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B.C. TEACHERS' FEDERATION

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A870141)

Before: MR. JUSTICE BOUCK (in chambers)

Vancouver, May 22, 1987

Charles S. Hopkins for the Appellant
Blair T. MacDonell for the Respondent

Reasons for Judgment (Oral) May 22, 1987

THE COURT: This is a stated case appeal under the *Assessment Act* R.S.B.C. 1979, Chapter 21. The British Columbia Teachers' Federation (the Federation) alleges the Assessment Appeal Board erred in law when it apportioned certain common areas of its premises as Class 8 property, described as "recreational property belonging to a non-profit organization".

The Federation is a non-profit organization which owns certain lands and buildings at 2235 Burrard Street, Vancouver. From that location it represents all public school teachers in the Province and looks after their interests in a broad range of professional and economic matters. In the building there are offices, hallways, washrooms, an auditorium and various meeting halls.

When determining the class of property the Board found that the auditorium and the various meeting rooms were exempt from taxation as Class 8 property. It also found that other areas of the building were not exempt because they were used for business or commercial purposes in representing the interests of schoolteachers.

Within the building there were the so-called "common areas". Apparently they were partly used for commercial and business purposes and partly used as facilities for the auditorium and meeting rooms. While the material is not altogether clear on this I assume it includes such things as hallways and washrooms.

In its findings of fact the Board determined that 33.4 per cent of the common areas should be placed in the Class 8 category as being necessarily incidental to the use of the meeting hall and the auditorium. The balance of 66.6 per cent should be the non-exempt classification as necessary for the commercial and business purposes of the Federation.

It is the contention of the appellant that the Board erred in law when it reached this conclusion. On the other hand, the respondent says that this was a finding of fact which the Board was entitled to make.

Disputes over whether a matter is a question of fact or one of law are not often easy to resolve. I am inclined to the view it is indeed a question of fact because the Board found as a fact that 33.4 per cent of the common area of the building should also be given Class 8 classification as being necessarily incidental to the use of the "meeting hall".

As a question of fact there can be no appeal under the Statute and, consequently, the appeal should be dismissed if I am right on that point.

On the other hand, should I be in error I ought to decide whether the Board erred in law.

The relevant regulation which gives rise to the appeal is worded as follows:

> "8. Class 8 property shall include only. . .
> (c) that part of any land and improvement used, or set aside for use as a meeting hall for a non-profit fraternal organization for persons of either or both sexes, together with the facilities necessarily incidental to that use."

As I understand the submission of the appellant, it argues the Board has no power in law to apportion the common area 33.4 per cent as non-taxable and 66.6 percent as taxable. It should either be all assessed as non-taxable or all assessed as taxable.

This conclusion is reached because the regulation fails to include the words "all or part of" before the words "the facilities" in Regulation 8 (c).

With great respect, I think that is too narrow a reading of the regulation. The opening words of sub-section (c) uses the words "that part of any land and improvements" and it is reasonable to imply the reference to the word "part" at the beginning also refers to "facilities" later on in the sub-section. This gives the regulation a flexible and rational application to circumstances such as those under discussion. Otherwise the assessor would have to make an arbitrary ruling that all the common areas were either tax exempt or not tax exempt. I do not see this as the proper scheme of the Act or the regulations.

Accordingly, I dismiss the appeal and answer Question 2, which was posed in the following way:

> "2. Did the Board err in law in not including other areas of the property in question to be 'facilities necessarily incidental to that use' as in the Prescribed Classes of Property Regulation (B.C. Reg. 438/81) Class 8."

Answer: No.

The appeal with respect to Question 1 was abandoned at the opening of this application.

Costs follow the event.

Is there anything else?

Thank you for your help and assistance, gentlemen and lady.