

**The following version is for informational purposes only**

**TRIZEC EQUITIES**

**v.**

**ASSESSOR OF BURNABY/NEW WESTMINSTER**

**ASSESSMENT COMMISSIONER**

**v.**

**WESTERN FOREST INDUSTRIES LIMITED**

Supreme Court of British Columbia (528/79) Vancouver Registry  
(A 790351, A 790350)

Before: MR. JUSTICE M.R. TAYLOR

Victoria, March 21/22, 1979

E.H. Alan Emery for Trizec Equities Limited  
Bruce I. Cohen for Western Forest Industries  
R.B. Hutchison for the Assessor and the Assessment Commissioner

**Reasons for Judgment** (Oral)

April 19, 1979

The first question to which these cases stated give rise is 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 as arrived at, or confirmed by, the Court of Revision decision under appeal.

I find that the words, contained in sec. 62 (1) of the *Assessment Act*, S.B.C. 1974, ch. 6, "with reference to the subject matter of the appeal" refer to the issues raised in the notices of appeal that are properly before the Board. The Board accordingly may exercise the powers enumerated in section 62 (1) (a) to (e) only in order to decide the issues which have been raised by an appellant, that is to say the taxpayer, the assessor or both of them, in notices of appeal properly filed. The Board does not have the power to adjudicate on issues which are not so raised, and therefore not "the subject matter of the appeal", merely because the Court of Revision would have had that power.

There is nothing in the Act which gives to the Board, in the context of these cases stated, any wider power than that thus defined, conferred by section 62 (1).

In reaching this conclusion I am particularly influenced by the fact that the Board would generally be unable to form a conclusion on an issue not raised by the Notice of Appeal. It does not have before it the whole of the roll, as does the Court of Revision, and accordingly it could not adjudicate the important issue of equity, if that issue were not raised and argued by one party, and responded to by the other. That could not, or certainly should not, be done if the issue is not raised in the Notice of Appeal.

It may, perhaps, be said that there *could* be a case in which the taxpayer raises the question of equity, as well as the question of actual, or market value, and the Board could, in such a case, conclude on the basis of the evidence that the assessment was not only below "actual value" but also low in relation to assessments for similar property as described in section 62 (1) (e). But I am of the view that even in those

circumstances the Board would not be entitled to increase the assessment, unless there had been a notice of appeal in which an increase was sought. As noted, unless there is an appeal to increase the assessment approved by the Court of Revision, it could not be said that "the subject matter of the appeal" included any assertion that the Court of Revision erred by setting a figure which was too low.

The second question raised by the cases stated, whether on an appeal by an assessor against a reduction made by the Court of Revision in the original assessment on the appeal of the taxpayer the Board may go beyond restoring the original assessment and actually increase the original assessment, will be separately dealt with.