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**ETHEL S. NEWBOLD**

**v.**

**ASSESSOR OF AREA 09 - VANCOUVER**

SUPREME COURT OF BRITISH COLUMBIA (L022263) Vancouver Registry

Before the HONOURABLE MR. JUSTICE LOWRY

Date and Place of Hearing: January 10, 2003, Vancouver, BC

R. Newbold for the Appellant

G.P. Holeksa for the Respondent

**Reasons for Judgment (Oral)**

January 10, 2003

[1] THE COURT: Ethel Newbold sought to challenge the 2002 assessment of her property. She prepared a complaint to the Assessment Review Panel on January 21<sup>st</sup> of 2002 and entrusted it to her son, Robert Newbold. He delivered it to the Assessor's office on February 1, 2002.

[2] The Review Panel considered the complaint to have been delivered late because it was received the day after required by the *Governing Statute* and was not then a valid complaint. An appeal to the Property Assessment Appeal Board was unsuccessful.

[3] A case is now stated that poses 10 questions for the consideration of this court. For present purposes they can be expressed as one question in the following way: Did the Property Assessment Appeal Board or the Assessment Review Panel err in law or in fact by adopting an incorrect, incomplete or wrongful view of the law or the facts, and therefore fail to make the findings of law or fact necessary to determine whether or not the Appellant was entitled to receive a fair and correct assessment for the year 2002.

[4] Section 33 of the *Assessment Act* provides:

(1) A person who wishes to make a complaint under section 32 must file notice of the complaint with the assessor responsible for the assessment that is the subject of the complaint.

(2) The notice of complaint must be filed with the assessor no later than January 31 of the year following the year in which the assessment roll is completed under section 3 or changed or amended under section 12, as the case may be.

(3) The notice of complaint must

(a) clearly identify the property in respect of which the complaint is made,

(b) include the full name of the complainant and a telephone number at which the complainant may be contacted during regular business hours,

(c) indicate whether or not the complainant is the owner of the property to which the complaint relates,

- (d) if the complainant has an agent to act on the complainant's behalf in respect of the complaint, include the full name of the agent and a telephone number at which the agent may be contacted during regular business hours,
- (e) include an address for delivery of any notices in respect of the complaint,
- (f) state the grounds on which the complaint is based under section 32(1), and
- (g) include any other prescribed information.

The word "file" is defined in s. 1 of the *Act* as follows:

... in relation to a notice or record required to be filed with an assessor, the board or the commissioner, includes mail to or leave with the assessor, board or commissioner or deposit in the mail receptacle at their office ...

"Mail" is defined in the *Interpretation Act* as follows:

... refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver ...

"Must" is defined as being construed as imperative.

[5] Mrs. Newbold sought no extension of time, and it is not said now there is any statutory provision for any extension.

[6] Mrs. Newbold says three things. She says, first, that a notice of complaint does not have to be written. She says the Assessor had been told the assessment was not acceptable on many occasions. But, in my view, it is clear that s. 33 contemplates a written notice. It must be a document that can be filed with the Assessor's office and it must contain the information itemized in ss. (3).

[7] Secondly, Mrs. Newbold says that the use of the word "must" is not to be read as imperative, but it is clear that is exactly how the *Interpretation Act* provides the word is to be read.

[8] Thirdly, Mrs. Newbold says that her son was acting as a courier and that giving him the complaint was equivalent to mailing it, but the *Interpretation Act* is clear that "mail" refers to the deposit of the complaint in the post office. It does not include entrusting it to a courier, much less to one's son.

[9] In my view, the circumstances prevailing here are largely the same as those that prevailed in *Wilbert Lennox and Linda Page v. The Assessor of Area 01 - Saanich/Capital* (October 28, 1987), Vancouver, A871971 (S.C.), and the decision in that case governs the decision that is to be made here.

[10] I conclude that no error was made by the Assessment Appeal Board or the Assessment Review Panel in concluding the notice of complaint was not filed as required by the *Act*. There was no valid complaint made. The questions posed are to be answered in the negative.

{SUBMISSIONS ON COSTS}

[11] THE COURT: It appears to me that costs should follow the event, and there will be an order accordingly.