

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Matsuri Foundation of Canada v. British Columbia (Assessor of Area #01 - Capital)*,
2024 BCSC 172

Date: 20240202
Docket: S232847
Registry: Vancouver

Between:

Matsuri Foundation of Canada

Applicant

And

**Assessor of Area #01 – Capital and
Property Assessment Appeal Board**

Respondents

Before: The Honourable Justice Marzari

On judicial review from: A decision of the Property Assessment Appeal Board dated
March 7, 2023 (2023 PAABBC 20221840)

Reasons for Judgment

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Place and Date of Trial/Hearing:

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INTRODUCTION

[1] The Matsuri Foundation of Canada (“Matsuri”) brings this appeal by way of a stated case, from a decision of the Property Assessment Appeal Board (the “Board”). Matsuri sought, and the Board denied, a property tax exemption for the lands and improvements that comprise Knapp Island, British Columbia, as a “place of public worship” pursuant to s. 15(1)(d) of the *Taxation (Rural Area) Act*, R.S.B.C. 1996, c. 448 [*Rural Area Taxation Act*].

[2] Knapp Island is a 31-acre island located just off Vancouver Island’s Saanich Peninsula near Swartz Bay. Matsuri is a registered Canadian charity with the purpose of the advancement of the Shinto religion. Matsuri owns Knapp Island.

[3] With respect to the 2022 taxation year, the Board found that the “place of public worship” exemption was not applicable to Knapp Island because Matsuri had not established that the public were invited to, and had access to, Knapp Island, and that its principal use was therefore not for public worship. The Board found that to the extent that Knapp Island was used for worship, that worship was private, and not public.

[4] Matsuri accepts the Board’s factual finding on this issue. However, Matsuri argues that the Board should nevertheless have found that Knapp Island was entitled to an exemption on fairness and equity grounds, when compared to other similar properties in British Columbia.

[5] The Assessor argues that the Board’s decision should be upheld, and that the evidence does not support a tax exemption on equity grounds.

[6] I find that the Board’s analysis fully addressed the equity issue in this case, and properly denied the requested exemption, and I would therefore dismiss the appeal.

RELEVANT STATED FACTS

[7] This appeal is based on a series of stated facts that are not in issue. I have considered all of these stated facts, which I summarize here.

The Past and Present Owners of Knapp Island

[8] Reverend Evans is a director of Matsuri and the spiritual director and resident Shinto priest on Knapp Island.

[9] The Shinto and Buddhist faiths are religions that share common meditation and prayer practices. These meditation and prayer practices are all forms of worship, whether seated or walking, individual or group, or guided or self-guided. Both religions value and encourage relationships with nature. Trees are of particular importance in the Shinto religion.

[10] Reverend Evans' partner, A. Evans, owned Knapp Island from the early 2000's until title to Knapp Island was transferred to Matsuri in September 2021 as part of A. Evans' estate planning. A. Evans and Reverend Evans (the "Evanses") resided on Knapp Island together from the early 2000's until they moved away in 2005, and the property was maintained on their behalf by a caretaker. While they resided on Knapp Island, A. Evans constructed and used some of the improvements on Knapp Island for private worship. Guests were on occasion invited to participate in that worship. The Evanses moved back to Knapp Island in early 2021. They continue to reside on Knapp Island and use the improvements for worship.

[11] From approximately 2000 to 2021, Matsuri owned and operated the Brightwoods Spiritual Centre ("Brightwoods") on Salt Spring Island. Brightwoods was exempt from taxation as a place of public worship. Located on a 7.5-acre site, Brightwoods had a large meeting room, smaller rooms available for retreats, a sacred forest, walking paths, and a shrine. It was mostly used for spiritual practice and ceremonies by people who lived on Salt Spring Island. No priest or other person resided there, and it was managed by a property manager. Matsuri permanently

decommissioned and closed Brightwoods in 2021, and relocated the forest shrine to Knapp Island in 2022.

The Property

[12] Knapp Island is assessed as two parcels:

- a) An improved 15.4-acre South Parcel with the land assessed at \$5,107,000 and improvements at \$3,427,000 (the “South Parcel”); and
- b) A 15.6-acre North Parcel with the land assessed at \$4,410,000 (the “North Parcel”). The very minor improvements on this parcel were not assessed.

[13] There are various buildings and other improvements located on the South Parcel, including:

- a) The Shin Mei Spiritual Centre: a two-story building that includes a Shinto and Buddhist meditation and prayer room with small shrines and religious paintings, a small kitchen, and living and dining rooms, all on the main floor, and a larger reception or prayer room on the second floor;
- b) The Jinja: a free-standing outdoor Shinto shrine that is used for worship activities;
- c) The Jangchub Chorten: a Buddhist stupa (shrine) that is used for worship activities;
- d) The Gyomando: a Shinto and Buddhist temple that is used for offering prayers;
- e) Two short walking meditation and prayer paths; and
- f) A wharf for boats that bring people and supplies to the Island.

[14] A. Evans constructed these improvements (except the wharf) in or about the early 2000’s, and the Evanses used the improvements for private worship while living

on Knapp Island. Matsuri has made some minor repairs but has not made any substantial changes to these structures.

[15] In addition to the above improvements, the South Parcel also has the following improvements:

- a) a private residence;
- b) a building containing two apartments used as, and referred to as, a guest residence or “the cottage”;
- c) a water treatment facility and other storage and maintenance buildings; and
- d) a barn with an apartment.

[16] The private residence is a 5,000 square foot house where the Evanses reside. On occasion, a visiting Buddhist priest also stays in this residence. Reverend Evans testified that the residence “is a personal space.” BC Assessment records show that the residence has four bedrooms, six bathrooms, six fireplaces, a swimming pool, and a beach house.

[17] The improvements on the North Parcel are more modest in comparison to the South Parcel and largely consists of a two-mile walking meditation and prayer path winding through the forest, with six designated prayer stops. Various cloth prayer flags, sacred rope shrines, bells, and other religious symbols are located at these stops. A peace pole and a forest shrine are also located along this path.

[18] The meditation and prayer path existed before Matsuri took title to Knapp Island, but the path was overgrown and has been gradually cleared by Matsuri. The peace pole was constructed in October 2021, but the dates of when the prayer flags, sacred rope shrines, bells, and other religious symbols were added were not provided.

[19] Knapp Island is only accessible by boat, either by Matsuri's own boats (included as part of the gift from A. Evans), or by private boat, stand-up paddleboard, kayak, or water taxi.

The Board's Decision on the Place of Public Worship Exemption

[20] The Board found that the principal use of the residence as it was being used by Reverend Evans, her spouse, and the Buddhist priest on occasion, constitutes residential use. The Board found the principal use of the "cottage" apartment building to be for private residential use. The place of public worship exemption was found to be inapplicable to those improvements.

[21] Viewed from the water, the Board found that the possible uses of the other improvements as places of public worship would be somewhat unclear, particularly given that for at least 20 years, the same improvements were, in fact, places of private worship. The transition from private use to public use would not be readily apparent from the water, which is the closest a person would be able to view the improvements without entering onto what a passerby might consider to be private property. This may be even more so, given that the "PRIVATE HARBOUR" sign at Knapp Island's only access point may deter some passing members of the public who may not otherwise see or notice the smaller and less prominent sign welcoming the public to meditate, study, and pray.

[22] Objectively, the Board found Matsuri's evidence of invitation to the public to attend and participate in public worship fell short of meeting the legal test on the basis of a series of factual findings regarding Matsuri's evidence with respect to invitations extended to the public to attend and participate in worship and study on Knapp Island in 2021.

[23] The Board found that the exemption claim failed on the invitation to the public test, and that such failure is sufficient to find that Knapp Island was not entitled to the place of public worship exemption. Matsuri does not challenge this finding.

[24] With respect to the use of the Spiritual Centre, the Jinja, the Jangchub Chorten, the Gyomando, and the walking meditation and prayer paths, the Board found that the principal use of those improvements was for worship. Given the findings made above about the actual use by persons who were not part of the core group of worshippers, the Board found that the principal use of these improvements was private worship. Matsuri also does not challenge this finding.

[25] With respect to the water treatment facility, the storage and maintenance buildings, the barn and the wharf, these structures support both the improvements used for worship and those used for residential purposes. Given that none of those improvements' principal use is for an exempt purpose, the Board found that these improvements are not exempt. Matsuri also does not challenge this finding.

STATED CASE AND STANDARD OF REVIEW

[26] This statutory appeal is brought by way of a stated case pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20. Appeals under s. 65(1) of the *Assessment Act* are on “a question of law alone.” In the context of property assessment appeals, a question of law has been defined in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)*, 62 B.C.L.R. (3d) 354, 1998 CanLII 6466 (C.A.) at para. 9; *Burlington Resources Canada Ltd. v. Peace River (Assessor of Area #27)*, 2005 BCCA 72 at para. 18; and *Home Depot Holdings Inc. v. British Columbia (Assessor of Area #10 – North Fraser Region)*, 2016 BCCA 511 at para 10 as including:

1. A misinterpretation or misapplication by the Board of a section of the Act;
2. A misapplication by the Board of an applicable principle of general law;
3. Where the Board acts without any evidence;

4. Where the Board acts on a view of the facts which could not reasonably be entertained; or
5. Where the method of assessment adopted by the Board is wrong in principle.

[27] More recently, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada identified the standard of review for a statutory appeal as the appellate standard of review: at paras. 36–38. The principles in *Housen v. Nikolaisen*, 2002 SCC 33 therefore govern the role of this Court in reviewing the decision of the Board. Pursuant to *Housen*, the standard of review is correctness for questions of law and palpable and overriding error for questions of fact or questions of mixed fact and law: *Vavilov* at para. 37, citing *Housen* at paras. 8, 10, 19, 26–37.

[28] A misapplication of a section of the *Assessment Act* can only be said to be a true question of law where the legal question is readily extricable from the factual analysis (e.g., the application of an incorrect legal standard, a failure to consider a required element of a legal test, or a similar error in principle). However, where the alleged error involves the application of a legal standard to a set of facts, this is a question of mixed fact and law that is subject to the standard of palpable and overriding error: *Housen* at paras. 26, 31, 36. A palpable and overriding error is one that can be “plainly seen”: *Housen* at para. 6.

[29] The parties do not agree on whether the questions posed by Matsuri on this stated case are questions of law, fact, or mixed law and fact. While Matsuri says that they are questions of law, the Assessor says that they are essentially questions of fact, or the application of law to the facts.

[30] Both parties rely on *Delsom v. Assessor Area #11*, 2000 BCSC 289, which predates *Vavilov*, but is helpful to understanding the scope of review for factual determinations of the Board:

[18] In the case at Bar in order for the Appellant to succeed on any of the questions stated, it must establish that the Board’s view or interpretation of

the facts leading to the question could not reasonably be entertained; that is to say, that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination, the emphasis being on the word “could”.

[31] In addition, in *Farrell Estates Ltd. v. Assessor of Area #11 – Richmond/Delta*, 2003 BCSC 1732 at para. 9, this Court provided the following guidance on the proper scope of review in cases involving allegations of inequitable assessment between properties:

[9] The question of what is or is not a comparable property is a question of fact not law, and the principle that properties are not to be inequitably assessed as against similar properties in the community requires a determination of whether or not properties are similar or comparable. The weighing and considering of evidence and the determination of whether or not a property is similar or comparable is a question of fact for the Board, not for the Court. Further, the choice of the method of assessment and the fixing of value are questions of fact and not law.

[32] To put the stated case in context, I will start with an overview of the statutory scheme generally and the law as it relates to the principle of equity in relation to property tax assessments. I will then set out the Board’s rulings on the relevant points before addressing the questions in the stated case.

THE STATUTORY EXEMPTION SCHEME

[33] The tax exemption at issue is sought pursuant to s. 15(1)(d) of the *Rural Area Taxation Act*.

[34] However, the *Rural Area Taxation Act* is not the only legislation that provides for property tax exemptions, including exemptions for places of public worship.

[35] For example, in municipalities in British Columbia most property tax exemptions are pursuant to the *Community Charter*, S.B.C. 2003, c. 26, rather than the *Rural Area Taxation Act*. In British Columbia municipalities, only “a building set apart for public worship, and the land on which the building stands” is entitled to an

exemption pursuant to s. 220(1)(h) of the *Community Charter*. However, any lands surrounding the exempt building or structure, even if within the same parcel and owned by the same religious organization, are not entitled to a legislated exemption. Such lands are instead subject to a discretionary exemption that may be enacted by a municipal bylaw pursuant to s. 224(2)(f). Exemptions to property taxation are also found in myriad other enactments, including on federally regulated lands, and other enactments, for a wide range of purposes: see e.g., *School Act*, R.S.B.C. 1996, c. 412, ss. 131–131.1; *Speculation and Vacancy Tax Act*, S.B.C. 2018, c. 46, ss. 20–51. The Board hears appeals in relation to these myriad exemptions, as well as valuation and classification appeals.

[36] Knapp Island is not within an incorporated municipality, and is therefore subject to the *Rural Area Taxation Act*. The relevant exemption under that legislation is as follows:

Exemption from taxation

- 15 (1) The following property is exempt from taxation: ...
(d) every place of public worship; ...

[37] The leading decision on the s. 15(1)(d) exemption for places of public worship under the *Rural Area Taxation Act* is *Young Life v. Assessor of Area #8 et al*, 2005 BCSC 1079 [*Young Life 2005*]. The issue in that stated case was whether the appellant’s use of the properties for an evangelist-Christian summer camp and related outdoor sports and activities should properly be characterized as “public worship” occurring in “places of public worship” under s. 15(1)(d) of the *Rural Area Taxation Act*.

[38] The Supreme Court of British Columbia applied two tests to determine whether the appellant’s summer camp qualified for such an exemption. The first was the “invitation test,” which is “intended to exclude from the benefit of a taxation exemption, facilities on private property that are owned or occupied, and used regularly and on an ongoing basis, by a core group of worshippers sharing a common religious affiliation”: *Young Life 2005* at para. 54. The Board had found that

the restrictions on attendees, including by age and a pre-existing affiliation with Young Life, was evidence that the camp did not meet the public invitation test. In the result, the Court ultimately found that the Board had correctly applied the “invitation test” in denying the exemption: *Young Life 2005* at paras. 59–60.

[39] The second test applied in *Young Life 2005* was the “principal use for public worship” test, providing that, even if a property’s incidental use includes public worship, this does not give rise to an exemption if the property’s principal use is not public worship: *Young Life 2005* at para. 69. With respect to principal use, the Court stated that:

[71] ... whereas a “place of public worship” may include a new and novel location, previously unrecognized as such (for example, not readily identifiable as a church, mosque, synagogue, or similar place), it must be recognizable as a place having as its principal use “as a place where people come together as a congregation or assembly to do reverence to God”, ... and also include an invitation to members of the public, within the accepted meaning of the “invitation test”.

[40] The Court accepted Young Life’s submission that worship in a natural setting (as opposed to a building designated for such a purpose) could attract the place of public worship exemption. However, this fluid concept of “place” was “inexorably tied to its principal use for the activity of ‘public worship’”: *Young Life 2005* at para. 73. On this basis, the Court found that the Board had correctly decided that the camp’s operations did not constitute “places of public worship”: *Young Life 2005* at paras. 73–74.

[41] A related property taxation issue arising within the City of Vancouver under the *Prescribed Classes of Property Regulation*, B.C. Reg. 438/81, was considered in *SCI Canada Ltd. v. British Columbia (Assessor of Area No. 09 – Vancouver)*, [1995] B.C.J. No. 1320, 1995 CanLII 2376 (S.C.), aff’d [1996] B.C.J. No. 2498, 1996 CanLII 3260 (C.A.). The subject property in that case was a funeral home, and the owner sought to have its chapel and associated parking area classified as Class 8 (Recreational Property/Non-Profit Organization) based on a claim that the property was “land and improvements used or set aside for use as a place of public worship”.

[42] On appeal before this Court, the activity at the funeral home was acknowledged to constitute “worship”; however, the issue was whether the Board had erred in finding this to be private worship, rather than public worship. In the result, the Court concluded that the Board had not erred in finding the worship to be private, and not public: *SCI Canada* at para. 11. With respect to the interpretation of the word “public,” the Court stated:

[5] ... The word is viewed in its ordinary sense and not according to the subjective interpretation of those worshipping or offering the facility for use. There must be an openness without discrimination to the general public, sometimes referred to as the invitation test, so that it is then a question of fact as to how open and universal the invitation is so to constitute or not an invitation to the public ... Factors such as the structure of the building, public notices, the number of persons attending and advertisements may be taken into account. Persons may come from different places and be entirely unknown to one another but so long as they are properly disposed in the sense that they are reasonably suitable and prepared to behave with reasonable conformity and are then admitted, the worship may be considered “public”. In all cases, the question as to how open or universal is the admission of the public is a question of fact.

[Citations omitted; underline emphasis added.]

[43] In this case, the Board applied both the “invitation to the public” test and the “principal use” test as articulated by this Court in *Young Life 2005*. Applying those tests, the Board found that Knapp Island was not a place of public worship in 2021 (for the purposes of the 2022 tax year). Matsuri does not dispute these factual findings.

[44] Rather, Matsuri appeals on the basis of the principles of equity and non-discrimination as they apply to property taxation, which it says requires the Board to apply a separate and additional analysis.

THE EQUITY PRINCIPLE IN THE CONTEXT OF PROPERTY TAX ASSESSMENT

[45] The principle of equity in taxation relied upon by Matsuri is rooted in the common law, originating from the case of *Jonas v. Gilbert*, 5 S.C.R. 356, 1881 CanLII 36. *Jonas* concerned the validity of a municipal business licensing bylaw that purported to impose double fees on non-residents. Chief Justice Ritchie found the bylaw *ultra vires* the authorizing legislation (the *Charter* of the City of Saint John,

New Brunswick). Although the Legislature had authorized the imposition of fees, the Supreme Court of Canada held that it must be presumed that the Legislature, in conferring the power to tax, did not intend to confer the power to tax in a discriminatory fashion (*Jonas* at 365):

I think this general power to tax by means of licenses involved the principle of equality and uniformity, and conferred no power to discriminate between residents and non-residents; that this is a principle inherent in a general power to tax; that a power to discriminate must be expressly authorized by law and cannot be inferred from general words such as are used in this statute; that a statute such as this must be construed strictly; and the intention of the legislature to confer this power of discrimination, must, I think, explicitly and distinctly, appear by clear and unambiguous words.

[Emphasis added.]

[46] The Supreme Court of Canada rooted the presumption against discrimination in common law considerations of fairness, impartiality, and non-arbitrariness (*Jonas* at 366):

The legislature never could, I think, have intended that the corporation of *Saint John* should have the arbitrary power of burthening one man or one class of men in favor of another, whereby the one might possibly be enabled to carry on a prosperous business at the expense of the other, but must have contemplated that the burthen should be fairly and impartially borne...

[47] Since *Jonas*, the Legislature, through the *Assessment Act* and its precursors, has set out various legislative grounds for discriminating amongst properties. On the basis of these grounds, properties may be taxed at different rates, based generally on their value, classification, and their entitlement to an exemption.

[48] In 1990, *Jonas* was found to have continuing relevance in relation to the valuation of land for the purposes of property taxation in *British Columbia (Assessor for Area 9 - Vancouver) v. Bramalea Ltd.*, 52 B.C.L.R. (2d) 218, 1990 CanLII 284 (C.A.) [*Bramalea*]. The facts in *Bramalea* were somewhat unusual: in the course of a dispute over the valuation of the Hyatt Regency Hotel in downtown Vancouver, the assessor tendered new evidence on appeal to the Assessment Appeal Board indicating that the hotel's value was in fact 20% higher than the amount that the assessor had originally stated, and persuaded that board to adopt the higher

assessment: at para. 2. On appeal, the appellant contended that the new assessment was based on a different capitalization rate than the other downtown hotels, resulting in a higher assessment. Justice Taylor, writing for a division of five judges, discussed the principles in *Jonas* and their relationship to the *Assessment Act* at paras 14-15:

Chief Justice Ritchie [in *Jonas*] emphasized (at p. 365) that "a power to discriminate must be expressly authorized by law and cannot be inferred from general words." It is, of course, apparent that the principle so stated must apply with at least equal force where discrimination might otherwise occur between taxpayers within a class: *Re Allen and Mimico* (1920), 19 O.W.N. 150; *Chapman v. McLeod*, [1949] O.W.N. 395.

The common law presumption that taxing authorities are required to deal even-handedly with all taxpayers has, if anything, been reinforced by our *Assessment Act*.

[49] Matsuri relies on *Bramalea* as establishing what it refers to as the equity analysis and, specifically, a taxpayer's right to an assessment "which is not in excess of that which can be regarded as equitable": para. 28. In the context of property valuation, the Court in *Bramalea*, at para. 28, suggests that properties should be assigned a value within a reasonable range and based on the same criteria as the assessed value of other similarly situated properties. The Court expressed this approach to valuation in the following terms at para. 25:

... [T]he assessment authority has the duty of deciding, so far as possible, in respect of each class of property an approach most likely to arrive at "actual value," as defined in law, and thereafter to apply available data to each in such a way as to ensure that all within the class are valued, so far as possible, on the same basis. Except to the extent justified by particular characteristics of individual lands and improvements, the assessor is not permitted to discriminate between them in arriving at assessed value.

[50] Since *Bramalea*, the bulk of this Court's decisions on non-discrimination and equity in property taxation pertain to property valuation. These decided cases deal, variously, with the concept of a "range" of values, the nature and degree of similarity that will engage the equity analysis, and the methodology used in valuation: See e.g.: *Bentall Retail Services et al v. Assessor of Area #09 - Vancouver*, 2006 BCSC 424; *Ross v. Assessor of Area #10 - Burnaby/New Westminster*, 2000 BCCA 5; *KBK No. 197 Ventures Ltd. v. British Columbia (Assessor of Area #09 - Vancouver Sea to*

Sky Region), 2013 BCSC 981; and *Wal-Mart Canada Inc. v. Assessor of Area #26 - Prince George and Assessor of Area #27 - Peace River*, 2005 BCSC 1625.

[51] Property valuation, which is primarily concerned with the value of land and improvements, is only one aspect of establishing property tax. Classification of the property is distinct from valuation and is primarily concerned with use (such as residential, commercial, or industrial use). Exemption from property taxation is distinct from both valuation and taxation, and the availability of an exemption may pertain to any number of factors that vary from enactment to enactment.

[52] In *Jericho Tennis Club v. Assessor of Area #09 - Vancouver*, 55 B.C.L.R. (2d) 332, 1991 CanLII 404 (S.C.), Justice Shaw considered whether the *Bramalea* principles extended to the *classification* of property under the then *Assessment Act*, in addition to the *valuation* of property. Justice Shaw found that the equity principle properly applied to the valuation of the Jericho Tennis Club lands, but not to the classification of the lands. With respect to the application of equity principles to property tax classification, Shaw J. at 14-15 (CanLII) found as follows:

Does the principle in *Bramalea* help Jericho?

Counsel for Jericho relied upon the following words of Branca, J.A. in *City of North Vancouver v. Philips*, [1973] 3 W.W.R. 262 (B.C.C.A.) at p. 271:

Each parcel of land is to bear its just and commensurate load of taxation with other comparable parcels of land and improvements in the municipal area and the taxpayer in this manner is made to pay a just, fair and equitable proportion of the total taxation to be levied on lands and improvements.

Jericho's counsel also cited *Jonas v. Gilbert* (1881), 5 S.C.R. 356 at p. 366 *per* Ritchie C.J., who said:

Unless the legislative authority otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal and that no one class of individual, or one species of property, shall be unequally or unduly assessed.

The words of Ritchie C.J. were applied by the Court of Appeal in *Bramalea*.

While the principle of even-handedness or equity set out in the above passages is of general application, specific legislation can authorize discriminatory or variable taxation. Ritchie C.J., in the above-quoted passage in *Jonas v. Gilbert*, used the qualifying words "Unless the legislative authority otherwise ordains . . .". He also said, at p. 365, that ". . . a power to discriminate

must be expressly authorized by law, and cannot be inferred from general words."

Thus, although classification may lead to more onerous taxation of some classes of property than others (the rates will depend upon the bylaws passed by municipal councils) the scheme of differential taxation is expressly permitted by statute. Accordingly, there is no basis for the application of the principle in *Bramalea*.

[Emphasis added.]

[53] Since *Jericho*, this Court has found that the *Bramalea* principles are applicable to classification questions in the following two cases: *C&C Holdings Inc. v. Assessor Area #04-Nanaimo-Cowichan*, 2003 BCSC 230 at paras. 25–28; and *Mount Pleasant War Memorial Community Cooperative Association v. Assessor of Area #09 – Vancouver Sea to Sky Region*, 2017 BCSC 1533 at paras. 68–94 [*Mount Pleasant*]. However, neither of these cases actually applied the comparative approach used for valuations pursuant to *Bramalea*, to property tax classification.

[54] *C&C Holdings* was a stated case on the classification of a lumber mill, where the applicable regulations distinguished between two classes of industrial use (light industry and major industry) based on a mill's production capacity. The appellant mill had been classified as major industry, but a competitor mill in the neighbouring taxing jurisdiction had successfully obtained light industry classification. The appellant mill operator sought to have the Board apply principles of equity and consistency in application to the classification of the mills across the two taxing jurisdictions: *C&C Holdings* at para. 1.

[55] Justice Pitfield found that, while it may be appropriate to consider how other mills were classified based on the equity principles set out in *Bramalea* to ensure that the proper valuation criteria were consistently applied for the purposes of determining their value, the nature of the assessment scheme under the *Assessment Act* limited such comparisons to equity within the same taxing jurisdiction, and not across taxing jurisdictions. He denied the appeal on that basis:

[27] Since classification affects the determination of actual value and, therefore the amount of the assessment which is defined as the valuation of property for taxation purposes, s. 57 must be construed to require the Board to ensure consistency of classification within a municipality or rural area. That

being the statutory direction, any common law requirement that could be said to require consistency as between municipalities and rural areas has been expressly overruled or constrained by statute. In that regard, one must not lose sight of the fact that the root of the consistency and fair treatment principle is found in *Jonas v. Gilbert* (1881), 1881 CanLII 36 (SCC), 5 S.C.R. 356 in which the Supreme Court of Canada observed that the requirement of equality and fairness as between classes of taxpayers was subject to legislative override. It is also noteworthy that in *Jonas*, the Court applied the statement of general principle to taxpayers within a single taxing jurisdiction.

[28] The conclusion that the common law principles of equity and consistency in classification are to be considered within a municipality or rural area and not across boundaries is consistent with the scheme of the *Assessment Act* and its purpose, quite apart from statutory interpretation. In that regard, I adopt the reasoning of the Board in para. [66] of its reasons, *supra*, to which I would add the following.

[29] The appellants claim that there should be consistency as between adjacent taxing jurisdictions within the same assessment area because of the principle of uniformity in s. 5 of the *Assessment Authority Act*. Were their position to prevail, there is no reason why a taxpayer should be denied the opportunity to appeal an assessment on the basis of inter-jurisdictional inconsistency, however geographically remote the location of the inconsistently classified property might be. Entitlement of that kind would be inconsistent with the scheme of the *Assessment Act* which recognizes the individuality of municipal or rural area taxing jurisdictions and would create an unacceptably burdensome review and appeal process.

[Emphasis added.]

[56] In so finding, Pitfield J. rooted this analysis in the predecessor to s. 57 of the *Assessment Act*, which then read as follows:

57(1) In an appeal under this Part, the board

(a) may reopen the whole question of the property's assessment to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area, ...

[57] *C&C Holdings* was decided before the definition of “assessment” in s. 1 of the *Assessment Act* was amended to also include “classification.” At that time, “assessment” was defined only as “valuation.” Since then, s. 57 has been amended to expressly require the Board to consider *classification* “in a consistent manner” within the same municipality, rural area, or treaty lands on appeal, thus bringing s. 57 into compliance with Pitfield J.’s interpretation of that provision. Section 57 does not refer to exemptions.

[58] In *Mount Pleasant* at paras. 68–94, the assessor argued that *C&C Holdings* could be distinguished on the basis that it related specifically to a special regulation with respect to mills in particular, but that the *Bramalea* analysis requiring the identification of a range of values and consistency in the application of valuation criteria ought not to apply to classification generally. Justice Young reviewed the case law, *C&C Holdings* in particular, and the amendments to the *Assessment Act*, and concluded that the *Bramalea* principles were also applicable to classification question. However, in *Mount Pleasant*, it was not necessary for Young J. to set out how equity was to be achieved or determined in relation to property tax classification, and she did not do so.

[59] In *Harrison Hot Springs (Village) v. Forsite Developments Inc.*, 2007 BCSC 833, Justice Holmes was also asked to consider equity in classification, and found that consistent application of policy met the equity principle as it related to classification: at para. 31, citing *C&C Holdings*. This is a sound analysis. I agree that resort need not be had to other property taxation comparables to achieve the requisite consistency pursuant to s. 57 and the *Bramalea* principles for *classification* purposes, where consistent application of law and policy can meet this requirement.

[60] Although the contrary finding in *Jericho* was not expressly considered in *Harrison Hot Springs*, *Mount Pleasant* or in *C&C Holdings*, for the purposes of this appeal, both the Assessor and Matsuri accept that equity and consistency principles apply to property tax classifications within a taxing jurisdiction pursuant to s. 57 of the *Assessment Act*.

[61] However, neither party was aware of any decisions of this Court that have considered whether the *Bramalea* principles and approach apply to the determination of *exemptions* from property taxation. Both point to a decision of the Board from 15 years ago in *Young Life v. Assessor of Area #8 – Vancouver Sea to Sky Region*, 2007 PAABBC 20070013 [*Young Life 2007*], where the use of comparators for the purposes of considering an exemption was employed. Matsuri relies significantly on this decision of the Board.

[62] Both *Young Life 2005* and *Young Life 2007* involved an assessment of the same camp, however *Young Life 2007* was not appealed to this Court. *Young Life 2007* did not engage the public worship exemption, but rather a different exemption pursuant to s. 15(1)(q) of the *Rural Area Taxation Act*: the “public benefit” exemption. In *Young Life 2007*, Young Life contested the refusal of the public benefit exemption on the basis that nine other camps in the Sechelt Region had been granted a property tax exemption on the basis of providing a “public benefit.” The Board concluded that Young Life did not satisfy the statutory requirements for the “public benefit” exemption. However, it also found that other comparable camps in the same region that benefitted from the exemption equally, did not meet the legal test for this exemption, given that they were also not delivering a “demonstrable benefit to all members of the community” within the meaning of s. 15(1)(q). Citing *Jonas*, the Board held that exemptions must be applied equitably, and granted Young Life the exemption on this basis.

[63] Relying on the Board’s analysis in *Young Life 2007*, Matsuri says that the Board (and now this Court) ought to similarly extend the *Bramalea* comparative equity analysis to property tax exemptions.

THE BOARD’S DETERMINATIONS RELEVANT TO THE STATED CASE

[64] The Board made two determinations that are challenged in this stated case: a disclosure order, and its determination on the merits of the equity analysis.

The Disclosure Application

[65] The disclosure order was made by the Vice-Chair of the Board in response to Matsuri’s application for the property tax files of other properties across British Columbia that benefit from the public worship exemption. My understanding is that Matsuri identified a number of such properties that it wished to raise as favourable comparators for the purposes of a comparator-based equity analysis located outside of the Southern Gulf Islands, and sought disclosure of the property tax files for those properties.

[66] At this preliminary stage, the Board ordered the disclosure of property tax files for properties that benefit from the place of public worship exemption for the purposes of a potential comparator-based equity analysis. However, the Board found that the disclosure would be limited only to properties within the same taxation jurisdiction as Knapp Island in accordance with s. 57 of the *Assessment Act* and *C&C Holdings*. In its November 14, 2022 decision, the Board reasoned as follows:

In my view, the matter of equity must be addressed only in a threshold manner: that is, if the requested documents meet the relatively low bar of “may”, barring other considerations, I should order them disclosed. Where a document request relates to an issue that is outside the Board’s jurisdiction, it would be a fundamental error to order them disclosed.

The Board is not the only review mechanism for decisions of the Assessor. As set out in *C&C Holdings*, among others, the Board is a creature of statute and only has the authority to deal with the matters delegated to it by Legislature. In this case, the Board’s jurisdiction with respect to equity is set out in section 57 of the Act. It does not have a freestanding equitable or common law jurisdiction such as that of the British Columbia Supreme Court. The legislative history of the Board’s equity jurisdiction as considered from *Bramalea* to *British Columbia (Assessor of Area # 09 - Vancouver) v. Lount*, 1995 CanLII 3441 (BC CA), is consistent with its narrow jurisdiction. This is also consistent with interpretation the Court in *C&C Holdings* undertook to find the legislative hook in order to ground fairness in respect of classification.

In my view, it would be a jurisdictional error for the Board to rely on *Jonas* in the absence of some legislative anchor to apply a legally incorrect interpretation of an enactment on the basis of equity.

It is a matter for the panel to resolve as to whether section 57 of the Act extends the broad jurisdiction of determining consistency beyond assessment (that is, as limited in section 1 of the Act to valuation and classification) to exemption. Whether or not the panel does, this interpretation would be limited to, at most, properties within the same taxing jurisdiction.

I note that there are wide-ranging implications to a finding that equity for the purposes of exemption applies outside the taxing jurisdiction. While many exemptions are fairly constrained, such as the one at issue here, others are much more broadly applied. For example, the application of additional school tax is characterized as an exemption for the purposes of the Board’s jurisdiction. These policy implications are not for the Board, but I note that the Foundation’s arguments insofar as they rely on the limited scope of disclosure requested in this case is far from universal.

For these reasons, I have ordered the requested disclosure for the exempt properties within the taxing jurisdiction.

[67] The above disclosure ruling expresses the Board’s skepticism that the equity analysis (first applied to property tax valuations by the Court of Appeal of British

Columbia in *Bramalea*, and later to property tax classification in *C&C Holdings*) applied to property tax exemptions. Despite such skepticism, the Board nevertheless ordered disclosure on a preliminary basis to allow the issue to be argued by the full panel of the Board on that appeal proper.

The Equity Analysis

[68] On the appeal proper, the Board continued to express doubts as to the appropriateness or requirement for a separate equity analysis based on comparators in relation to property tax exemptions. Specifically, the Board stated:

[119] I find the express wording of section 57(1)(a) of the Assessment Act applies to limit the comparing of properties within the taxing jurisdiction to questions of equity in valuation and classification only and not equity.

[120] At first blush, I am very hesitant to find equity applies at all to exemptions – after all, an exemption is a statutorily granted privilege that relieves a property owner from the burden of taxation, which means all other taxpayers must shoulder that burden. On that basis, a property owner must clearly qualify for an exemption. However, *Jonas* expresses the broad common law principles of fairness and equity in taxation and neither the case law nor the legislature seem to have limited the application of those principles to issues of equity.

[121] The second concern I have is whether issues of equity, being within the inherent jurisdiction of the courts, is something this Board, as a creature of statute, has the jurisdiction to address without the express legislative authorization, which is limited in section 57(a) to value and classification.

[Emphasis added.]

[69] Nevertheless, the Board went on to consider the comparators provided by the parties, all from the Southern Gulf Islands, in light of Matsuri's and the Assessor's positions that it ought to, primarily based on its previous decision in *Young Life 2007*:

[122] However, in *Young Life 2007*, the Board found that equity applies to exemptions and to my knowledge that case has not been the subject of negative judicial comments on that point. With that in mind, and given both parties agreed the Board has jurisdiction, I have proceeded to consider their submissions.

[123] So, while clearly the Legislature may differentiate between properties by granting only certain properties an exemption (which means all other properties are not exempt and therefore taxable), the principles of fairness and equity may apply to *how* exemptions from taxation are applied to properties. This requires finding that similar properties were given preferential or different treatment when granted an exemption. However, as in issues of equity in valuation and classification, a simple finding of one or

two properties having been treated differently does not mean an inequity that needs to be remedied. Rather, there must be a systemic application of differential treatment across a number of properties.

[124] So for Shin Mei to be entitled to a tax exemption as a public place of worship on the basis of fairness and equity, I need to find on the evidence before me that

- a number of other properties have been granted an exemption from taxation as a place of public worship on different criteria or another basis than was applied to Shin Mei, or
- the same criteria were applied to other exempt properties and Shin Mei, and a number of those other properties, like Shin Mei, failed to meet the criteria but were still granted the exemption.

[125] Both of these are, in effect, issues of consistency, or perhaps more appropriately, potential inconsistency.

[126] To change an accurate assessment (here, no exemption) to an inaccurate assessment (to exempt the property) on the basis of equity is, as was expressed in *Shato Holdings v. Area 09* (2019 PAABBC 20190016) (when dealing with an issue of valuation), not a decision that should be taken lightly. And as the Board said, to do so requires convincing evidence that shows inequity truly exists and an appellant seeking an equity remedy must demonstrate it is warranted.

[70] With respect to which party has the burden to establish an exemption at equity, the Board stated at para. 127 that “while there is no legal burden of proof in assessment appeals, there is an evidentiary burden of proof and the party asserting a fact should lead evidence to support the fact.”

[71] The Board then went on to find that there was “no evidence” that the properties granted the public worship exemption in the Southern Gulf Islands were evaluated by different criteria when they were first granted their exemptions, than those applied to Matsuri in this case: at para. 131. The Board also found that a later survey of properties in Southern Gulf Islands benefitting from this exemption in 2018 did not provide a basis for comparing the methodology of exemption determination because it was a not a full review and did not relate to the initial determination for exemption of these properties, which would have necessarily included a property inspection at that time.

[72] The Board concluded that: "...in 2021 the worship practiced at Shin Mei was not public as the invitation test requires. On this basis, I find that there is no unfairness or inequity in the criteria that was applied to [Matsuri]": at para. 131.

[73] On the question of whether there were other properties, like Knapp Island, that were found to be exempt despite not meeting the criteria (as was found in *Young Life 2007*), the Board concluded:

[133] I agree with the Foundation that the appraiser's equity analysis focused on differences rather than similarities and that the criteria chosen were not necessarily ideal or even perhaps the best to assess equity.

[134] And with respect to the 2018 review, I also question the extent and depth of analysis given to weighing and assessing the quality and accuracy of the information garnered and if it supported the continued availability of the exemption to some of the properties. However, I do not have sufficient evidence to say any of those properties is not entitled to the exemption, and I note the appraiser's evidence that a review is, by its very nature, less rigorous than an initial determination. I find that there is no reliable evidence that the same criteria were applied to other exempt properties and Shin Mei, and a number of those other properties failed to meet the criteria but were still granted the exemption.

[135] For the above reasons I find the property is not entitled to an exemption from taxation on the basis of fairness and equity.

[74] Matsuri says that the questions asked by the Board in relation to the equity issue are overly complex and miss the mark. It instead argues before this Court that the equity analysis in relation to exemptions should be as follows:

It should be possible for a taxpayer to demonstrate entitlement to an exemption by showing that the assessor is applying the statute in a way that is producing inequitable *results*. A result is inequitable if there are no particular characteristics of the property or its use that justify differentiating the subject property from properties that have received the exemption.

[75] Matsuri goes on to argue that, once a property has been found not to meet the legal criteria for an exemption, the equity analysis should proceed as a separate, additional analysis. At that point, the burden should first be on the appellant to identify exempt properties that it says are similar to its own from anywhere in the Province. The burden should then shift to the assessor to justify the difference in treatment between the other exempt properties and the property on appeal (beyond

the fact that the subject property was found not to meet the legal criteria for the exemption). The Board should then separately evaluate the similar and differentiating factors outside the legal criteria for the exemption itself. In this regard, Matsuri argues:

The assessor is free to challenge the existence and significance of the similarities upon which the taxpayer relies to say properties are comparable. The taxpayer is free to challenge the existence and rationality of characteristics upon which the assessor relies to justify differential treatment. The [Board's] task is simply to decide whether the differences identified by the assessor justify differential treatment or not, having regard to the purpose of the exemption at issue.

[76] The Assessor says that Matsuri is trying to recast a fundamentally factual finding that there is no inequity in the refusal of an exemption into a legal question, when it is not one. The Assessor also argues that any comparators used for this purpose must be limited to only those properties within the same taxing jurisdiction pursuant to s. 57 of the *Assessment Act* and *C&C Holdings*.

[77] Matsuri's arguments raise the question of whether the equity enquiry lives within the *Assessment Act*. Matsuri concedes that s. 57 of the *Assessment Act* limits consistency concerns to the same taxing jurisdiction, and to valuation and classification only. However, Matsuri argues that the Board has an inherent power to compare the exemption status of other similar properties in British Columbia and apply a consistency and equity analysis to exemptions not contemplated by s. 57 of the *Assessment Act*. By contrast, the Assessor argues that the Board is statutorily limited to the considerations authorized by s. 57 of the *Assessment Act* in this regard.

THE STATED QUESTIONS AND ISSUES ON APPEAL

[78] I turn then to the stated case as it was narrowed before me in argument:

1. Did the Board misinterpret or misapply section 15(1)(d) of the *Taxation (Rural Area) Act*, R.S.B.C. 1996, c. 448 ("place of public worship") and/or s. 57 of the *Assessment Act*, R.S.B.C. 1996, c.20, or misapply an applicable principle of general law, when it denied the appellant Matsuri Foundation of Canada ("Matsuri") an exemption from taxation in respect of the Shin Mei Spiritual Centre ("Shin Mei")? Specifically:

(a) Did the Board err in law when it stated that the test for an exemption on the basis of fairness and equity required a finding on the evidence that “[i] a number of other properties have been granted an exemption...on different criteria or another basis than was applied to [the subject property]; or [ii] the same criteria were applied to other exempt properties, and a number of those...failed to meet them but were still granted the exemption”;

(b) Did the Board err in law in determining that Shin Mei was not entitled to an exemption on the basis of fairness and equity by:

- i. Requiring that differential treatment be “systemic” in order to support an exemption on the basis of fairness and equity;
- ii. Treating the absence of evidence that the same questions as were applied to Shin Mei were not asked of and satisfactorily answered by owners of comparable properties as precluding an exemption on the basis of fairness and equity;
- ...
- iv. Accepting that a distinction between properties in respect of which an exemption is being sought for the first time and those whose exemption status is under review can supply a basis for differential treatment capable of defeating a claim for an exemption on the basis of fairness and equity;
- v. Denying an exemption to Shin Mei despite the assessor’s failure to tender evidence that addressed appropriate and relevant criteria for comparison; and/or
- vi. Failing to consider comparable properties from outside of the Gulf Islands Rural jurisdiction;

2. Did the Board err in law by acting without evidence or on a view of the facts that cannot be reasonably entertained when it concluded that there was no evidence that comparable properties that had been granted an exemption under s. 15(1)(d) of the *Taxation (Rural Area) Act* were not subject to the same questions as were applied to Shin Mei?; and/or

3. Did the Board misinterpret or misapply s. 57 of the *Assessment Act*, Rule 15(2)(d) of the Board’s *Rules of Practices and Procedure*, and/or s. 15(1)(d) of the *Taxation (Rural Area) Act*, or misapply an applicable principle of general law, when it declined to require the assessor to produce documents and information concerning comparable properties from outside the taxing jurisdiction in its pre-hearing ruling of October 31, 2022?

[79] Matsuri groups these questions into three themes as follows:

A. *Did the Board adopt the correct approach to the equity analysis in the context of exemptions from taxation?* Questions 1(a), 1(b)(i) and (iv) fall under this heading.

B. *If the Board adopted the correct approach to the equity analysis, does its application of that approach nevertheless disclose extricable errors of law*

or a view of the facts and evidence that cannot reasonably be entertained?
Questions 1(b)(ii) and 2 fall under this heading.

C. What is the geographic scope of the equity analysis in the context of exemptions from taxation? Questions 3 and 1(b)(vi) fall under this heading.

[80] I intend to review the stated case on the basis of this thematic grouping of questions, starting with the third question, which directly engages the source and scope of the equity analysis in the statute and at common law.

Question 3: The Source and Geographical Scope of Equity-Based Exemptions

[81] Both before the Board and this Court, Matsuri argues that it ought to have been able to rely on properties outside of the Southern Gulf Islands that have received an exemption on the basis of public worship to establish, on a comparative and equitable basis, that Matsuri ought to receive the same exemption. It makes this argument even while accepting the Board's unchallenged factual findings that the worship on Knapp Island is private in nature, and not public. Matsuri argues that the appropriate comparable properties for this exemption were not limited to those in the same taxing jurisdiction (as they are for valuation and classification). It was on this basis that Matsuri sought disclosure of the tax files of a number of religious retreats that they had identified from around the Province, and not just within the Southern Gulf Islands.

[82] Matsuri acknowledges that s. 57 of the *Assessment Act*, which is the statutory source of the Board's authority to consider consistency amongst assessed properties with respect to both valuation and classification, does not refer to property tax exemptions.

[83] Matsuri argues that this means there is a legislative gap in the property taxation regime in British Columbia because there is no comparator-based equity analysis for exemptions pursuant to s. 57 of the *Assessment Act*. On this appeal, Matsuri argues that such a comparator-based equity analysis is necessary to satisfy the requirement of non-discrimination in taxation, as articulated in *Jonas* and *Bramalea*. On this basis, Matsuri argues that the common law not only requires that a comparator-based equity analysis be read into the Board's powers under the

Assessment Act despite its absence from the statute, but that such a common law analysis need not be constrained by the limited geographic scope of s. 57.

[84] Furthermore, Matsuri argues that engaging in a separate comparator analysis for property tax exemptions is inherent in the Board's authority, precisely because it must fill this gap left by s. 57 of the *Assessment Act*. Matsuri argues that this comparator analysis allows the parties themselves to propose the criteria for equitable comparison by suggesting what they consider to be similar exempt properties, rather than being bound by the enactments that provide legal criteria for such statutory exemptions. In making such an argument, it acknowledges that the potential comparative factors for the purposes of exemption are theoretically unlimited, and would depend entirely on the property owner or the Assessor's own creativity in proposing potential comparator properties, and the extent to which the Board finds them persuasive.

[85] For example, in this case, Matsuri says that road access was one such relevant factor upon which the Assessor sought to distinguish Knapp Island from other places that benefit from the public worship exemption on the Southern Gulf Islands. Matsuri argues that this factor might be relevant to the public invitation test for the purposes of evaluating the exemption under the *Rural Area Taxation Act*, but is also relevant as a potential differentiating factor for the comparative equity analysis it proposes.

[86] The Assessor accepts that there is a role for the equity analysis for exemptions, but only as it may be expressed within s. 57 of the *Assessment Act*, and therefore only within the geographical scope of the taxing jurisdiction. The Assessor says that the only comparator properties that are appropriate for the equity analysis are properties in the same taxing jurisdiction pursuant to this Court's decision in *C&C Holdings* and the overarching scheme of the *Assessment Act*.

[87] Before the Board, the Assessor presented a review of 19 properties located on the Gulf Islands that had been granted a full or partial exemption as a place of public worship. The Assessor distinguished these 19 properties from Knapp Island on a

number of bases, including their much smaller size, the population of the islands they are located on, and their accessibility by ferry and the public road system.

[88] On this appeal before me, the Assessor raised a question as to whether all 19 properties the Assessor used for comparative purposes before the Board were, in fact, in the same taxing jurisdiction as Knapp Island, but I have no evidence of this either way. I understand that the arguments proceeded before the Board on the basis that they were all in the same taxing jurisdiction, and I will assume this fact for the purposes of my determination on this appeal.

[89] The Board accepted this comparator evidence but, in its reasons (above), clearly expressed doubts as to whether a separate equity analysis is required or appropriate for exemption issues. Ultimately, it found that, if a separate equity analysis is to be conducted with respect to exemptions, that analysis is nevertheless constrained by s. 57 and limited to comparisons within the same jurisdiction.

Determination

[90] I accept that non-discrimination is a fundamental concept of administrative law, and that discrimination in treatment must be founded in law, statute, regulation, or properly delegated policy.

[91] However, I do not accept that there is a gap in the exemption analysis for places of public worship under either the *Rural Area Taxation Act* or the *Assessment Act*, which needs to be addressed through the importation of a comparator analysis that considers factors beyond the public invitation and principal use tests developed to determine the availability of the public worship exemption. Nor do I find that there is a legislative gap that requires the Board to look beyond the geographical scope of the taxing jurisdiction for any such analysis.

[92] The *Rural Area Taxation Act* authorizes a distinction between exempt and non-exempt properties based on whether they are places of public worship or not. Furthermore, the tenor of this Court's decisions demonstrates a consistency in approach to this exemption, including in *SCI Canada* and *Young Life 2005*,

regarding both the public invitation and principal use tests. These tests are grounded in the statutory language of the relevant exemptions under the *Rural Area Taxation Act*, and their principled applications ensures a level of consistency and non-discrimination in the granting of such exemptions.

[93] If I were to accept Matsuri's position that the principle of non-discrimination also requires a comparative analysis based on random comparators proposed by the parties at the Board level, then the applicable factors that determine exemption will no longer be defined or limited by legislation or policy, but only by the ingenuity of counsel to propose comparator grounds, and only once the assessment of a property has been appealed all the way to the Board.

[94] The consideration of suggested comparables, limited only by the creativity of counsel, introduces non-statutory and non-principled considerations to property taxation exemptions. Comparators could include the factors the Assessor raised here (e.g., road access, size, and the population of surrounding areas) or entirely different factors. To the extent the above suggested comparators are relevant, they are generally already subsumed in the public invitation test and principal use tests used to determine exemption. However, while accessibility may be a potential factor in the public worship exemption analysis in relation to the public invitation test, it is only one such factor. In my view, such a factor (or any other factor chosen by the parties) should not be extracted and then elevated to a stand-alone consideration, such that it becomes determinative as part of a separate comparator analysis after a determination has already been made that the property, viewed as a whole, is not principally used for public worship.

[95] I find that a separate common law comparator-based equity analysis, as advanced by Matsuri, as opposed to an approach to consistency based on statute, regulation and policy, is not necessary in this case, nor with respect to the public worship exemption generally. Indeed, I find that introducing additional discretionary property comparators to the exemption analysis (particularly to properties that have already been found *not* to meet the exemption criteria) risks introducing substantial

variability and inconsistency in property taxation. Non-specified criteria are also non-transparent. This would be contrary to the principles in *Jonas* and *Bramalea* and s. 57 of the *Assessment Act*, which, above all, seek consistency in approach by relying upon authorized distinctions between properties.

[96] Rather, I would follow *Harrison Hot Springs*, where the equity concerns regarding property classification in that case were found to be addressed by the consistent application of policy. In my view, this is also consistent with the Court of Appeal's observations in *Bramalea* emphasizing the need for a consistent approach to property valuation. However, the approach of seeking a reasonable range of values in valuation, as developed since *Bramalea*, is not appropriate for exemptions where the determination is a binary one.

[97] It follows that I do not consider that there is any gap in s. 57 of the *Assessment Act* that would require the common law to supplement the Board's statutory authority under s. 57 to consider consistency with respect to exemptions, or comparator properties outside the taxing jurisdiction for the purposes of exemptions.

[98] Although not strictly necessary to my decision, I also find that allowing the use of comparators from other taxing jurisdictions, which is not authorized in relation to valuation and classification, is even more problematic in relation to exemptions. Unlike the property valuation and classification regime in this Province, which is generally governed by the *Assessment Act*, exemption related enactments vary from jurisdiction to jurisdiction, with different legislative schemes applying to municipalities and rural areas, for example. Comparisons between municipalities and rural areas as to what property is exempted from taxation for public worship would be particularly problematic for this reason, but my concerns are not limited to this distinction alone.

[99] With respect to the *Assessment Act*, it is well-established in *C&C Holdings*, and from the statutory scheme of the *Assessment Act* itself, that comparisons for the purpose of consistency are limited to those within the same taxing jurisdiction, in part because property taxes may be expected to vary considerably from taxing

jurisdiction to taxing jurisdiction given that local governments and other taxing authorities determine local rates and other significant aspects of property taxation. Therefore, even if I am wrong with respect to the availability of a separate comparator-based equity analysis for exemptions, I find that any such comparators must be limited to those within the same taxation jurisdiction, as was found by the Board.

[100] Finally, I agree with the analysis and concerns identified by the Board in both its decisions before me as they relate to the equity analysis and its scope when applied to exemption decisions by assessors and the Board.

[101] Overall, while I agree that principle of non-authorized discrimination has a role within a property tax exemption analysis, I find that that role is described and properly circumscribed by the consistent application of the legislated exemption criteria.

Question 1: The Proper Equity Analysis for Exemptions

[102] Given my conclusion that a separate property comparator analysis is not authorized or required for property tax exemptions to ensure that there is no discrimination without legislative authority, the Board's attempt at formulating such an analysis, and Matsuri's criticisms of that attempt, are moot.

[103] Fundamentally, the Board's articulation of these tests was complicated by the flawed premise underlying the performance of such an analysis in the first place. After reluctantly accepting that such an analysis might apply, the Board then defined only a very limited scope for that analysis.

[104] In this regard, I agree with Matsuri that the tests the Board created are overly complex. However, I find that the reason for this complexity is that the comparator analysis Matsuri advocates for cannot be properly reconciled with the applicable statutes in relation to exemptions.

[105] Ultimately, I find that the Board was correct that the principles of consistency and of no unauthorized discrimination in taxation were satisfied by the Board's unchallenged application of the law in relation to the statutory exemption for places of public worship under the *Rural Area Taxation Act*, together with the Board's principled application of the public invitation and principal use tests.

[106] I also find that the rule against unauthorized discrimination was not undermined in this case by evidence that other Gulf Islands properties that were already exempt on the basis of being places of public worship were not subjected to a full review of their exempt status in 2018. I agree with the Board that it cannot be presumed, even in the absence of a full review in 2018, that these exemptions were not initially properly granted. It is also well established that the fact that others may not be in compliance with the law is not a defence to one's own non-compliance with the law. Nor is it a reason for the Board or this Court to sanction non-compliance. Finally, even if the policies and the common law around the public invitation test have evolved since public worship exemptions were initially granted to these other properties, Matsuri has no right to insist on the application of now obsolete policy or law to its own property on equitable grounds.

[107] Matsuri was entitled to the principled application of the public invitation and principal use tests to determine whether it qualified for the public worship exemption under the law. The principled application of these tests, and the Board's finding that Matsuri does not meet them, is not challenged in this statutory appeal. Nothing more is required to ensure non-discrimination with respect to the property taxation exemption regime.

[108] As I found in relation to Question 3, the introduction of a comparator analysis where the property owner and the Assessor choose different criteria than those already subsumed within the legislation and established tests for exemption, would have the effect of introducing non-legislated, random and unlimited criteria into the exemption analysis. It invites the Board to consider criteria for an exemption that is *not* authorized by legislation, and introduces a greater risk of the precise evil sought

to be prevented in *Jonas*: taxation decisions that differ between properties that are not based on expressly legislated authority and criteria.

[109] Furthermore, such an approach would only tend to propagate further departures from the legislated criteria for exemptions and compound the error.

Question 2: No Evidence

[110] This question is also moot in light of my conclusions above.

[111] However, even were it not moot, I agree with the Assessor that the Board’s decision ultimately rests on the facts that it found regarding the nature of Matsuri’s property use, as well as the nature of the proposed comparable properties. I also find that the Board had evidence before it that supported its conclusions. Matsuri’s attempts to parse these questions more closely cannot turn a fundamentally factual determination into a legal question or an error of law.

CONCLUSION

[112] In conclusion, I answer the three questions posed in the stated case in the negative, and I would dismiss Matsuri’s appeal.

[113] The Assessor has been substantially successful in this appeal, and is generally entitled to its costs.

“Marzari J.”