

The following version is for informational purposes only

ASSESSMENT COMMISSIONER

v.

**WOODWARD STORES LTD.
CHEVRON CANADA LTD.
and
BRITISH COLUMBIA FOREST PRODUCTS LTD.**

Supreme Court of British Columbia (A810002, A810003, A810099)

Before: MR. JUSTICE K.F. FAWCUS (In Chambers)

Vancouver, January 28, 1981

J.E.D. Savage for the Appellant
B.J. Wallace for the Respondents

Reasons for Judgment (Oral)

January 28, 1981

THE COURT: This is an appeal by way of stated case pursuant to the provisions of the *Assessment Act* R.S.B.C. 1979, Ch. 21. The appeal is brought by the Assessment Commissioner of British Columbia against a decision of the Assessment Appeal Board.

Two preliminary objections were taken to the jurisdiction of this Court to hear the appeal. First, it is submitted that because each of the three members of the Board did not sign the case as stated that there has been no case submitted to this Court within the meaning of section 74, subsection 3 of the Act. That subsection reads as follows:

"The Board shall, within 21 days after receiving the notice under subsection (2), submit the case in writing to the Supreme Court,"

The case as stated is signed by the Chairman of the Board only. By virtue of section 49 of the Act, the Chairman is the chief executive officer of the Board. The appellant submits, therefore, that as chief executive officer, the Chairman is entitled to sign the case on behalf of the Board. Furthermore, the appellant points to an affidavit filed by the Chairman of the Board, wherein, in part, he states the following:

"That in my capacity as Chairman of the Assessment Appeal Board, I signed the Stated Case on behalf of the Assessment Appeal Board.

"That the other Members of the Assessment Appeal Board which heard the within appeal are Mr. D. L. Vaughan, Q.C., and Mr. G. D. Frampton, A.A.C.I.

"That before signing the Stated Case herein, I conferred with Mr. D. L. Vaughan, Q.C., on each Stated Case and was specifically authorized by him to sign and submit each of the Stated Cases on behalf of the Board.

"That at the time the Stated Case was signed and submitted for filing in the Supreme Court, Mr. G. D. Frampton, A.A.C.I., was out of the Province.

"That for each Assessment Appeal Board, only the Chairman signs a Stated Case on behalf of the Assessment Appeal Board.

"That it is further the practice of each Assessment Appeal Board that in the absence of any Member, the Assessment Appeal Board will conduct its business by a majority."

In *Corporation of the District of Saanich v. Racquet Club of Victoria Holdings Limited*, Supreme Court Registry No. 000230, Victoria Registry, decided March 2, 1978, (not yet reported), which was also on appeal by way of Stated Case under the *Assessment Act*, my brother Fulton decided that the Acting Chairman of the Board could act on behalf of the Board for the purpose, inter alia, of stating a case under the Act. In that case there was evidence that the Acting Chairman was authorized to sign the case as stated on behalf of the Board.

The respondent in the case at Bar relies on a contrary decision of my brother Bouck in *The Arbutus Club v. Assessor of Area 09-Vancouver*, Supreme Court Registry No. A800302, decided September 9, 1980 (not yet reported). However, from my reading of the Reasons for Judgment, Bouck, J. did not have the benefit of argument on the point, nor, apparently, did he have evidence before him that the Chairman of the Board had signed the case as stated on behalf of the Board.

In my view, the case at Bar is on all fours with the decision referred to above of my brother Fulton. It would, therefore, be inappropriate for me to disagree with it: *Vide In Re Hansard Spruce Mills Ltd.* (1954), 13 W.W.R. 285. I therefore disallow the first preliminary objection and hold that the case at Bar was properly stated and submitted to this Court.

The second preliminary objection is that because the Board did not submit the case within the time limited by the Act, this Court has no jurisdiction to hear the appeal and that the appeal must, therefore, be dismissed. The relevant subsections of the Act are as follows:

"74 (2) A person affected by a decision of the Board on appeal, including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the Board to submit a case for the opinion of the Supreme Court on a question of law only by

(a) delivering to the Board, within 21 days after his receipt of the decision, a written request to state a case; and

(b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the Board to state a case to the Supreme Court.

(3) The Board shall, within 21 days after receiving the notice under subsection (2), submit the case in writing to the Supreme Court."

The respondent agrees that the appellant met the conditions precedent of the section, in that a written request to the Board was delivered to it on December 22, 1980, which was within the 21 days after the appellant received the Board's decision. However, the Board did not submit the case to this Court until January 16, 1981. By virtue of the provisions of the Act, to which I have referred, the final day for submission of the case to this Court was January 12th, 1981. These facts are agreed to by the appellant. However, the appellant submits that because there was no fault on his part, in the sense that he met the conditions precedent as they affected him, as stated in the Act, that he should not be prejudiced because of the Board's failure to meet the conditions precedent as stated by the Act as they apply to the Board. I agree. In my view the conditions precedent in section 74, although mandatory vis-a-vis the appellant, are directory only vis-a-vis the Board. In *R. v. Bourassa* (1972), 1 W.W.R. 285, the Court of Appeal of this Province decided that principle with respect to an appeal by way of stated case under the relevant provisions of the *Criminal Code* of Canada. Those provisions are, in substance, in my view, analogous to the

provisions under consideration in the *Assessment Act*. I therefore disallow the second preliminary objection.

In the result, I hold that the case as stated is properly before this Court for decision on the merits.

The foregoing reasons apply to each of the three appeals before me.