

Significant Court Decisions

Mr. Savage practices primarily in the area of Litigation and Administrative Law. He has appeared in numerous cases decided in the B.C. Supreme Court and Court of Appeal involving complex statutory interpretation and common law principles with leading counsel, including the following:

Bentall Retail Services Inc. v. Vancouver (Assessor) Area #09, [2006] B.C.J. No. 560 (BCSC), (2006) 147 A.C.W.S. (3d) 168, 223 B.C.A.C. 313.

The Property Assessment Appeal Board declined to change an assessment as it was found to be within appraisal and equitable valuation tolerances. In a case of first impression, the Court agreed that the notion of appraisal and equitable tolerances should be applied in assessment appeals.

Norske Skog Canada Ltd. v. British Columbia (Assessor of Area No. 6 -- Courtenay), [2005] B.C.J. No. 1712 (BCSC) 141 A.C.W.S. (3d) 701.

The Tribunal declined to allow the opening of a new issue following extensive appeal management. The Court found that, applying the pragmatic and functional approach, the standard of review of procedural decisions was patent unreasonableness and that the decision of the Tribunal was reasonable.

TSI Terminal Systems Inc. v. Vancouver (Assessor) Area #09, [2005] B.C.J. No. 2418 (BCSC), BCCA No. CA033581, Vancouver Registry, 16 M.P.L.R. (4th) 71, 36 R.P.R. 94th) 211, 144 A.C.W.S. (3d) 793.

TSI appealed a decision of the Tribunal that gave it jurisdiction to deal with adjacent but not appealed properties, classification issues, and issues of occupation and paramount occupation. The Court upheld the decision of the Tribunal on all issues. Leave on two issues was granted but the appeal abandoned.

Norske Skog Canada Ltd. v. British Columbia (Assessor of Area No. 6 - Courtenay) [2005] B.C.J. No. 1238 (BCSC), BCCA No. CA033116, Vancouver Registry, 139 A.C.W.S. (3d) 618.

The Tribunal found that the proper method of calculating interest during construction in a regulated manual was similar to that dictated by appraisal theory, and that a pollution abatement exemption was not available based on the statutory language. The Court upheld these decisions, interpreting the transitional provisions of two legislative enactments. On further appeal, the Court generally agreed but held that the pollution abatement matter should be remitted to consider another matter not earlier determined. On remittance back, the Tribunal upheld its original decision which was not further appealed.

Vancouver Port Authority v. Delta (Municipality), [2004] B.C.J. No. 512 (BCSC), BCCA CA031819 Vancouver Registry, 50 M.P.L.R. (3d) 302, 129 A.C.W.S. 93d) 450.

The appellants argued that certain assessments were nullities, that the occupier and paramount occupier provisions of an enactment were misinterpreted and misapplied. The nullity arguments were raised for the first time on appeal. The Court dismissed the appeals finding that the arguments regarding nullities were not properly before it and the occupier and paramount occupier provisions had been properly interpreted and applied. Leave to appeal was refused.

Timberwest Forest Ltd. v. Assessor of Area #04 [2003] BCSC 1230, BCCA CA31161 Vancouver Registry, 124 A.C.W.S. (3d) 232.

The Tribunal found that part of a marine terminal facility was a plant within the meaning of the classification of property regulation. The Assessor argued that an earlier case should not be followed and was wrongly decided. The Court in the first instance disagreed but on further appeal to the Court of Appeal agreed that earlier authority was wrong.

C & C Holdings Inc. v. British Columbia (Assessor of Area No. 4 - Nanaimo-Cowichan) [2003] B.C.J. No. 315 (BCSC), 36 M.P.L.R. (3d) 101, 120 A.C.W.S. (3d) 721.

The issue on appeal was whether equity in assessment should be applied only within taxing jurisdictions or should apply across jurisdictions but within assessment areas. The Court agreed with the Assessor that, although not express, as a matter of the interpretation of the scheme of the assessment legislation, equity should only apply within a taxing jurisdiction.

Kyah Forest Products v. Assessor Area No. 25 [2002] BCCA 344, No. CA028799, Vancouver Registry, Kyah Forest Products Ltd. et al. v. Assessor Area #25 – Northwest [2001] BCSC 549, 106 A.C.W.S. (3d) 569, [2001] B.C.T.C. 549.

On appeal to the Court of Appeal, it was acknowledged that decision below erred, and that a company was assessable as the occupier of otherwise exempt reserve lands.

Huyck v. Musqueam Indian Band [2000] F.C.J. No. 582, [2000] A.C.F. no 582, 189 F.T.R. 1, 23Admin. L.R. (3d) 28, 97 A.C.W.S. 93d) 381.

A panel of the Board of Review recused itself over an apprehension of bias, a new panel was struck, heard an appeal, and following its decision, judicial review was commenced alleging impropriety in the appointment process. The petition was dismissed.

Canpar Industries Ltd. v. Assessor of Area #17 - Penticton [2000] B.C.J. No. 585, [2000] BCSC 509

The Tribunal reversed a previous Tribunal ruling and was then challenged on appeal. The appeals were dismissed as the methodology employed was within the discretion of the Board.

Boundary Bay Airport Corp. v. British Columbia (Assessor of Area #11 - Richmond/Delta) [1999] B.C.J. No. 1751, [2001] BCCA 87, No. CA026219, Vancouver Registry, 2000 BCSC 509.

The appeal concerned the property interpretation of the phrase “on behalf of”, it being argued that holding on behalf of someone else does not apply where there is beneficial occupation. The Court of Appeal reversed the BCSC agreeing that occupation is not on behalf of the exempt owner where there is the possibility of profit.

British Columbia (Assessor of Area No. 10 - Burnaby/New Westminster v. Intracorp Developments Ltd. [1998] B.C.J. No. 2902, [2000] BCCA 121, No. CA25425 Vancouver Registry, 137 B.C.A.C.63, 9 M.P.L.R. (3d) 185, 94 A.C.W.S. (3d) 615.

The Court of Appeal established a new test of when split classification can commence on mixed zoned properties where a development permit has been issued and construction has commenced.

Musqueam Holdings Ltd. et.al. v. Assessor of Area #09 - Vancouver et.al. November 12, 1998, B.C. Supreme Court, No. A973201, Vancouver Registry, [2000] BCCA 299, CA025358, Vancouver Registry, 187 D.L.R. (4th) 510, 138 B.C.A.C.309, 76 B.C.L.R. 93d 323, [2000] 4 C.N.L.R. 226, 97 A.C.W.S. (3d) 191.

The companies argued that they could unilaterally create a "special reserve" by purchasing land in fee simple and passing the appropriate resolution. Such property would then be exempt from taxation. The Appeal was dismissed in both Courts and further leave to appeal refused; while the words of the statute might bear this interpretation, this was not a reasonable interpretation of the statutory provisions in light of Canada's constitutional arrangement.

Fletcher Challenge Ltd. et. al. v. B.C. Assessment Commissioner et. al. November 3, 1998, B.C. Court of Appeal, No. CA023029, Vancouver Registry.

Fletcher Challenge and 5 other companies petitioned the Court for a declaration that the Commissioners Rates for Forest Land for the years 1989-1994 (and ongoing) were ultra vires the Assessment Act. The rates were used to value some 960,000 hectares of privately held forest land. The Petition was dismissed, as while the evidence supporting the rates and methodology applied was not perfect, the use of it disclosed no jurisdictional error.

Tin Wis Resorts Ltd. v. Assessor of Port Alberni. et.al. October 8, 1998, B.C. Court of Appeal, No. CA V03189, Victoria Registry [1998] B.C.J. No. 2454, 116 B.C.A.C. 150.

The company argued that the provisions of the Indian Self-Government Enabling Act were ultra

vires the province, and that the scheme of provincial taxation of non-Indian occupiers of reserve lands was ultra vires the province. Appeal dismissed.

Gemex Developments Corporation v. Assessor of Area 12 - Coquitlam September 30, 1998, B.C. Court of Appeal, No. CA 022158, Vancouver Registry, [1998] B.C.J. No. 2275, 112 B.C.A.C. 176, 62 B.C.L.R. (3d) 354, 82 A.C.W.S. (3d) 1065.

The company argued that the principle that property should be valued at its highest and best use did not apply when outdated municipal zoning did not support that use. In this case the official community plan and market activities formed the basis of the highest and best use conclusion. Appeal dismissed, as the evidence reasonably supported the conclusion and the reasoning of the Tribunal disclosed no error of law.

Assessor of Area #21 - Nelson/Trail v. Cominco Ltd., February 6, 1998, B.C. Court of Appeal, No. V02826, Victoria Registry, [1998] B.C.J. No. 277, 102 B.C.A.C. 309, 48 B.C.L.R. (3d) 371, 77 A.C.W.S. (3d) 480.

The assessor argued that the Board and Court below were wrong in classifying dams owned by Cominco as class 6, business and other, and that the dams should be classified as class 2, utilities and not split classified as the Board had done. The Court agreed that as a matter of interpretation, a split classification was not possible and classified the property as Class 2.

Standard Life Assurance Company v. Assessor of Area 01- Capital (1995) BCSC No. A950896, Victoria Registry, (1997) BCCA No. VI02751, Victoria Registry, [1997] B.C.J. No. 972, 146 D.L.R. (4th) 247, 90 B.C.A.C. 270, 34 B.C.L.R. (3d) 346, 40 M.P.L.R. (2d) 80, 70 A.C.W.S. (3d) 768.

The Court below held that it was appropriate to reduce the value of property for assessment purposes where leases encumbered the property and run with the land. The Court of Appeal reversed this finding, holding that for assessment purposes the fee simple interest must be assessed, thus establishing the fundamental basis on which all property must be assessed.

Musqueam Holdings Ltd. v. British Columbia (Assessor of Area No. 9 - Vancouver) [1996] B.C.J. No. 2355.

The Court declined to review a decision of the Tribunal granting party status to the intervenors. The Tribunal should be master of its own process. The Court should decline to interfere with that process until a final determination is made for to do otherwise would invite one court application after another and frustrate the Tribunal's mandate.

British Columbia Television Broadcasting System Ltd. v. British Columbia (Assessor of Area No. 01 - Capital) [1996] B.C.J. No. 2515.

Issues concerning the method of valuation do not raise questions of law. The fact that a Tribunal member had, some years before, been employed by a party, did not give rise to an apprehension

of bias, when those facts had been known at the outset of the hearing.

Assessor of Area 09 - Vancouver v. Bastion Development Corporation (1996) BCCA No. CA021118, Vancouver Registry, [1996] B.C.J. No. 2648, 85 B.C.A.C. 241, 30 B.C.L.R. (3d) 135, 68 A.C.W.S. (3d) 231.

The Board held that the property should receive split classification residential and business and other where the land was significantly on its way to being developed for that purpose. The B.C. Court of Appeal agreed with the Assessor that, development property could not be assessed as residential until it is used for residential purposes.

Bosa Development Corporation et.al. v. Assessor of Coquitlam (1996) BCCA No. CA020174, Vancouver Registry, [1996] B.C.J. No. 2647, 85 B.C.A.C. 248, 30 B.C.L.R. (3d) 263, 37 M.P.L.R. (2d) 285, 68 A.C.W.S. (3d) 232.

The appellant argued that its lands which were held for residential developments should be classified as residential. Other developers joined in advancing this position against the Assessor. The appeal was dismissed. The lands should be classified as class 6, business and other.

City of Vancouver v. Assessment Appeal Board et. al. (1996) BCCA No. CA021039, Vancouver Registry, [1996] B.C.J. No. 1062, 135 D.L.R. (4th) 48, 76 B.C.A.C. 42, 20 B.C.L.R. (3d) 79, 39 Admin. L.R. (2d) 129, 63 A.C.W.S. (3d) 402.

The Board embarked on an in camera hearing excluding the City of Vancouver. The City and the Assessor argued that the Board had no jurisdiction to embark on in camera hearings as such would interfere with the essential public nature of the assessment process. Appeal of the Developer Concord Pacific dismissed. The Board has no jurisdiction to hold in camera hearings.

Grassington Estates Ltd. v. Assessor of Area No. 9 - Vancouver (1995) BC Stated Case [1995] B.C.J. No. 1072

The appellant argued that a two person board lacked jurisdiction to hear an appeal. The Court dismissed the appeal on the basis that the behavior of the consultant did not constitute them a Board member, and thus the situation was distinguishable from an earlier contrary ruling.

Mussallem Realty Ltd. v. Assessor of Area 13 - Dewdney / Allouette (1994) B.C. Stated Case 342, B.C. Court of Appeal, [1994] B.C.J. No. 140, 40 B.C.A.C. 24, 91 B.C.L.R. (2d) 268, 45 A.C.W.S. (3d) 387.

The Board denied the appellant farm class. The Court of Appeal agreed with the Assessors interpretation of the farm class regulations, that if land does not make a reasonable contribution to the farm, from a business point of view, it should not be classified as farm based on it being part of an integrated farm operation.

Fraser v. Victoria (City) Police (B.C.C.A.) [1990] B.C.J. No. 1617, [1990] 6. W.W.R. 411, 48 B.C.L.R. (2d) 99, 72 D.L.R. (4th) 732, 22 A.C.W.S. (3d) 340.

Fraser successfully made complaint to the Human Rights Counsel. The unsuccessful parties sought to appeal the decision which was filed in Court pursuant to statutory provisions. The Court agreed that the provision in question was not an appeal provision but an enforcement provision and did not create a right of appeal.

Crown Forest Industries v. Assessor of Area 06 - Courtenay (1987) B.C. Stated Case 210, B.C. Court of Appeal, [1987] B.C.J. No. 87, 10 B.C.L.R. (2d) 145, 3 A.C.W.S. (3d) 370.

After 20 hearing days the Board agreed with the Assessor to value the subject pulp mill by the cost approach. Following 5 hearing days in Supreme Court the decision of the Board was reversed. At the end of a 3 day hearing the Court of Appeal allowed the Assessors appeal. It found that the appropriate principle for applying the cost approach was that the property was being used for the purpose for which it was designed.

Trizec Equities Ltd. v. Assessor of Area #10 - Burnaby/New Westminster (1983) B.C. Stated Case 174, B.C.S.C., B.C.C.A. [1983] B.C.J. No. 1803, 147 D.L.R. (3d) 637, 45 B.C.L.R. 258, 22 M.P.L.R. 318.

Based on proper principles of statutory interpretation, an appeal to the Board under the Assessment Act (the second level of appeal) is a trial de novo which can cure any jurisdictional defects in proceedings before the first appeal Tribunal. Thus, where a Tribunal arguably lost jurisdiction, an appeal of this sort can cure jurisdictional defects in the earlier proceedings.

Her Majesty the Queen v. Newmont Mines Ltd. (1982) B.C. Stated Case 151, B.C. Court of Appeal, [1982] B.C.J. No. 2267, 132 D.L.R. (3d) 525, [1982] 3 W.W.R. 317, 37 B.C.L.R. 1, 13 A.C.W.S. (2d) 269.

In an earlier case the Court of Appeal held that occupiers of Crown land were only assessable if they held an exclusive right of occupation. If correct, this principle would mean that few occupiers would ever be assessed since completely exclusive rights were seldom granted. A five person panel in the Court of Appeal allowed the appeal and the earlier case of Construction Aggregates was not followed. Simple occupation, even if not coupled with any right, was sufficient for assessable occupation.