

The following version is for informational purposes only

HOWARD A. GERMAINE

v.

ASSESSOR OF AREA 25 - NORTHWEST

Supreme Court of British Columbia (SC0085) Prince Rupert Registry

Before the HONOURABLE MR. JUSTICE CURTIS (in chambers)

Prince George, November 29, 1994

(No Counsel) for the Plaintiff
G.E. McDannold for the Defendant

Reasons for Judgment (Oral)

November 29, 1994

Howard Germaine and his wife operate a small grocery store in Burns Lake. Mr. Germaine, who owns the business premises, has appealed the ruling of the Assessment Appeal Board which fixed the actual value of the property at one hundred and twenty-three thousand dollars for assessment purposes.

An appeal from the decision of the Assessment Appeal Board is authorized by Section 74(2) of the *Assessment Act*. That section provides:

"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"

and proceeds thereafter to describe the manner in which an appeal is to be brought.

Counsel for the Assessor of Area 25 - Northwest submits that the seven questions set forth in the Stated Case brought by Mr. Germaine are all questions of fact, such that this Court being empowered to deal with questions of law only has no jurisdiction to review the decision on the factual bases set forth.

Section 74 of the *Assessment Act* clearly limits the jurisdiction of this Court, and the Court is not empowered to weigh the evidence and come to its own opinion, but rather must deal only with issues of law. It is not always easy to determine what is an issue of law and what is an issue of fact. However, a helpful definition is set forth by Justice Southin in the case of *Crown Forest Industries Limited v. Assessor of Area 6 - Courtenay*, August 1985, B.C.A.C. Stated Cases 210 at page 1179, where it is held the Court's power to intervene in such cases is limited to instances where the Appeal Board has:

1. misinterpreted or misapplied legislation,
2. misapplied general principles of law, or

3. acted without any evidence, or upon a view of the facts which could not reasonably be entertained.

A reading of the seven questions posed in the present case reveals they all raised issues of fact only. The Board's decision demonstrates that it considered the evidence before it in reaching its decision. This is not a case of no evidence or conclusions which are not reasonable as there is evidence upon which the Board could reach the conclusion it did. Whether or not I would reach the same conclusion on the evidence is irrelevant. It is the Assessment Appeal Board not the Supreme Court of British Columbia which is empowered by the legislation to determine the actual value of properties from the evidence. I must accordingly dismiss the appeal of Mr. Germaine against the finding of the Board as it is not founded upon a basis upon which this Court can review the decision.

While the 1993 assessment is thus not reviewable, I do note that the Germaines may proceed to put forth their case concerning the 1994 assessment, as that assessment, I understand, is under appeal by the Assessor, and whatever evidence they wish to call concerning the actual value of their property may be heard at the time concerning the 1994 assessment.

I am advised by counsel for the Assessor that there is no claim for costs in this appeal. Accordingly, each party shall bear their own costs.

There's not anything further I could say about it.

(Excerpts from transcript)