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**ASSESSMENT COMMISSIONER,
ASSESSOR OF AREA 05 AND ASSESSOR OF AREA 06**

v.

ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia (89 2227) Victoria Registry

Before MR. JUSTICE PARRETT

Victoria, June 14, 1990

Guy E. McDannold for the petitioners
Michael J. O'Conner for the respondent

Reasons for Judgment

June 14, 1990

THE COURT (Oral): This is an application brought under the provisions of the *Judicial Review Procedure Act*.

The petitioners seek declarations under section 2 of the Act:

1. A declaration that it is not within the jurisdiction of the Assessment Appeal Board to order the Assessor to amend the assessment roll by a predetermined amount on properties which are not the subject of an appeal before the Assessment Appeal Board.
2. A declaration that the Assessment Appeal Board acted contrary to law and exceeded its jurisdiction in its decision dated May 31st, 1989 between *Jeep and Ina Dehaan v. Assessor of Area 06 - Courtenay* and in its decision dated August 21st, 1989 between *William D. and Janet B. Hunter and Assessor of Area 05 - Port Alberni* when the Board in both instances ordered the Assessor to amend the Assessment Roll to change the value on properties which were not the subject matter of the appeal before the Assessment Appeal Board.
3. An order setting aside that part of the Board's decision relating to the amendment of values for properties other than the Appellants' property in the decision dated May 31st, 1989 between *Jeep and Ina Dehaan v. Assessor of Area 06 - Courtenay* and in the decision dated August 21st, 1989 between *William D. and Janet B. Hunter and Assessor of Area 05 - Port Alberni* relating to the properties other than the Appellants'.

The facts leading to this application are not disputed. On more than one occasion the respondent, the Assessment Appeal Board, has ordered the Assessor to amend the Assessment Roll by specified amounts on properties which were not the subject matter of an appeal before the Assessment Appeal Board.

The materials filed in support of the application give two specific examples. The first was an appeal taken to the respondent Appeal Board by Jeep and Ina Dehaan from a decision of the 1989 Court of Revision. The appeal involved the value of a residential strata unit located on the

top floor of a four-storey wood frame structure in Campbell River. The owners of the other three units on the same floor did not appeal their assessments.

The Dehaans' appeal was heard and on May 31, 1989 the Assessment Appeal Board ordered the Assessor to amend the Assessment Roll by reducing the assessed value of the Dehaans' unit by 2.33 percent. They also ordered the Assessor to amend the Roll to reduce the assessed value of the other three units on the same floor by the same percentage.

The second example was an appeal by William and Janet Hunter from the decision of the 1989 Court of Revision. This appeal was based on the assertion that the value of their property at Nanoose Bay was too high for a number of reasons including the fact that their property had an unmaintained dirt access road. The owners of the neighbouring properties (Lots 2, 3, 4, 6, 7 and 8) did not appeal their assessments.

On August 21, 1989 the Assessment Appeal Board ordered the Assessor to reduce the assessed value of the Hunter property by a five percent road allowance factor. In the same decision they ordered a similar five percent reduction on each of the values of the neighbouring properties.

The Assessment Appeal Board in carrying out its duties exercises powers and draws its jurisdiction from the provisions of the Assessment Act R.S.B.C. 1979 c. 21. The Board is set up by powers given to the Lieutenant Governor in Council in section 48 of the Act. The powers and jurisdiction of the Board is found in parts 6 and 7 of the Act.

Under the provisions of the Act the various Area Assessors prepare the Assessment Roll as directed in section 2 of the Act. After the Roll has been prepared the next phase of the scheme involves the hearing of appeals by the Court of Revision. Once these hearings are complete the Court of Revision confirms and authenticates the Assessment Roll as provided in section 47 (2) of the Act.

The significance of that step is set out in section 10:

"10. The completed Assessment Roll as confirmed and authenticated by the Court of Revision under section 47 is, unless changed or amended under section 11, 73 or 75, valid and binding on all parties concerned notwithstanding any omission, defect or error committed in or with respect to that Assessment Roll, or any defect, error or misstatement in any notice required, or the omission to mail the notice. The Assessment Roll is, for all purposes, the Assessment Roll of the municipality or rural area as the case may be, until a new Roll is revised, confirmed and authenticated by the Court of Revision."

The Act permits changes or amendments to the confirmed and authenticated Assessment Roll in three specific ways:

- (1) corrections made in the specified situations by supplementary roll as provided in section 11.
- (2) a direction from the Assessment Appeal Board under section 73, and
- (3) a direction from the Supreme Court or Court of Appeal under section 74.

The section that permits the respondent Board to vary the assessment contained in the authenticated Assessment Roll is section 73 and its powers on the hearing on one of these appeals is defined and limited by section 69 which provides: "69 (1) In an appeal under this Act the Board has and may exercise with reference to the subject matter of the appeal, all the powers of the Court of Revision . . ."

This section, in my view, limits the use of the specified powers to the subject matter of the appeal. It in no way can be viewed as authorizing the expansion of the powers to govern properties which are not before the Board by way of appeal.

The Board is given further powers under section 69 (2) and section 71 of the Act. The power given in section 69 (2) is central to the issue arising in this petition. It provides that: "69 (2) Where, on the appeal, the Board finds that the assessed value of land and improvements in a municipality or rural area is in excess of assessed value as determined under section 26, it may order a reassessment by the Commissioner in all or part of the municipality or rural area, and the reassessment, on approval by the Board, shall, subject to section 75, be binding on the municipality or rural area, as the case may be."

The legislature has, in this section, provided within the scheme of the Act both the powers and a very specific process for dealing with the situations which arose in the Dehaan and Hunter appeals. It is not, in my view that utilized by the Assessment Appeal Board in those instances. The provision in section 71 permits, on an appeal, the reopening of the Roll but once again the power is limited to "the question of the assessment on that property . . ."

The process provided is one in which the Board can in appropriate circumstances order a reassessment by the Commissioner. The Commissioner upon completion of the reassessment reports back to the Board for approval. I can find nothing in the enabling legislation which permits the process adopted by the Assessment Appeal Board in these instances.

The Supreme Court of Canada dealt with jurisdictional error in *Le Syndicat National des Employes de La Commission Solaire Regionale de L'Outaouais v. Union des Employes de Service Local 298 (F.T.O.)* [1988] 2 S.C.R. 1048 at page 1086 where Beetz, J. said: "It is I think possible to summarize in two propositions the circumstances in which an administrative tribunal will exceed its jurisdiction because of error:

1. if the question of law at issue is within the tribunal's jurisdiction, it will only exceed its jurisdiction if it errs in a patently unreasonable manner; a tribunal which is competent to answer a question may make errors in so doing without being subject to judicial review;
2. if however the question at issue concerns a legislative provision limiting the tribunal's powers, a mere error will cause it to lose jurisdiction and subject the tribunal to judicial review."

The Assessment Appeal Board in ordering the Assessor to amend the Roll with respect to properties which were not the subject of an appeal purported to exercise powers that are outside their jurisdiction and ignore the limiting provisions of the Act. This is not, in my view, a mere technicality but a significant and fundamental departure from the scheme envisioned by the Legislation. In part that legislation is intended to bring certainty and finality within the scope of section 10 of the Assessment Roll and to provide within the Legislation certain specific procedures by which variations or amendments may take place.

The Assessment Appeal Board, in my view, does not have the jurisdiction to order the Assessor to amend the Assessment Roll by predetermined amounts on properties not the subject of an appeal before the Board.

In their decisions of May 31, 1989 (Dehaan) and August 21, 1989 (Hunter) the Board exceeded its jurisdiction in ordering the Assessors to amend the Assessment Roll in each case to change the value of properties which were not the subject matter of appeals before the Board.

There will be orders setting aside those portions of the Board's decisions.

In view of the conclusions I have reached, I am also directing that these two appeals be remitted to the Assessment Appeal Board for reconsideration as provided for by section 5 of the *Judicial Review Procedure Act*. Upon reconsideration the Board may decide it is appropriate to exercise their powers under section 69 (2) of the Act.

Costs will follow the event.