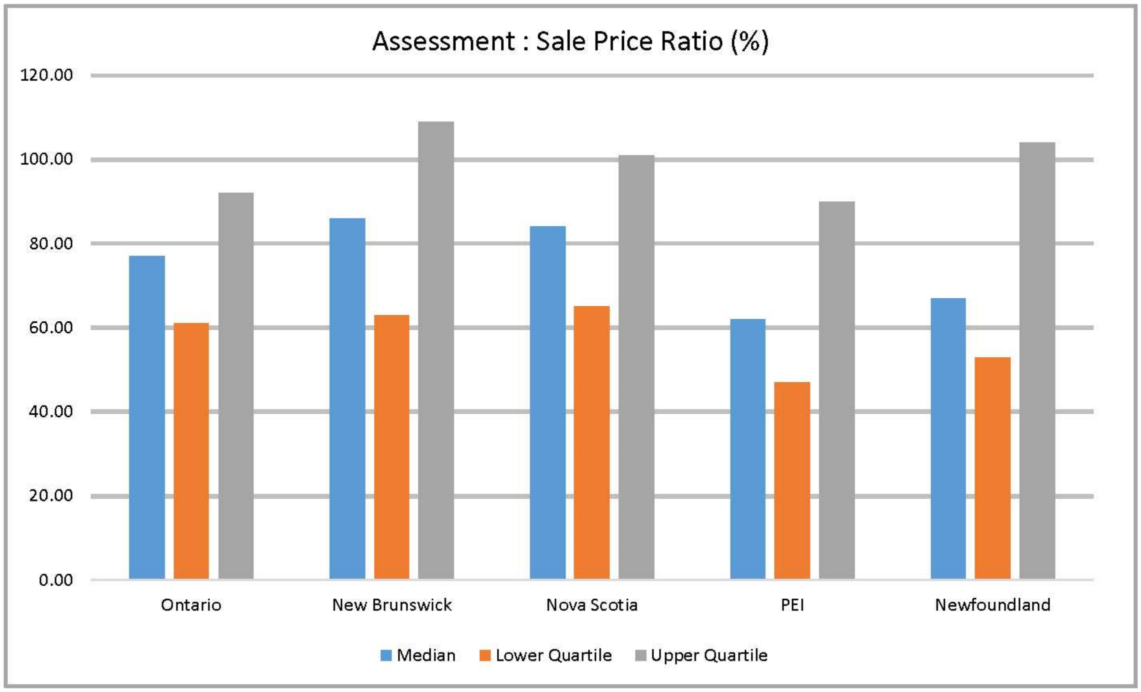
PROPERTY ASSESSMENTS: THE FACTS BEHIND THE FICTION



Are property owners across Canada being hoodwinked; conned into thinking they have no grounds for appealing their assessment even though they are over-assessed? Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John's and MAA (Newfoundland and Labrador), trumpet the fact that "Market Value" is the legislated basis for property assessment … but there is clear evidence that this is **not** the metric most assessors use. In fact, they assess virtually all property *at less than its Market Value* to deter property owners from filing an appeal even though similar properties may bear vastly dissimilar assessments, resulting in an inequitable distribution of the property tax load. *Fortunately in most provinces, "Market Value" is not the only grounds on which to launch a successful assessment appeal … indeed it is rarely the most appropriate basis on which to challenge an unfair assessment.*

The "Market Value" Myth

It is true that most, if not all, provincial Assessment Acts cite "Market Value" as the primary basis for assessing property. "Market Value" is the price you would expect to receive for your property if you were under no pressure to sell and the buyer was not especially motivated to purchase (technically Market Value is "*the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus").* However this is not the basis actually used by the provincial assessors: indeed most, perhaps all, provincial assessment bodies do not even directly assess their own performance by measuring property assessments against Market Value; instead they utilise a technique called the Coefficient of Dispersion which "represents the average percentage deviation from the median ratio" of the assessment to sale price … in other words they focus on how closely the assessment/sale price ratios are grouped around the median (a positional statistic) assessment/sale price ratio. Arcane? Absolutely! Mind boggling? Undoubtedly! The conclusion? Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John's and MAA (Newfoundland and Labrador), or any other Assessment Authority, are more interested in the *uniformity* of the assessment process than whether the assessment reflects Market Value. The latter is the subterfuge they use to discourage appeals: indeed the only time the assessment will approximate Market Value is when the property is sold close to the assessment Base Date. In that unhappy event the provincial assessor will attempt to defend their assessment, citing the Market Value criteria.

“Uniformity”: The Hidden Gem

Hidden in the bowels of most, but not all, provincial Assessment Acts is a provision that assessments have to be uniform, or similar, for comparable properties (New Brunswick is the exception that proves the rule, but even there the more competent assessors recognise the inequity of assessing similar properties for dissimilar amounts). It is true that some provincial Assessment Authorities make a passing reference to “uniformity” on their web sites, not however as grounds for appeal, but to buttress and justify their purported use of Market Value as the benchmark for property assessment … the implication being that since all properties are assessed at Market Value, comparable properties will bear similar assessments … as indeed they would were they to be so assessed ... but they are not! And if they were under-assessed by a similar amount, it would not matter either since the tax load would still be distributed more or less equitably … but as our research demonstrates such is not the case. The uniformity provision is sometimes buried in the appeal section of the Assessment Act and can be spelled out, as in the Ontario legislation; the result of case law, as in Nova Scotia; or be at the whim of a New Brunswick assessor. It matters not where it lurks, its existence is the key to saving you money on your property taxes … and now, as Monty Python was wont to say, for something entirely different …

“Market Value”. Again!

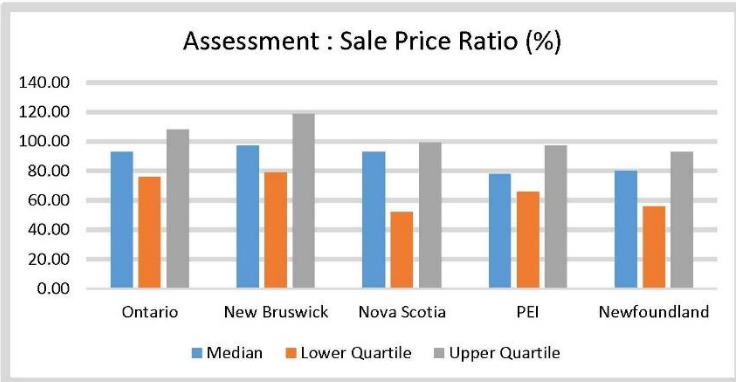
Although Market Value is only used by the provincial assessor to discourage appeals, we need to dwell upon it a little longer because, whilst its relationship with your property assessment is tenuous at best, it does influence the uniformity metric. Market Value is pinned to a moment in time (the “Base Date”), having regard to its occupation on a “Classification Date” and physical condition on a “State Date”. (These are our own labels; true to form most provinces cannot even agree to call “Market Value” by its name … Ontario terms it “Current Value”, New Brunswick “Real and True Value”, Newfoundland “Actual Value”, and miracle of miracles, Nova Scotia *and* Prince Edward Island, “Market Value”). Sadly it does not mean the same thing in Ontario as the rest of the world. In Atlantic Canada, it refers to the value of the property in its *existing use* ... in Ontario *highest and best use* is the order of the day. Take a property comprising an old warehouse worth $0.5 million (including its industrial site) sitting on land worth $3.0 million for redevelopment … its Market Value for assessment purposes would be the former in Atlantic Canada and the latter in Ontario. Oh woe! And that’s just the start. Your assessment should only include the “real” estate: “personal” property is excluded. So if your motel carries a “flag”, as most do, the value of the brand and any referral or other business which accrues as a result is not assessable … even in Ontario. The same principle applies to automotive dealerships, fast food outlets, gyms, muffler shops, et al … the value of the franchise is not assessable. Nor is machinery and equipment assessable as part of the realty, so storage tanks and piping which are part of the manufacturing process are similarly exempt … unless the provincial Act and/or Regulations have decreed otherwise. This can get a little tricky: some buildings are so process designed, identifying the demarcation is often a matter for negotiation.

“Uniformity”.

What are the facts? What evidence exists to support our bold assertion that “Market Value” is routinely ignored by provincial assessors and is nothing more than a strategy to make their lives easier and to rob property owners of their democratic right of appeal? Atlantic Canadians will need the least convincing, businesses there operate in a hard scrabble world where the margin between success and failure is razor thin … Ontarians on the other hand may be a more trusting bunch … Recognising that burning questions such as these turned you off your turkey over the festive season, we decided to find out where the bodies are hidden. Stick with us, we are about to save you money.

In order to test whether the Assessment Authorities in Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, relied on Market Value as their criteria for computing assessments we compared sale prices with assessed values. We ignored properties that had sold close to the assessment Base Date, our thesis being that the provincial assessor **would** have assessed these properties at Market Value because the property owner would be behind the proverbial eight ball in an assessment appeal. Instead we selected property sales that occurred after the assessment Base Date or close to the issuance of the Assessment Roll, on the assumption that these sale prices would not have been utilised in computing the assessment. The time period we selected was designed to give the Assessment Authority the benefit of the doubt by about six months, given that some provinces issue their Assessment Rolls within a few months of the Base Date and others about a year later. We also chose industrial properties, the easiest property to appraise, to control for incompetence (we had to expand our sample in PEI to include all commercial property since there were insufficient industrial sales to produce a rellable result). The results are shown on the bar chart on Page 1.

If the properties were really assessed at Market Value their Assessment/Sale Price ratio would be 100%. However the median (middle of the pack) ratio, shown as a blue bar, ranges from 62% (PEI), 67% (Newfoundland), 77% (Ontario), 84% (Nova Scotia) and 86% (New Brunswick). Nor are the properties assessed below Market Value by a consistent amount. The inter quartile range, which shows the middle 50% of properties, is represented by the orange (lower) and grey (upper) bars. These middle 50% of properties range between 53% - 104% (Newfoundland), 47% - 90% (PEI), 63% - 109% (New Brunswick), 65% - 101% (Nova Scotia) and 61% - 92% (Ontario).



As a final verification that the provincial assessors only use Market Value to compute the property assessment where there is compelling market evidence, we analysed the data for properties that had sold around the time of the Base Date. “Chasing sales” i.e. using sale prices close to the Base Date to establish the assessed value, unfairly distributes the tax load unless all property is assessed at its Market Value. If the assessor has “chased sales” to arrive at the Market Value a comparison of the assessments arrived at by this method, with other assessments, will also establish whether Market Value is the metric generally in use by the Assessment Authority. If such is the case there would be no significant difference between the Assessment/Sale Price ratio for the two samples. The results are shown on the bar chart above. If the Assessment Authority is “chasing sales” their Assessment/Sale Price ratio would be closer to 100%, and there would be less variability than in the bar chart on Page 1. This would also be prima facie evidence that little reliance is placed by the Assessment Authority on Market Value unless the property sold close to the assessment Base Date. In the “Chasing Sales” bar chart above the median (middle of the pack) ratio, shown as a blue bar, ranges from 78% (PEI), 80% (Newfoundland), 93% (Ontario), 93% (Nova Scotia) and 97% (New Brunswick). The properties are still assessed below Market Value but generally by a more consistent amount. The inter quartile range, which shows the middle 50% of properties, is represented by the orange (lower) and grey (upper) bars. These middle 50% of properties range between 56% - 93% (Newfoundland), 66% - 97% (PEI), 79% - 119% (New Brunswick), 52% - 99% (Nova Scotia) and 76% - 108% (Ontario).

The Bottom Line

Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John’s and MAA (Newfoundland and Labrador) only use Market Value (sale price) as their benchmark for computing the property assessment when the property is sold close to the assessment Base Date. In every other case they are more interested in the *uniformity* of the assessment process than whether the assessment reflects Market Value. The latter is the subterfuge they use to discourage appeals by citing it as the mandated benchmark whilst actively assessing property below its Market Value, often by 40% to 50%. However most Assessment Acts do include a uniformity provision so even when property is assessed at less than its Market Value, or there is a sale of the property close to the Base Date, it will be possible to successfully appeal the assessment. The application of the uniformity provision can differ by province, through practice or case law, and a wealth of supporting sales and assessment data is required to prosecute a successful appeal … but our Property Tax Division does so all the time.

For more information on property tax appeals visit our corporate web site www.turnerdrake.com > Corporate Site > Property Tax > Tax Appeals, our dedicated property tax web site www.turnerdrake.net, or call our tax team Rick Escott & Mike Turner (Ontario), Giselle Kakamousias & Greg Kerry (Nova Scotia), Andre Pouliot & Chris Jobe (New Brunswick), Matt Smith (Newfoundland and Prince Edward Island) at 1-800-567-3033 (toll free) or 902-429-1811 (in HRM).

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