ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

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CHAIRMAN

ASSOCIATE CHIEF JUSTICE LAWRENCE A. POITRAS
COMMISSIONER

THE HONOURABLE
MR. JUSTICE GREGORY THOMAS EVANS
COMMISSIONER

May 12, 1988

Mr. Harry Munro
MacIntosh, MacDonnell & MacDonald
Barristers & Solicitors
159 George Street
P. O. Box 368
New Glasgow, Nova Scotia B2H 5E5

Dear Mr. Munro:

Thank you for your letter of May 5, 1988 to Mr. Justice Hickman and the attachments relating to the assessment of D. Porter & Son Limited. The material will be directed to Chief Justice Hickman's attention on his return to Halifax.

Yours truly,

Susan M. Ashley,
Commission Executive
Secretary

SMA/ljb

MAY 09 1988

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May 5, 1988.

Marshall Inquiry
1505 Barrington St.
Suite 1026
Halifax, N.S.
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Attention: Mr. Justice Alec Hickman

Dear Mr. Justice Hickman:

Clarence Porter, the principal of D. Porter & Son Limited, has asked me to forward to your attention, this narrative which outlines the details of his Company's five (5) year assessment appeal.

My client feels that since the Attorney General's Department handled the case for the Assessment Department, that perhaps this may provide you with some insight as to how the Attorney General's Department functions when dealing with the general public at large.

Your sincerely,
MacINTOSH, MacDONNELL & MacDONALD

Per:
Harry Munro

HM/bls

cc: Mr. Clarence Porter

CASE HISTORY

D. Porter & Son Limited Assessment Appeal

In the belief that our experience may be of benefit to property owners and so that all may understand the structures involved in assessment appeals, we offer the following information gained from experience. If a taxpayer is not satisfied with his assessment, he has twenty-one (21) days within which to launch an appeal. The Regional Assessment Appeal Court is the first stage of the appeal process. The Regional Assessment Appeal Court judges are usually lawyers and answerable to the Minister of Municipal Affairs. Appeals from their decisions are heard by the Municipal Board. This Board was established in 1982 to replace the role of the independent County Court in assessment appeals. It too is appointed by the government in power. It is only after this stage that the taxpayer has the opportunity to plead his case before a truly impartial tribunal being the Nova Scotia Supreme Court Appeals Division.

The Department of Municipal Affairs and their assessors, the Regional Assessment Appeal Court and the Municipal Board are supportive of each other and are all on the same payroll and it became clear during our appeal that there was no way in which we could prove our case to those whose income and position depended on holding the contrary view.

TOWN OF STELLARTON - TAXES

YEAR	D. PORTER & SON ASSESSMENT	TAX	% INCREASE BASE 1972	TYPICAL RESIDENTIAL ASSESSMENT	TAX	% INCREASE BASE 1972
1972		$ 4,661.25	100%	$25,800.	$709.50	100%
1973		6,558.75	141%	25,800.	709.50	100%
1974		9,400.00	202%	36,000.	720.00	102%
1975	470,000	11,750.00	252%	30,000.	750.00	106%
1976	475,000	16,625.00	357%	30,000.	690.00	97%
1977	485,000	19,012.00	408%	30,000.	735.00	104%
1978	302,000	9,075.00	195%	49,000.	911.40	128%
1979	302,000	9,528.75	204%	49,000.	980.00	138%
1980	368,500	12,344.75	204%	49,000.	1,053.50	148%
1981	1,000,000	29,500.00	633%	60,000.	1,170.00	165%
1982	1,000,000	29,500.00	633%	60,000.	1,170.00	165%
1983	1,000,000	31,200.00	669%	60,000.	1,236.00	174%
1984	1,223,550	38,174.76	819%			

This table illustrates the history of the assessment of the D. Porter & Son Limited complex off Foord Street in Stellarton. We believe that these increases on our assessment are without precedent. By the time we had compared the increase in our 1981 assessment to those of other commercial properties in the Town, the time for launching appeals had expired and therefore our appeal had to wait until 1982.

Our main ground of appeal was that our assessment had been increased by a greater percentage than other commercial properties within the Town.

No one wishes to jeopardize the situation of a neighbor or competing business and we certainly did not in our case. All that we sought was to be treated equally with other taxpayers in the Town of Stellarton. The Assessment Act requires that all property shall be assessed for the amount which would be paid if it was sold on the open market by a willing seller to a willing buyer. But, the Act stipulates that the assessor must have regard to other properties in the Town to ensure that taxation falls in a uniform manner on all taxpayers. We felt that because of the extraordinary increase in our assessment that we were bearing more than our fair share of taxation.

In the year of our appeal almost all commercial properties in the Town of Stellarton were supposed to be valued on a replacement cost approach using a manual produced by the Boeckh Company. This manual can be used to calculate a replacement cost for all types of buildings and includes formula for costing such details as heating, lighting, flooring, fire protection, etc.. When used properly, this manual produces an approximate but fair valuation figure. When we started our appeal we sought access to the work sheets and figures used to determine the assessments on these other commercial properties so that we might determine whether we had been treated equally and in a uniform manner. This request was immediately denied and it took three years and an appeal to the highest court in this Province to obtain access to these records.

The first hearing was held in early 1982, before the Regional Assessment Appeal Court Judge, Joseph Cameron. We sought Mr. Cameron's permission to record these proceedings so that a transcript would be available in the event of an appeal. Before the hearing had begun the Judge, who was appointed by the Department of

Municipal Affairs, was informed by the Solicitor for the Director of Assessment, Marion Tyson (a lawyer from the Attorney General's Department), that he could not authorize such a recording. Thus, it became evident at an early stage, that the Judge and the Department of Assessment were one and the same. Mr. Cameron was asked by us to write to his superior, the Deputy Minister of Municipal Affairs, to request a ruling and eventually permission to record the proceedings was granted to us. At that stage both sides took their own tape recorders into the hearing which was held on July 13, 1982. In spite of the fact that the Regional Assessment Appeal Court is required by law to render its decision within sixty (60) days, Mr. Cameron gave his decision only after having been forced to do so by a Supreme Court Order nine months later on May 16, 1983. His decision reduced the assessment on our property to $380,000.00, but two weeks later it was appealed by the Director of Assessment to the Municipal Board.

The power to tax has the power to destroy, and levied as we were, it was necessary to research our case, and provide witnesses and legal counsel to make a meaningful appeal.

We had to bear our own costs in this appeal, for research, lawyers, witnesses, etc., and at this first appeal we presented descriptions, pictures and other apparent features on thirteen other commercial properties within the Town of Stellarton, properties not owned by us. We also had evidence from a registered architect and a property appraiser who also supplied date on these other properties as well as our own.

It is clear that Mr. Cameron, in making a judgment favorable to us, delayed as long as possible, but to his credit he judged on what he saw, and on what he heard.

His decision was not acceptable to the Department of Municipal Affairs, and two weeks after receiving his findings we were advised that they were appealing his decision. We would now have to appear before the Municipal Appeal Board for a new Hearing. This meant an entirely new trial. Evidence previously given could not be re-presented, and to appeal our assessment we had to start all over again.

As the Municipal Board was a new body, we contacted the Chairman and requested information on the rules of procedure before the Board. We received a response on June 6, 1983 stating that "general rules are in the process of being prepared". Four years later these rules were still not available.

Before this Hearing started we asked for the working papers for the thirteen commercial properties owned by other parties for our review, but without success. To understand the importance of these records it is necessary to appreciate their function. Every assessment has a card and on that card are the particulars that the assessor has recorded on any given property, for instance, lot dimension, frontage, type of construction (steel, wood, brick, etc.), paving, heating, lighting, etc. Also on the same card the assessor must show each feature that was included, or not included, in his valuation figures. Thus, to determine whether a building or property was properly assessed in a manner similar to ours, access to these cards was essential. Without access to these records, there is no meaningful way of verifying or discrediting anything.

To prepare our case, we requested that these documents be subpoenaed, and this request was granted through the County Court.

The Hearings in Stellarton were a prolonged examination of witnesses on both sides, but all confined to our property and no other.

Listening to these proceedings, and aware of the costs involved, we believed that if comparative values were to be excluded from the Hearing, we had no case, and in discussing this with our legal counsel, they advised us that this comparative information would eventually be made available, and that we should continue.

The next session was in Halifax, and during this session we were advised by the Chairman that evaluation methods used on other properties were not relevant to our case and we could not have the information. By their decision they effectively revoked the decision of our County Court and held themselves above its authority.

When we were so informed, we knew that we were in serious difficulty. We had spent a lot of time and money. Our combined costs for taxes and legal costs

during 1981, 1982, 1983, 1984 were out of all reason. For the assessment year 1984, valuations were increased by 22.35%, and the tax bill to $38,174.00 Reluctantly we were forced to seek the real value of the property by offering it for sale.

The Board was informed of our intentions and forthwith the property was advertised and proposals invited.

In March 1985, sixteen months after the first day of Hearings before them, and twenty-two months after the appeal notice was filed, they gave their decision setting the assessment at $989,000.00. The decision was lengthy. Where the evidence of the appraiser retained by D. Porter & Son Limited differed from the evidence of the assessor, the assessor's evidence was accepted. Our evidence, despite the fact that it could be verified by physical inspection of the buildings, was said to be biased, and a precedent was set, indicating that a property owner who took the stand in defence of lower assessment would be tainted with the "biased label". In their decision, they substantially confirmed the assessor's valuation and taxed all costs to us.

Prior to the decision, a transcript had been ordered and reviewed. Many inconsistencies were apparent. After revealing the decision, and based on the statement of Marion Tyson and Merle Gordon, that the records which had been subpoenaed to the Municipal Board for comparative purposes were available and an appeal was launched to the Court of Appeal.

An appeal from the Municipal Board to the Nova Scotia Supreme Court Appeals Division can only be made on a question of law. This means that the Municipal Board has the widest authority when it comes to finding of facts and deciding who to believe and who not to believe. However, after reviewing the evidence it was decided to appeal.

From the date of our inflated assessment in 1981 until today, this case was in process, and it may confuse the reader to get a clear time frame for each incident, but with your patience we hope to inform you on at least the highlights of the process as it unfolded. The information being presented is being researched from volumes of files, but as every property owner is directly involved

and affected, we trust the whole narrative will merit your attention.

Appeal to a Higher Court

The basis of our appeal had always been uniformity. The Municipal Board in their decision had held that the comparable information that we sought was not relevant to our assessment and was therefore inadmissible. We reasoned, however, that if the paramount duty of the assessor was to ensure that the burden of taxation fell in a uniform manner on all properties in the Town, then this information had to be of relevance to our assessment. In an appeal from the Municipal Board decision, an appealing taxpayer must first obtain permission to appear before the Nova Scotia Court of Appeal from a judge of that Court in Halifax. This was granted to us and the appeal was heard in September, 1985. The Appeal Court was made up of three judges, Mr. Justice Pace, Jones and Matthews, who in a brief judgment, held that the information we had sought and to which the Municipal Board had denied access was both relevant and admissible. Accordingly, the Court allowed our appeal. <u>They overturned the Municipal Board's decision</u>, ordered a new hearing <u>and ordered that the Department of Municipal Affairs pay our taxed costs at both the Municipal Board hearing and at this appeal itself</u>.

Missing Records

Following the overturn of the Municipal Board's Decision, we then requested the comparable worksheets which the Municipal Board had been told were available and which we had been informed in various letters would be provided to us should the Municipal Board so order. After much correspondence we were informed by the solicitor for the Department of Municipal Affairs, Marion Tyson, <u>that the information we sought</u> <u>had been erased</u>. Our trip to the Nova Scotia Supreme Court Appeals Division and the costs incurred on the expectation of obtaining the assessor's working papers had been in vain.

Appeal should at least know about this and we sought permission to appear before them and to ask them for full compensation for our legal costs. This permission was granted and the same panel of three judges heard our arguments in June of 1986. The Court's judgment was given by Mr. Justice Jones who stated:

> "While I have a great deal of sympathy for the applicant's position, I do not think that sufficient grounds have been shown to set aside the order assuming that this court has the power to do so. There was certainly some evidence to indicate that this litigation could have been avoided if the information had been disclosed in the first instance. However, the principal of finality cannot be overlooked. In the circumstances I would dismiss the application but without costs." (emphasis added)

The principal of finality stands for the proposition that once a Court has made its decision and issued an Order then only in very exceptional circumstances can that Order be overturned. This prevents the parties from returning to a Court asking it to alter its Order. We note that it does not prevent a matter such as ours from being remitted back to the same forum (the Municipal Board) for a new hearing.

At this second hearing, the Court of Appeal sought an explanation for the missing records from a senior solicitor with the Department of Municipal Affairs, Randall Duplak. During the discussions with Mr. Duplak, the Court of Appeal suggested to him that in the absence of these records the assessor would have a difficult time proving to the Municipal Board that the burden of taxation had fallen in a uniform manner in the Town. The Court suggested, to prove that point, the assessor would require these records. Thus, even without the records, it was clear to us that we still had strong arguments for the new hearing before the Municipal Board.

Pre-Hearing Conference

At the pre-hearing conference in Halifax, we learned that the Municipal Board was to sit as a single member, Mr. Richard Weldon, who had been a Dartmouth lawyer. I wished to be present at this conference and was most surprised when Ms. Tyson, the Department's Lawyer objected to my sitting in. However, after my Counsel insisted on my being present, the conference proceeded. Mr. Weldon works in and out of the same office as Mrs. Lawrence and Darrell Wilson and he advised us of

his familiarity with what had happened previously. During the conference, we were asked to submit a Pre-Hearing Brief setting out our grounds for defending Mr. Cameron's decision. We informed Mr. Weldon that we were unable to prepare our Brief since we did not have the assessor's records for these other properties. We suggested that the assessor could reconstruct these records. Alternatively, if he was unable to reconstruct the records then it would be necessary for us to have him recreate his assessment figures at the hearing.

It was also during this conference that Marion Tyson, the Department's Solicitor, stated that she wanted it made clear on the record that her Department would be looking for all their costs in preparing and bringing this appeal, and that these would include the costs of the preparation of the assessor's report and his attendance at the Hearing. This position was adhered to even when it was pointed out to her that these individuals were government employees doing their job. The observation was made to Mr. Weldon at that time that we considered this statement to be intimidation.

Municipal Board Hearing

The Municipal Board Hearing commenced in late November, 1986. At that time Richard Weldon brought with him a Clerk of the Board, and the Board's legal counsel, Vincent Lambie. From the Department of Municipal Affairs there was the Regional Director of Assessment, Francis Monck; the Director of Assessment for the Colchester region, Sam Farrell; an assessor who previously worked on our valuation, Merle Gordon and two senior solicitors, Marion Tyson and Randall Duplak. D. Porter & Son Limited retained our lawyer, Harry Munro and I sat through the Hearings. A raw nerve had obviously been touched to necessitate the attendance of three government lawyers and three assessors.

Prior to this Hearing the Board had again been asked to provide us with any rules that might have been formulated regarding procedure, but at the start of the Hearing these rules were still not available. On the first day, November 24, 1986. Randall Duplak who had represented the Director of Assessment before the Nova Scotia Court of Appeal, rose to his feet and introduced the records which all along, we had been told were not available. He introduced them in the following words:

> "The Respondent has made much "to-do" about these original cards and in letters and comments has indicated that he cannot proceed unless he has those original cards. In preparing for this Hearing the Respondent subpoenaed the assessor again for those same 13 properties and plus requested three more. In going through the boxes and boxes of material we have come across, unbeknownst to anybody, copies of the original cards before they were altered. Who made the copies we don't know but they are copies of the originals, they were hand copied and we've photostated them and now we have them here for the Respondent." (Emphasis added)

This was Mr. Duplak's introduction. Mr. Gordon's sworn explanation was as follows:

"Q. Have you seen those records before today?

A. Yes, Friday.

Q. And at what time on Friday did you find them?

A. Approximately 1 o'clock.

Q. And where did you find them?

A. Found them buried in a file.

Q. And in what file were they buried?

A. In a file in the office that I weren't aware that they were there.

Q. Now can you describe this file, was it a manila folder, was it a banker's box?

A. It was a cardboard box with Mr. Porter's files.

Q. Is that box here today?

A. No, it's not.

Q. What else was inside the cardboard box?

A. 1980 cards, Mr. Picketts' report from the last Hearing, my report from the last Hearing, calculations for the last Hearing.

Q. And where was this box kept?

A. In my office.

Q. Now that box file would have been in your office pretty well continuously from 1983 'til the present, is that right?

A. Not particularly this box, no.

Q. The contents of that box file.

A. The contents were, yes.

Q. Now do you recall looking for these records?

A. Yes.

Q. Looking for them several times?

A. Yes.

Q. And do you recall correspondence wherein you said you couldn't find them?

A. Yes.

Q. What's your explanation?

A. I didn't know they were there and apparently the file was not opened where they were.

At last, after almost five years, we had obtained handcopied cards showing some particulars and calculations for the other commercial properties in the Town of Stellarton. Some of the figures on these cards were to prove extremely interesting.

It is important to note that in the interim period, while the 1982 assessment was in progress, the Chairman of the Regional Assessment Appeal Court, David Hubley, another lawyer from Truro, was trying to push on with our 1983 and 1984 assessment appeals even though our assessed values for those years would obviously be affected by the decision of the Municipal Board.

In our next article we will look into some of the assessor's calculations and methodology concerning commercial properties in the Town of Stellarton to illustrate how the Town's tax base was manipulated in those years and the tax burden shifted around.

Magic With Figures

At the commencement of the cross-examination of the assessor, we obtained the

following details of the increases of the assessments of the major commercial properties in Stellarton between 1980 and 1981:

C.N.R.	13.5%	
Sobeys Supermarket	21.6%	
Canada Envelope	12.3%	
Sears Building	11.1%	
Scotsburn Co-op	50 %	
Wearwell Garments	36.8%	
Heather Motel	29.9%	
Food City Distribution Centre	121.%	(This included the new part just completed.)
D. Porter & Son Limited	133%	(on building alone)
	368%	(on building, equipment and business occupancy.)

All other properties in this category would have either stayed the same or had their assessments reduced.

Uniformity

In the three years between "reassessments" the Assessment Department reflects uniformity by applying a contrived figure known as the "general level of the roll". They take all the properties that have sold in that year and express their assessed value as a percentage of their sale price. If 10 houses with a total assessment of $800,000.00 sold for a total of $1,000,000.00 then the "general level of the roll" would be 80 percent.

At the time of our appeal there was no distinction made between commercial and residential properties as far as this figure went. In fact, in calculating the "general level" for the 1982 tax year there were no commercial properties used. Thus the roll did not act as a check on the accuracy of the assessor's opinion of value regarding commercial properties and did not in our opinion provide any manner of uniformity. In a large urban centre it is assumed there would be sufficient commercial sales to reflect any inaccuracies. But, it was our position that in the absence of a good cross-section of commercial sales that this concept of a general level was completely unsuited to a small town like

Stellarton where commercial sales were few and far between.

When you appeal your assessment, you put your property under the assessor's microscope. He looks at every detail most carefully. We felt that if the assessor applied this same degree of diligence to other commercial properties in the Town that this would be a good check on their assessments, and, if as a result we discovered that their assessments were lower than his calculated figure, then we too should also be entitled to this same reduction.

It became clear in our cross-examination of the assessor that his valuation of these other commercial properties in the Town was seriously flawed in four areas.

1. His calculation of land values.
2. His choice of costing models.
3. His development of depreciation and obsolescence factors.
4. His rounding down of final valuation figures.

Calculation of Land Values

The testimony of the assessor was that there were three methods of valuing commercial land in Stellarton. The first method was to apply a value of $ .20 per square foot to occupied industrial land in the Town regardless of location and $ .35 per square foot in the Stellarton Industrial Mall. The second method was to value land based on its street frontage and lot depth. The third method was to value land in excess of five acres and not utilized as bulk land at $1,000.00 an acre regardless of location.

The value of $ .20 per square foot was applied to our land. Thus, our lands, with no road frontage, access over a railway crossing and minimal municipal services had in his opinion the same value as other lands with full municipal services and street frontage.

Street frontage values were generally applied to downtown properties. It became clear in our cross-examination however that in the Department's opinion, corner lots were worth the same as other street frontage lots. The assessor did not add any value to them even though his worksheets made provision for a "corner

influence" factor. This flexibility of the application of these rules led to some interesting situations.

One property which we examined had been purchased for $64,000.00 in 1965, had some additional lands added to it and yet 15 years later, in 1980, was valued at $60,000.00, $4,000.00 less. Incredibly, it had decreased in value. Another property that we examined consisted of a building containing 110,000 square feet and a parking lot covering 20,000 square feet; yet on the worksheet only 130,000 square feet of land was listed as being used. The remaining five acres of the lot were listed as unoccupied bulk land and valued at $ .02 per square foot rather than $ .20 per square foot. This led to a loss in assessed value of approximately $45,000.00.

As in most other areas where errors were discovered in the next year of reassessment (1983), these errors and most others were rectified.

The Assessor's Choice of Model

When an assessor values a building under the replacement cost method he chooses a model from the Boeckh Manual which is as similar as possible to the one he is working on. The exercise of this discretion can lead to some unusual situations. Our retail store which many of our readers are familiar with, was valued as a one-story/neighborhood food store which in the Boeckh Manual was described as follows:

> "These stores are located in residential sections to provide essential convenience food and variety items to the immediate neighborhood. ... A typical design has load-bearing masonry exterior walls, light interior steel framing supporting a built-up roof on metal deck with open-web steel joists."

As most of you know our building had a peaked roof, was wood framed and sided and had no metal framing.

There was one warehouse building in particular in the Town which, because of its similarity in structure and use to ours, we felt would be a good check on the assessor's methods. Our building was valued in the Boeckh Manual as a commercial industrial storage shed. When we looked at the worksheet on the other building

used for comparison, it was valued as an agricultural workshop. The assessor agreed that it would be appropriate to use the same commercial model on this building as had been used on our warehouse. When we had him value this building in this manner the new value came out to $35,716.00 as opposed to the value shown on his worksheets of $22,000.00. In other words, the assessor had, simply by choosing the inappropriate model, decreased its value by $13,000.00.

Depreciation and Obsolescence

Depreciation is the factor used to reflect the age of, and wear and tear on, a building. Obsolescence is the factor used to reflect a building's lack of utility and style for its present use. These can be calculated on a mathematical basis or as was the case in most of the commercial and industrial buildings we looked at, by the "observed" method.

Our nine buildings dating from 1911 and sprawling over a four and one-half acre complex were given a 20 percent obsolescence factor. The assessor admitted he had no experience in our industry however, he based this figure on a calculation using an imaginary replacement building which, he said, would be needed to replace our nine buildings. Even though the trend in the building supply business is for smaller, more efficient operations this replacement building contained a square footage equal to that contained in our nine buildings. On the other hand, where the assessor used the "observed" method for obsolescence he was able to provide an opinion that one commercial property still being used for the purpose that it was built for only 12 years before, was 40 percent obsolete. This allowed him to reduce its assessment by 40 percent. When asked why he had formed such an opinion he could give no reasons. In other words, it was a "guess". Most of the other properties had 30, 40 and in one case 55 percent deductions from their value for obsolescence on the basis of "the assessor's opinion".

The assessor's use of depreciation figures had the same effect on value. On one building we looked at the assessor gave his opinion with no factual basis that its depreciation was 35 percent, yet in the next reassessment year after our appeal, he had reduced this depreciation figure to 25 percent. He could give no explanation for the 35 percent figure or for the reduction. In other words, on

the figures, the condition of the building had actually improved with age.

Rounding Down

The practice that gave us the most concern was the evidence that came out on "rounding down". This, we feel, caused a serious erosion of the Town's tax base. One property was valued after depreciation, etc. at $2,950,000.00 yet it was rounded down to $2,500,000.00. In other words, at the stroke of a pen $450,000.00 had been erased from the assessment roll of the Town of Stellarton. Another property, while being valued on the cards at $2,186,192.00 was rounded down to $2,000,000.00. Yet another property was valued at $138,000.00 and was rounded down to $100,000.00. We point out that there are many residential properties in the Town of Stellarton assessed at less than $38,000.00 whose owners pay the full amount of taxes on that assessment. Our assessed value was rounded down from $582,953.00 to $582,950.00, a $3.00 reduction!

The assessor could provide no explanation for this practice but again, we point out that after our appeal was launched, the local office in the assessor's words was reprimanded and told to discontinue this practice. We wonder if such a practice would ever have been made known to the public in the absence of our appeal.

Our examination of the worksheets that we obtained showed that in the years involving our appeal, the assessor had the discretion through the use of these tools to create whatever value he wished for a building and simply justify it, by stating that it was "his opinion".

However, when our assessment appeal was launched this opinion was quickly substantiated by carefully manipulated calculations to reflect the assessed value.

We estimate that the assessor's failure to apply the same methods he used on our buildings to other commercial properties in the Town of Stellarton eroded hundreds of thousands of dollars from the Town's tax base. After the testimony of the assessor it was clear that there were indeed good reasons for the Assessment Department having denied us access to these worksheets.

It was the stated intention of these articles to fully inform the Public of the method of assessment used on our property and also on the method - or rather lack of method used on other commercial properties in the Town. It is a sad indictment on our assessment system when a property owner can be assessed not on a property's physical features but on what physical features an assessor says should exist. When we sold our operation in two parts, we made commitments to the purchasers to see this matter through to a conclusion. It become obvious to us after five days at this second Hearing that we were no closer to a comparison of property values, than we were when we were before Mrs. Lawrence and Darryl Wilson.

Extraordinary Situation

We found ourselves in an extraordinary situation, we were appealing a 1982 assessment in 1987, and the Department of Municipal Affairs were pressing for a rerun for 1983, 1984, 1985, etc.. Mr. Gordon's evidence and calculations clearly demonstrated that it was all a facade and Mr. Weldon even refused to permit us to put up comparative calculations on a flip chart to illustrate this facade.

A Genuine Authority

We had contacted the Boeckh Organization, on whom the Province relied for appraisal expertise and subscribed to their system. They assigned Mr. Joseph Dicolangelo to our case to assist us in providing evidence in support of our position. Please note that we subsequently learned that Mr. Dicolangelo providing evidence within the Province for a client other than the Province of Nova Scotia, could have jeopardized the entire use of the Boeckh System by the Province. Mr. Dicolangelo to his credit however, was still prepared to testify in spite of this.

The documents tendered to us and superficially examined before Mr. Weldon, completely exposed the assessment system. We wanted Mr Dicolangelo to do an appraisal on the other properties in question and to present his calculations and conclusions to the Board. However, the Board would not accommodate our request for an adjournment so that Mr. Dicolangelo could be present during Mr. Gordon's cross-examination.

Escape Options

The Municipal Board could insist to have evidence before it to show what the proper assessment for our property should be. Up to this time, there was no indication that the value of other properties would have any bearing on the Board's conclusions. The requirement for us to prove the correct assessment meant that this Hearing could have continued indefinitely. Furthermore, costs were mounting. Besides the Chairman, Mr. Weldon, and his counsel, Mr. Lambie, the Government had two lawyers, a stenographer and three assessors sitting in on the Hearing; six of whom were staying in motels in the area. We had been warned earlier that we would be responsible for the assessor's costs and that we would have to face legal costs as well. Mr. Cameron at the Regional Assessment Appeal Court had found that our assessment was $380,000.00. After protracted negotiations, a figure of $425,000.00 was manufactured. Added to this was a business occupancy tax of 50% and machinery at $80,000.00 for a total of $717,500.00.

The year 1981 was not considered, in spite of the fact that it took us six years to obtain the information we had sought back then, so, in the spirit of justice, we were stuck with our 1981 assessment of $1,000,000.00.

The following chart shows our assessment before the appeal, after the appeal and the reduction we achieved. You will note how much more valuable our property became in 1984, (Could this have been further intimidation?)

	Before		After	Reduction
1981	$ 600,000	Land & Building	$ 600,000	
	300,000	Bus. Occupancy	300,000	
	100,000	Equipment	100,000	
	$1,000,000		$1,000,000	No reduction because of 3-week limitation
1982	$ 600,000		$ 425,000	
	300.000		212,500	
	100,000		80,000	
	$1,000,000		$ 717,500	$ 282,550
1983	$ 600,000		$ 425,000	
	300.000		212,500	
	100,000		80,000	
	$1,000,000		$ 717,500	$ 282,550
1984	$ 721,700		$ 500,000	
	360.850		250,000	
	141,000		80,000	
	$1,223,550		$ 830,000	$ 393,550

Part of our property was sold in 1984 to A.J. Munro Building Supplies Limited.

A Fabricated Figure

The Municipal Board is bound by its legislation to make an investigation and finding once a case has been commenced. This means that it cannot accept an agreed figure. Thus to accommodate this, the assessor, Mr. Farrell took the stand and conveniently gave testimony to the effect that our correct assessment based on the evidence he had heard in the second Hearing should be $425,000.00 (as opposed to nearly $600,000.00 he testified was appropriate in the first Hearing). This figure was a fabricated figure, symbolic of the whole process we had been through. We offered no evidence in rebuttal and so the Board accepted this figure as final.

We had incurred extraordinary legal bills between January 1, 1981 and January 31, 1987 with three law firms and an appraisal company. We point out that these costs had been imposed on us ever since our assessment was increased 300% in 1981.

Seven Years of Torment and Aggravation

The following is a chronology of the events imposed on us from 1981 to 1987.

Month	Day	Year	
Jan.	01	1981	Initial reassessment (3 week appeal limitation)
Jan.		1982	Appeal Filed
May		1982	Initial hearing before Regional Assessment Appeal Court. This was adjourned because of an objection by the solicitor for the Department of Municipal Affairs to counsel for D. Porter & Son Limited re, recording the proceedings.
May	18	1982	Deputy Minister of Municipal Affairs, John Mullaly, confirms in writing to Joseph A. Cameron, Vice-Chairman of Regional Assessment Appeal Court that recording of proceedings is acceptable provided that parties record at their own expense.
July	13	1982	Regional Assessment Appeal Court Hearing. Both parties record Hearing.
April	29	1983	Application by way of Mandamus to force Joseph A. Cameron, Vice-Chairman of Pictou Regional Assessment Appeal Court to file his decision. Justice Lorne Clarke issues order and awards costs to D. Porter & Son Limited. 10 months later.
May	16	1983	Decision of Regional Assessment Appeal court received. Assessment set at $380,000. D. Porter & Son accept decision and later pay taxes on this figure.
May	30	1983	Director of Assessment files Notice of Appeal with Municipal Board, against Mr. Cameron's decision.
July	8	1983	Letter to Marion Tyson requesting access to tapes for transcript of proceedings before Regional Assessment Appeal Court, our tapes inaudible.
July	25	1983	Follow-up request for tapes.

July	28	1983	Reply from Marion Tyson stating that the tapes were not available and probably erased.
September	22	1983	Request by D. Porter & Son Limited for information later subpoenaed, regarding comparable properties.
October	13	1983	Request refused. Subpoena issued
November	15	1983	First day of Hearings before Municipal Board: R. H. Blois (Chairman), Elizabeth Lawrence, Darryl Wilson.
January	17 18 19	1984) 1984) 1984)	Resumption of Hearing in Halifax (Lawrence and Wilson, Blois no longer on Board).
March	19 20	1984) 1984)	Completion of Hearing in Stellarton (Lawrence and Wilson).
March	18	1985	Decision and Order of Municipal Board issued. 1 year later to Supreme Court of Appeal.
April	10	1985	Application for leave to Appeal filed.
June	20	1985	Order granting leave to Appeal on issue of access to records.
September	13	1985	Appeal heard and Order issued revoking decision of Municipal Board ordering a new hearing awarding costs to us and granting access to records. Various requests for assessment cards for 13 buildings made.
Sept.'85 - March '86			Solicitor for Department of Municipal Affairs states No records Figures erased.
March	27	1986	Ex Parte Application to have matter remitted back to Supreme Court of Appeal; made for an order seeking full costs. June 19 date set.
May	8	1986	Appearance in Court of Appeal Chambers to answer application by Director of Assessment to have March 27 Order struck out.
May	15	1986	Appearance before Clarke, Chief Justice of Nova Scotia on adjournment from previous week, Director of Assessment's application dismissed.
June	19	1986	Attendance before Nova Scotia Supreme Court Appeal Division to argue application.
June	25	1986	Nova Scotia Supreme Court Appeal Division hands down judgment, sympathizes but refuses application for full costs.

November	24	1986	First day of Hearing in Stellarton, Randell Duplak produces "missing documents". Merle Gordon claims they were found previous Friday.
November	24-28/86		Hearings in Stellarton.
January	26	1987	Hearings in Stellarton.
January	26	1987	Escaped by accepting fabricated assessment of $425,000.00.

We Sought Redress

We have sought redress, from our elected officials, and have asked for three things: (a) compensation for the costs incurred (b) a roll-back of our 1981 assessment to reflect the reduced 1982 figure (c) a forgiveness of the 17% interest penalty charged on over-due accounts by the Town of Stellarton.

To seek this redress and to express our dismay, we contacted the Honourable Jack MacIsaac. He in turn put me in touch with Mr. Gordon Gillis, Deputy Minister of Municipal Affairs. A meeting was held with the Deputy Minister on May 8, 1987 and a transcript of the Hearing was supplied to him, together with an offer of free access to our files. Meanwhile, while these matters were under consideration, the purchaser of our plant, A.J. Munro Building Supplies Ltd., was threatened with a tax sale on their property. In order to bring the matter to a head, we contacted Mr. Gillis by letter and told him that unless we heard from him, we would assume that the Province had taken the position that we would have to pay all the costs imposed on us.

Part of the System

In response, we received correspondence from Mr. Gillis stating that we must negotiate any interest settlement with the Town and that if our concern was of the legal nature, we must deal directly with Mr. Duplak. In our opinion, Mr. Duplak was part of the system and had no power to remedy this situation. That was the sum total of the Province's answer to this whole charade. The Town was then contacted and a meeting with Town Council requested. The following response was received from Town Council:

"Council feels that no useful purpose would be served in

> meeting with D. Porter & Son Limited representatives to discuss outstanding taxes owed by A.J. Munro Limited and Stellar Moulding Inc.
>
> Likewise the matter of assessments is a Provincial responsibility handled through the Regional Assessment Office."

With a very superficial examination of a few commercial properties on the Stellarton assessment roll, we had discovered that the Town's tax base had been reduced by more than $2,000,000.00. The Town authorities by receiving and accepting the assessment roll knew or should have known what was going on, but they showed no further interest. It must be kept in mind that all of these maneuvers by the Assessment Department were on behalf of the Town to collect taxes from us. Yet neither wanted to accept responsibility for the reprehensible actions that had continued for seven years.

As a result of this we ask this question of all our readers: Is taxation without representation any worse than with it?

From the information given in our previous presentation you may wonder as we do, whether we were involved in an obstruction of justice, a miscarriage of justice, a conspiracy or a combination of all three.

After seven years we escaped from a morass of bureaucracy by accepting a compromise on our assessment. From the inception, we have been subjected to a succession of maneuvers that were intended to deny our rights as taxpayers. When it became apparent that rather than an inquiry, we were in a confrontation with all the resources of Government, a decision was made to remove capital and vacate.

Following extensive advertising, we did not receive a single offer or proposal for the whole operation, so we offered it for sale in two parts and eventually sold both our manufacturing and sales facilities. We gave an undertaking to both purchasers that we would give our best efforts to find a solution to the inherited assessment problem. It is dangerous to be right when the Government is wrong.

Without justification, we continue to see both segments of the operation assessed in a manner that bears little relationship to other commercial properties in the Town, some of which are overvalued, some are undervalued. However, I believe that we have found the rules of the game and through the experiences of the past seven years, we should be in a position to guide others around the barriers that were raised against our efforts. One does not have to eat a whole egg to KNOW that it is bad. It must be apparent that property assessment and taxation is an in-house operation, from the assessors to the appeal system and the legal support supplied to enforce the will of the assessors.

The consequences to many people have become apparent, and will continue to become apparent. Prior to this fiasco we felt a moral and civic responsibility to create employment, but it is difficult to pursue these goals with such overwhelming forces working to disrupt and destroy. From a staff of 25 in 1981, eight are now employed in the two separated operations. This could be called job creation in reverse.

The past seven years have been a very distressing period, but nevertheless, we have obtained a valuable insight into a situation from which no taxpayer, challenging the system, will escape unscathed. The scars have many forms, horrendous costs on time and money, loss of livelihood for many people and all for what? For extra taxes? Hardly! Other commercial properties assessed for a small fraction of their values, properties left off the assessment rolls, hundreds of thousands of dollars written off the rolls after the manipulation of models, features, depreciation, obsolescence factors, etc..

While it is true that there is a higher court, and that twice we appeared before them, there is little one can do to limit the power of a system whose authority and resources are unlimited. The Nova Scotia Court of Appeal's role is a very limited one, in that they cannot adjudicate the merits of the case, only observe and judge the propriety of the proceedings at the lower court and board level.

No one can change the events of the past. Damage has been inflicted and none of our elected representatives has cared to intervene. The type of situation that we uncovered was anticipated by the original drafters of the Assessment Act and, in the Act, there is a section that deems an assessment of property at any amount

greater or less than the value at which it should have been assessed by 25% to be fraudulent and unjust, and to result in criminal charges. Unfortunately, these charges must be brought within two years of the offence. The procedure in our case was drawn out for seven years and thus circumvented the use of that section. What we have at present is a civil service bureaucracy which few are prepared to challenge and one which is an entity answerable only unto itself.

We have been damaged and others have been damaged through their actions, and the outcome we cannot predict. It is surely just another manifestation of those things which gives rise to so much public cynicism and mistrust of our legal and administrative systems.

To avoid recurrences, we urge our legislators to have the following incorporated into the Assessment Act now.

1. Once an assessor has set an assessment on a particular property that should be the end of his involvement. If a taxpayer chooses to appeal, the taxpayer should retain an independent appraiser to check the assessor's figures and the Province should do the same. Their choice should not be another assessor from within their own system but a competent and independent individual, one without a vested interest. This would avoid a situation where the assessor is scrambling and compromising to justify his own figures and would, we feel, create credibility and responsibility.

2. That the Regional Assessment Appeal Board divorce itself entirely from the local assessment offices. At present the Recorder of this Court works in the Assessment Office and any one of you who have attended a Regional Assessment Appeal Court will have noted how, upon entering the room, the assessor and the Regional Assessment Appeal Court Judge appear to be sharing the same papers and conversing in friendly and familiar terms, with nothing to manifest the independence or detachment of the judge from the administration.

3. That on a rotating basis the assessor's work papers undergo an audit by an independent appraisal firm to ensure proper valuation principles are applied and that uniformity of taxation is present. Such audit should be Province-wide and unannounced.

4. All judicial bodies involved in the assessment process be required by law to file their decisions within thirty days of the conclusion of the hearing. An extension to this only be granted upon application to a court of law.

5. That a taxpayer who successfully reduces his assessment in excess of 15% be reimbursed for all costs and appraisal fees.

6. That the Assessment Act be reviewed so that taxpayers and municipalities generally are treated on an equal basis throughout (i.e. no interest to either party or interest to both).

7. That all records pertaining to an assessment be carefully preserved and available for audit or comparative purposes.

We trust that our readers have been alerted by our experience and we hope no other taxpayer will ever have to endure the imposition of costs and anguish that we have had to to through over the past seven years. Freedoms are dearly won and easily lost, surely the right to appeal a property assessment should not be hindered or denied by persons on the public payroll who are appointed and paid to protect the public.

We thank you for your interest, and we would like to remind you that, on some scale what happened to us could happen to you. We have in our files a great deal of information concerning assessment methodology and other surprises somewhat similar to those that we have shared with you. Should any of our readers wish to pursue this matter further, we would be pleased to share information gathered from our experiences.

In closing, we believe that such an abuse of power as we have shown to you surely merits an independent examination by an appropriate authority.

D. Porter & Son Limited

TAH

MAY 0 9 1988

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May 5, 1988.

Marshall Inquiry
1505 Barrington St.
Suite 1026
Halifax, N.S.
B3J 3K5

Attention: Mr. Justice Alec Hickman

Dear Mr. Justice Hickman:

Clarence Porter, the principal of D. Porter & Son Limited, has asked me to forward to your attention, this narrative which outlines the details of his Company's five (5) year assessment appeal.

My client feels that since the Attorney General's Department handled the case for the Assessment Department, that perhaps this may provide you with some insight as to how the Attorney General's Department functions when dealing with the general public at large.

Your sincerely,
MacINTOSH, MacDONNELL & MacDONALD

Per:
Harry Munro

HM/bls

cc: Mr. Clarence Porter

CASE HISTORY

D. Porter & Son Limited Assessment Appeal

In the belief that our experience may be of benefit to property owners and so that all may understand the structures involved in assessment appeals, we offer the following information gained from experience. If a taxpayer is not satisfied with his assessment, he has twenty-one (21) days within which to launch an appeal. The Regional Assessment Appeal Court is the first stage of the appeal process. The Regional Assessment Appeal Court judges are usually lawyers and answerable to the Minister of Municipal Affairs. Appeals from their decisions are heard by the Municipal Board. This Board was established in 1982 to replace the role of the independent County Court in assessment appeals. It too is appointed by the government in power. It is only after this stage that the taxpayer has the opportunity to plead his case before a truly impartial tribunal being the Nova Scotia Supreme Court Appeals Division.

The Department of Municipal Affairs and their assessors, the Regional Assessment Appeal Court and the Municipal Board are supportive of each other and are all on the same payroll and it became clear during our appeal that there was no way in which we could prove our case to those whose income and position depended on holding the contrary view.

TOWN OF STELLARTON - TAXES

YEAR	D. PORTER & SON ASSESSMENT	TAX	% INCREASE BASE 1972	TYPICAL RESIDENTIAL ASSESSMENT	TAX	% INCREAS BASE 1972
1972		$ 4,661.25	100%	$25,800.	$709.50	100%
1973		6,558.75	141%	25,800.	709.50	100%
1974		9,400.00	202%	36,000.	720.00	102%
1975	470,000	11,750.00	252%	30,000.	750.00	106%
1976	475,000	16,625.00	357%	30,000.	690.00	97%
1977	485,000	19,012.00	408%	30,000.	735.00	104%
1978	302,000	9,075.00	195%	49,000.	911.40	128%
1979	302,000	9,528.75	204%	49,000.	980.00	138%
1980	368,500	12,344.75	204%	49,000.	1,053.50	148%
1981	1,000,000	29,500.00	633%	60,000.	1,170.00	165%
1982	1,000,000	29,500.00	633%	60,000.	1,170.00	165%
1983	1,000,000	31,200.00	669%	60,000.	1,236.00	174%
1984	1,223,550	38,174.76	819%			

This table illustrates the history of the assessment of the D. Porter & Son Limited complex off Foord Street in Stellarton. We believe that these increases on our assessment are without precedent. By the time we had compared the increase in our 1981 assessment to those of other commercial properties in the Town, the time for launching appeals had expired and therefore our appeal had to wait until 1982.

Our main ground of appeal was that our assessment had been increased by a greater percentage than other commercial properties within the Town.

No one wishes to jeopardize the situation of a neighbor or competing business and we certainly did not in our case. All that we sought was to be treated equally with other taxpayers in the Town of Stellarton. The Assessment Act requires that all property shall be assessed for the amount which would be paid if it was sold on the open market by a willing seller to a willing buyer. But, the Act stipulates that the assessor must have regard to other properties in the Town to ensure that taxation falls in a uniform manner on all taxpayers. We felt that because of the extraordinary increase in our assessment that we were bearing more than our fair share of taxation.

In the year of our appeal almost all commercial properties in the Town of Stellarton were supposed to be valued on a replacement cost approach using a manual produced by the Boeckh Company. This manual can be used to calculate a replacement cost for all types of buildings and includes formula for costing such details as heating, lighting, flooring, fire protection, etc.. When used properly, this manual produces an approximate but fair valuation figure. When we started our appeal we sought access to the work sheets and figures used to determine the assessments on these other commercial properties so that we might determine whether we had been treated equally and in a uniform manner. This request was immediately denied and it took three years and an appeal to the highest court in this Province to obtain access to these records.

The first hearing was held in early 1982, before the Regional Assessment Appeal Court Judge, Joseph Cameron. We sought Mr. Cameron's permission to record these proceedings so that a transcript would be available in the event of an appeal. Before the hearing had begun the Judge, who was appointed by the Department of

Municipal Affairs, was informed by the Solicitor for the Director of Assessment, Marion Tyson (a lawyer from the Attorney General's Department), that he could not authorize such a recording. Thus, it became evident at an early stage, that the Judge and the Department of Assessment were one and the same. Mr. Cameron was asked by us to write to his superior, the Deputy Minister of Municipal Affairs, to request a ruling and eventually permission to record the proceedings was granted to us. At that stage both sides took their own tape recorders into the hearing which was held on July 13, 1982. In spite of the fact that the Regional Assessment Appeal Court is required by law to render its decision within sixty (60) days, Mr. Cameron gave his decision only after having been forced to do so by a Supreme Court Order nine months later on May 16, 1983. His decision reduced the assessment on our property to $380,000.00, but two weeks later it was appealed by the Director of Assessment to the Municipal Board.

The power to tax has the power to destroy, and levied as we were, it was necessary to research our case, and provide witnesses and legal counsel to make a meaningful appeal.

We had to bear our own costs in this appeal, for research, lawyers, witnesses, etc., and at this first appeal we presented descriptions, pictures and other apparent features on thirteen other commercial properties within the Town of Stellarton, properties not owned by us. We also had evidence from a registered architect and a property appraiser who also supplied date on these other properties as well as our own.

It is clear that Mr. Cameron, in making a judgment favorable to us, delayed as long as possible, but to his credit he judged on what he saw, and on what he heard.

His decision was not acceptable to the Department of Municipal Affairs, and two weeks after receiving his findings we were advised that they were appealing his decision. We would now have to appear before the Municipal Appeal Board for a new Hearing. This meant an entirely new trial. Evidence previously given could not be re-presented, and to appeal our assessment we had to start all over again.

As the Municipal Board was a new body, we contacted the Chairman and requested information on the rules of procedure before the Board. We received a response on June 6, 1983 stating that "general rules are in the process of being prepared". Four years later these rules were still not available.

Before this Hearing started we asked for the working papers for the thirteen commercial properties owned by other parties for our review, but without success. To understand the importance of these records it is necessary to appreciate their function. Every assessment has a card and on that card are the particulars that the assessor has recorded on any given property, for instance, lot dimension, frontage, type of construction (steel, wood, brick, etc.), paving, heating, lighting, etc. Also on the same card the assessor must show each feature that was included, or not included, in his valuation figures. Thus, to determine whether a building or property was properly assessed in a manner similar to ours, access to these cards was essential. Without access to these records, there is no meaningful way of verifying or discrediting anything.

To prepare our case, we requested that these documents be subpoenaed, and this request was granted through the County Court.

The Hearings in Stellarton were a prolonged examination of witnesses on both sides, but all confined to our property and no other.

Listening to these proceedings, and aware of the costs involved, we believed that if comparative values were to be excluded from the Hearing, we had no case, and in discussing this with our legal counsel, they advised us that this comparative information would eventually be made available, and that we should continue.

The next session was in Halifax, and during this session we were advised by the Chairman that evaluation methods used on other properties were not relevant to our case and we could not have the information. By their decision they effectively revoked the decision of our County Court and held themselves above its authority.

When we were so informed, we knew that we were in serious difficulty. We had spent a lot of time and money. Our combined costs for taxes and legal costs

during 1981, 1982, 1983, 1984 were out of all reason. For the assessment year 1984, valuations were increased by 22.35%, and the tax bill to $38,174.00 Reluctantly we were forced to seek the real value of the property by offering it for sale.

The Board was informed of our intentions and forthwith the property was advertised and proposals invited.

In March 1985, sixteen months after the first day of Hearings before them, and twenty-two months after the appeal notice was filed, they gave their decision setting the assessment at $989,000.00. The decision was lengthy. Where the evidence of the appraiser retained by D. Porter & Son Limited differed from the evidence of the assessor, the assessor's evidence was accepted. Our evidence, despite the fact that it could be verified by physical inspection of the buildings, was said to be biased, and a precedent was set, indicating that a property owner who took the stand in defence of lower assessment would be tainted with the "biased label". In their decision, they substantially confirmed the assessor's valuation and taxed all costs to us.

Prior to the decision, a transcript had been ordered and reviewed. Many inconsistencies were apparent. After revealing the decision, and based on the statement of Marion Tyson and Merle Gordon, that the records which had been subpoenaed to the Municipal Board for comparative purposes were available and an appeal was launched to the Court of Appeal.

An appeal from the Municipal Board to the Nova Scotia Supreme Court Appeals Division can only be made on a question of law. This means that the Municipal Board has the widest authority when it comes to finding of facts and deciding who to believe and who not to believe. However, after reviewing the evidence it was decided to appeal.

From the date of our inflated assessment in 1981 until today, this case was in process, and it may confuse the reader to get a clear time frame for each incident, but with your patience we hope to inform you on at least the highlights of the process as it unfolded. The information being presented is being researched from volumes of files, but as every property owner is directly involved

and affected, we trust the whole narrative will merit your attention.

Appeal to a Higher Court

The basis of our appeal had always been uniformity. The Municipal Board in their decision had held that the comparable information that we sought was not relevant to our assessment and was therefore inadmissible. We reasoned, however, that if the paramount duty of the assessor was to ensure that the burden of taxation fell in a uniform manner on all properties in the Town, then this information had to be of relevance to our assessment. In an appeal from the Municipal Board decision, an appealing taxpayer must first obtain permission to appear before the Nova Scotia Court of Appeal from a judge of that Court in Halifax. This was granted to us and the appeal was heard in September, 1985. The Appeal Court was made up of three judges, Mr. Justice Pace, Jones and Matthews, who in a brief judgment, held that the information we had sought and to which the Municipal Board had denied access was both relevant and admissible. Accordingly, the Court allowed our appeal. They overturned the Municipal Board's decision, ordered a new hearing and ordered that the Department of Municipal Affairs pay our taxed costs at both the Municipal Board hearing and at this appeal itself.

Missing Records

Following the overturn of the Municipal Board's Decision, we then requested the comparable worksheets which the Municipal Board had been told were available and which we had been informed in various letters would be provided to us should the Municipal Board so order. After much correspondence we were informed by the solicitor for the Department of Municipal Affairs, Marion Tyson, that the information we sought had been erased. Our trip to the Nova Scotia Supreme Court Appeals Division and the costs incurred on the expectation of obtaining the assessor's working papers had been in vain.

Appeal should at least know about this and we sought permission to appear before them and to ask them for full compensation for our legal costs. This permission was granted and the same panel of three judges heard our arguments in June of 1986. The Court's judgment was given by Mr. Justice Jones who stated:

> "While I have a great deal of sympathy for the applicant's position, I do not think that sufficient grounds have been shown to set aside the order assuming that this court has the power to do so. There was certainly some evidence to indicate that this litigation could have been avoided if the information had been disclosed in the first instance. However, the principal of finality cannot be overlooked. In the circumstances I would dismiss the application but without costs." (emphasis added)

The principal of finality stands for the proposition that once a Court has made its decision and issued an Order then only in very exceptional circumstances can that Order be overturned. This prevents the parties from returning to a Court asking it to alter its Order. We note that it does not prevent a matter such as ours from being remitted back to the same forum (the Municipal Board) for a new hearing.

At this second hearing, the Court of Appeal sought an explanation for the missing records from a senior solicitor with the Department of Municipal Affairs, Randall Duplak. During the discussions with Mr. Duplak, the Court of Appeal suggested to him that in the absence of these records the assessor would have a difficult time proving to the Municipal Board that the burden of taxation had fallen in a uniform manner in the Town. The Court suggested, to prove that point, the assessor would require these records. Thus, even without the records, it was clear to us that we still had strong arguments for the new hearing before the Municipal Board.

Pre-Hearing Conference

At the pre-hearing conference in Halifax, we learned that the Municipal Board was to sit as a single member, Mr. Richard Weldon, who had been a Dartmouth lawyer. I wished to be present at this conference and was most surprised when Ms. Tyson, the Department's Lawyer objected to my sitting in. However, after my Counsel insisted on my being present, the conference proceeded. Mr. Weldon works in and out of the same office as Mrs. Lawrence and Darrell Wilson and he advised us of

his familiarity with what had happened previously. During the conference, we were asked to submit a Pre-Hearing Brief setting out our grounds for defending Mr. Cameron's decision. We informed Mr. Weldon that we were unable to prepare our Brief since we did not have the assessor's records for these other properties. We suggested that the assessor could reconstruct these records. Alternatively, if he was unable to reconstruct the records then it would be necessary for us to have him recreate his assessment figures at the hearing.

It was also during this conference that Marion Tyson, the Department's Solicitor, stated that she wanted it made clear on the record that her Department would be looking for all their costs in preparing and bringing this appeal, and that these would include the costs of the preparation of the assessor's report and his attendance at the Hearing. This position was adhered to even when it was pointed out to her that these individuals were government employees doing their job. The observation was made to Mr. Weldon at that time that we considered this statement to be intimidation.

Municipal Board Hearing

The Municipal Board Hearing commenced in late November, 1986. At that time Richard Weldon brought with him a Clerk of the Board, and the Board's legal counsel, Vincent Lambie. From the Department of Municipal Affairs there was the Regional Director of Assessment, Francis Monck; the Director of Assessment for the Colchester region, Sam Farrell; an assessor who previously worked on our valuation, Merle Gordon and two senior solicitors, Marion Tyson and Randall Duplak. D. Porter & Son Limited retained our lawyer, Harry Munro and I sat through the Hearings. A raw nerve had obviously been touched to necessitate the attendance of three government lawyers and three assessors.

Prior to this Hearing the Board had again been asked to provide us with any rules that might have been formulated regarding procedure, but at the start of the Hearing these rules were still not available. On the first day, November 24, 1986. Randall Duplak who had represented the Director of Assessment before the Nova Scotia Court of Appeal, rose to his feet and introduced the records which all along, we had been told were not available. He introduced them in the following words:

"The Respondent has made much "to-do" about these original cards and in letters and comments has indicated that he cannot proceed unless he has those original cards. In preparing for this Hearing the Respondent subpoenaed the assessor again for those same 13 properties and plus requested three more. In going through the boxes and boxes of material we have come across, unbeknownst to anybody, copies of the original cards before they were altered. Who made the copies we don't know but they are copies of the originals, they were hand copied and we've photostated them and now we have them here for the Respondent." (Emphasis added)

This was Mr. Duplak's introduction. Mr. Gordon's sworn explanation was as follows:

"Q. Have you seen those records before today?

A. Yes, Friday.

Q. And at what time on Friday did you find them?

A. Approximately 1 o'clock.

Q. And where did you find them?

A. Found them buried in a file.

Q. And in what file were they buried?

A. In a file in the office that I weren't aware that they were there.

Q. Now can you describe this file, was it a manila folder, was it a banker's box?

A. It was a cardboard box with Mr. Porter's files.

Q. Is that box here today?

A. No, it's not.

Q. What else was inside the cardboard box?

A. 1980 cards, Mr. Picketts' report from the last Hearing, my report from the last Hearing, calculations for the last Hearing.

Q. And where was this box kept?

A. In my office.

Q. Now that box file would have been in your office pretty well continuously from 1983 'til the present, is that right?

A. Not particularly this box, no.

Q. The contents of that box file.

A. The contents were, yes.

Q. Now do you recall looking for these records?

A. Yes.

Q. Looking for them several times?

A. Yes.

Q. And do you recall correspondence wherein you said you couldn't find them?

A. Yes.

Q. What's your explanation?

A. I didn't know they were there and apparently the file was not opened where they were.

At last, after almost five years, we had obtained handcopied cards showing some particulars and calculations for the other commercial properties in the Town of Stellarton. Some of the figures on these cards were to prove extremely interesting.

It is important to note that in the interim period, while the 1982 assessment was in progress, the Chairman of the Regional Assessment Appeal Court, David Hubley, another lawyer from Truro, was trying to push on with our 1983 and 1984 assessment appeals even though our assessed values for those years would obviously be affected by the decision of the Municipal Board.

In our next article we will look into some of the assessor's calculations and methodology concerning commercial properties in the Town of Stellarton to illustrate how the Town's tax base was manipulated in those years and the tax burden shifted around.

Magic With Figures

At the commencement of the cross-examination of the assessor, we obtained the

following details of the increases of the assessments of the major commercial properties in Stellarton between 1980 and 1981:

C.N.R.	13.5%	
Sobeys Supermarket	21.6%	
Canada Envelope	12.3%	
Sears Building	11.1%	
Scotsburn Co-op	50 %	
Wearwell Garments	36.8%	
Heather Motel	29.9%	
Food City Distribution Centre	121.%	(This included the new part just completed.)
D. Porter & Son Limited	133%	(on building alone)
	368%	(on building, equipment and business occupancy.)

All other properties in this category would have either stayed the same or had their assessments reduced.

Uniformity

In the three years between "reassessments" the Assessment Department reflects uniformity by applying a contrived figure known as the "general level of the roll". They take all the properties that have sold in that year and express their assessed value as a percentage of their sale price. If 10 houses with a total assessment of $800,000.00 sold for a total of $1,000,000.00 then the "general level of the roll" would be 80 percent.

At the time of our appeal there was no distinction made between commercial and residential properties as far as this figure went. In fact, in calculating the "general level" for the 1982 tax year there were no commercial properties used. Thus the roll did not act as a check on the accuracy of the assessor's opinion of value regarding commercial properties and did not in our opinion provide any manner of uniformity. In a large urban centre it is assumed there would be sufficient commercial sales to reflect any inaccuracies. But, it was our position that in the absence of a good cross-section of commercial sales that this concept of a general level was completely unsuited to a small town like

Stellarton where commercial sales were few and far between.

When you appeal your assessment, you put your property under the assessor's microscope. He looks at every detail most carefully. We felt that if the assessor applied this same degree of diligence to other commercial properties in the Town that this would be a good check on their assessments, and, if as a result we discovered that their assessments were lower than his calculated figure, then we too should also be entitled to this same reduction.

It became clear in our cross-examination of the assessor that his valuation of these other commercial properties in the Town was seriously flawed in four areas.

1. His calculation of land values.
2. His choice of costing models.
3. His development of depreciation and obsolescence factors.
4. His rounding down of final valuation figures.

Calculation of Land Values

The testimony of the assessor was that there were three methods of valuing commercial land in Stellarton. The first method was to apply a value of $ .20 per square foot to occupied industrial land in the Town regardless of location and $ .35 per square foot in the Stellarton Industrial Mall. The second method was to value land based on its street frontage and lot depth. The third method was to value land in excess of five acres and not utilized as bulk land at $1,000.00 an acre regardless of location.

The value of $ .20 per square foot was applied to our land. Thus, our lands, with no road frontage, access over a railway crossing and minimal municipal services had in his opinion the same value as other lands with full municipal services and street frontage.

Street frontage values were generally applied to downtown properties. It became clear in our cross-examination however that in the Department's opinion, corner lots were worth the same as other street frontage lots. The assessor did not add any value to them even though his worksheets made provision for a "corner

influence" factor. This flexibility of the application of these rules led to some interesting situations.

One property which we examined had been purchased for $64,000.00 in 1965, had some additional lands added to it and yet 15 years later, in 1980, was valued at $60,000.00, $4,000.00 less. Incredibly, it had decreased in value. Another property that we examined consisted of a building containing 110,000 square feet and a parking lot covering 20,000 square feet; yet on the worksheet only 130,000 square feet of land was listed as being used. The remaining five acres of the lot were listed as unoccupied bulk land and valued at $ .02 per square foot rather than $ .20 per square foot. This led to a loss in assessed value of approximately $45,000.00.

As in most other areas where errors were discovered in the next year of reassessment (1983), these errors and most others were rectified.

The Assessor's Choice of Model

When an assessor values a building under the replacement cost method he chooses a model from the Boeckh Manual which is as similar as possible to the one he is working on. The exercise of this discretion can lead to some unusual situations. Our retail store which many of our readers are familiar with, was valued as a one-story/neighborhood food store which in the Boeckh Manual was described as follows:

> "These stores are located in residential sections to provide essential convenience food and variety items to the immediate neighborhood. ... A typical design has load-bearing masonry exterior walls, light interior steel framing supporting a built-up roof on metal deck with open-web steel joists."

As most of you know our building had a peaked roof, was wood framed and sided and had no metal framing.

There was one warehouse building in particular in the Town which, because of its similarity in structure and use to ours, we felt would be a good check on the assessor's methods. Our building was valued in the Boeckh Manual as a commercial industrial storage shed. When we looked at the worksheet on the other building

used for comparison, it was valued as an agricultural workshop. The assessor agreed that it would be appropriate to use the same commercial model on this building as had been used on our warehouse. When we had him value this building in this manner the new value came out to $35,716.00 as opposed to the value shown on his worksheets of $22,000.00. In other words, the assessor had, simply by choosing the inappropriate model, decreased its value by $13,000.00.

Depreciation and Obsolescence

Depreciation is the factor used to reflect the age of, and wear and tear on, a building. Obsolescence is the factor used to reflect a building's lack of utility and style for its present use. These can be calculated on a mathematical basis or as was the case in most of the commercial and industrial buildings we looked at, by the "observed" method.

Our nine buildings dating from 1911 and sprawling over a four and one-half acre complex were given a 20 percent obsolescence factor. The assessor admitted he had no experience in our industry however, he based this figure on a calculation using an imaginary replacement building which, he said, would be needed to replace our nine buildings. Even though the trend in the building supply business is for smaller, more efficient operations this replacement building contained a square footage equal to that contained in our nine buildings. On the other hand, where the assessor used the "observed" method for obsolescence he was able to provide an opinion that one commercial property still being used for the purpose that it was built for only 12 years before, was 40 percent obsolete. This allowed him to reduce its assessment by 40 percent. When asked why he had formed such an opinion he could give no reasons. In other words, it was a "guess". Most of the other properties had 30, 40 and in one case 55 percent deductions from their value for obsolescence on the basis of "the assessor's opinion".

The assessor's use of depreciation figures had the same effect on value. On one building we looked at the assessor gave his opinion with no factual basis that its depreciation was 35 percent, yet in the next reassessment year after our appeal, he had reduced this depreciation figure to 25 percent. He could give no explanation for the 35 percent figure or for the reduction. In other words, on

the figures, the condition of the building had actually improved with age.

Rounding Down

The practice that gave us the most concern was the evidence that came out on "rounding down". This, we feel, caused a serious erosion of the Town's tax base. One property was valued after depreciation, etc. at $2,950,000.00 yet it was rounded down to $2,500,000.00. In other words, at the stroke of a pen $450,000.00 had been erased from the assessment roll of the Town of Stellarton. Another property, while being valued on the cards at $2,186,192.00 was rounded down to $2,000,000.00. Yet another property was valued at $138,000.00 and was rounded down to $100,000.00. We point out that there are many residential properties in the Town of Stellarton assessed at less than $38,000.00 whose owners pay the full amount of taxes on that assessment. Our assessed value was rounded down from $582,953.00 to $582,950.00, a $3.00 reduction!

The assessor could provide no explanation for this practice but again, we point out that after our appeal was launched, the local office in the assessor's words was reprimanded and told to discontinue this practice. We wonder if such a practice would ever have been made known to the public in the absence of our appeal.

Our examination of the worksheets that we obtained showed that in the years involving our appeal, the assessor had the discretion through the use of these tools to create whatever value he wished for a building and simply justify it, by stating that it was "his opinion".

However, when our assessment appeal was launched this opinion was quickly substantiated by carefully manipulated calculations to reflect the assessed value.

We estimate that the assessor's failure to apply the same methods he used on our buildings to other commercial properties in the Town of Stellarton eroded hundreds of thousands of dollars from the Town's tax base. After the testimony of the assessor it was clear that there were indeed good reasons for the Assessment Department having denied us access to these worksheets.

Escape Options

The Municipal Board could insist to have evidence before it to show what the proper assessment for our property should be. Up to this time, there was no indication that the value of other properties would have any bearing on the Board's conclusions. The requirement for us to prove the correct assessment meant that this Hearing could have continued indefinitely. Furthermore, costs were mounting. Besides the Chairman, Mr. Weldon, and his counsel, Mr. Lambie, the Government had two lawyers, a stenographer and three assessors sitting in on the Hearing; six of whom were staying in motels in the area. We had been warned earlier that we would be responsible for the assessor's costs and that we would have to face legal costs as well. Mr. Cameron at the Regional Assessment Appeal Court had found that our assessment was $380,000.00. After protracted negotiations, a figure of $425,000.00 was manufactured. Added to this was a business occupancy tax of 50% and machinery at $80,000.00 for a total of $717,500.00.

The year 1981 was not considered, in spite of the fact that it took us six years to obtain the information we had sought back then, so, in the spirit of justice, we were stuck with our 1981 assessment of $1,000,000.00.

The following chart shows our assessment before the appeal, after the appeal and the reduction we achieved. You will note how much more valuable our property became in 1984, (Could this have been further intimidation?)

	Before		After	Reduction
1981	$ 600,000	Land & Building	$ 600,000	
	300,000	Bus. Occupancy	300,000	
	100,000	Equipment	100,000	
	$1,000,000		$1,000,000	No reduction because of 3-week limitation
1982	$ 600,000		$ 425,000	
	300.000		212,500	
	100,000		80,000	
	$1,000,000		$ 717,500	$ 282,550
1983	$ 600,000		$ 425,000	
	300.000		212,500	
	100,000		80,000	
	$1,000,000		$ 717,500	$ 282,550
1984	$ 721,700		$ 500,000	
	360.850		250,000	
	141,000		80,000	
	$1,223,550		$ 830,000	$ 393,550

Part of our property was sold in 1984 to A.J. Munro Building Supplies Limited.

A Fabricated Figure

The Municipal Board is bound by its legislation to make an investigation and finding once a case has been commenced. This means that it cannot accept an agreed figure. Thus to accommodate this, the assessor, Mr. Farrell took the stand and conveniently gave testimony to the effect that our correct assessment based on the evidence he had heard in the second Hearing should be $425,000.00 (as opposed to nearly $600,000.00 he testified was appropriate in the first Hearing). This figure was a fabricated figure, symbolic of the whole process we had been through. We offered no evidence in rebuttal and so the Board accepted this figure as final.

We had incurred extraordinary legal bills between January 1, 1981 and January 31, 1987 with three law firms and an appraisal company. We point out that these costs had been imposed on us ever since our assessment was increased 300% in 1981.

Seven Years of Torment and Aggravation

The following is a chronology of the events imposed on us from 1981 to 1987.

Month	Day	Year	
Jan.	01	1981	Initial reassessment (3 week appeal limitation)
Jan.		1982	Appeal Filed
May		1982	Initial hearing before Regional Assessment Appeal Court. This was adjourned because of an objection by the solicitor for the Department of Municipal Affairs to counsel for D. Porter & Son Limited re, recording the proceedings.
May	18	1982	Deputy Minister of Municipal Affairs, John Mullaly, confirms in writing to Joseph A. Cameron, Vice-Chairman of Regional Assessment Appeal Court that recording of proceedings is acceptable provided that parties record at their own expense.
July	13	1982	Regional Assessment Appeal Court Hearing. Both parties record Hearing.
April	29	1983	Application by way of Mandamus to force Joseph A. Cameron, Vice-Chairman of Pictou Regional Assessment Appeal Court to file his decision. Justice Lorne Clarke issues order and awards costs to D. Porter & Son Limited. 10 months later.
May	16	1983	Decision of Regional Assessment Appeal court received. Assessment set at $380,000. D. Porter & Son accept decision and later pay taxes on this figure.
May	30	1983	Director of Assessment files Notice of Appeal with Municipal Board, against Mr. Cameron's decision.
July	8	1983	Letter to Marion Tyson requesting access to tapes for transcript of proceedings before Regional Assessment Appeal Court, our tapes inaudible.
July	25	1983	Follow-up request for tapes.

July	28	1983	Reply from Marion Tyson stating that the tapes were not available and probably erased.
September	22	1983	Request by D. Porter & Son Limited for information later subpoenaed, regarding comparable properties.
October	13	1983	Request refused. Subpoena issued
November	15	1983	First day of Hearings before Municipal Board: R. H. Blois (Chairman), Elizabeth Lawrence, Darryl Wilson.
January	17 18 19	1984) 1984) 1984)	Resumption of Hearing in Halifax (Lawrence and Wilson, Blois no longer on Board).
March	19 20	1984) 1984)	Completion of Hearing in Stellarton (Lawrence and Wilson).
March	18	1985	Decision and Order of Municipal Board issued. 1 year later to Supreme Court of Appeal.
April	10	1985	Application for leave to Appeal filed.
June	20	1985	Order granting leave to Appeal on issue of access to records.
September	13	1985	Appeal heard and Order issued revoking decision of Municipal Board ordering a new hearing awarding costs to us and granting access to records. Various requests for assessment cards for 13 buildings made.
Sept.'85 - March '86			Solicitor for Department of Municipal Affairs states No records Figures erased.
March	27	1986	Ex Parte Application to have matter remitted back to Supreme Court of Appeal; made for an order seeking full costs. June 19 date set.
May	8	1986	Appearance in Court of Appeal Chambers to answer application by Director of Assessment to have March 27 Order struck out.
May	15	1986	Appearance before Clarke, Chief Justice of Nova Scotia on adjournment from previous week, Director of Assessment's application dismissed.
June	19	1986	Attendance before Nova Scotia Supreme Court Appeal Division to argue application.
June	25	1986	Nova Scotia Supreme Court Appeal Division hands down judgment, sympathizes but refuses application for full costs.

November	24 1986	First day of Hearing in Stellarton, Randell Duplak produces "missing documents". Merle Gordon claims they were found previous Friday.
November	24-28/86	Hearings in Stellarton.
January	26 1987	Hearings in Stellarton.
January	26 1987	Escaped by accepting fabricated assessment of $425,000.00.

We Sought Redress

We have sought redress, from our elected officials, and have asked for three things: (a) compensation for the costs incurred (b) a roll-back of our 1981 assessment to reflect the reduced 1982 figure (c) a forgiveness of the 17% interest penalty charged on over-due accounts by the Town of Stellarton.

To seek this redress and to express our dismay, we contacted the Honourable Jack MacIsaac. He in turn put me in touch with Mr. Gordon Gillis, Deputy Minister of Municipal Affairs. A meeting was held with the Deputy Minister on May 8, 1987 and a transcript of the Hearing was supplied to him, together with an offer of free access to our files. Meanwhile, while these matters were under consideration, the purchaser of our plant, A.J. Munro Building Supplies Ltd., was threatened with a tax sale on their property. In order to bring the matter to a head, we contacted Mr. Gillis by letter and told him that unless we heard from him, we would assume that the Province had taken the position that we would have to pay all the costs imposed on us.

Part of the System

In response, we received correspondence from Mr. Gillis stating that we must negotiate any interest settlement with the Town and that if our concern was of the legal nature, we must deal directly with Mr. Duplak. In our opinion, Mr. Duplak was part of the system and had no power to remedy this situation. That was the sum total of the Province's answer to this whole charade. The Town was then contacted and a meeting with Town Council requested. The following response was received from Town Council:

"Council feels that no useful purpose would be served in

> meeting with D. Porter & Son Limited representatives to discuss outstanding taxes owed by A.J. Munro Limited and Stellar Moulding Inc.
>
> Likewise the matter of assessments is a Provincial responsibility handled through the Regional Assessment Office."

With a very superficial examination of a few commercial properties on the Stellarton assessment roll, we had discovered that the Town's tax base had been reduced by more than $2,000,000.00. The Town authorities by receiving and accepting the assessment roll knew or should have known what was going on, but they showed no further interest. It must be kept in mind that all of these maneuvers by the Assessment Department were on behalf of the Town to collect taxes from us. Yet neither wanted to accept responsibility for the reprehensible actions that had continued for seven years.

As a result of this we ask this question of all our readers: Is taxation without representation any worse than with it?

From the information given in our previous presentation you may wonder as we do, whether we were involved in an obstruction of justice, a miscarriage of justice, a conspiracy or a combination of all three.

After seven years we escaped from a morass of bureaucracy by accepting a compromise on our assessment. From the inception, we have been subjected to a succession of maneuvers that were intended to deny our rights as taxpayers. When it became apparent that rather than an inquiry, we were in a confrontation with all the resources of Government, a decision was made to remove capital and vacate.

Following extensive advertising, we did not receive a single offer or proposal for the whole operation, so we offered it for sale in two parts and eventually sold both our manufacturing and sales facilities. We gave an undertaking to both purchasers that we would give our best efforts to find a solution to the inherited assessment problem. It is dangerous to be right when the Government is wrong.

Without justification, we continue to see both segments of the operation assessed in a manner that bears little relationship to other commercial properties in the Town, some of which are overvalued, some are undervalued. However, I believe that we have found the rules of the game and through the experiences of the past seven years, we should be in a position to guide others around the barriers that were raised against our efforts. One does not have to eat a whole egg to KNOW that it is bad. It must be apparent that property assessment and taxation is an in-house operation, from the assessors to the appeal system and the legal support supplied to enforce the will of the assessors.

The consequences to many people have become apparent, and will continue to become apparent. Prior to this fiasco we felt a moral and civic responsibility to create employment, but it is difficult to pursue these goals with such overwhelming forces working to disrupt and destroy. From a staff of 25 in 1981, eight are now employed in the two separated operations. This could be called job creation in reverse.

The past seven years have been a very distressing period, but nevertheless, we have obtained a valuable insight into a situation from which no taxpayer, challenging the system, will escape unscathed. The scars have many forms, horrendous costs on time and money, loss of livelihood for many people and all for what? For extra taxes? Hardly! Other commercial properties assessed for a small fraction of their values, properties left off the assessment rolls, hundreds of thousands of dollars written off the rolls after the manipulation of models, features, depreciation, obsolescence factors, etc..

While it is true that there is a higher court, and that twice we appeared before them, there is little one can do to limit the power of a system whose authority and resources are unlimited. The Nova Scotia Court of Appeal's role is a very limited one, in that they cannot adjudicate the merits of the case, only observe and judge the propriety of the proceedings at the lower court and board level.

No one can change the events of the past. Damage has been inflicted and none of our elected representatives has cared to intervene. The type of situation that we uncovered was anticipated by the original drafters of the Assessment Act and, in the Act, there is a section that deems an assessment of property at any amount

greater or less than the value at which it should have been assessed by 25% to be fraudulent and unjust, and to result in criminal charges. Unfortunately, these charges must be brought within two years of the offence. The procedure in our case was drawn out for seven years and thus circumvented the use of that section. What we have at present is a civil service bureaucracy which few are prepared to challenge and one which is an entity answerable only unto itself.

We have been damaged and others have been damaged through their actions, and the outcome we cannot predict. It is surely just another manifestation of those things which gives rise to so much public cynicism and mistrust of our legal and administrative systems.

To avoid recurrences, we urge our legislators to have the following incorporated into the Assessment Act now.

1. Once an assessor has set an assessment on a particular property that should be the end of his involvement. If a taxpayer chooses to appeal, the taxpayer should retain an independent appraiser to check the assessor's figures and the Province should do the same. Their choice should not be another assessor from within their own system but a competent and independent individual, one without a vested interest. This would avoid a situation where the assessor is scrambling and compromising to justify his own figures and would, we feel, create credibility and responsibility.

2. That the Regional Assessment Appeal Board divorce itself entirely from the local assessment offices. At present the Recorder of this Court works in the Assessment Office and any one of you who have attended a Regional Assessment Appeal Court will have noted how, upon entering the room, the assessor and the Regional Assessment Appeal Court Judge appear to be sharing the same papers and conversing in friendly and familiar terms, with nothing to manifest the independence or detachment of the judge from the administration.

3. That on a rotating basis the assessor's work papers undergo an audit by an independent appraisal firm to ensure proper valuation principles are applied and that uniformity of taxation is present. Such audit should be Province-wide and unannounced.

4. All judicial bodies involved in the assessment process be required by law to file their decisions within thirty days of the conclusion of the hearing. An extension to this only be granted upon application to a court of law.

5. That a taxpayer who successfully reduces his assessment in excess of 15% be reimbursed for all costs and appraisal fees.

6. That the Assessment Act be reviewed so that taxpayers and municipalities generally are treated on an equal basis throughout (i.e. no interest to either party or interest to both).

7. That all records pertaining to an assessment be carefully preserved and available for audit or comparative purposes.

We trust that our readers have been alerted by our experience and we hope no other taxpayer will ever have to endure the imposition of costs and anguish that we have had to to through over the past seven years. Freedoms are dearly won and easily lost, surely the right to appeal a property assessment should not be hindered or denied by persons on the public payroll who are appointed and paid to protect the public.

We thank you for your interest, and we would like to remind you that, on some scale what happened to us could happen to you. We have in our files a great deal of information concerning assessment methodology and other surprises somewhat similar to those that we have shared with you. Should any of our readers wish to pursue this matter further, we would be pleased to share information gathered from our experiences.

In closing, we believe that such an abuse of power as we have shown to you surely merits an independent examination by an appropriate authority.

D. Porter & Son Limited