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**JOAN SAXTON**

**v.**

**ASSESSOR OF AREA 9 - VANCOUVER**

Supreme Court of British Columbia (C864996) Vancouver Registry

Before: MR. JUSTICE MURRAY

Vancouver, October 9, 1987

Joan Saxton appearing personally  
John E.D. Savage for the Respondent

**Reasons for Judgment**

October 9, 1987

THE COURT: (Oral) This is a stated case pursuant to section 74 subsection 2 of the *Assessment Act*. The appellant is in person which in many ways is unfortunate, but that by no means is intended as a reflection on her. It has caused me a great deal of difficulty in that she appears to have drawn seven questions which I am asked to answer, and I say at once that the answers to six of those questions must be "no" and that is largely because, in my view, the questions were not properly framed to allow an answer by this court to questions of law. But one question that I am going to answer "yes" is question number 3 and I do so somewhat hesitatingly as I am not here completely satisfied that the question is properly worded, but it is close enough to cover the difficulty that I find with the proceedings before the Board. The question as framed reads this way: "Was it not a procedural error and/or denial of fundamental justice that the appellant was not given an opportunity to hear evidence from the respondent or to cross-examine him on evidence in his file, including minutes of the Court of Revision and other documents which had not been presented to the Board nor the appellant even though the appellant had given written notice in advance she was relying on this information for her appeal. "As I say, there is a lot of surplusage in that question, but the reasons that I am about to give here I think will be apparent once I have recited the facts from the transcript. On page two of the transcript the Chairman says this: "Okay, we have marked as Exhibit I your written statement; would you like to take us through it please. You were a little late in appearing so we are going to gear this to the time allocated because we have a full schedule.

"Now it appears from several other remarks that the Chairman was most anxious to get on with the matter and was urging the appellant to get on with her case. I may say that I, having listened to Mrs. Saxton today, experienced somewhat the same problem, but at page 15, the error in law that I see taking place starts to appear. I'm sorry, I had better go back to about the middle of the page, when Mrs. Saxton says:

"Excuse me I have taken quite a few years of law school so I don't think I would publicly engage counsel.

THE CHAIRMAN: All right, well you would have to state the case yourself then.

MRS. SAXTON: Yes.

THE CHAIRMAN: And state the facts and ask the questions where you think the Board was in error(?). Okay that's your evidence, Mrs. Saxton?

MRS. SAXTON: Well, I will have a chance to, I understand that he will now have a chance to say something and I will have a chance to answer."

The Chairman then said: "The respondent assessor will now have the opportunity to cross-examine you on your evidence and ask questions of you. He will then submit his evidence in chief and you will have an opportunity to cross-examine him, okay?"

Then there was cross-examination and he says, "Okay - cross-examination" and Mr. Lee said, "I have no questions, Mr. Chairman.

THE CHAIRMAN: You have a submission for us?

MR. LEE: Mr. Chairman, before I do that I'd like - I reserve the right to put in evidence later - a motion that this appeal be dismissed for lack of evidence."

He then proceeded to argue why the appeal should be dismissed for lack of evidence. The transcript shows no opportunity was given to Mrs. Saxton to respond to the argument for dismissal for lack of evidence or to respond to the motion for lack of evidence. The proceedings were then adjourned and the Chairman came back and dismissed her appeal for lack of evidence.

Now it is apparent to me at that stage that Mrs. Saxton had been assured by the Chairman that the Assessor was going to give evidence. She was given no opportunity to reply to the motion which was advanced and acted on, and in my view she was clearly deprived of her right at that stage to call further evidence before the motion was disposed of. She never did say that she had closed her case, and the case was in fact disposed of before she had closed her case. It may well be that she may have wanted to call the Assessor herself as her witness. I don't know.

So given those circumstances I have arrived at the conclusion that there was a fundamental error and that the Board exceeded its jurisdiction. As to what follows from that, I suppose that it means that the Board must now allow her an opportunity to call her further evidence if she so desires. I am required under the statute simply to give my opinion to the Board under subsection 6 of section 75, which provides that the court shall hear and determine the question and within two months give its opinion and cause it to be remitted to the Board. I have given my opinion by the answers I think to the question and by these reasons which I have just delivered. Now there remains only the question of costs. Any submissions on that? - Short submissions!

MS. SAXTON: I am impecunious.

THE COURT: Well ordinarily, you having won the case, you are entitled to the costs so I will hear from Mr. Savage as to why you are not entitled.

MR. SAVAGE: Well my lord, the appellant is unrepresented, the cost of the transcript was paid for by the respondent and the filing fee was paid by the Assessment Appeal Board.

THE COURT: Of course the appellant isn't entitled to any counsel fees, she appeared in person.

MR. SAVAGE: That leaves nothing that I see, my lord, the only disbursements, there is no filing fee because it is a Crown filing, a stated case.

THE COURT: I am going to give her her costs if in fact she can demonstrate to the Registrar that she has some costs.

MS. SAXTON: What about damages because penalty and interest-

THE COURT: You can't get damages on a stated case, you can get your costs on the Supreme Court tariff if you can bring yourself within that.

MR. SAVAGE: My lord, there is one other matter in this. You indicated at the commencement of your reasons that the answer to six of the questions must be "no." I wonder if you would specify which questions those were. There was one that was a charter question, which really couldn't be answered.

THE COURT: Well just a minute. The questions are numbered 1, 2, 3,4, 5, 6, 7. I have said that the answer to all those questions is "no" except question number 3. Does that cover it?

MR. SAVAGE: Yes. it does.