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**THE MINISTER OF FINANCE OF THE PROVINCE OF BRITISH COLUMBIA**

**v.**

**DARKWOODS FORESTRY LIMITED**

Supreme Court of British Columbia (No. 1012/75)

Before: MR. JUSTICE J.G. RUTTAN

Vancouver, January 27, 1976

Mr. P. Klassen for the appellant
Mr. B. Cohen for the respondent

**Reasons for Judgment** February 10, 1976

This is an appeal by the Minister of Finance of the Province of British Columbia (the appellant) made pursuant to section 67 of the *Assessment Act*, Statutes of British Columbia for 1974, chapter 6.

As a preliminary point counsel for the respondent has submitted that this Court does not have jurisdiction to hear and determine this appeal.

The problem of jurisdiction arises because in this case both the *Taxation Act* and the *Assessment Act* apply, and because if the procedure for appeal is as laid down by the *Taxation Act*, the only appeal to this Court, is from the Court of Revision established under the *Taxation Act*. It is common ground, that the Court of Revision which originally sat on this appeal was not established under the *Taxation Act* but under the *Equalization of Assessments Act*, as now replaced by the provisions of the *Assessment Act*.

The points in support of respondent's submission on jurisdiction are as follows:

1. The subject matter of this assessment is a tree farm licence, which by sections 37 (6) (b) of the *Assessment Equalization Act* and section 39 of the *Taxation Act*, are to be assessed by the valuation procedure set up under the *Taxation Act*.

2. Under section 86 (1) of the *Taxation Act* appeals from assessment are made to the Court of Revision as constituted under the *Assessment Equalization Act* (as now replaced by the *Assessment Act*).

3. Under section 86 (2) of the *Taxation Act*, Courts of Revision may also be constituted under the *Taxation Act* for assessments, and only, for assessments, made pursuant to the *Esquimalt and Nanaimo Railway Belt Land Tax Act*.

4. Under section 103 of the *Taxation Act*, persons dissatisfied with decisions of Courts of Revision appointed under this Act, (i.e., courts established to assess under the *Esquimalt*

*and Nanaimo Railway Belt Land Tax Act*) may appeal to the Supreme Court directly without the intervention of any Assessment Appeal Board hearing.

5. Under section 102 (2) of the *Taxation Act*, an assessed owner dissatisfied with a decision of the Court of Revision constituted under the *Assessment Equalization Act*, (now the *Assessment Act*) may appeal to the Assessment Appeal Board.

6. There is no further provision for a right of appeal on to the Supreme Court from the Assessment Appeal Board under the terms of section 102 or any other section of the *Taxation Act*.

Thus counsel for the respondent submits that in spelling out the right of persons to appeal under the *Esquimalt and Nanaimo Railway Belt Land Tax Act* directly to the Supreme Court, the Statute must have intended that the right of appeal to the Supreme Court was confined to such assessments and was not to include assessments made under the *Taxation Act*, i.e., with reference to tree farm land. Mr. Cohen submits that where the Statute specifically provides for one form of appeal, no other form of appeal may be invoked. He refers in particular to the decision of the late Mr. Justice Sullivan when sitting in this Court in the case of *Madsen* v. *Vardal* (1960) 33 W.W.R. (N.S.) 217, and specifically to page 221 of that report and the citation from the Supreme Court of Canada of *Normand* v *Chagnon* (1880) 16 S.C.R. 661, where Chief Justice Ritchie said at page 662:

> "We think that an appeal which is unknown to the common law must be given by statute in such clear and explicit language that the right to appeal cannot be doubted."

Such an appeal not being given in explicit language in the present case, counsel submits there is no right of appeal beyond the decision made by the Assessment Appeal Board.

However where there are other relevant statutory authorities, they must be referred to in considering the procedure for and the right of appeal by a person dissatisfied with an assessment, including decisions made by a Court of Revision and the Assessment Appeal Board.

In the present case the subject matter of the assessment was tree farm land, which by section 39 of the *Taxation Act*, must be assessed under that Act. But appeals from the assessment follow the procedure laid down by the *Equalization Act* and its 1974 replacement, the *Assessment Act*. The only form of assessment where the appeal procedure is governed entirely by the *Taxation Act*, is that prepared under the *Esquimalt and Nanaimo Railway Belt Land Tax Act* and referred to above as contained in section 86 (2) of the Taxation Statute et seq. The procedure there is to set up its own Court of Revision under the *Taxation Act*, to bypass appeals to the Assessment Appeal Board, and appeal directly to the Supreme Court. All other assessments and this must include tree farm land, are dealt with on appeal to the Courts of Revision constituted under the *Assessment Equalization Act* (and now the *Assessment Act*). To learn the procedure for successive appeals one must look at the relevant Statutes including sections 44 to 52 of the *Equalization Assessment Act* and section 32 (1), 54 (a), part VII and part VIII of the *Assessment Act*. The last portion (part VIII) deals with appeals to the Supreme Court.

By reviewing all these relevant Statutory provisions we find that the specific remedy or form of appeal here given, is not limited to the Assessment Appeal Board, but extends on and to this Court.

Admittedly these appeals are entirely creatures of Statute, but by reviewing all the relevant Statutes, we find that the test laid down in *Normand* v. *Chagnon* is met and that the Statutes in question, in clear and explicit language, provide for an ultimate right of appeal to this Court.

I adopt here with respect the words of the late Chief Justice Davey of our Court of Appeal given in an appeal involving *Crown Zellerbach of Canada Ltd.* and the *Assessment Districts of Comox,*

*Cowichan and Nanaimo* filed in this Court originally as No. X688-62. There he said in his reasons for judgment on April 29, 1963:

> "At the outset the system of assessment and appeals therefrom should be explained. The Provincial Assessors are charged by the *Taxation Act*, chapter 376, R.S.B.C. 1960, with the duty of assessing, *inter alia*, real property in unorganized areas; by section 31 the assessed value of land is determined under the provisions of the *Assessment Equalization Act*. The taxpayer may appeal against the assessment to the Court of Revision; the Assessor and the taxpayer may then appeal upon any ground from the Court of Revision to the Assessment Equalization Board under the provisions of the *Assessment Equalization Act*.
>
> Section 50 (2) of the *Assessment Equalization Act* declares that the decision of that Board shall be final and conclusive, subject only to an appeal by way of stated case upon any question of law to a Judge of the Supreme Court of British Columbia. An appeal from the Supreme Court of British Columbia lies to this Court."

The preliminary objection therefore is dismissed.

On proceeding to the merits of this case I find that section 76 of the *Taxation Act* is conclusive. That section is hereinafter set forth and I refer in particular to the second portion which I have underlined:

> "76. Where, subsequent to the completion of any assessment roll, the Assessor finds that any property or other basis of assessment was liable or has become liable to assessment for the current year or any previous year, but has not been assessed on the roll or on any previous assessment roll, he shall assess the same on a supplementary roll, or further supplementary roll, for the current year, to be prepared by him from time to time; or where, subsequent to the completion of any assessment roll, the Assessor finds that any property or other basis of assessment has been assessed for less than the amount for which it was liable to assessment, he shall assess the same on a supplementary roll, or further supplementary roll, subject to the conditions of assessment governing the roll on which the same should have been assessed." (my underlining)

By computer error, the tree farm licence in question was not assessed for its full value by the assessor for the years 1973 and 1974. The error was discovered in March of 1974 after the completion of the rolls. Then supplementary rolls to make up the difference for each year were completed. The assessor is not confined to one year or one assessment roll in making his corrections. Counsel for the applicant has drawn my attention to the judgment of Mr. Justice Wilson, (as he then was sitting on the Court of Appeal for this Province) in the case of *Crown Zellerbach of Canada Limited* v. *The Provincial Assessors of Comox, Cowichan and Nanaimo*, reported in 1963,42 W.W.R. 480. I refer in particular to his judgment at page 491 which is directly applicable here:

> ". . . the supplementary roll is a thing separate from the main roll and to be dealt with as such. It may be made to supplement any assessment roll, which means an assessment roll for any year."

Mr. Cohen submits that the error here was not made by the assessor, but by the computer and that such clerical errors are not contemplated in section 76 which is confined to errors in under assessment and this was not an under assessment but had originally been made as a complete assessment.

I regret I find this interpretation too strained to be acceptable. I agree with Mr. Klassen that the sole purpose of the second portion of section 76 of the *Taxation Act* is to correct the assessment

of property that for whatever reason or cause has been assessed for less than the amount for which it was liable to be assessed.

My answer therefore to the issues to be determined by this appeal are as follows:

1. The Assessment Appeal Board erred in law in ordering that the 1973 supplementary assessment be deleted from the roll.

2. The Assessment Appeal Board erred in law in holding that the assessor could not in the year 1974 assess the additional values for the year 1973 on the supplementary assessment roll for the year 1973.

3. The Assessment Appeal Board erred in law in holding that section 76 of the *Taxation Act*, R.S.B.C. 1960, c. 376 only permitted the assessor to issue a supplementary assessment for the additional amount for the current year.

4. The Assessment Appeal Board erred in holding that section 364 (1) of the *Municipal Act*, R.S.B.C. 1960, c. 255 applied to a supplementary assessment made for property located in an unorganized territory. The *Municipal Act* has. no application to tree farm assessment.