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TRIZEC EQUITIES

v.

ASSESSOR OF BURNABY/NEW WESTMINSTER

ASSESSMENT COMMISSIONER

v.

WESTERN FOREST INDUSTRIES LIMITED

British Columbia Court of Appeal

Before: MR. JUSTICE P.D. SEATON, MR. JUSTICE H.E. HUTCHEON and MR. JUSTICE J.D. TAGGART

R.B. Hutchison and J.K. Greenwood for the appellant, the British Columbia Assessment Authority
E.H. Alan Emery for the respondent, Trizec Equities Ltd. And Bramalea Limited
B.I. Cohen for the respondent, Western Forest Industries Ltd

Reasons for Judgment of Mr. Justice Seaton December 5, 1980

These appeals, heard together, deal with the jurisdiction of the Assessment Appeal Board. The questions are first, whether the Board's jurisdiction is limited by the notice of appeal and second, whether it is limited to an assessment between that fixed by the Court of Revision and that sought by the person who has appealed. The appellants, the Assessor of Area 10 and the Assessment Commissioner, contend that the Board can fix the value that it thinks proper regardless of the form of the notice of appeal, what was done by the Court of Revision, and who has appealed. The learned Chambers judge rejected that approach and held that the jurisdiction of the Board was limited. I do not agree with him. I think that the Board can fix what it considers to be the proper value no matter how the appeal comes to be before it.

The circumstances that give rise to the appeals are set out in the reasons of my brother Taggart and I will not repeat them.

The respondents argue that on an appeal launched by a taxpayer the Assessor cannot ask the Board for an increase in the assessment. I think that an examination of the Assessor's power is not helpful. We are concerned with the jurisdiction of the Board. We are not concerned with the power of the Assessor or with the limitations that the Board ought to impose upon itself by way of rules or otherwise.

This appeal must turn on the legislation, the *Assessment Act*, R.S.B.C. 1979, chapter 21, particularly the following parts of sections 69, 70 and 71:

> 69. (1) In an appeal under this Act the board has and may exercise with reference to the subject-matter of the appeal, all the powers of the Court of Revision, and without restricting the generality of the foregoing, the board may determine, and make an order accordingly.
>
> (a) whether or not the land or improvements, or both, have been valued at too high or too low an amount;

* * *

(e) whether or not the value at which an individual parcel under consideration is assessed bears a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated;

* * *

70. An appeal under this part shall, without special mention, be deemed to be in respect of both land and improvements and, at the request of a party to the appeal, the board shall take evidence with respect to, and determine the assessment of, both land and improvements in accordance with section 69.

* * *

71. On an appeal, on any ground, from the decision of the Court of Revision in respect of the assessment of property, the board may reopen the whole question of the assessment on that property, so that omissions from, or errors in, the assessment roll may be corrected, and an accurate entry of assessment for that property and the person to whom it is assessed may be placed on the assessment roll by the board.

These provisions of the Act, on first reading, seem to say that the Board is empowered to correct errors and emissions so that the assessment roll is correct and accurate. It would be difficult to conceive of language better suited than that found in sections 69 and 71 to accomplish that purpose.

The respondents argue that the subject-matter of the appeal referred to in section 69 (1) and the ground of appeal are the same thing. I think that not to be so. Grounds of appeal are required to be stated in the notice of appeal by section 68 (a), and they are mentioned in section 71. The subject-matter of the appeal, the words in section 69, I think to mean the assessment in question. These words limit the Board to the assessment under appeal. That interpretation gives the words their ordinary meaning and I see no reason to do otherwise.

Partly because of the equating of grounds and subject-matter the Chambers judge concluded that the notice of appeal set the jurisdiction of the Board. I would not reach that conclusion. Nothing in the Act guides one to it. If the Legislature had meant the grounds of appeal to confine the Board, it would not have introduced section 71 with the words "On an appeal, *on any ground*. . .".Those words must have been chosen to exclude the grounds being a limitation; to avoid the result urged upon us by the respondents.

The respondents rely upon *Re Assessment Equalization Act Re Appeal of MacMillan, Bloedel & Powell River Ltd. et al*. (1961) 36 W.W.R. 463, a decision of Wilson, J., as he then was. I first note that in the nearly 20 years since that decision many changes have occurred in the Act. Wilson, J. started with the proposition that the Board could not do everything that a Court of Revision could do. That approach, proper in 1961, has not been valid since the amendments of 1977. The Board now has “all the powers of the Court of Revision" (section 69 (1)).

The next observation I wish to make about that case is that Wilson, J. held that an assessment could be increased if the matter fell under what was then section 46 (1) (a):

46. (1) The amount of the assessment of real property appealed against may be varied by the Board where, in the opinion of the Board, either

(a) the value at which an individual parcel under consideration is assessed does not bear a fair and just relation to the value at which other land and improvements are assessed in the municipal corporation or rural area in which it is situated;

but not if it fell under what was then section 46 (1) (b):

> (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.

The reason he found a limited power under paragraph (b) is obvious. The Board only has authority to vary where "the assessed values . . . are in excess of the assessed value . . .". The difficulty in that case arose out of the conflict between the Board's broad power under section 46 (1) (a) and its limited power under section 46 (1) (b). It was not clear which power the Board was exercising. In the result the case was sent back. Of importance to us is the observation that under section 46 (1) (a), notwithstanding that the Assessor has not appealed, the assessment may be increased. I agree with that conclusion.

There is not now the limitation that was contained in section 46 (1) (b) and gave such trouble in *Re Assessment Equalization Act, supra*. The specific provision in section 69 (1) with which we are concerned empowers the Board to

> determine, and make an order accordingly,
> (a) whether or not the land or improvements, or both, have been valued at too high or too low an amount;

That language is clear. Whether the valuation be too high or too low, the Board is empowered to act. The position is now the same as that found in *Re Assessment Equalization Act* under section 46 (1) (a) of which Wilson, J. said at page 465:

> Therefore it may, under section 46 (1) (a) reject a discriminatory assessment. Under this heading, if an appellant considers an assessment discriminatory and appeals against it and the result of the Board's acceptance of his argument is to increase the assessment, it may well be that the appellant is saddled with a higher valuation than before.

and

> It is said that the effect of the ruling made by the Board has been to increase the assessment. If this is to be justified it must be justified by section 46 (1) (a). I think it can be. If a taxpayer bases his argument on discrimination and the result of the acceptance of his argument is to increase the assessment I do not see what he has to complain of.

I conclude that section 69 (1) (a) authorizes the Board to increase an assessment notwithstanding that the Assessor has not appealed. Section 71 also gives the Board that power.

There are decisions that limit the scope of section 71 and I must refer to them.

In *Re Assessment Equalization Act, supra*, this was said about section 47 (now, with changes, section 71):

> I reject crown counsel's argument that section 47 has any relevance to this situation. Section 47 is, I think, somewhat equivalent to the slip rule in the Supreme Court Rules and is not meant to enlarge the specific powers of review given to the Board by section 46 save by providing for the correction of omissions and what might be called mechanical errors. In this connection I refer to *Caven* v. *Ottawa (City)* [1932] OR 369.

That case has been followed on a number of occasions by Supreme Court judges as well as by the Board. In my view, it was appropriate for them to do so for reasons of judicial comity explained in *In Re Hansard Spruce Mills Limited (in Bankruptcy)* (1954) 13 W.W.R. (NS) 285. But the question has not been before this court. We are obliged to consider the matter and I conclude that section 71 is broader than a mere slip rule.

There is nothing in *Caven* v. *Ottawa (City)* [1932] OR 369 that I find helpful.

Every section must be interpreted in the light of the provisions around it. In *Re Assessment Equalization Act*, Wilson, J. was considering a section (section 47) that could not easily be reconciled with its neighbour (section 46 (1) (b)). He was obliged to conclude either that section 46 (1) (b) was broader than it appeared to be, an impossible situation, or that section 47 was narrower than it appeared to be. He was driven to the latter course and he held that section 47 did not enlarge the specific powers given in section 46. One cannot seriously argue that he ought to have allowed section 47 to prevail. Today section 71 can be reconciled with its neighbour. It can stand, without being narrowed, beside section 69, which need not be broadened. Each section can be interpreted to mean what it says. I think that to be the interpretation they deserve.

Section 71 employs language that covers the questions on this appeal. If the Board decides that a property ought to be valued at $10,000 and it is in fact valued at $8,000, it seems to me that an assessment roll showing $8,000 contains an error that “may be corrected" so that "an accurate entry of assessment . . . may be placed on the assessment roll by the board." That is what section 71 authorizes the Board to do. The Board is permitted by section 71 to reopen "the whole question of the assessment on that property". What could be broader than that?

I concede that the use of the words omissions and errors leads one to assume that the section is narrow. But in this Act the words are given a meaning somewhat broader than they are often given. Section 40 (1) shows that they include a valuation that is too high or too low. and that they include every other ground upon which one may go to the Court of Revision. This is how section 40 deals with assessments that are too high or too low:

> 40. (1) Where a person is of the opinion that an *error or omission* exists in the completed assessment roll in that
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> * * *
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> (c) land or improvements, or both land and improvements, have been valued at too high or too low an amount:
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> * * *
>
> he may personally, or by a written notice signed by him, or by a solicitor, or by an agent authorized by him in writing to appear on his behalf, come before, or notify, the Court of Revision and make his complaint *of the error or omission*, and may in general terms state his ground of complaint, and the court shall deal with the complaint, and either confirm, or alter, the assessment.
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> (Emphasis added)

It seems clear that a high or low valuation is an error or omission for the purposes of section 40. I see no reason to think that the words bear a different meaning in section 71.

The respondents argue that if the Legislature had wished to permit the Board to deal with appeals in this way, it would have said so clearly. They did not suggest any words clearer to me than those found in sections 69 and 71. I think the Board has been given the broad powers claimed for it by the appellants.

I would allow these appeals.

In the Western Forest Industries Ltd. case I think it was open to the Board to increase the assessed values. Only that jurisdictional question was argued before us. I would refer the matter back to the Board in order that consideration might be given by the Board to the question whether the jurisdiction to increase the assessment ought to be exercised.

I would refer the Trizec Equities Limited and Bramalea Limited cases back to the Board for the reasons given by my brother Taggart in the final paragraph of his judgment.

Reasons for Judgment of Mr. Justice Hutcheon December 5, 1980

I would allow these appeals and refer the cases back to the Assessment Appeal Board for the reasons given by my brother Seaton, with which I agree.

Reasons for Judgment of Mr. Justice Taggart December 5, 1980

These are 3 appeals from judgments of a Supreme Court judge given following the hearing of 3 cases stated by Assessment Appeal Boards (the Board) under the provisions of the *Assessment Act*, 1974 S.B.C., chapter 6. That Act was amended from time to time and is now chapter 21 of the *Revised Statutes of British Columbia, 1979*. Counsel were agreed that although some minor changes were made in the Act as a result of the 1979 revision of the statutes nothing turns on those changes. Accordingly I propose to refer to the Act as it appears in chapter 21 of the 1979 revision.

In each of the 3 Stated Cases common questions of statutory interpretation arise and for that reason the 3 cases were heard together by the Chambers judge. We have likewise heard together the 3 appeals taken from his judgments. Although there are common questions of statutory interpretation in each of the 3 appeals the background leading up to the stating of a case in the Western Forest Industries Ltd. (Western Forest) matter differs from the background leading up to the stating of the 2 cases in the Trizec Equities Limited and Bramalea Limited (Trizec and Bramalea) matters.

In the Western Forest case what was involved was the assessment of a sawmill at Honeymoon Bay on Cowichan Lake, Vancouver Island. The assessment was of land and of buildings and machinery. Western Forest was dissatisfied with the assessed value of the land and of the buildings and machinery and appealed to the Court of Revision. It was dissatisfied with the decision of the Court of Revision and appealed to the Board. The Board concluded that the lands were assessed in excess of actual value and reduced the assessed value. No appeal has been taken by anyone from that aspect of the Board's decision.

The Assessor had valued the buildings and machinery at $6,645,150. The Board decided that the value of the buildings and machinery was $7,423,962 and concluded that because the buildings and machinery had not been valued in excess of actual value the appeal of Western Forest from the decision of the Court of Revision should be dismissed. The Board did not increase the assessed value of the buildings and machinery to a value calculated by using the actual value which it found was correct. The assessor had not appealed his original assessment to the Court of Revision nor had he appealed from the Court of Revision to the Board. Notwithstanding that and being dissatisfied with the failure of the Board to increase the assessed value of the lands and building to a value calculated by using the actual value found by the Board to be correct, he requested that the Board state a case for the opinion of a Supreme Court judge. The questions set out in the Stated Case upon which the opinion of the Supreme Court judge was sought read as follows:

> (a) Did the Board err in law when it found as a fact that the subject buildings and machinery had not been valued in excess of actual value, but failed to increase the assessed values to the values as found by it?
>
> (b) Does the Board have a duty in law after hearing an appeal on the assessed values of both land and improvements to raise either such assessed values if it finds either are under-assessed despite the fact that the Assessor fails to appeal his own assessment?

Although 2 questions are stated there is really only one issue and that is whether, in the absence of an appeal to it by the Assessor, the Board, having found the actual value of the buildings and machinery to be greater than the value found by Assessor, can increase the assessed value of the buildings and

machinery to a value calculated by using the actual value found by it to be correct. The Chambers judge concluded that it could not.

In each of the other 2 appeals each involving Trizec and Bramalea what was involved was the assessment of a shopping centre in which Trizec and Bramalea had interests. The original assessments of each of the shopping centres were made on a depreciated cost basis for the buildings and a comparative market basis for the lands. Trizec and Bramalea being dissatisfied with the assessments, appealed to the Court of Revision. The Assessor did not appeal his original assessments to the Court of Revision. The Court of Revision allowed the appeals and the assessments were reduced.

Being dissatisfied with the decisions of the Court of Revision the Assessor appealed to the Board which was constituted differently than the Board which heard the Western Forest appeal. On the appeals to the Board the Assessor advanced a method of assessment which differed from the method he had used in making his original assessments. Based upon the new method the Assessor sought not a restoration of his original assessments but an approval of assessed values greater than those given in his original assessments. The Board granted the Assessor's request and increased the assessments of each of the shopping centres to values in excess of those given in the original assessments. The Assessor had given notice of appeal from the decision of the Court of Revision but had not given notice of his intention to seek an order approving of assessed values greater than the values given in his original assessments.

Being dissatisfied with the decisions of the Board Trizec and Bramalea requested the Board to state cases for the opinion of a Supreme Court judge. The Board did so and the following questions are found in each of the Stated Cases:

> 1. Did the Board err when it held the actual value of the land or improvements to be higher than the value as originally determined by the Assessor?
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> 2. Did the Board err in the method used to establish actual value?
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> 3. Did the Board err in not considering equitable comparisons with similar lands and improvements in the municipality?

In the Trizec and Bramalea appeals the Chambers judge held that the Board had erred because the Assessor did not appeal his original assessment to the Court of Revision and because, although the Assessor had given notices of his intention to appeal from the decisions of the Court of Revision he had not given notices of his intention to seek an order of the Board approving of assessed values greater than those he had originally assigned to the properties.

Although these two appeals are separate and distinct and the values whether actual or assessed are different for each shopping centre I will treat the two appeals as one because the issues which concern us are identical.

In order to simplify matters I will refer hereafter to value without distinguishing between actual value and assessed value.

The *Assessment Act* was enacted in 1974 by chapter 6 of the statutes of that year. It replaced the *Assessment Equalization Act* which had first been enacted as chapter 32 in the Second Session of 1953. It was chapter 18 of the 1960 Revised Statutes. Many of the provisions of the *Assessment Equalization Act* were continued in the *Assessment Act* of 1974.

The *Assessment Act* provides a procedure for determining the value of property in British Columbia. The process begins with the completion of an assessment roll by the Assessor. This must be done not later than December 31st in each year. The roll sets out each property liable to assessment and the persons named therein are given notice of the assessment of the property. Section 6 requires the Assessor to make a statutory declaration in relation to the completed assessment roll and having done so the Assessor returns the completed roll to the clerk of the appropriate municipality or to the Provincial

Collector as the case may be. This must be done on or before December 31st of the year in respect of which the roll is prepared. Section 9 prohibits the Assessor from making changes in the completed assessment roll without the consent of the Court of Revision but the section permits the Assessor to bring all errors or omissions in the roll to the Court of Revision for correction. Section 10 makes the assessment roll as confirmed by the Court of Revision valid and binding on all parties concerned notwithstanding any omissions, defects or errors in the roll. The roll remains the assessment roll of the municipality or rural area until a new roll is revised, confirmed and authenticated by the Court of Revision. Section 11 permits the Assessor to prepare a supplementary assessment roll on which he may include the kinds of properties referred to in subsections (1) and (2) of section 11. In certain circumstances section 11 permits the assessment commissioner to direct the assessor to correct errors and omissions in a completed assessment roll.

Section 40 provides for access to the Court of Revision. Since the provisions of this section are of some consequence I set them out in full hereunder:

> 40. (1) Where a person is of the opinion that an error or omission exists in the completed assessment roll in that
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> (a) the name of a person has been wrongfully inserted in, or omitted from, the assessment roll;
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> [69 (1) (d)]
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> (b) land or improvements, or both land and improvements, within a municipality or rural area have been wrongfully entered on, or omitted from the assessment roll;
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> [69 (1) (a)]
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> (c) land or improvements, or both land and improvements, have been valued at too high of too low an amount;
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> [69 (1) (b)]
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> (d) land has been improperly classified;
>
> [69 (1) (c)]
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> (e) an exemption has been improperly allowed or disallowed; or
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> [69 (1) (f)]
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> (f) the commissioner has failed to approve an application for classification of land as a farm under section 28 (1), or has revoked a classification of land as a farm under the regulations,
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> he may personally, or by a written notice signed by him, or by a solicitor, or by an agent authorized by him in writing to appear on his behalf, come before, or notify, the Court of Revision and make his complaint of the error or omission, and may in general terms state his ground of complaint, and the court shall deal with the complaint, and either confirm, or alter, the assessment.
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> (2) The council of a municipality may, by its clerk, solicitor, or agent authorized by it, or the Minister of Finance, or the commissioner, or the assessor, make complaint against the assessment roll or any individual entry in the assessment roll on any ground whatever, and the Court of Revision shall deal with the complaint, and either confirm or alter the assessment.
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> (3) Notice in writing of every complaint shall be delivered to the assessor not later than January 20 of the year for which the roll has been compiled.

Section 44 sets out the powers of the Court of Revision. Subsections (1) to (4) of this section are relevant and provide:

> 44. (1) The powers of Court of Revision constituted under this Act are
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> (a) to meet at the dates, times, and places appointed, and to try all complaints delivered to the assessor under this Act:
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> [69 (1) (e)]
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> (b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsection (4), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area;
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> (c) to direct amendments to be made in the assessment roll necessary to give effect to its decisions; and
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> (d) to confirm the assessment roll, either with or without amendment.
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> (2) Any member of the Court of Revision may issue a summons in writing to any person to attend as a witness, and any member of the Court of Revision may administer an oath to a person or witness before his evidence is taken.
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> (3) No increase in the amount of assessment and no change in classification shall be directed under subsection (1) until after 5 days' notice of the intention to direct the increase or change and of the time and place of holding the adjourned sittings of the Court of Revision at which the direction is to be made, has been given by the assessor in the manner prescribed by regulations made under the *Assessment Authority Act* to the assessed owners of the land on which the assessments are proposed to be increased, or changed as to classification. A party interested, or his solicitor or agent, if he appears, shall be heard by the Court of Revision.
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> [69 (1) (e)]
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> (4) The assessment of property complained against shall not be varied if the value at which it is assessed bears a fair and just relation to the value at which similar or neighbouring property in the municipality or rural area is assessed.

Section 47 provides for the authentication of the assessment roll by the Court of Revision.

Part 5 of the Act provides for the appointment of the Board while Part 6 sets out its powers. Section 61 (a) provides:

> 61. The Board
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> (a) shall hear all assessment appeals from the Courts of Revision established under Part 4;

Part 7 provides for the procedures to be followed with respect to appeals to the Board. Sections 67, 68, 69, 70 and 71 are relevant and provide:

> 67. (1) Where a person, including a municipality, the minister, commissioner, or assessor, is dissatisfied with the decision of a Court of Revision, or with the omission or refusal of the Court of Revision to hear or determine the complaint on the completed assessment roll, he may appeal from the Court of Revision to the Board.

(2) The Assessor, at the time that he notifies a complainant of the decision of the Court of Revision in respect of his complaint, shall also notify him that he may appeal the decision of the Court of Revision to the Board and advise him of the procedure to be followed in respect of an appeal.

68. The procedure in an appeal to the Board shall be as follows:

(a) the appellant shall, within 14 days from the date of mailing the notice of the decision of the Court of Revision, serve on, or send by registered mail to, the Assessor, a written notice of his intention to appeal, and the notice shall contain the ground of appeal;

(b) the appellant shall with his notice of appeal, deposit with the Assessor the sum of $5 for the first entry on the assessment roll appealed against, and $2 for each additional entry, and those amounts shall be forwarded by the assessor to the Provincial Collector, Victoria Collection District;

(c) as soon as the time for notices of appeal has passed, the Assessor shall notify the Board of any appeals, giving the names of the appellants and a brief statement of the grounds of appeal;

(d) the Board shall appoint a time, date and place for hearing the appeal;

(e) on receiving an appointment, the Assessor shall give notice to all persons affected of the time, date and place fixed for hearing the appeals, and the assessor shall, without further notice, attend the hearing of the appeals with the assessment roll, the minutes of the Court of Revision, and all documents and writings having a bearing on the appeals;

(f) the Assessor shall cause a notice to be conspicuously posted in the office of the municipality or government agent, containing the names of the appellants and the persons, municipalities, or rural areas appealed against, with a brief statement of the ground of appeal in each case, together with the time, date and place at which the appeals are to be heard by the Board;

(g) on the appeal, witnesses may be produced by any of the persons affected by the appeal and may be required to give evidence and to produce books, papers, documents or writings in their possession or under their control relating to the appeal, and a party to the appeal may obtain from the Board a subpoena requiring the attendance of a witness on the bearing of the appeal;

(h) the appeal may be determined whether or not the person against or by whom it is made is present.

69. (1) In an appeal under this Act the Board has and may exercise with reference to the subject matter of the appeal, all the powers of the Court of Revision, and without restricting the generality of the foregoing, the Board may determine, and make an order accordingly,

[40 (1) (c)]

(a) whether or not the land or improvements, or both, have been valued at too high or too low an amount;

[40 (1) (d)]

(b) whether or not land or improvements, or both, have been properly classified;

[40 (1) (e)]

(c) whether or not an exemption has been properly allowed or disallowed;

[40 (1) (b)

(d) whether or not land or improvements, or both, have been wrongfully entered on or omitted from the assessment roll;

[44 (1) (b)] [44 (4)]

(e) whether or not the value at which an individual parcel under consideration is assessed bears a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated; and

[40 (1) (f)]

(f) whether or not the commissioner has erred in failing to approve an application for classification of land as a farm under section 28 (1) or in revoking a classification of land as a farm under the regulations.

(2) Where, on the appeal, the Board finds that the assessed value of land and improvements in a municipality or rural area is in excess of assessed value as determined under section 26, it may order a reassessment by the commissioner in all or part of the municipality or rural area, and the reassessment, on approval by the Board, shall, subject to section 75, be binding on the municipality or rural area, as the case may be.

70. An appeal under this part shall, without special mention, be deemed to be in respect of both land and improvements and, at the request of a party to the appeal, the Board shall take evidence with respect to, and determine the assessment of, both land and improvements in accordance with section 69.

71. On an appeal, on any ground, from the decision of the Court of Revision in respect of the assessment of property, the Board may reopen the whole question of the assessment on that property, so that omissions from, or errors in, the assessment roll may be corrected, and an accurate entry of assessment for that property and the person to whom it is assessed may be placed on the assessment roll by the Board.

With respect to the appeals relating to the Trizec and Bramalea matters the Chambers judge stated the issue before him as being:

> . . . whether an Assessor who has not initiated any proceeding before the Court of Revision to increase his original Assessment (as provided for by section 33 (2) [now section 40 (2)] of the *Assessment Act*) but appeals to the Assessment Appeal Board against a decision of the Court of Revision reducing that assessment on the complaint of the taxpayer, may, with proper notice, argue before the Board that the original assessment was in fact itself too low, so as to entitle the Board, in addition to reversing the decision of the Court of Revision reducing the original figure, to direct that an assessed value be entered on the roll which is higher than the original assessment.

The judge then referred to section 60 (1) (now section 67 (1)) of the Act and stated a supplementary question for consideration as follows:

> The question is this: Does the expression "decision of the Court of Revision" mean: (i) the *figure* which was arrived at the Court of Revision as the appropriate assessed value; or (ii) the *order* of that court, that is to say the direction varying, or refusing to vary, the assessment.

The judge concluded that it was the order of the Court of Revision from which an appeal may be taken to the Board. He then said that it is not open to the Assessor or to the taxpayer to contend on an appeal to the Board that the original assessment was in error if a complaint had not first been made to the Court of Revision. In concluding his reasons the judge said:

> The function of the Board, as now defined, is that of an appellant tribunal-the correction of erroneous decisions of other tribunals. Subject to the power under section 64 [now section 71] to correct certain technical errors (which, as Counsel agree has been restrictively interpreted) it has no jurisdiction to deal with issues not raised before the tribunal appealed from. It does not seem to me that it would be just that the Board should have the power here contended for unless its function were radically changed, so as to enable it to review *all* assessments, and so that *all* taxpayers would have access to it, without regard to whether or not they had made complaint in the first instance in the manner required by the Act.

In the Western Forest matter the judge stated the question for resolution as:

> . . . whether the Assessment Appeal Board, on an appeal by a taxpayer and in the absence of an appeal by the Assessor, may increase the assessment arrived at, or confirmed by, the Court of Revision decision under appeal.

The judge then referred to section 62 (1) (now section 69 (1)) and especially to the words "with reference to the subject-matter of the appeal" which he concluded qualify the powers of the Board. He said that those words refer to the issues raised in notices of appeal that are properly before the Board and that the Board may exercise the powers given to it by section 69 only in order to decide the issues which have been raised by the appellant. He was of the opinion that the Board does not have the power to adjudicate on issues not so raised merely because the Court of Revision would have had that power. The judge then went on to deal with the hypothetical case where a taxpayer appealed not only the amount of the assessment but as well whether the assessment was equitable in the sense that it bore a just and fair relationship to like properties on the assessment roll. He concluded that even in those circumstances the Board could not increase the assessment found by the Court of Revision unless there had been a notice of appeal in which an increase was sought.

I have dealt with the appeals in the foregoing order because that is the sequence in which they were argued before us. A different sequence was followed before the Chambers judge who dealt first with the Western Forest matter and thereafter with the Trizec and Bramalea matters.

Before dealing with the competing positions of the parties in the Trizec and Bramalea matters on the one hand and the Western Forest matter on the other hand I should draw attention to the changes made to section 69 of the Act in 1977. Prior to 1977 that section, which was then section 62, read:

> 62. (1) The amount of the assessment of property appealed against may be varied by the Board where, in the opinion of the Board, either
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> (a) the value at which an individual parcel under consideration is assessed does not bear a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated; or
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> (b) the assessed value of the land and improvements is in excess of the assessed value as properly determined under section 24.

When one compares that language with the present language of section 69 it is apparent that the powers of the Board have been considerably altered by the 1977 amendments. We were told by counsel that the amendments were brought about by the judgment of Legg, J. in *Assessments affecting Rayonier Canada (B.C.) Limited and MacMillan Bloedel Industries Ltd.*, Victoria Registry Nos. 1393/76 and 1394/76, dated March 17, 1977. There it was held that while the Court of Revision had power to consider exemptions from assessment in respect of pollution control equipment the Board had no such power. It seems clear that in order to put the 2 bodies on substantially the same footing the Legislature conferred on the Board all the powers of the Court of Revision and permitted it to vary assessments in the circumstances set out in subparagraphs (a) to (f) inclusive of what is now section 69 (1).

While dealing with this Legislative history I think it pertinent to point out that the matters referred to in subparagraphs (a) to (f) of section 69 (1) appear to be based on, if they are not identical with, the matters referred to in subparagraphs (b), (c), (d), (e) and (f) of section 40 (1) and to the matters referred to in section 44 (1) (b) and section 44 (4). Thus section 69 (1) (a) conforms to section 40 (1) (c), section 69 (1) (b) to section 40 (1) (d), section 69 (1) (c) to section 40 (1) (e), section 69 (1) (d) to section 40 (1) (b), section 69 (1) (e) to section 44 (1) (b) and section 44 (4) and section 69 (1) (f) to section 40 (1) (f). There is nothing in Section 69 (1) which conforms to section 40 (1) (a). That may be because of the provisions of section 71 with respect to which I will have more to say later.

I turn now to a consideration of the Trizec and Bramalea matters and particularly to the submissions of the appellant made with respect to the conclusions of the Chambers judge.

The appellant contended that the judge had interpreted the opening words of section 69 (1) too narrowly. It was his submission that the subject-matters of the appeals were the assessments and not merely the complaints about the assessments set out in the notices of appeal to the Board. An alternative submission was that section 71 of the Act should be construed as conferring broad powers on the Board. This alternative submission will be dealt with more fully when I deal with the Western Forest matter.

I think the first proposition advanced on behalf of the appellant is put too broadly. I can conceive of cases like the Western Forest case where the assessment involves both land and building and machinery and yet the subject-matter of the appeal will be only the assessment of the land. Similarly if an appeal is taken to the Board by a taxpayer on the ground that the assessment of the land is too high and there is no appeal by the Assessor with respect to that assessment then in my opinion the Board can only affirm or decrease the assessment but may not increase the assessment confirmed or varied by the Court of Revision even if the Board decides that the value of the land is greater than that found by the Court of Revision. But if the Assessor appeals from the decision of the Court of Revision with respect to the assessment of the land and complains that the assessment is too low then I think he can urge the Board to increase the assessment above the value originally assigned to it and above the value assigned by the Court of Revision. In such an appeal I think the Assessor can present evidence and argument supporting his position which differ from the presentation to the Court of Revision and use a method of assessment which differs from the one he originally used. That is what occurred in the Trizec and Bramalea cases where the Assessor presented to the Board a new method for determining the values of the shopping centres.

For the respondent it was contended that if the Assessor wishes to take such an approach it is incumbent on him to appeal his original assessment to the Court of Revision. Without such an appeal and without a notice of appeal stating that he seeks an increase in the original assessment it was submitted that it is not open to the Board to increase the assessments in the manner proposed by the Assessor. I cannot accede to those arguments. I see nothing in the Act which compels the Assessor to appeal his assessment in the first instance to the Court of Revision. He may do so, of course, since the Act gives him that right. But in my opinion his failure to take such an appeal does not inhibit him from appealing from the Court of Revision and advancing before the Board a new basis upon which the assessment should rest. Nor do I think the failure of the Assessor to appeal his assessment to the Court of Revision precludes the Board from determining the appeal to it upon the basis advanced before it by the Assessor. It may well be that the owner may be taken by surprise because of an inadequate notice of appeal but that is a procedural problem which can be cured by appropriate adjournments granted by the Board in the exercise of its discretion.

It seems to me that it is what is done consequent on the decision of the Court of Revision that determines in large part what is the subject-matter of the appeal to the Board and what action the Board may take on the appeal. The notice (or notices, for there may well be appeals by both property owner and Assessor or by "a person dissatisfied with the decision of a Court of Revision"-see section 68) of appeal, which must set out the ground of appeal (section 68), will play a major role in defining the subject-matter of the appeal. If the appeal from the Court of Revision to the Board is limited in its scope, to say the assessment of land alone, as opposed to land and buildings, then in the absence of an appeal relating to the buildings the Board is limited to dealing with the appeal in relation to land alone. On the other hand if as appears to

be the case here, a taxpayer has succeeded before the Court of Revision with respect to the assessment of land and the Assessor appeals to the Board in respect of that assessment contending it is too low then it seems to me it is open to him to deal with the assessment on such basis as he may be advised to advance for the consideration of the Board, including a basis which may result in the assessment being approved of by the Board at a figure higher than the original assessment given the property by the Assessor and higher than that found by the Court of Revision. In effect the subject-matter of the appeal is whether the assessment of the land should be increased. The converse situation is demonstrated by the Western Forest appeal with which I will deal later.

I do not overlook the provisions of section 70 which tends to enlarge the subject-matter of the appeal. However that effect may be overridden by a notice of appeal which by "special mention" imposes limits on the scope of the appeal.

While it may be true in a general sense that the Court of Revision and the Board are appellate tribunals, I think it is important to note that parties may adduce evidence before both tribunals. Section 46 contemplates the calling of witnesses before the Court of Revision while section 68 (g) provides for witnesses being called before the Board. No doubt in proceedings before the Board the "subject-matter of the appeal" will circumscribe the nature of the evidence and arguments which may be advanced. Nonetheless if the subject-matter of the appeal is whether the assessment is, for example, too high or too low, I think parties to the appeal may call evidence and advance submissions relevant to that subject-matter. For those reasons I am of the view that the Chambers judge, having taken too narrow a view of the meaning to be given the words "subject-matter of the appeal" was in error when he concluded that the Board did not have power to increase the values of the 2 shopping centres beyond the values originally given to them by the Assessor. That conclusion makes it unnecessary for me in these 2 appeals to consider the appellant's argument based on the provisions of section 71 of the *Assessment Act*. It will, however, be necessary for me to consider that alternative argument when I deal with the Western Forest matter to which I now turn.

Here it will be recalled that the taxpayers appealed to the Board from the assessed value of buildings and equipment found by the Court of Revision. No appeal was taken by the Assessor from that decision. No notice was given by the Assessor pursuant to the provisions of Rule 7 of the Rules of Practice and Procedure of the Board. I very much doubt that Rule 7 is of any effect for the purposes of this appeal but I refer to it because I sought information from the appellant concerning the rules and was referred to Rule 7. The Rule provides:

> (1) If the respondent in an appeal intends, on the hearing of the appeal, to recommend to the Board that the decision of a Court of Revision in issue in the appeal should be varied, the respondent shall give notice forthwith upon formulating that intent to the appellant.
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> (2) No such recommendation will be considered by the Board unless supported by appropriate evidence furnished by or on behalf of the respondent making the recommendation.

I am of the view that in these circumstances it was quite proper for the Board to refuse to accede to the request of the Assessor to increase the value of the buildings and machinery because the subject-matter of the appeal was only whether too great a value had been found for the buildings and equipment by the Court of Revision. In my opinion the subject-matter of the appeal is limited because of the absence of any appeal by the Assessor and, perhaps, because no notice was given by him under the provisions of Rule 7 of the Rules and Practice of the Board.

In these circumstances I think the Board correctly declined the request of the Assessor to approve an assessment at an amount higher than that fixed by the Court of Revision. It could, of course, have done so if the appropriate notice of appeal had been given by the Assessor for then the subject-matter of the appeal would have been enlarged.

Counsel for the appellant called in aid the provisions of section 71 of the Act. For convenience the provisions of the section are repeated:

> 71. On an appeal, on any ground, from the decision of the Court of Revision in respect of the assessment of property, the Board may reopen the whole question of the assessment on that property, so that omissions from, or errors in, the assessment roll may be corrected, and an accurate entry of assessment for that property and the person to whom it is assessed may be placed on the assessment roll by the Board.

It was submitted that this section confers a broad jurisdiction upon the Board and stress was put on the words "the Board may reopen the whole question of the assessment on that property". I think that submission is unsound. If the Legislature had intended that result I think it would have included the section in section 69 when the latter was amended in 1977. That is especially so since for many years section 71 and its predecessors have been given a restricted interpretation.

Section 71 is closely modelled upon section 47 of the *Assessment Equalization Act*. The latter section was the subject of consideration in *Re Appeal of MacMillan, Bloedel & Powell River Ltd.* (1961) 36 W. W. R. 463. There Wilson, J., as he then was, had to deal with an assessment which it was contended was discriminatory. An argument appears to have been advanced on behalf of the assessor based upon the provisions of section 47. Of that argument the judge said at page 466:

> I reject crown counsel's argument that section 47 has any relevance to this situation. Section 47 is, I think, somewhat equivalent to the slip rule in the Supreme Court Rules and is not meant to enlarge the specific powers of review given to the Board by section 46 save by providing for the correction of omissions and what might be called mechanical errors. In this connection I refer to *Caven* v. *Ottawa (City)* [1932] OR 369.

Counsel for the appellant contended that that was taking too narrow a view of the provisions of the section and pointed to the amendment made to section 69 in 1977 as indicative of the way in which the powers of the Board had been increased by the Legislature. I was at first inclined to put considerable weight on this submission especially since in 1977 the powers of the Board were expanded to make them equivalent to those enjoyed by the Court of Revision. The errors and omissions referred to in subparagraphs (a) to (f) of section 40 (1) are similar to those referred to in subparagraphs (a) to (f) of section 69 (1) and one would be justified in concluding that when the Legislature used the words "omissions from, or errors in, the assessment roll" in section 71 it intended those errors and omissions to be the same as those referred to in section 40 (1) and section 69 (1). On further reflection, however, I am of the view that section 71 should be given the restricted interpretation given its predecessor by Wilson, J. in the *MacMillan, Bloedel* case. I say that because of the language of the section itself. Just as sections 40 (1) and 69 (1) by their contents and, of course, especially subparagraphs (a) to (f) inclusive, define "errors and omissions", so section 71 by its language limits the meaning to be given to those words. I think the power of the Board to reopen "the whole question of the assessment" is limited by the words "so that" which follow. The latter words and the words that follow them describe the purpose for which the assessment may be reopened. That purpose is to correct "omissions from, or errors in, the assessment roll . . .". The words "accurate entry" are also words of limitation for they imply a power to reopen only if there is an inaccuracy in the roll. Taking the language of the section as a whole I think the omissions and errors with which the Board may deal under section 71 are of a kind similar to those referred to in section 9 of the Act. Subsection (1) of section 9 provides that the assessor shall bring all errors or omissions in the roll completed under section 2 to the Court of Revision for correction. Not only do I think the language used in section 71 limits the scope of the errors and omissions that may be dealt with by the Board under that section to mechanical errors but I think the failure to include in section 69 (1) the matters referred to in section 40 (1) (a) is indicative of the intention of the Legislature that the language of section 71 would be sufficient to permit the Board to deal for instance with a wrong insertion of the name of a person inserted or omitted from the assessment roll. That is a specific kind of error that may be corrected.

In the result I am of the view that the appeal by the assessor in the Western Forest matter should be dismissed but that his appeal in the Trizee and Bramalea matters should be allowed.

At the opening of the appeals counsel for the appellant quite properly drew to our attention the fact that the Board had not dealt with the relationship which the assessed values of the two shopping centres bear to the assessed values of other properties of a similar nature on the assessment roll. He conceded that because of this failure it would be necessary for the matter to be referred back to the Board in order that consideration might be given by the Board to that aspect of the matter. This would be in accord with the judgment of MacKenzie, J. in *Oxford Development Group Ltd.* v. *Assessor Area 02-Capital*, unreported but dated May 5, 1980. Accordingly, the Trizec and Bramalea appeals must be referred back to the Board in order that the Board may deal with them in that respect.