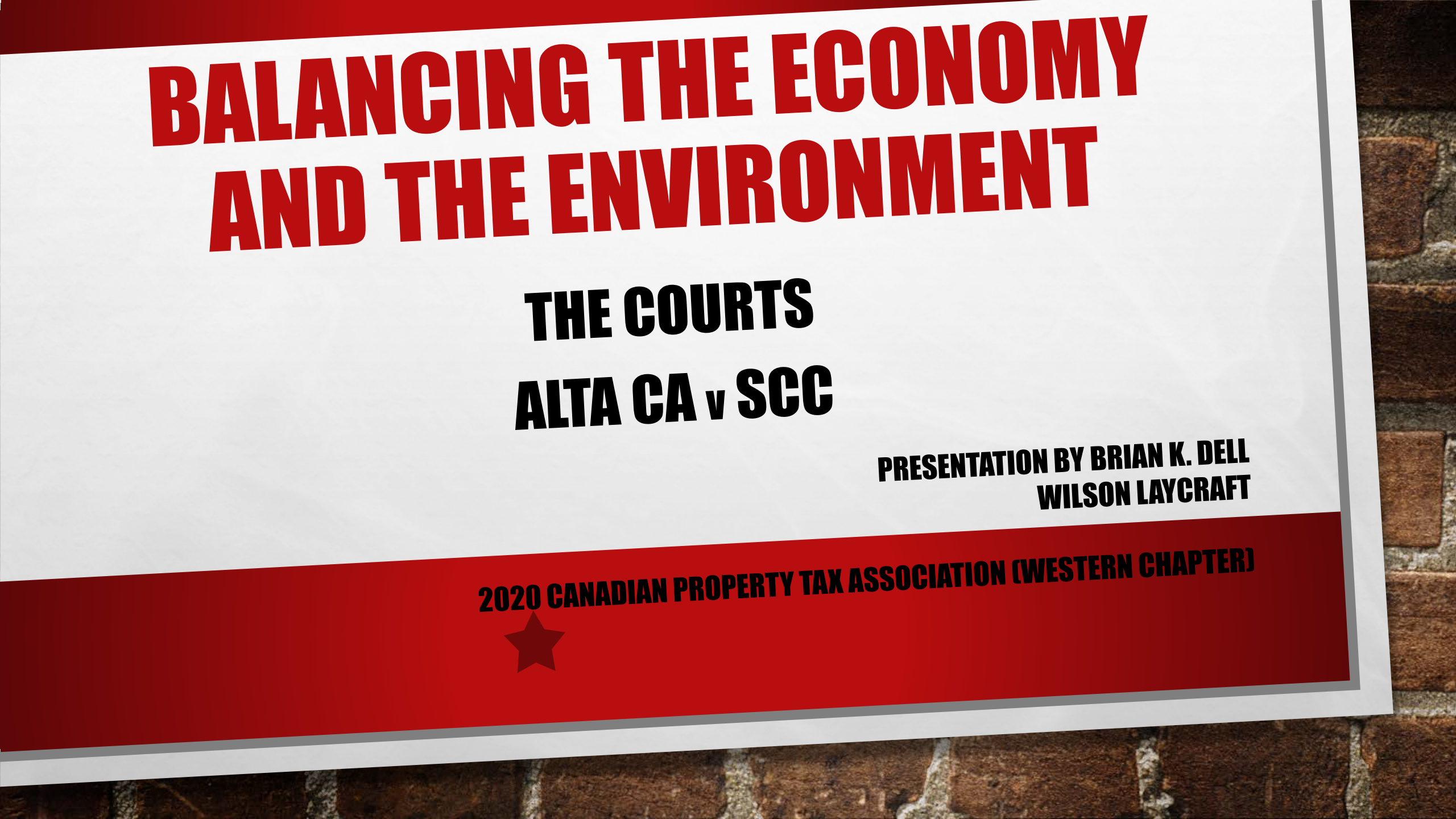
BALANCING THE ECONOMY AND THE ENVIRONMENT

THE COURTS

ALTA CA v SCC

PRESENTATION BY BRIAN K. DELL
WILSON LAYCRAFT

2020 CANADIAN PROPERTY TAX ASSOCIATION (WESTERN CHAPTER)



THE ECONOMY - ALBERTA COURT OF APPEAL

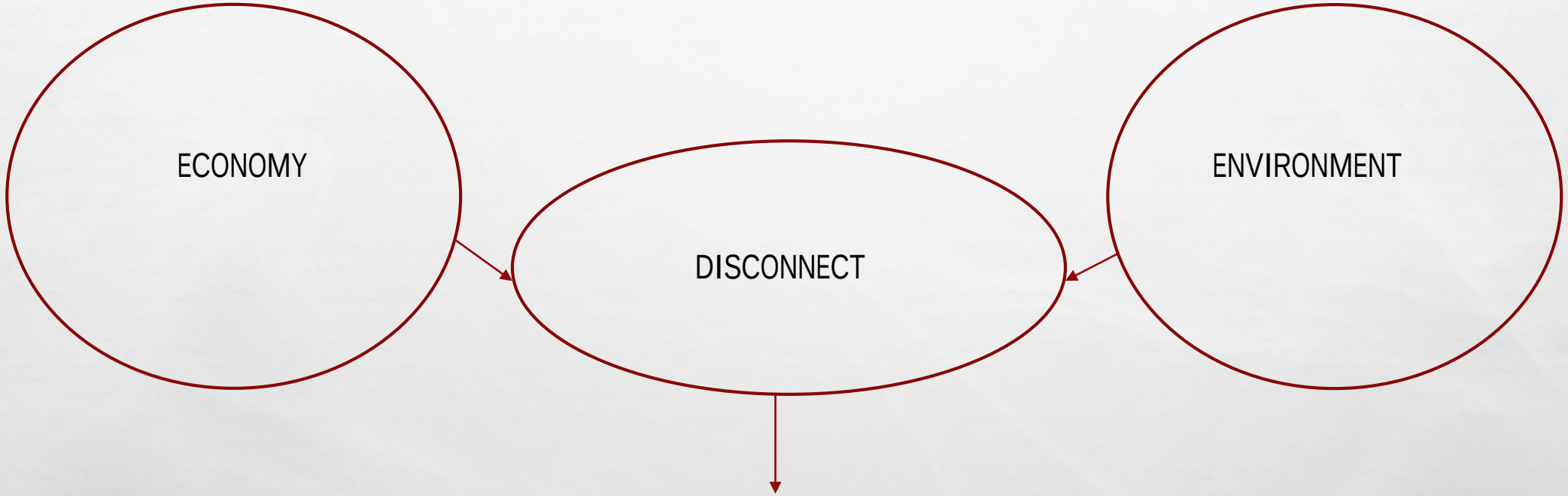
REFERENCE RE: *GREENHOUSE GAS POLLUTION PRICING ACT*, 2020 ABCA 7

- FEDERAL *GREENHOUSE GAS POLLUTION PRICING ACT* UNCONSTITUTIONAL
- OPINION – FEDERAL ENACTMENT IS INCONSISTENT WITH DIVISION OF POWERS AND PROVINCIAL PROPRIETARY RIGHTS OVER NATURAL RESOURCES
- MAJORITY – A "SUBSTANTIAL" DISCONNECT EXISTS BETWEEN MEETING ENVIRONMENTAL OBJECTIVES ON ONE HAND AND PRESERVING PROVINCIAL ECONOMIES AND THE ABILITY TO FUND NEW TECHNOLOGIES AND CLEAN ENERGY ON THE OTHER
- "DISCONNECT" INVOLVES A SHOPPING LIST OF LINKED ISSUES:
  - HOW TO ENSURE PROVINCES CONTINUE TO BE ABLE TO DEVELOP THEIR RESOURCES;
  - HOW TO ENSURE OIL AND GAS RESOURCES DO NOT BECOME STRANDED ASSETS
  - HOW TO IMPLEMENT ENVIRONMENTAL MITIGATION STRATEGIES
  - HOW TO ENCOURAGE CAPITAL INVESTMENT
  - HOW TO MINIMIZE REGULATORY DELAY
  - HOW TO TRANSITION TO CLEAN ENERGY
  - HOW TO RECONCILE RESOURCE DEVELOPMENT WITH ENVIRONMENTAL CONCERNS
- SCC TO GET FINAL SAY (SASKATCHEWAN AND ONTARIO)

THE ENVIRONMENT - SUPREME COURT OF CANADA
ORPHAN WELL ASSOCIATION v. *GRANT THORNTON LTD.*, 2019 SCC 5

- RECEIVER ATTEMPTS TO RENOUNCE NON-PRODUCTIVE OIL AND GAS ASSETS AND RETAIN ONLY THE PRODUCTIVE ASSETS OF INSOLVENT OIL AND GAS COMPANY
- END OF LIFE OBLIGATIONS FOR NON-PRODUCTIVE ASSETS OUTSTRIPPED ANY VALUE THAT COULD BE REALIZED THROUGH DISPOSITION OF PRODUCING ASSETS
- REGULATOR CLAIMED RECLAMATION OBLIGATION WAS PARAMOUNT AND RECEIVER OBLIGATED TO FULFILL REGULATORY END OF LIFE OBLIGATIONS
- ALBERTA COURT OF APPEAL – SECURED CREDITORS HAD PRIORITY IN BANKRUPTCY
- SCC RECLAMATION OBLIGATION TAKES PRIORITY OVER CREDITORS
- REGULATORS HAVE A FIRST CHARGE ON REAL PROPERTY OF A BANKRUPT AFFECTED BY ENVIRONMENTAL CONDITIONS

BALANCING THE ECONOMY AND THE ENVIRONMENT



TECH RESOURCES WITHDRAWS APPLICATION FOR FRONTIER OILSANDS PROJECT

BALANCING THE ECONOMY AND THE ENVIRONMENT

THE SOLUTION?

BALANCING THE ECONOMY AND THE ENVIRONMENT
CAN ASSESSMENT / TAX POLICY PLAY A ROLE?

- EXEMPTIONS FOR POLLUTION ABATEMENT EQUIPMENT
- EMBRACING EXPERIMENTAL PLANT ALLOWANCES
- RECOGNIZE OF END OF LIFE OBLIGATIONS

ASSESSMENT CASES

1. LET'S KEEP IT SECRET – S. 299 INFO RIGHTS
2. ONE DAY SHORT – CONDITION DATE
3. ALL HAT AND NO COW – FARM LAND
4. THE JOE NAMATH – A GAURANTEED WIN

EDMONTON (CITY OF) v. *TEN 201 JASPER AVENUE LTD.*, 2020 ABCA 60

- 2016 TAX YEAR - SECTION 299 RIGHTS (PRIOR TO 2018 AMENDMENTS TO MGA)
- STANDARD OF REVIEW
  - CORRECTNESS – S.470 STATUTORY APPEAL
  - NOW JUDICIAL REVIEW S.470 – REASONABLENESS
- PRE-COMPLAINT THE TAXPAYER REQUESTED LEASING AND VACANCY INFORMATION RELATING TO INCOME APPROACH APPLIED BY CITY
- CITY REFUSED TO PROVIDE UPFRONT, BUT INTRODUCED THE INFORMATION IN DEFENCE OF COMPLAINT

EDMONTON (CITY OF) v. *TEN 201 JASPER AVENUE LTD.*, 2020 ABCA 60

- ARB REFUSED TO ACCEPT CITY'S DISCLOSURE OF COMPARITIVE LEASE AND VACANCY RATES - 9(4) MRAC – AR 310/2009
- BOUND BY *CNRL v. WOOD BUFFALO*, 2014 ABCA 195
- COURT OF APPEAL – CANNOT INTERPRET S. 299 TO ONLY REQUIRE PARTIAL DISCLOSURE THAT IS INSUFFICIENT TO ALLOW TAXPAYER TO LEARN BASIS OF ASSESSMENT, AND DETERMINE IF THERE WAS GOOD REASON TO FILE COMPLAINT
- MUST BE GIVEN ALL RELEVANT INFORMATION USED TO PREPARE ASSESSMENT
- 2018 AMENDMENTS TO INFORMATION SECTIONS OF *MGA* AND REGULATIONS?
  - SECTION 9 PROHIBITIONS PREVENTING ARB FROM HEARING EVIDENCE REMOVED IN MRAC 2018
  - MRAT, 2018 S. 33(1)(A) "ALL IN DOCUMENTS, RECORDS AND OTHER INFORMATION IN RESPECT OF THAT PROPERTY

EDMONTON (CITY OF) v. *TEN 201 JASPER AVENUE LTD.*, 2020 ABCA 60

- EDMONTON ARGUED DISCLOSURE ONLY RELATED TO THE PARTICULAR PROPERTY (HOW THE ASSESSOR PREPARED THE ASSESSMENT OF THAT PERSON'S PROPERTY). THE CITY WAS NOT OBLIGATED TO DISCLOSE LEASE RATES, VACANCY RATES FROM OTHER PROPERTIES USED TO ARRIVE AT RATES IN THE VALUATION MODEL
- COURT OF APPEAL REJECTED THE ARGUMENT THAT s. 299 WAS TO BE SO NARROWLY CONSTRUED. CENTRAL PURPOSE INFORMATION RIGHT IS ABOUT HOW ASSESSMENT PREPARED AND UPON WHAT GROUNDS THE ASSESSMENT MIGHT BE CHALLENGED. THIS REQUIRED DISCLOSURE OF THIRD PARTY COMPARATIVE INFORMATION. STEPS CAN BE TAKEN TO ADDRESS CONFIDENTIALITY CONCERNS.

CALGARY (CITY) v. *EAU CLAIRE MARKET INC.*, 2020 ABQB 112

- ASSESSMENT YEAR VERSUS TAX YEAR / MRAT v MRAT, 2018 - CONDITION DATE PREVAILS
- IN JANUARY CALGARY PREPARED ANNUAL ASSESSMENT FOR THE 2018 TAX YEAR WITH A SPLIT CLASSIFICATION OF 54% RESIDENTIAL AND 46% NON-RESIDENTIAL
- *CALGARY CHARTER REGULATION* ENACTED APRIL 4, 2018 - AMENDED S. 297 CLASSIFICATION
- S.11(1) OF THE *CHARTER* PROVIDED IT HAD APPLICATION ON AND AFTER JANUARY 1, 2018
- CITY PREPARED AMENDED NOTICE IN MAY 2018 PROVIDING FOR 100% NON-RESIDENTIAL - SUBSTANTIAL TAX INREASE

CALGARY (CITY) v. *EAU CLAIRE MARKET INC.*, 2020 ABQB 112

- CARB DETERMINED CLASSIFICATION SECTIONS OF *CHARTER* DID NOT APPLY FOR THE 2017 ASSESSMENT YEAR
- ON CONDITION DATE OF DECEMBER 31, 2017 CITY HAD DETERMINED THAT PROPERTY WAS TO RECEIVE SPLIT CLASSIFICATION BASED ON CHARACTERISTICS AT THAT TIME
- STANDARD OF REVIEW – REASONABLENESS
- COURT – LEGISLATIVE STRUCTURE AND EVIDENCE BEFORE THE CARB WERE THE LEGAL AND FACTUAL CONTEXT WHICH INFORMED THE CARB'S DECISION
- CARB DECISION TO VACATE THE AMENDED NOTICE AND REINSTATE THE ORIGINAL NOTICE WITH THE SPLIT CLASSIFICATION WAS REASONABLE. THE DECISION DEMONSTRATED SPECIALIZED KNOWLEDGE IN THE AREA OF PROPERTY TAX ASSESSMENT

AIRDRIE (CITY) v. *803969 ALBERTA LTD.*, 2020 ABQB 114

- 2018 TAXATION YEAR
- FARM LAND STATUS PREVAILS WHEN AGRICULTURAL LEASE IN PLACE;
- GRASSLAND – NO CATTLE PRESENT IN 2016 OR 2017 ASSESSMENT YEARS
- AIRDRIE CHANGED CLASS FROM HISTORICAL FARM LAND CLASS TO RESIDENTIAL CLASS
- EVIDENCE
  - TAXPAYER ACQUIRED LANDS IN CITY OF AIRDRIE WITH LONG RANGE DEVELOPMENT PLANS
  - ENTERED INTO A GRAZING LEASE WITH A FARMER IN 2015 FOR SUBJECT PROPERTY AS WELL AS OTHER GRAZING LANDS OUTSIDE OF THE CITY
  - DROUGHT CONDITIONS IN 2016 AND 2017 DRIED UP WATER SUPPLY ON SUBJECT LANDS, AND FARMER DID NOT USE FOR GRAZING

AIRDRIE (CITY) v. *803969 ALBERTA LTD.*, 2020 ABQB 114

- ARGUMENT
  - CITY – FARM LAND CLASS REQUIRED ACTUAL FARMING OPERATIONS TO OCCUR ON EACH PARCEL IN THE ASSESSMENT YEAR
  - TAXPAYER - FARMING OPERATIONS TO BE WIDELY CONSTRUED AND MUST NOT LOOK AT THE SUBJECT IN ISOLATION, BUT A PART OF FARMER'S OVERALL INVENTORY OF PROPERTY
  - CARB FOUND PROPERTY USED FOR FARMING OPERATIONS
- STANDARD OF REVIEW – REASONABLENESS
  - COURT – PRACTICAL APPROACH
    - FARMING OPERATIONS TAKE PLACE ON MORE THAN ONE PARCEL. TO LOSE FARM LAND STATUS BECAUSE NO RAISING, PRODUCTION OR SALE ON A SPECIFIC PARCEL IN A GIVEN YEAR IGNORES THE REALITY OF CYCLES WITHIN A FARMING OPERATION
    - DECISION WAS REASONABLE. CARB DID NOT IGNORE THE REQUIREMENT FOR ASSESSMENTS TO BE PREPARED ANNUALLY BASED ON DECEMBER 31 CONDITION DATE

CAL-ED FIFTH AVENUE HOLDINGS LTD. AND 9318577 CANADA INC. v. *THE CITY OF CALGARY*
QB 1801-16372 (OCTOBER 9, 2019)

- TWO OFFICE BUILDINGS ASSESSED ON INCOME
  - BUILDING A: ASSESSED $44,010,000
  - BUILDING B: ASSESSED $30,740,000
- OWNERS RETURNED S. 295 INFORMATION REQUEST TO CITY INDICATING APPRAISALS HAD BEEN DONE
  - BUILDING A: APPRAISAL $93,450,000
  - BUILDING B: APPRAISAL $36,350,000
- CITY PRODUCED THE RFI FORMS REFERENCING APPRAISALS IN ITS DEFENCE OF ASSESSMENTS

CAL-ED FIFTH AVENUE HOLDINGS LTD. AND 9318577 CANADA INC. v. *THE CITY OF CALGARY*
QB 1801-16372 (OCTOBER 9, 2019)

- CARB CONFIRMS ASSESSMENT CITING APPRAISALS AS INDICATORS OF MARKET VALUE
- JUDICIAL REVIEW – DECISION WAS UNREASONABLE
  - APPRAISALS WERE NOT IN EVIDENCE
  - NEITHER AGENT NOR ASSESSOR HAD ANY KNOWLEDGE OF APPRAISALS OTHER THAN WHAT WAS ON RFI FORM
  - THE BASIS AND PURPOSE OF THE APPRAISALS WERE UNKNOWN
    - FEE SIMPLE? LEASED FEE? INTEREST VALUED? VALUATION APPROACH?
- UNREASONABLE FOR CARB TO RELY ON APPRAISED VALUES WHEN NO EVIDENCE THAT APPRAISALS WERE OF MARKET VALUE OF FEE SIMPLE INTEREST
- PROCEDURALLY UNFAIR TO RELY ON APPRAISALS WHEN NO WITNESS COULD ANSWER QUESTIONS ABOUT APPRAISALS