ASSESSMENT COMMISSIONER

v.

**SEASPAN INTERNATIONAL LIMITED,
BURRARD DRY DOCK COMPANY LIMITED
(also known as Burrard Yarrows Corporation),
CASSIAR ASBESTOS CORPORATION LIMITED,
BRITISH YUKON NAVIGATION COMPANY LIMITED,
BURRARD TERMINALS LIMITED,
SASKATCHEWAN WHEAT POOL,
NEPTUNE BULK TERMINALS LIMITED,
SEABOARD SHIPPING COMPANY LIMITED,
DILLINGHAM CORPORATION CANADA LIMITED,
GULF OF GEORGIA TOWING COMPANY LIMITED,
ELECTRIC REDUCTION COMPANY
(also known as Erco Industries Limited),
NOVA LUMBER COMPANY LIMITED,
and McKENZIE BARGE AND MARINE WAYS LIMITED**

**ASSESSMENT COMMISSIONER
v.
CANADIAN OCCIDENTAL PETROLEUM LIMITED**

**ASSESSMENT COMMISSIONER
v.
VANCOUVER WHARVES LIMITED**

Supreme Court of British Columbia (A790470, A790471, A790472)

Before: MR. JUSTICE G.L. MURRAY

Vancouver, September 2, 1979

R.B. Hutchison and J. Greenwood for the Appellant
D.W. Shaw for Vancouver Wharves Limited and Canadian Occidental Petroleum Limited
B.I. Cohen for all other respondents

Reasons for Judgment October 4, 1979

This is a case stated by the Assessment Appeal Board pursuant to the provisions of section 67 of the *Assessment Act* wherein the Board asks for the opinion of the Court on the following questions of law:

"(a) Did the Assessment Appeal Board err in law in failing to value the subject water lots at their 'actual value' as required by section 24 of the *Assessment Act*, chapter 6, S.B.C. 1974?

(b) Did the Assessment Appeal Board err in law by the method it adopted in valuing the respondents' water lots by failing to determine whether or not the actual value at which an individual water lot was assessed bore a fair and just relation to the value at which similar water lots were being valued?

(c) Did the method adopted by the Assessment Appeal Board result in the assessment being bad in law by being arbitrary as a decision made at discretion in the absence of specific evidence and based on opinion or preference contrary to section 24 of the *Assessment Act*?

(d) Does the Assessment Appeal Board have the jurisdiction to determine a method of finding the value of water lots and then order the assessor to adopt the method and reduce the taxpayer's assessment by amending the roll according to the results of such calculations?

(e) Does the Assessment Appeal Board have jurisdiction in law to amend its decisions?"

At the hearing, counsel for the Commissioner, who is the appellant herein, withdrew question (e) above.

At the hearing before the Board the assessor took the position that all the water lots in question in this appeal should be assessed "at 30 per cent of uplands, or $1.35 per square foot". One of the appraisers called by the respondents suggested "an average general rate of 80¢ per square foot". The other appraiser called by the respondents stated that" a rate of 70¢ a square foot would be appropriate to use for assessment purposes". The assessor and the two appraisers both supported their submissions with evidence relating to the water lots in question and to comparable properties.

The Board ordered that a rate of 75¢ per square foot be applied for the 1978 roll and the Commissioner now appeals because he says that the Board has failed to assess each lot individually as it was required to do under section 24 of the *Assessment Act*. It is obvious that the Commissioner now disagrees with the submission that the assessor made to the Board and Mr. Hutchison was quite frank in so conceding.

Counsel for the appellant relied upon the unanimous decision of the Supreme Court of Canada in *Pacific Logging Company Ltd.* v. *The Assessor for the Province of British Columbia* - case 99 of the British Columbia Stated Cases. In that case Mr. Justice Maitland, in giving the judgment of the court, said:

"We are in agreement with the reasons for judgment delivered by MacIntyre, (sic.) J.A. in the Court of Appeal. The appeal is allowed, the judgment of the Court of Appeal is set aside. The judgment at trial is restored but subject to variation thereof by substituting for the opinion expressed in answer to the question the following: 'Yes, the assessor erred in law in adopting an arbitrary method of assessment'."

Mr. Justice McIntyre had dissented in the British Columbia Court of Appeal and I quote from his judgment at pages 525 and 526 as follows:

"The assessor must determine the actual value of these lands. He must do so in accordance with s. 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 this section amounts to 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.

The method he adopted is clearly set out in paragraph 12 of the case which is reproduced in the judgment of Mr. Justice McFarlane. *It seems clear to me that to divide the area into two parts and assign a uniform value per acre to the lakebed in each district is to treat all of the lands as having the same value without reference to individual differences and without reference to the factors mentioned in s. 37 (1)*. This step provided an arbitrarily chosen base for the assessment. The second step described in subparagraph (b), a selection of a 50-acre lake bed as the most valuable, is stated to have been made on an arbitrary basis. The selection of per acre prices for upland in the two areas described in subparagraph (c) was said to have been based upon sales data and may be said to rest upon a consideration of factors mentioned in s. 37 (1), but to adopt 50 per cent of the upland values so determined as the value of the lake bed bears no apparent relation to the requirements of s. 37 (1). The variation of 5 per cent of value for every five acres of variance from the arbitrarily chosen 50-acre area is equally arbitrary. The considerations mentioned in subparagraph (f) may well bear a relation to those mentioned in s. 37 (1) but since they are applied to values obtained on an arbitrary basis they cannot alter the arbitrary nature of the resulting assessment.

When I use the word 'arbitrary' I mean-and from the context in which the word is used in the case I conclude the assessor meant-a decision made at discretion *in the absence of specific evidence* and based upon opinion or preference (see Shorter Oxford English Dictionary). The resulting assessment is then made without regard for the statutory provisions and uncontrolled by them.

The authorities are clear that an assessment must be made in conformance with the statute which provides for it. The respondent cited various authorities for this proposition including *Re Starr Manufacturing Company* (1926) 1 D.L.R. 212, *In Re Soda Lake Assessment and Malhus* (1923) W.W.R. 19, but the most significant authority is *Montreal* v. *Sun Life Assurance Company of Canada* (1952) 2 D.L.R. 81 where Lord Porter at page 97 stated:

> Their Lordships do not dissent from the view that if the Board of Revision has followed the correct method and used its discretion, its findings should not be interfered with unless it is plainly erroneous, but where as here it has followed a rigid formula which has no justification in law they feel free to disregard the finding which has been reached and to accept that of the Judge of the Superior Court.

Reference was also made to *In Re The Assessment Act and The Nelson & Fort Sheppard Railway Company* (1904) 10 B.C.R. 519 and the comments of Drake, J. at page 523.

They all enunciate the proposition that an assessment made in a manner not justified in law cannot stand. In my view that is what has occurred here. The assessor has assessed upon a basis not authorized in the statute, and in the selection of another method which has no legal warrant, has acted in an arbitrary manner and created an arbitrary assessment. I am aware that in the cases cited above, statutory provision differing from s. 37 (1) of the *Assessment Equalization Act* were involved. The important point here, however, is not that statutes differed, but that the assessments were held bad because the assessors departed from the statutory provisions then governing." (My italics.)

Mr. Shaw and Mr. Cohen attempted to distinguish the present case from the *Pacific Logging* case on the basis that there was "specific evidence" before the Board in the case at bar, but as I read the first italicized portion of the judgment of McIntyre, J.A. he was saying that to assign a uniform

value to each and every lot in a district is to treat all lots as having the same value and this procedure automatically constitutes an arbitrary assessment. In my view the later reference to "specific evidence" does not detract from what McIntyre, J.A. said in the first italicized portion of his judgment.

I am reinforced in the conclusion at which I have arrived by the judgment of my brother Trainor in the case of *The Assessment Commissioner, Province of British Columbia* v. *Kingsview Properties Ltd.* - Case 125 of the British Columbia Stated Cases, where he says at page 7:

> "The responsibility of the Board was to determine the value of each lot. This responsibility was not met by designing a formula, however accurate, which was handed back to the Assessor. As the section provides, the Board has all the powers of a Court of Revision and s. 53 gives it broad powers to make inquiries concerning matters pending before it.
>
> Although a reassessment can be ordered under s. 62 (2), it must be approved by the Board before it is effective. So whatever procedure is adopted by the Board to gather the information needed to determine actual value of each lot, the ultimate responsibility rests on it to make a specific determination for each lot. That responsibility cannot be delegated."

I am further reinforced in the conclusion at which I have arrived by the fact that before me all parties stated that it was common ground that water lots lying to the east of the Second Narrows Bridge by reason of their location and other factors had a substantially lower value than water lots to the west of the bridge. Those eastern lots however have in the decision of the Board been given the same value as the western lots. That result cannot be correct in light of the provisions of section 24 of the *Assessment Act*.

In arriving at my conclusion I have not overlooked the other authorities cited to me by Mr. Shaw and Mr. Cohen in their able arguments, but in the light of the decision of the Supreme Court of Canada in the *Pacific Logging* case I am unable to find any assistance in those other authorities.

I accordingly answer questions (a), (b) and (c) in the affirmative and in accordance with section 67 (5) of the *Assessment Act* I direct that this opinion be remitted to the Board.

I have not answered question (d) and I consider that it is too broadly and too vaguely framed.

As to the costs of these proceedings, I direct that in view of the position taken by the assessor before the Board all parties will pay their own costs.