



# CANADA – August 2018

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## **BRITISH COLUMBIA A land value capture tax allows us to dream big**

Land value taxes work by "capturing", or taxing, part of the windfall acquired through zoning changes, infrastructure improvements, and other local areas enhancements.

Amid out-of-control speculation and rent increases more than twice the rate of inflation, Vancouver is in a housing affordability crisis. It’s time for transformative solutions that get to the heart of the problem. We believe a land value capture tax is one of those solutions.

As Vancouver grows — and as governments and communities continue to create public and private improvements to infrastructure (e.g. improved transit service, increases to density, new businesses and cultural events) — the value of land is likely to increase further, keeping housing affordability elusive.

So far it is largely individual landowners and developers who have benefited from these immense gains in land wealth. We believe these land gains — often created by the public — should benefit everyone. A land value capture policy will discourage speculation while raising funds to build social and affordable housing and make significant improvements to our public transit system.

Land value taxes work by “capturing”, or taxing, part of the windfall acquired through zoning changes, infrastructure improvements, and other local areas enhancements. OneCity proposes a two-fold approach to Windfall Power, our made-in-Vancouver land value tax.

First, the City of Vancouver, in collaboration with TransLink, has the power to apply a land value tax to areas impacted by transit improvements.

Once elected, the new city council should immediately work to create a land value taxation plan for areas around the Broadway Subway. Revenue could be earmarked to improve transit services and fund future transit projects.

Second, the City of Vancouver should work with the provincial government to create a made-in-Vancouver land value capture tax. This new system could replace much of the city’s reliance on Community Amenity Contribution contracts, providing greater clarity and transparency, and helping rebuild residents’ trust in how City Hall negotiates with developers.

There are a number of details that will need to be figured out with input from experts, including when and how the increase gets collected so that costs do not get downloaded onto renters. These details matter.

### **International Property Tax Institute**

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However, B.C. Assessment, our world-class provincial property assessment agency, already holds the data needed to effectively implement and administer this type of land value tax. The money raised should be directed toward providing social and affordable housing to support those struggling most under the housing crisis.

OneCity imagines a Vancouver where every neighbourhood is for everyone — where all parts of the city have apartments, social and supportive housing, multiplexes, and co-ops.

However, given who has profited most from development in Vancouver over the years, concerns exist about up-zoning functioning as a windfall for large developers and those fortunate enough to own property. A land value capture policy will ensure a significant part of these windfalls from transformative zoning changes are redirected towards the public good.

Done well, land value capture will decrease speculation, slowing the astronomical rise in land costs that drive our affordability crisis. While achieving that goal, it will also raise necessary funds to build truly affordable housing for low and moderate income residents and provide an improved public transit system. Both are important outcomes in getting where we need to be.

It's time for progressive, pragmatic solutions to Vancouver's housing crisis. A Windfall Power land value tax can be a powerful tool to redistribute wealth in our city. This election, let us dream big.

## **British Columbia Foreign Nationals' Property Tax Faces Challenge for Being Ultra Vires and Discriminatory**

A summary trial for what is likely to be a landmark case for Canada in residential real estate is currently underway in British Columbia ("BC"). Jing Li is the lead plaintiff in a civil claim against the BC government, challenging the Foreign Nationals' Property Tax, generally referred to as a foreign buyers' tax.

Ms. Li moved to Canada from China to attend the University of Saskatchewan, and subsequently settled in Burnaby, BC. In 2016, Ms. Li purchased a townhouse. Between signing her agreement, putting down a deposit, and closing day, BC implemented their foreign buyers' tax. Ms. Li then had to pay an additional \$83,850 for her home. The tax at the time was 15% of the fair market value of the property, and has since risen to 20%.

### *The Grounds to Challenge the Law*

Ms. Li and the class are challenging the tax on four grounds:

- it is ultra vires the Provincial legislature; alternatively
- the provisions are inapplicable to the class members; alternatively
- the tax is inoperative to foreign entities in which Canada has signed related treaties; alternatively
- the tax infringes Section 15 of the Canadian Charter of Rights and Freedom, and therefore, of no force or effect.

The class is seeking restitution of the amount collected by the BC government under the tax. Should they succeed, the BC government will be liable to pay back all amounts collected under the tax.

### *What Experts Think*

Academics and industry experts have been weighing in on both sides.

On the Plaintiff's side, Professor Nathanael Lauster from the University of B.C. commented on the discriminatory aspects of the tax. He states that the tax has invoked xenophobia, racism and specifically sinophobia as Chinese immigrants have been the main focus of the tax.

On the Government's side, Andy Yan, the director of The City Program at Simon Fraser University, notes that Chinese-Canadians largely supported the tax when it was implemented. He also draws attention to the fact that China has a variety of restrictions on foreign buyers.

### *The Future of the Case*

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Regardless of the outcome of the summary trial, this case is likely to make its way up to the Supreme Court of Canada ("SCC"). There is a lot at stake for both sides, and therefore, the losing party is likely to appeal. Further, this is exactly the kind of case that the SCC was designed to hear: cases of public and national importance. BC is not alone in having a foreign buyers' tax, it also exists in Ontario.

In addition, provinces such as Prince Edward Island, Saskatchewan, Manitoba, and Quebec have some limits on foreign ownership rights. Dependent on the outcome, a lot of money may be owed by provincial governments across the country to foreign buyers. This is a case to follow in the upcoming years.

## **Saskatoon city hall still struggling with property tax adjustments**

The City of Saskatoon's property tax assessment could be trampling city hall's own objectives, council's finance committee heard Tuesday.

Mayor Charlie Clark made the point during an extended and confusing discussion about the city's approach to property tax assessment.

The debate was prompted by an attempt to get special consideration for older properties with heritage value.

"The struggle of this is whether or not there is an unintended consequence of our approach to reassessment," Clark said. "It feels sometimes like we're shooting ourselves in the foot."

Dave Denny, who owns the 105-year-old Drinkle Building No. 3 on Third Avenue downtown, kicked the debate into motion by suggesting to city hall in May that older buildings should not be taxed at the same rate as new buildings.

Clark seemed to agree with Denny that some sort of different approach is needed. Denny has argued that taxing older properties at the same rate as new ones forces demolition and renovation of buildings that may have heritage value.

That effect also limits the types of properties available to lease, Denny has said, when the city wants a variety of businesses and residential options downtown.

Clark agreed the city's set objectives include a range of business and residential options downtown.

"Based on the information provided today, I don't think we are quite hitting the mark there," Coun. Cynthia Block, who represents downtown, said of reassessment.

The five-storey Drinkle Building has been reassessed in value by the city at \$10.66 million for 2018, up from \$7.48 million two years ago. That means property taxes on the building have risen to \$109,9155.88 this year from \$86,8291.99 in 2016.

City assessor Darcy Huisman appeared before the committee to try to explain assessment and reassessment, but committee members expressed confusion and frustration.

Huisman said the age of a property is taken into consideration when reassessment is done every four years.

"We just can't kick an adjustment and that's accomplished by using statistics and analytics," Huisman said.

The city's chief financial officer, Kerry Tarasoff, further explained that applying assessment principles is like enforcing the law. He said if the city does not like the effects of assessment, then it should reconsider its tax policy.

The committee ultimately voted to explore aligning tax policy so it does not conflict with other city hall objectives.

Property assessment in Saskatchewan is determined by the Saskatchewan Assessment Management Agency (SAMA). Coun. Bev Dubois said SAMA has no appetite to conduct more frequent assessments.

Denny did not speak at Tuesday's meeting. In a letter, he expressed "deep disappointment" in city hall's response to his concerns. He called for a consultant to review transparency in the assessment branch at city hall.

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"In my experience, the strategy of the assessor's department is to keep people confused and to wear them out until they give up," Denny wrote.

## **Newfoundland - Property taxes could go up this year, warns St. John's councillor**

*Increase possible to offset overall drop in assessments, values of smaller homes up*

A St. John's city councillor is warning that residential taxes could be going up in next year's budget.

Dave Lane, councillor at large, told CBC's St. John's Morning Show that assessed values of homes in the city — estimated value as of March 1, 2017, the assessment date now being used for taxation purposes — have decreased slightly since the last round of assessments.

"We're looking at how the economy has been shaking out over the past few years," said Lane. "It looks like assessed values will be going down."

All homes aren't affected equally

If a house's assessed value goes down, so do property taxes — provided the mill rate stays the same. Lane said that presents a challenge for the city.

"If we multiply the same mill rate by reduced property tax values, that means we get less revenue, so we can't cover the budget that we have," he said.

The city can increase the mill rate — currently 7.3 — by enough to cover the expected loss of residential tax revenue — an estimated average of two to five per cent — to even things out, but the problem is an average drop in assessed value won't be uniform across every house; some houses' values may drop more than others — and some may go up.

Lane says smaller houses are more likely to see an increase in value than larger houses.

"Because of the way the economy has gone, it's the bigger homes that have gone down in value, because less people are buying them. They're less appealing in a downward economy, and lower property values have gone up."

The city's 2018 budget has \$91.3 million in residential tax revenue. Losing two to five per cent of that would mean a \$1.8 to \$4.6 million loss.

The city is doing its best to keep costs down, said Lane, but there are "external pressures" that are making that difficult.

"We are looking at our electricity rates going up. We've seen a few new facilities open up — for example, the Paul Reynolds Centre in the east end, we're looking at Kenmount Terrace Community Centre opening up. These all require operating costs," he said.

"So not only are we looking at a potential decrease in revenue as the property assessments change, we're also looking at costs going up due to external forces like that."

Council to release budget info early

Lane said the city is planning a public update in October — ahead of the budget coming before council in December — to lay out what revenues will look like for the next year, and what that might mean for tax rates.

"And then we're gonna say, let's talk about this, and we're gonna put out some options that we have to deal with that. We're going to talk about what we've done to try to mitigate costs," he said.

This will mark a change from the city's usual practice of presenting the budget — including mill rates — to the public on the day it's voted on by council. That approach caused headaches for councillors in 2015 when residents protested against a budget that raised taxes and cut services.

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Lane acknowledged people are likely to have strong opinions about any threat of higher taxes. That is one of the reasons why he's talking about it now.

Reaction to a potential tax increase drew immediate criticism on Twitter.

### **Ontario - Sault council ratifies property tax deal with steel mill**

Deal was cut after a recent appeal reduced the assessment of Algoma's local property holdings to \$39 million, compared to \$83 million in 2014-2016

Sault Ste. Marie will receive \$21.8 million of the \$23.8 million owed by Essar Steel Algoma Inc. for the tax years 2014, 2015, 2016 and 2017, under an agreement approved Aug. 20 at a special city council meeting.

The deal was cut after a recent Assessment Review Board appeal reduced the current value assessment of Algoma's local property holdings to \$39 million, compared to \$83 million in 2014 to 2016.

The city's negotiating team consisted of Mayor Christian Provenzano, chief administrative officer Al Horsman, city solicitor Nuala Kenny, assistant city solicitor Melanie Borowicz-Sibenik, city treasurer Shelley Schell and outside legal specialists.

It agreed to negotiate taxes based on an assessed value of \$60 million, agreeing not to appeal the tax years 2017 to 2020.

The deal is expected court approval on Aug. 22.

Mayor Provenzano said municipal tax rates are not expected to increase and no service cuts will be necessitated by today's deal.

When interest is taken into account, the \$21.8 million to be received by the city is about \$4 million less than might have been received before the assessment appeal.

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