next year, only the decreases will count.

Saint John Mayor Don Darling is not hopeful the city will get any of the money announced by the province, even though preliminary estimates are it will lose about \$600,000 in tax revenues from assessment reductions next year.

Revenue increases from construction projects such as the new Irving Oil headquarters are expected to be just enough to break even and provincial compensation will only be available to communities with shrinking tax revenues.

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"This really hasn't changed anything for me," said Darling.

'Trying to buy silence'

The freeze was announced in response to the continuing controversy over the provincial government's mishandling of property assessments this year.

A new assessment system generated thousands of inflated property tax bills, and Service New Brunswick managers were caught making up renovation amounts on some homes to justify some of the larger increases.

A record 18,000 property owners challenged their assessments and the province is still identifying and fixing mistakes.

Opposition Leader Blaine Higgs criticized the plan to partially compensate municipalities that will be harmed by the freeze.

"Now they're trying to buy silence," he said. "If they can go around the province and create independent deals, then they will buy silence and they'll spend whatever it takes to do that."

Judge slams Service New Brunswick property assessors

Assessors decided to ignore Planning Appeal Board ruling in Saint John homeowner's case

A Court of Queen's Bench Judge has upheld the authority of the province's Planning Appeal Board while delivering a sharp rebuke to Service New Brunswick's assessment branch.

Justice Tom Christie said the assessment branch simply ignored a 2015 board directive that a home on Saint John's Anchorage Avenue was to be reassessed.

Instead of performing the reassessment as ordered, assessment staff — collectively referred to in the judgment as the Executive Director" — sent a letter to the home's owner, Doug Robinson, telling him they would not be following the directive because they did not consider it legal.

While not physically reassessing the building they lowered the assessed value to \$443,300

"There can be no other reasonable reading of the March 30th letter than that the Executive Director understood the directive," Christie wrote. "The Executive Director was not prepared to follow the Board's decision."

Dismisses Service N.B. appeal

In the judgment, he questioned what would happen if the roles had been reversed, with homeowners choosing to ignore orders of the appeal board.

Christie's ruling dismissed the appeal filed by the assessment branch against the Planning Appeal Board decision in the Robinson case.

The judge's final observation is telling: "To allow otherwise would result in powers resting in the Executive Director that are superior to those of the Appeal Board and, therefore, not in keeping with the legislative scheme."

In a brief statement, a provincial spokesperson said Service New Brunswick "accepts and respects the decision of the court."

Speaking to CBC News on Thursday, Robinson, a developer and home-builder, said he is thrilled with the outcome.

"It's a win, but it's not just a win for me," he said. "It's a win, I think, for the people who pay property tax that feel it's unjust every day."

Robinson represented himself in appealing his tax assessment to the Planning Appeal Board after learning a lawyer would cost between \$5,000 and \$10,000.

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He said he wants others to know they have that option.

Provoked by assessment differences

Robinson appealed the \$475,000 assessment on the house at 80 Anchorage Ave. because the similar but larger home next door, which he also built, was assessed at \$423,000, he said.

He called for a reform of the tax system, claiming there is neither predictability nor accountability in Service New Brunswick's assessments.

Robinson said assessments should not include the amount of HST charged, real estate fees or the cost of kitchen appliances.

"I think we all agree we have to pay taxes," Robinson said. "But it would be nice to know what formula we're paying or how we arrive at that formula. And I think we need to be part of that solution, a huge part of it."

The home later sold for \$483,000, which was more than the original assessment.

Alberta entrepreneurs deserve property tax fairness

CFIB study reveals commercial property tax rates remain almost two and a half times the residential rate in Alberta

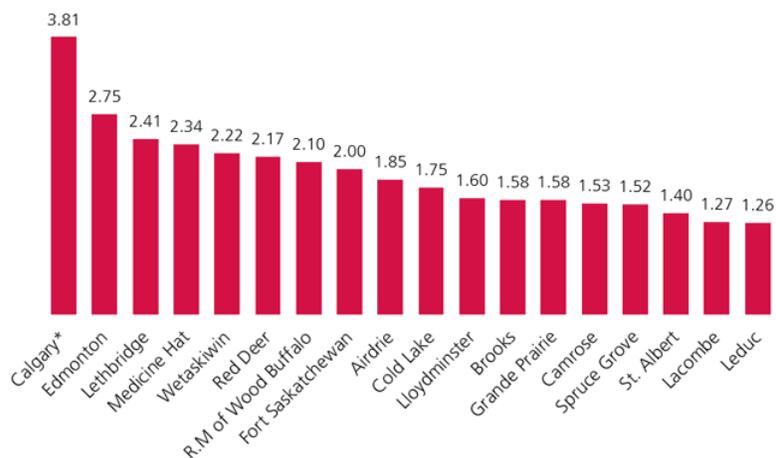
Entrepreneurs Deserve Property Tax Fairness analyzes residential and commercial property tax mill rates levied by Alberta's municipalities from 2006 to 2016, the most recent data available province wide.

The property "tax gap" is the differential between commercial and residential property tax mill rates. Overall, the tax gap in Alberta held steady at 2.45, equal to that of the previous year.

Calgary and Edmonton are the cities that have the most work to do with gaps of 3.81 and 2.75 respectively. While Calgary has a bigger gap, Edmonton residents and businesses pay substantially more on the same assessed value due to higher tax rates.

Figure 1:

Major Municipalities Property Tax Gaps



Source: CFIB analysis of Alberta Government published property tax rates 2007-2016.

To ensure the property tax system is fair and balanced, over time CFIB recommends:

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Municipalities reduce the tax gap through restraint in municipal operating spending. Cost savings should include: limiting the scope of government to core services, aligning public sector wages salaries and benefits to their private sector equivalents, and contracting out services where appropriate. Year-over-year operating spending growth should be limited to no more than inflation and population growth.

The province continue to reject proposals calling for increased taxation or revenue generating powers for municipalities, including through city charter arrangements.

The province and/or municipalities cap commercial-to-residential rates at a maximum of 2:1. The newly adopted 5:1 ratio does not fundamentally address the issue of fairness.

ONTARIO - Tory calls on province to fix property tax system for small businesses

Mayor John Tory has written to Finance Minister Charles Sousa, saying the current MPAC tax assessment system is “often distorted” and has led to small downtown businesses, such as those on Yonge St., being forced to close.

Mayor John Tory is urging the province to fix the way commercial property taxes are calculated after skyrocketing bills forced some small businesses on Yonge St. to shutter, and others to threaten to follow suit.

The current assessment methodology used by the Municipal Property Assessment Corp. (MPAC) is “often distorted” and does not account for the current use of a property, nor the “undue pressure that its valuations place on tenants,” Tory wrote in an Aug. 30 letter to Finance Minister Charles Sousa.

“We require a fairer model of assessing property taxes for our small businesses and I would encourage you to review options,” Tory wrote.

“MPAC is not working when it comes to small businesses in Toronto and I am willing and anxious to work with you to find ways to fix it before more jobs are lost.”

The current model looks at the potential market value of the land and assesses it according to its “highest and best use.” That can mean a mom-and-pop store is assessed at the same tax rate as a nearby glass condo tower.

“The corresponding sticker shock led many businesses to consider closing their doors. Some business did close their doors,” Tory wrote.

NEW BRUNSWICK - Homeowners save thousands after objecting to property tax increases

John Cheraz got his property tax bill during the first week of March. He didn't agree with the \$14,800 increase in the assessed value of his Saint John home and filed an objection.

Last month, after more than 20 weeks of waiting, he and his wife were finally notified the original billing was in error. But their assessment increase wasn't just cancelled, it was slashed by \$36,000 — more than double the original increase.

"We were expecting to stay flat or maybe go down a little bit and were a little surprised it went down that far," said Cheraz. "My wife and I feel that's pretty successful."

New Brunswick property assessment controversies have largely receded from the headlines in recent weeks but the effort to fix thousands of inflated tax bills generated by a new assessment system the province rushed into service last winter has been quietly moving forward all summer with some surprisingly generous results for homeowners.

In the Cherazes' case, their new assessment lowered the taxable value of their home well below where it was last year. and saved the couple \$649.58 on their property tax bill.

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It was a result John Cheraz had not even hoped for when he first asked for a review, although other homeowners have been having similar experiences.

On Evergreen Drive in Moncton, Bill Foster was surprised in August when his challenge of an \$11,000 assessment increase on his home resulted in a \$57,900 decrease.

It was a much bigger win than he expected.

"What I was really impressed with is there didn't seem to be any effort on their part to fight (challenges)," said Foster. "I've been very pleased with the process."

Foster's experience is not unique. Elsewhere on Evergreen, four other houses won big assessment reductions in August that, as in Foster's case, were more than the increase the homeowners originally objected to.

Several doors down from Foster, one neighbour fought a \$13,600 assessment increase and was notified of a \$41,400 reduction, while three houses over, a second neighbour fought a modest \$1,400 assessment increase and won a \$19,800 cut.

"I thought maybe the government, relative to all the heat they've been taking, was being a little enthusiastic about making adjustments," Foster said.

"I'm saying, 'Hey, I paid top dollar for how many years and if you guys want to make a generous reduction, I'm not complaining.'"

The province is saying little about what is happening with all of the assessment challenges. It won't give an update on how many requests for assessment reviews it received from the public since confirming 17,500 had come forward by late July.

It also won't say how many of the requests have been dealt with or what percentage of those have been successful.

And it won't reveal how many thousands remain to be evaluated.

Requests to Service New Brunswick for all that information this week went unanswered.

But according to adjustments the department had to make as of Aug. 15 to its assessment data base, 7,112 New Brunswick properties have had their assessments reduced since tax bills were first issued in March.

That includes 900 assessment reductions that property owners like Foster and Charez were notified of in August.

The total value of assessment reductions property owners have been awarded since March now exceeds \$250 million.

John Cheraz says although his own property tax bill has been fixed he still wants to know why so many assessments were inflated in the first place.

He believes the province needs to learn from the way it rushed the new assessment system into service.

"I think when it comes to changing to new systems, especially when they are tax-based and affect a lot of people, you really need to phase that program in and get the kinks out."

BRITISH COLUMBIA - Environmental contamination

Victory Motors (Abbotsford) Ltd. v. British Columbia (Assessor of Area No. 15 – Fraser Valley), [2017] B.C.J. No. 1541

Appeal by the assessor from a judgment on the property owner's stated case appeal from a decision of the Property Assessment Appeal Board assessing its property at \$975,000.

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The respondent owned a property on which it had operated a gas station, automobile dealership and automobile repair shop for many years. The soil under the property was contaminated and there was no competitive market for it. The property was not listed on the Contaminated Sites Registry, nor had any remediation order been issued with respect to it. The owner renovated the existing building for use as commercial rental units without any remediation being required.

The Board assessed the property at \$975,000 on the basis of its value to its current owner using an income approach. On appeal by the property owner, the Property Assessment Review Panel reduced the assessment to \$500,000. The owner then appealed to the Property Assessment Appeal Board, arguing that the property had no value.

The Appeal Board accepted the assessor's position that as a multi-tenant commercial building, the property had a market value of \$1,080,000, and it reinstated the original assessment. The owner then appealed to the Court. The judge allowed the appeal, finding that the Board erred in its approach to the assessment value of the property given the presence of environmental contamination, and remitted the matter to the Board for reconsideration. The assessor appealed.

HELD: Appeal allowed. The Board's reassessment was restored. The appropriate standard of review was reasonableness, as the Board was engaged in the interpretation of its home statute. The Board's approach was reasonable. In determining that the highest and best use of the property was as a one-storey renovated building, as opposed to a two-storey mixed-use redevelopment which would require remediation, the Board took the contamination into consideration.

Victory Motors (Abbotsford) Ltd. v. British Columbia (Assessor of Area No. 15 – Fraser Valley), [2017] B.C.J. No. 1541, British Columbia Court of Appeal, S.D. Frankel, D.C. Harris and G.J. Fitch J.J.A., August 4, 2017. Digest No. TLD-Sept42017005

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