

Attn: James Fraser  
LAWSON LUNDELL LAWSON & MCINTOSH

Attn: Peter Klassen/David Houston  
CREASE HARMAN & COMPANY

**Appeal No:** 2001-12-00006; 2001-12-00007; 2002-12-00065; 2003-12-00068

**Roll No:** 12-43-305-32599-000; 12-43-305-32599-002

**Morguard Investments Limited, et al. v. Assessor of Area #12 - Tricities/Northeast Fraser Valley – Requirement to State a Case**

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The Board has received a Requirement to State a Case from its decisions in these appeals from Hudsons Bay Company and Zellers Inc (the Bay and Zellers). Mr. Houston submits the Board does not have jurisdiction to state the case because the Bay and Zellers are not “a person affected” within the meaning of section 65 of the *Assessment Act*. Mr. Fraser submits this is an issue for the Court’s jurisdiction, not the Board’s, and in any event that the Bay and Zellers are “person’s affected”.

Section 65 (1) of the *Assessment Act* provides that “...a person affected by a decision of the board on appeal,...may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.” The *Act* then goes on to prescribe timelines for the Board to state the case and for the Court to hear it. Mr. Houston submits the Board only has jurisdiction to state the case if the person requiring it is a “person affected”. If this is so, the Board would be required to determine, when it is in dispute, whether an applicant is a “person affected”.

While section 65 is worded in such a way so as to suggest that it is for the Board to make this determination, in my view its intent is really to provide a right of appeal to the Supreme Court, on a question of law, from a decision of the Board to “a person affected”. Whether someone is “a person affected” is, therefore, a matter affecting the Supreme Court’s jurisdiction to hear the appeal. The jurisdiction of the Supreme Court to entertain the appeal, is an issue for the Court’s determination.

Even if the question of whether someone is a “person affected” entitling them to require the Board to state a case is a matter within the Board’s jurisdiction, the Board’s decision on this point would, of course, be reviewable, on a standard of correctness, by the Supreme Court in any event. Further, in order to make this determination, the Board may require, as it would in this case, evidence from the parties as to how the applicant is alleged to be affected by the Board’s decision. It simply makes more sense, that when the standing of an applicant to require an appeal is disputed, that issue be determined by Court who must ultimately determine the appeal, and not the Board.

I further rely on the Court’s decision in *GDP Investments Ltd v. Assessor of Area #04 – Port Alberni*, 1998 Stated case 417, in concluding that issues of compliance with section 65 are not within the Board’s jurisdiction but are matters for the Court.

I find, therefore that the Board must state the case, and the issue of whether the Bay and Zellers are persons affected is a matter for the Court’s jurisdiction. I make no finding in that regard.

I enclose a further draft of the proposed form of stated case. **The Board must file this case today. In order to do that, the deadline for any further comments is 10:30 am.**

With respect to Mr. Fraser's inquiry about the confidential spreadsheet referred to in the Board's letter of January 16, 2003, this spreadsheet was not returned to the parties and is still in the possession of the Board along with some other documents received from the parties in confidence in the context of settlement conference proceedings. These documents are in a sealed envelope and would have been in the Board's files at the time the Recommendations were received.

As to the paragraph suggested by Mr. Houston re representation, the record reflects Mr. Houston's presence at the appeal management conferences. While the Board was aware counsel was involved on behalf of Coquitlam Centre and would appear if the appeal proceeded to hearing, counsel for Coquitlam Centre did not participate at the appeal management conferences. The first reference in the Board's record to Mr. Gibson's involvement appears to be the participation of K. Koleopy at the February 11, 2003 AMC. The record of this AMC was sent to Mr. Gibson and he was copied with subsequent notices of AMC and the Notice of Hearing. Neither counsel participated in the Settlement Conference proceedings. As the Statement of Facts in the Stated Case is to reflect the Board's understanding of the facts and the record before the Board, and as the Board has no knowledge of the extent of participation of counsel, I think it is best if the record just speaks for itself as to the representatives of the parties.

With respect to Mr. Fraser's suggested revisions to paragraph 8, I am not convinced naming the actual Board Members involved is relevant as the Board Members act on behalf of the Board and their decisions become a decision of the Board. I have attempted to make the paragraph more specific to this appeal as well as setting out the Board's general practice.

With respect to the additional fact suggested by Mr. Fraser with respect to the leases and the requirement to pay taxes, this is not a matter that was in evidence before the Board in these appeals or that the Board has any knowledge of. It is not a matter the Board can set out as fact.

If you have any further comments please provide them by 10:30 am. At that time I will consider any proposed final revisions and finalize the Stated Case for filing in the

Vancouver Registry today. The Board will provide you with copy of the filed Stated Case.

For the Board

Cheryl Vickers,  
Chair

Encl.

pc. Assessor of Area #12 - Tricities/Northeast Fraser Valley (Michael Lomax)  
Deloitte & Touche L L P Property Tax Services (Philip Gertsman)  
Farris Vaughan Wills & Murphy (Barry Gibson)  
B C Assessment Authority (Mim Quigley)