The Burden of Proof in Assessment Hearings: A Comparison of Canadian and American Law

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> *Civil burdens of proof and presumptions comprise a conceptually narrow topic, but one quite difficult to grasp for practical purposes. Particularly as to presumptions, the literature is vast ... the literature is also confused. For example, Professor Ronald Allen quotes the Minnesota Supreme Court as saying that this 'is a subject on which text writers, teachers of law and authors of legal articles have written much and clarified little' and Learned Hand, speaking for the courts, as saying 'Judges have mixed it up until nobody can tell what on earth it means.'* (Davis 2001, 1)

Canadian lawyers can easily agree with this statement. Lack of clarity in the law remains since Davis wrote his article in 2001, but that seems to be a feature of the law of evidence.

Therefore, the thesis of this article is that the concept of *burden of proof* ought not to be strictly applied by assessment tribunals in Canada, depending, of course, on the precise legislative directive in each jurisdiction. The law of the Province of Alberta is compared to laws of other Canadian provinces and then compared again to those of American states.

Of course where the burden of proof is placed is a policy issue. And this must always be kept in mind.

Interestingly, the laws of each state and province appear to be complementary, keeping in mind that procedures from province to province or state to state differ. That is to say, we can understand each other in this discussion. So practitioners on both sides of the fence should find this article helpful.

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In Canada, property tax issues are dealt with by administrative tribunals. Matters are then referred to superior courts by judicial review—but this of course is limited to concepts of administrative law. In Canada, this means that the courts decide whether the decision was *reasonable* with regard to the comparative expertise of the courts and the tribunal. The concept of a *tax court* does not exist in Canada, except for federal income tax, and those matters go directly to the Federal Court of Canada.

The following is a quick review of Canadian provincial legislation regarding burden of proof in assessment hearings:

1. In British Columbia the burden of proof is on the complainant, or if the assessor makes a recommendation, the burden of proof is on the assessor.
2. In Manitoba, the burden of proof is on the assessor for valuation issues, but on the taxpayer if the issue is one of liability for taxation.

3. In Ontario, the burden of proof is on the assessor.
4. In Prince Edward Island, the burden of proof is on the minister to demonstrate the uniformity of the assessment.

The other Canadian provinces are silent on the subject; this likely means that they revert to "he who asserts must prove."

In the United States, the burden of proof by state varies (see table 1). Clearly, assignment of the burden of proof is a policy for each state or province.

In his excellent and thoughtful article in 2001, Davis said, in the context of a property tax trial in the United States, that there were three preliminary questions, paraphrased as follows:

1. What must be proven to the court or other tribunal for the complainant to prevail? Davis refers to this as the "'standard of review' under which the court evaluates the correctness or legality of the assessment."
2. Who among the parties is responsible to prove the various elements of the cause of action or defense—or who has the risk of loss if one or more of the elements is not proven? "This refers to the assignment of burdens of proof, duties of producing evidence or ultimately persuading the fact finder, to one or other party" (Davis 2001, 3).
3. How persuasive must the evidence be that the elements of the standard of review are met? "This refers to the probability analysis inherent in any court's findings from the evidence: the level of persuasion, or the degree of confidence which must be instilled in the fact finder, which courts frequently term the 'standard of proof.'"

This observation is also generally true in Canada, but there is virtually no legal scholarship on the subject in the context of administrative tribunals. There is, however, very recent case law.

We can also agree with Davis that *burden of proof* can be interpreted as "the burden of persuasion."

In addition, we are all aware of the legal adage that, "he who asserts must prove." But what if the person proving is an unrepresented David and the object of the proving, with all the resources, is Goliath?

In addition, we are all aware of the legal adage that, "he who asserts must prove." But what if the person proving is an unrepresented David and the object of the proving, with all the resources, is Goliath? What if there are statutory provisions that say the rules of evidence do not apply? Is there a presumption of correctness in Canada, or is it simply a matter of tribunals being too close to the assessing and taxing authority? How does the burden of proof relate to a taxing authority's ability to collect and share information?

The Alberta Position

The Legislation

In Alberta, the law is dependent on the following provisions:

1. The governing statute, the Municipal Government Act (MGA), places the following legal obligations on the shoulders of taxpayers when complaining about their assessed values. [Note that the act is in the process of massive revision. However, new Section 460(9), formerly Section 460(7), where this legal obligation is found, remains the same.] They must
    a. Indicate what information shown on an assessment or tax notice is incorrect
    b. Explain in what respect that information is incorrect
    c. Indicate what the correct information is
    d. Identify the requested assessed value in the complaint relates to an assessment.
2. It is actually at this juncture where problems arise, so the question then becomes, What is required of the complainant taxpayer in order to discharge this legal obligation? Does the taxpayer have to prove *conclusively* what the correct information is? (This is the language used in some of the tribunal decisions and appears to equate "to beyond a reasonable doubt.") Or does the taxpayer have to establish a prima facie case? And, in any event, why are we talking about complicated evidentiary provisions?
3. Section 464(1) (similarly not affected by the new revisions to the act) provides that the rules of evidence, along with any other law applicable to court proceedings, do not apply. The board may determine the admissibility, relevance, and weight of any evidence.
4. The assessing authority has statutory duties as well:
    a. The municipality must prepare an annual assessment for each property in the municipality (MGA, RSA 2000, c M-26, section 285).
    b. Each assessment must be prepared by the assessor appointed by the municipality [MGA, RSA 2000, c M-26, section 289(1)].
    c. Each assessment must reflect the characteristics and physical condition of the property on December 31 [MGA, RSA 2000, c M-26, section 289(2)].

Table 1. Assignment of burden of proof in the United States

State	Who Bears the Burden	Legislation	Source
Alabama	Taxpayer	Ala Code sec. 40-2A-7(b)(5)c	CCH State Tax Editors 2016
Alaska	Taxpayer	AS 29.45.210 , AS 43.56.130	CCH State Tax Editors 2016
Arizona	Taxpayer bears the burden of proof, but the department bears the burden of proof relating to factual issues.	ARS 42-1255	CCH State Tax Editors 2016; Davis 2001
Arkansas	Taxpayer	Sec. 26-18-313, A.C.A	CCH State Tax Editors 2016
California	Taxpayer, can shift to assessor for single-family homes	Sec. 167, Rev. & Tax Code, Reg. 321, 18 CCR	CCH State Tax Editors 2016
Colorado	Taxpayer	Sec. 39-1-113(1.5), CS	CCH State Tax Editors 2016
Connecticut	Taxpayer	75 C. 281	CCH State Tax Editors 2016
Delaware	Taxpayer	Sec. 8312, Tit.9 Code	CCH State Tax Editors 2016
District of Columbia	Taxpayer	Reg. Sec. 2014.1	CCH State Tax Editors 2016
Florida	Taxpayer	Sec. 194.301, F.S; rules 12D9.001 through 12D9.038	CCH State Tax Editors 2016
Georgia	Assessor	Reg. s560-11-12-01 through Reg. s560-11-12-09 and Reg. s560-11-13-01 through Reg. s560-11-13-11	CCH State Tax Editors 2016
Hawaii	Taxpayer	Form: BFS-RP-p-51 from Honolulu County	CCH State Tax Editors 2016
Idaho	Taxpayer	IC sec. 63-502	CCH State Tax Editors 2016
Illinois	Circuit Court: taxpayer has burden PTAB: burden of persuasion unstated, burden of production shifts from taxpayer to assessment officials		Davis 2001
Indiana	Taxpayer	50 IAC 17-6-3	CCH State Tax Editors 2016
Iowa	Taxpayer; however, when the complainant offers competent evidence by two disinterested witnesses that the market value of the property is less that what the assessor determined, the burden of proof shifts to the assessor	Sec. 441.21(3), Code of Iowa	CCH State Tax Editors 2016
Kansas	Assessor	Sec. 79-1602, KSA	CCH State Tax Editors 2016
Kentucky	Taxpayer	KRS 133.120 (3)(c)	CCH State Tax Editors 2016
Louisiana	Assessor	RS 47: s 1969.1 A	CCH State Tax Editors 2016
Maine	Taxpayer		CCH State Tax Editors 2016
Maryland	Taxpayer		Davis 2001
Massachusetts	Taxpayer	Sec. 12A. CH. 58A, G.L	CCH State Tax Editors 2016
Michigan	Taxpayer has the burden to establish the true cash value and the property, but the assessor has the burden with regards to equalization	Sec. 205.737, M.C.L.	CCH State Tax Editors 2016
Minnesota	Taxpayer	Sec. 278.05(3)	CCH State Tax Editors 2016 ;Davis 2001
Mississippi	Unknown		Not addressed in either CCH State Tax Editors 2016 or Davis 2001
Missouri	Taxpayer		Davis 2001
Montana	Taxpayer		Davis 2001
Nebraska	Taxpayer	*Bottorf v Clay County Board of Equalization* (NB CtApp 1998) 7 NebApp 162.	CCH State Tax Editors 2016
Nevada	Taxpayer	NRS 361.356.1	CCH State Tax Editors 2016
New Hampshire	Taxpayer		Davis 2001
New Jersey	Taxpayer	*Properties v City of Jersey City*, NJ SuperCT, AppDiv, No. A-2205-9711, 13/3/98. CCH New Jersey	CCH State Tax Editors 2016
New Mexico	Taxpayer	NM Stat Ann Sec. 7-38-6, 3 NMAC 6,7,13	CCH State Tax Editors 2016
New York	Taxpayer		Davis 2001
North Carolina	Taxpayer		Davis 2001
North Dakota	Taxpayer		Davis 2001
Ohio	Taxpayer initially, respondent thereafter		Davis 2001
Oklahoma	Taxpayer		Davis 2001
Oregon	Taxpayer	Sec. 305.427, ORS	CCH State Tax Editors 2016
Pennsylvania	Taxpayer	24 P.Ss. s581.69, 72 P.S. s4844.1	CCH State Tax Editors 2016
Rhode Island	Taxpayer		Davis 2001
South Carolina	Taxpayer		Davis 2001
South Dakota	Taxpayer	SL 1917, ch 130, s2: RC 1919, s 6814; SDC 1939, s 57.0803	CCH State Tax Editors 2016
Tennessee	Assessor	Tenn. Code Ann. S 68-5-1405	CCH State Tax Editors 2016
Texas	Assessor	Sec. 41.43 Tax Code	CCH State Tax Editors 2016
Utah	Taxpayer	Publication 31, Utah State Tax Commission, May 2013, CCH Utah Tax Reports, 400-848	CCH State Tax Editors 2016
Vermont	Taxpayer		Davis 2001
Virginia	Taxpayer	Sec. 58.1-3984(A), Code	CCH State Tax Editors 2016
Washington	Taxpayer	RCW 84.40.0301	CCH State Tax Editors 2016
West Virginia	Taxpayer		Davis 2001
Wisconsin	Taxpayer	Sec. 70.47(8)(g), Wis. Stats	CCH State Tax Editors 2016
Wyoming	Taxpayer	Rule ch. 9, Sec. 6, WY DR	CCH State Tax Editors 2016

5. The assessor has mandatory duties as follows:
    a. The assessor must, in a fair and equitable manner, apply the valuation and other standards, follow the procedures set out in the regulations [MGA, RSA 2000, c M-26, Section 293(1)].
6. As does the tribunal, who must not alter any assessment that is fair and equitable [MGA, RSA 2000, c M-26, section 467(3)].

Judicial Decisions

In two initial decisions on the topic of burden of proof, Alberta courts have found that the taxpayer is obliged to adduce "conclusive evidence" to satisfy the tribunal that the assessed value is incorrect and further adduce evidence of what the correct value of the assessment should be. These decisions were later questioned in further court decisions. Notably, the courts were *not* alerted to the above provision that "the rules of evidence do not apply." Essentially, this is how the law developed.

In *GSL Chevrolet Cadillac Ltd. v. Calgary* (2013), the court said that the correct standard of proof is a question of law. The normal burden of proof in civil cases is "a simple balance of probabilities" and that was found to be the applicable burden even though the tribunal itself referred to "conclusive proof." The burden on the complainant is set out in Section 460(7) of the Municipal Government Act. In this case, the complainant taxpayer was found to have introduced no evidence at all.

This case was followed in 2014 by *Genesis Land Development Corp. v. Calgary (City)* (2014). In this case, the assessing and taxing authority, the City of Calgary, chose not to provide any evidence at all even though taxpayer materials had been filed. Because there was no assessing authority evidence, the taxpayer was not allowed to put in rebuttal evidence. At the end of the hearing, the board said the taxpayer had failed to demonstrate that the assessed value was incorrect or inequitable.

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The board further said that the appraisal report tendered in evidence was prepared post facto, the appraiser was not available to give evidence, it was not clear how adjustments had been made, and there was no specific evidence, amongst other things. The court agreed and disagreed that the taxpayer had established a prima facie case. The court said that the facts as alleged by the taxpayer were not proved and that the board's actions were reasonable. The court said, "On the issue of onus and standard of proof, the test is also one of reasonableness. The standard of proof relates to the sufficiency of the evidence." This reflects the commentary of Davis (2001) and *Genesis Land Development Corp*. (2014, para 32).

However, how is it that the taxing authority was permitted to effect a procedural manoeuvre before the tribunal by providing the evidence, yet not tendering it, when tendering the evidence was a simply formality and the legislation provides for a mandatory "filing" of evidence with the board?

A year later, the issue was raised again in *Ross v. Edmonton (City*) (2015). The court said, "... the City argues that the law on the standard of proof was settled in GSL ... however, there are cases that suggest that an applicant must simply raise 'some evidence'." The court concluded that the law was not settled and that it was a question of wide-ranging importance to municipal taxpayers. Leave was granted.

One of the cases cited in the *Ross* decision was *Alberta Ltd. v. Edmonton (City)* (2014). In the lower court decision, the court said,

> *In my view, it is unreasonable for the board to have concluded there was no evidence of market value provided by the Applicant on that first arm of the test and to ignore the fact that the onus shifted to the City under their burden of proof to demonstrate that there were other sales of similar properties and to identify what the sales actually were and when they took place.*

In the following decision of *Alberta Ltd. v. Edmonton (City*) (2015), the court summarized the law as follows:

> *In my view, the obligation described by [Section] 460(7) of the MGA is an evidential burden, rather than a legal burden. In other words, the complainant must provide the evidence sufficient to warrant consideration of its claim that the assessment is wrong. If it does, the CARB [Composite Assessment Review Board] must consider the issue of whether or not the assessment is correct. It did not do so.*
>
> *Here the CARB did not address the onus, legal or evidentiary, it did not analyse the evidence of the only sale before it, it did not address the absence of sales evidence from the City, and it did not address the City's use of the statistical model. One cannot determine from its reasons whether it considered that Altus was required to meet a prima facie case or some higher standard, or for what reason, if any, it accepted the City's market valuation.*

In my view, the sales comparable provided by Altus was sufficient to meet its evidential burden such that it was entitled to have a proper consideration of its claim that the assessment was wrong. I find that it was unreasonable for the CARB to find that the market value of the Property as at the valuation date was correct in the absence of any evidence that refuted the only evidence before it of market value, and in the absence of any reasons for that finding. Without evidence of market value, it was impossible, at law, to determine whether the assessment was both correct and 'fair and equitable.'

The case law is, therefore, evolving, not settled (subject to the most recent *Ross* decision, discussed at the end of this article.)

In addition, two important elements were missing from the judicial considerations: that the law of evidence does not apply to a tribunal [MGA, RSA 2000, c M-26, section 464(1)] and that an assessing authority in Canada has a positive duty to prepare an assessment in accordance with the Municipal Government Act and regulations. This latter duty has ramifications for how the taxing authority presents its case at a hearing—that is, as a public authority, it has a duty to demonstrate to the public how the assessment was arrived at and ought to be prohibited from procedural manoeuvres such as not presenting evidence that supports the value.

On the basis of authority that reaches to the Supreme Court of Canada, there is a positive duty on the part of assessors to prepare an assessment in accordance with the governing act and regulations (*Royal Montreal Golf Club v. Dorval* [1946]; *Estevan Coal Corp. v. Estevan* [2000]; *Kramer Ltd. v. Sherwood (Rural Municipality No. 159)* [2003]; *Kolitsas Holdings Ltd. v. Regina (City)* [2003]; *Pacific Logging Co. v. British Columbia (Assessor)* [1976]) .

It is therefore not sufficient for the assessing authority to merely attack the evidence of the taxpayer or otherwise point out deficiencies, but rather it must adduce positive evidence to support its own assessment. The mandatory language of the relevant provisions of the Municipal Government Act and the MRAT (Matters Relating to Assessment and Taxation Regulation) also supports the conclusion that there is a positive duty on assessors.

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By the time the parties are at a hearing, the complaint has been shepherded through the system by support staff, the complainant has paid a fee to complain, and the complaint has been staffed by three tribunal members. It is not appropriate for the assessing authority to decline to formally enter evidence which they have a mandatory duty under the legislation to provide. (See for example, section 4 of the Matters Relating to Assessment Complaints Regulation, AR 310/2009, which provides that "the respondent [taxing authority] must, at least 7 days before the hearing date, disclose to the complainant and the local assessment review board the documentary evidence ... .") In fact, it is simply unfair when they are present at the hearing and ready to go.

In the 1927 decision of the *Royal Montreal Golf Club v. Dorval* (supra, p. 2), the court said,

A valid assessment is an indispensable prerequisite to a valid tax, and valid assessment must be effected according to law...

The requirement for the assessor, and not the taxpayer, to establish the correct assessment of the property was reinforced by the Saskatchewan Court of Appeal in *Estevan Coal Corp v. Estevan (Rural Municipality No. 5)* (2000). In that case the court (Justice Sherstobitoff) said,

It was the duty of the assessor to collect the necessary data to calculate a market adjustment factor, to calculate it, and to arrive at an assessment utilizing it, and it is perverse for it to say that its own failure to perform that duty casts some sort of obligation on the taxpayer to carry out that duty before the taxpayer should have relief. Neither the legislation, nor the decisions of this court will permit, or were intended to permit, an assessor to avoid its obligation to assess according to the assessment manual, or to permit the assessor to benefit from its own default, so as to impose an assessment on a taxpayer not made in accord with the manual.

Estevan was applied by the Saskatchewan Court of Appeal in *Kramer Ltd. v. Sherwood (Rural Municipality No. 159)* (2003), another decision of Sherstobitoff for the appellate court.

Sherstobitoff said it was striking that there was a lack of evidence about what the Saskatchewan Assessment Management Agency had done in order to carry out its obligation to consider and determine whether abnormal economic obsolescence existed in respect of the buildings in question, and he concluded that it had not done anything. Rather than presenting evidence to contradict or dispute the expert evidence led by the appellant taxpayer, the agency simply argued that the onus was on the taxpayer to prove conclusively that the assessment was wrong and what the assessment should be, and that the taxpayer had failed to meet that onus. The court said,

> *The question of the onus of proof upon an appellant respecting whether an assessment is unfair or inequitable, and respecting what the correct assessment should have been in the case of an error, were dealt with in* Estevan Coal*. For the purpose of this case, it is sufficient to say that once material error on the part of the assessor has been proven, it does not necessarily follow that an appellant must also prove unfairness or inequity, and what the correct assessment should have been. Depending on the circumstances, the burden of proving either fairness or equity or proving that the amount of the assessment was correct notwithstanding the error, if these issues are raised by the assessor by way of response to the appeal, may be the burden of the assessor. The Board of Revision erred in this respect.*

Estevan was again applied by the Saskatchewan Court of Appeal in *Kolitsas Holdings Ltd. v. Regina (City)* (2003), a decision of Justice Tallis for the appellate court. *Estevan* was applied with respect to the positive obligation on an assessor. Tallis further states,

> *These controlling authorities stress the legal importance of the assessor's role and actual exercise of discretion in the statutory taxation scheme.*

And finally the Supreme Court of Canada weighed in. The positive duty of an assessor to prepare an assessment in accordance with the statutory regime was emphasized in dissent by Justice McIntyre of the British Columbia Court of Appeal in *Pacific Logging vs. British Columbia (Assessor)* (1976). The significance of this is that the Supreme Court of Canada overturned the majority decision and adopted the dissenting reasons of McIntyre (decision at [1977] 2 S.C.R. 623, 16 N.R. 513).

In *Pacific Logging*, in the dissenting judgment of the Court of Appeal that was adopted by the Supreme Court, the court stated,

> *The assessor must determine the actual value of these lands. He must do so in accordance with [Section] 37(1) of the Assessment Equalization Act, R.S.B.C. 1960, c. 18, as amended. In doing so he may give consideration to the various factors mentioned in the section, or some of them, and he may as well consider 'any other circumstances affecting the value.' **Failure to assess according to the section amounts to an error in law**. It is my opinion from reading the stated case that the assessor has not assessed according to the statute and has thus fallen into error.* [Emphasis added]

In the result McIntyre, in dissent, would have referred the matter back to the assessor for reassessment as he had adopted an arbitrary method of assessment. This reasoning was adopted by the Supreme Court of Canada.

Landing on an Acceptable Interpretation of the Law

In Alberta, both the governing statute and regulations use mandatory language to impose a positive duty as described above.

This was also addressed in the *Boardwalk* decision**,** a decision of the Alberta Court of Appeal, in which the court says,

> *The assessor is a statutory officer with statutory powers and duties. Only the City's assessor could use section 295 and only he could assess land. A complaint to the [ARB (Assessment Review Board)] ... are from acts by the assessor. Error by the assessor dictates a successful appeal.* (*Boardwalk REIT LLP v. Edmonton* 2008, at para 159)

In *Boardwalk*, the assessing authority was heavily criticized by the Court of Appeal in Alberta for seeking to disallow the taxpayer's complaint on a technical ground of failing to respond to a request for information. In other words, the court was saying that the assessor, as a statutory officer, has been given special powers. The court found that the assessor had not been fair.

A reasonable interpretation of the law in Alberta is as follows:

1. The taxpayer must adhere to Section 460(7) of the MGA. He must
    a. "Indicate what information shown on an assessment notice or tax notice is incorrect
    b. Explain in what respect that information is incorrect
    c. Indicate what the correct information is
    d. Identify the assessed value."
2. However, subsection (1) of the same section provides that the complaint must be "in the form prescribed in the regulations." This is a one-page form. Sometimes this confuses unrepresented complainants.
3. Using the language of the law of evidence, this is a *burden of proof* of sorts, but we know from the act that the law of evidence does not apply to these tribunals. Therefore, it is better to interpret this as a *statutory requirement* imposed on the complainant taxpayer.
4. And just how much information is required at this stage? Davis would call this the "standard of proof." In *Genesis Land Development Corp. v. Calgary* (2014, at para 32), the Alberta Court of Queen's Bench said, "The standard of proof relates to the sufficiency of the evidence." But again, this language is found in the law of evidence.
5. It is submitted that *some evidence* is enough and that this

then means that the assessing authority, with its superior statutory powers and mandate, must explain its assessed value to the tribunal. Justice Yungwirth said, "In other words, the complainant must provide the evidence sufficient to warrant consideration of its claim that the assessment is wrong. If it does, the CARB must consider the issue of whether or not the assessment is correct" *(Alberta Ltd. v. Edmonton* 2015, at para 53). Further, this case is of note in that the judge essentially finds that the evidence of the taxpayer was the only valid evidence of market value due to the deficiencies in the evidence of the city. Note that the justice also said that, "*Further, I agree with the comments of Acton J, that statistical models used to prepare the mass assessments cannot be used to defend an assessment...*" [Emphasis in original]*)*

Ross Decision of 2016: At Last Some Clarity

Just prior to the publication of this paper, the decision (on the merits) in *Ross v. Edmonton (City)* (2016) was delivered on December 21, 2016. The leave application is referred to on page 6, *Ross v. Edmonton (City)* (2015).

Briefly, in this case a residential property assessment was increased by 24 percent when there was an average decrease of 4.4 percent in the neighbourhood. The taxpayer appealed and offered a real estate firm valuation as evidence.

The court said,

> *As will be demonstrated below, the correct analysis of the burden of proof on hearings before the Board is that a complainant must initially provide only some evidence that the assessment is incorrect, after which the evidentiary onus switches to the City to provide evidence that the assessment is correct. After hearing all submissions on all the evidence, the Board should have decided whether the assessment of the Ross property was fair and equitable. Here, Ms. Ross had provided some evidence that the assessment was incorrect; the City then provided evidence which the Board rejected; the Board was then presumably left only with Ms. Ross' evidence; Ms. Ross' claim should therefore have been accepted. The Board's actual approach was incorrect.*

As will be demonstrated below, the correct analysis of the burden of proof on hearings before the Board is that a complainant must initially provide only some evidence that the assessment is incorrect, after which the evidentiary onus switches to the City to provide evidence that the assessment is correct.

In summary, the Board's imposition of an ultimate burden rather than an initial burden on Ms. Ross was unreasonable.

Conclusion

It is not unusual in law to find a legislative provision that the law of evidence does not apply to a particular administrative tribunal.

This is because administration tribunals are not courts of law and therefore, theoretically, are not bound by the formality of the courts: witnesses are not sworn, hearings are held in an office, not a court-like setting, and moreover, the rules of evidence do not apply. The rules of evidence are complicated and, at least in the case of criminal law in Canada, are designed as *procedural safeguards*. And if you have not studied the law of evidence, you ought not to be applying its rules.

As one Canadian academic says that you must have some rational means of dealing with evidence:

> *... individuals appearing before agencies and agency decision makers cannot simply ignore the concept of evidence. The fact that an administrative decision-maker may not be bound by the legal 'rules of evidence' does not mean that anything should go respecting the material which you receive in the course of a proceeding. The rules of evidence exist for a reason, and while, perhaps one need not know the formal rules, one must know what the rules of evidence are trying to accomplish and one should try to guide one's approach to evidence according to those aims.* [Macaulay and Sprague 2010, 17.1(c)]

True. But it need not be legalistic.

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