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See also Stated Case #122

**TRIZEC EQUITIES LTD.
and
BRAMALEA LIMITED**

v.

**ASSESSMENT AREA OF BURNABY/NEW WESTMINSTER (10)
and
THE CORPORATION OF THE DISTRICT OF BURNABY**

Supreme Court of British Columbia (A790350) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Victoria, March 21, 22, 1979

E.H. Alan Emery for the appellants
R.B. Hutchison for the respondents

Reasons for Judgment (Oral)

April 30, 1979

The second question which I have to decide is 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) 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 issue involves definition of the purpose and jurisdiction of the Board. It turns on interpretation of the relevant words of section 60 (1) of the *Assessment Act* which provides as follows:

60 (1) Where a person, including a[n]. . . assessor, is dissatisfied with the decision of a Court of Revision. . . he may appeal therefrom to the board.

The question is this: Does the expression "decision of the Court of Revision" mean: (i) the figure which was arrived at by 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. I am satisfied, being aware of the implications which Mr. Hutchison has very ably impressed on me, that the *latter* is the correct interpretation, that is to say that the decision from which appeal may be taken to the Board is the *order* of the Court of Revision increasing or reducing (or refusing to increase or reduce) the assessment.

The Board is an appellate body and it is, I think, open neither to the assessor nor to the taxpayer to contend on an appeal to the Board that the original assessment was in error if he has not first complained to the Court of Revision that it was wrong in the manner provided by the Act. An appellant can only object before the Board to what the Court of Revision has done, or refused to do, with the original assessment.

Mr. Hutchison emphasizes that while in the present case such an interpretation may operate for the benefit of the taxpayer, there could be other cases in which it had been demonstrated to the Board that an assessment to which the taxpayer had taken no objection to the Court of Revision was, in fact, too high. It would be harsh, he says, in such a case, that the Board should be unable to grant appropriate relief.

But I do not think that it would be unjust, or offend in any way the purpose or intent of the Act, to restrict the jurisdiction of the Board in the manner which I have indicated. There may be many taxpayers whose assessments are too high but who, having failed to complain to the Court of Revision, are unable to obtain relief from the Board. It seems to me the consequences of failure to complain, as required by the Act, should be the same in the case of assessor or taxpayer who finds himself before the Board on an appeal relating to a complaint by the other as they are in the case of an assessment which was never adjudicated upon by the Court of Revision and therefore cannot be considered at all by the Board. This seems to be entirely fair.

The function of the Board, as now defined, is that of an appellate tribunal-the correction of erroneous decisions of other tribunals. Subject to the power under section 64 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.

The Questions will be answered accordingly, costs in each case to follow the event.