

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Goldberg v. British Columbia (Assessor of Area #09 – Vancouver Sea to Sky Region)*,
2025 BCCA 125

Date: 20250409
Docket: CA49388

Between:

Sheldon Goldberg

Appellant
(Applicant)

And

**Assessor of Area #09 – Vancouver Sea to Sky Region and
The Property Assessment Appeal Board**

Respondents
(Respondents)

And

The Attorney General of British Columbia

Respondent

Before: The Honourable Mr. Justice Butler
(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated July 29, 2022 and September 1, 2023 (*Goldberg v. British Columbia (Assessor of Area #09 – Vancouver Sea to Sky Region)*), 2022 BCSC 1294 and 2023 BCSC 2255, Vancouver Dockets S207215; S207216; S221127).

Oral Reasons for Judgment

The Appellant, appearing in person
(on April 2, 2025 only):

S. Goldberg

Counsel for the Respondent, Assessor of
Area #09 – Vancouver Sea to Sky Region:

R.B.E. Hallsor, K.C.

Counsel for the Respondent, the Property
Assessment Appeal Board:

R.J.B. Gage
J. Riddle

Counsel for the Respondent, the Attorney
General of British Columbia
(via videoconference):

J.M. Patrick

Place and Date of Hearing:

Vancouver, British Columbia
April 2, 2025

Place and Date of Judgment:

Vancouver, British Columbia
April 9, 2025

Summary:

The appellant applies to remove his appeal from the inactive list. The underlying appeal challenges two orders: the first, dated July 29, 2022, dismissed appeals of property tax assessments upheld by the Property Assessment Appeal Board; the second, dated September 1, 2023, assessed and awarded costs to the respondents. After filing his notice of appeal, the appellant took no further steps for nearly 18 months until he filed the application to remove the appeal from the inactive list. Held: application dismissed. Given the appellant’s failure to offer reasonable explanations for the lengthy delay, as well as the lack of demonstrated merit to the underlying appeal, it is not in the interests of justice to reactivate the appeal.

[1] **BUTLER J.A.:** Mr. Goldberg applies to remove his appeal from the inactive list, as well as for a 90-day extension of time to file appeal documents. The Assessor of Area #09 – Vancouver Sea to Sky Region (the “Assessor”) and the Property Assessment Appeal Board (the “Board”) oppose the application.

[2] In the underlying appeal, Mr. Goldberg challenges two orders of Justice Fleming, as she then was. The first order, issued on July 29, 2022, dismissed Mr. Goldberg’s appeals from three decisions of the Board, as well as his constitutional challenge to the *Assessment Act*, R.S.B.C. 1996, c. 20: *Goldberg v British Columbia (Assessor of Area #09 – Vancouver Sea to Sky Region)*, 2022 BCSC 1294 (“Appeal Decision”). In the second order, issued on September 1, 2023, Justice Fleming assessed and awarded costs against Mr. Goldberg, as well as dismissed another constitutional challenge to the *Assessment Act*: *Goldberg v. British Columbia (Assessor of Area #09 – Vancouver Sea to Sky Region)*, 2023 BCSC 2255 (“Costs Decision”).

[3] In the Appeal Decision, Mr. Goldberg wished to raise the same three questions on each of the three appeals (the “Questions”):

1. Must or Need the Property Assessment Review Panel & the Property Assessment Appeal Board [PAAB] take an Oath or Affirmation of Independence and Impartiality and Honesty?
2. Need the PAAB Chair [have] advised the Panel Hearing the case of the Appellant’s previous request to State a Case?
3. Was there a right to an In Person Hearing where witnesses are cross examined on substantial discrepancies & accuracy and independence?

[4] These questions were raised by Mr. Goldberg, but heard on appeal in the form of stated cases prepared and filed by the Board, pursuant to Part 7 of the *Assessment Act*. Prior to the hearing of the Appeal Decision, Mr. Goldberg had provided more than a dozen additional questions he wished to raise as part of the stated cases. The Board refused to have these additional questions included in the stated cases on the basis that they were not questions of law as required by s. 65 of the *Assessment Act*.

[5] At the hearing of the Appeal Decision, Mr. Goldberg handed up a document which contained “further points of law” he wished to be considered, which was the same list of additional questions the Board already declined to include in the stated cases: at para. 8. As the court’s jurisdiction on appeals from a Board decision are “limited to answering the precise questions asked in the stated case”, Justice Fleming did not consider these “further points”: at para. 11. Instead, she noted that the appropriate route for a remedy was to seek judicial review of the Board’s decision not to include these statements, which Mr. Goldberg had not done.

[6] Regarding the initial Questions, Justice Fleming found that she could not consider them as they were not questions of law. She declined to exercise her discretion to remit the questions back to the Board for amendment, as she was “satis[fied]...there is essentially no merit to the issues he raises”: Appeal Decision at para. 58. She also dismissed his constitutional challenge to the *Assessment Act* on the basis that his notice of constitutional question was “wholly inadequate” and his “ongoing refusal to provide requested particulars, and his written and oral submissions make it clear there is no prospect of ‘getting to the merits’ in this case”: at para. 111.

[7] In the Costs Decision, the first issue was whether the Assessor should bear its own costs on the basis of the public interest exception. Both the Assessor and Mr. Goldberg relied on *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at para. 251, which considered five factors earlier identified in *Guide Outfitters v. British Columbia (Information and Privacy Commissioner)*, 2005 BCCA 368 at

para. 8. Justice Fleming found, relying on those factors, that Mr. Goldberg had not met the burden of showing his case was unsuitable for applying the normal costs rule and awarded costs against him. She reasoned:

[16] I agree with the Assessor that the issues raised by Mr. Goldberg in this matter were not in the public interest. Rather than extending beyond the immediate interests of the parties, they were personal, if not peculiar, to him. Although the issues may not have been raised before, as indicated, Mr. Goldberg's questions did not articulate reviewable legal errors. Also raising a meritless constitutional challenge does not change the nature of this case from a private interest assessment appeal to public interest litigation.

[17] Addressing the fifth factor in *Guide Outfitters*, that is the person has not engaged in vexatious, frivolous, or abusive conduct, certainly Mr. Goldberg's submissions during both the stated case hearing and the costs hearing were highly disorganized, inadequate, largely irrelevant, mostly tangential, and often very disrespectful if not quite abusive to counsel for the Assessor. There is no question Mr. Goldberg's approach extended the length of the hearing of the stated cases and the costs hearing, resulting in increased costs to the respondents in the stated cases and the Assessor *vis-à-vis* the costs hearing.

[8] Justice Fleming also assessed the Assessor's bill of costs, which set out \$4,681.60 in tariff costs and \$2,183.84 in disbursements. A significant amount of the disbursements was related to the Assessor's counsel's travel costs from Victoria to Vancouver, including flights, accommodation, and transportation. Mr. Goldberg argued it was "unfair to impose the travel costs on him": Costs Decision at para. 19. However, Justice Fleming found that these costs were reasonable in the circumstances, as the Assessor's head office was in Victoria, the Assessor's counsel practiced in Victoria, and the Assessor's counsel's firm had acted for the Assessor since 1972. She assessed costs as set out in the Assessor's bill of costs for a total of \$6,864.44.

[9] Finally, Justice Fleming dismissed Mr. Goldberg's constitutional challenge to s. 65(8) of the *Assessment Act*, which related to his "object[ion] to what he characterizes as the provision's requirement to provide his financial information": Costs Decision at para. 24. Section 65(8) reads: "[t]he costs of, and incidental to, a stated case under this section are at the discretion of the court". Justice Fleming

held: “[a]dopting paras. 1 through 32 of the [Attorney General’s] written submissions, I dismiss his constitutional challenge”: at para. 25.

[10] Mr. Goldberg filed his notice of appeal on October 3, 2023. He took no further steps to pursue his appeal for a year. Accordingly, on October 4, 2024, the registry notified him that his appeal had been placed on the inactive list as of that date pursuant to Rule 50(1)(a) of the *Court of Appeal Rules*, B.C. Reg. 120/2022.

[11] On March 19, 2025, nearly six months later, Mr. Goldberg commenced the application that is now before me.

[12] I heard this application in chambers on April 2, 2025 and advised the parties I would give an oral judgment on April 9, 2025. On April 4, 2025, Mr. Goldberg sent the registry a letter advising that he wished me to consider a decision of this Court released that day: *British Columbia v. 1084204 B.C. Ltd.*, 2025 BCCA 110 [108]. Mr. Goldberg said the case “relate[d] to a tax not paid and raising Constitutional arguments for the first time upon appeal”. I have considered this case and find it is unhelpful and not relevant to Mr. Goldberg’s application. The issue in 108 was the imposition of an additional transfer tax on foreign buyers under the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378. It had nothing to do with assessing property value or the *Assessment Act*. Furthermore, while the Court considered (and ultimately rejected) an application to raise a constitutional challenge for the first time on appeal, it did not break any new ground when it came to the relevant test to apply in these circumstances. I see nothing in this judgment which could assist Mr. Goldberg in demonstrating that Justice Fleming erred in the Appeal Decision or the Costs Decision.

[13] I note at the outset that it is not clear from Mr. Goldberg’s notice of appeal that he wished to appeal both the Appeal Decision and the Costs Decision. The notice of appeal form—Form 1—requires an appellant to fill in the “Date the order was pronounced”. In that section of Form 1, Mr. Goldberg only included the date of the Costs Decision. The date of the Appeal Decision, which had been written in the provided space, is crossed out and the change is initialized. However, under the

section “Grounds for leave to appeal”, he listed a number of grounds which relate to both decisions.

[14] In addition, as the Appeal Decision was issued over a year before Mr. Goldberg’s notice of appeal was filed, I note that Mr. Goldberg is required to apply for an extension of time to file his notice of appeal from that order. He has not formally sought such an application, and it is unclear whether the order he seeks on this application—an order “extend[ing] time for filings for 90 days”—is intended to include an extension of time for the filing of his notice of appeal from the first order as well as an extension of time for filing appeal documents required for his appeal from the second order.

[15] However, at the hearing of this application, Mr. Goldberg made it clear that he wishes to appeal both the Appeal Decision and the Costs Decision. My analysis proceeds on this basis.

Legal Framework

[16] There is no rigid test for whether an appeal should be restored after it has been placed on the inactive list. The extent of the delay, the explanation for the delay, any prejudice resulting from the delay, and the strength of the appeal are all factors to be considered: *Kar Recovery, Ltd. v. KDA*, 2004 BCCA 503 at para. 24 (Chambers) [*Kar Recovery*]. The overriding consideration is the interests of justice: *Grosz v. Royal Trust Corporation of Canada*, 2022 BCCA 57 at para. 7 (Chambers).

Analysis

[17] When I consider the relevant factors, I find that it is not in the interests of justice to grant an extension of time.

Delay

[18] The length of the delay since Mr. Goldberg filed his notice of appeal is considerable—almost 18 months. That does not include the additional 14 months between the first order and the filing of the notice of appeal. I note Mr. Goldberg also

seeks an extension of time for an extra 90 days in the event his appeal is reactivated, meaning the delay will be even longer.

[19] Having reviewed Mr. Goldberg’s affidavit and heard his submissions, I note that he has provided no explanation for his failure to take any action to pursue an appeal in the 14 months between the first order and his filing of the notice of appeal on October 3, 2023. I also conclude he has not provided a satisfactory explanation for the lengthy delay since filing the notice of appeal for the reasons below.

[20] On January 1, 2024, in response to an inquiry from the respondents’ counsel, Mr. Goldberg informed the respondents via email that he needed a further 40 days to file an amended notice of appeal as he had not yet read Justice Fleming’s reasons.

[21] Counsel for the respondent Assessor emailed Mr. Goldberg to follow up on his intentions regarding the appeal on April 30, 2024 and May 2, 2024. On May 2, 2024, Mr. Goldberg replied advising he still wished to proceed with the appeal, but needed 30 days to determine a course of action as he had been ill with COVID-19 for the previous two weeks.

[22] On May 28, 2024, Mr. Goldberg informed counsel for the respondents he had been unable to work for the past month due to another unrelated illness which impacted the use of his hands.

[23] Mr. Goldberg’s affidavit provides two further explanations for the delay from May 2024 to March 2025, when he filed this application. He deposed that he “misconstrued” the letter from the registry placing his appeal on the inactive list “as giving [him] some leeway”, and admits that this was his error. He also deposed he has had health issues due to COVID-19 from November 2024 to January 2025, but that he hopes to recover fully within 90 days.

[24] While this Court has been prepared to show some lenience to self-represented litigants in similar applications—*M.P.W. v. Victoria (City)*, 2022 BCCA 113 at para. 13 (Chambers)—I note that Mr. Goldberg is a former

lawyer. In oral submissions, Mr. Goldberg emphasized that he practiced criminal law, never had conduct of a civil appeal, and has not practiced for well over a decade. Nevertheless, given his prior legal experience, his statement that he “misconstrued” the registry’s letter falls well short of providing a reasonable explanation for his delay in filing appeal documents for a further six months. In addition, the suggestion he had not read Justice Fleming’s reasons for three months after receipt and that he needed another 40 days to consider amending the notice of appeal calls into question his assertion of a *bona fide* intent to pursue an appeal. His actions since that time further suggest he did not have such an intent. Finally, while Mr. Goldberg’s health issues might explain minor delays, they cannot explain a delay of 18 months.

Prejudice to the Respondents

[25] At the hearing of this application, the respondents argued that lengthy delays—such as the delay in this case—prejudice the statutory appeal system established in ss. 64 and 65 of the *Assessment Act*. They submit that the provisions establish a “statutory imperative” on speed of resolution. The respondents note that local governments depend on the revenue from property taxes, which turn on the property tax assessments that are revised each year. When disputes take years to resolve, it can cause compounding issues, as past assessments which cannot be finalized can impact assessments made each subsequent year. I agree with the respondents’ characterization of the provisions of the *Assessment Act*. In this case, the underlying property assessments Mr. Goldberg disputes were made in 2019, the Appeal Decision was made on July 29, 2022, the Costs Decision was made on September 1, 2023, and Mr. Goldberg initiated his appeal on October 3, 2023. In this context, I find that Mr. Goldberg’s lengthy delay in moving forward with his appeal results in some prejudice to the property tax assessment process.

Merits of the Appeal

[26] The merits of Mr. Goldberg’s appeal, especially as they relate to the Appeal Decision, are somewhat difficult to evaluate. In Mr. Goldberg’s notice of

appeal, he lists 10 grounds of appeal. The majority of these grounds allege broad and general procedural defects with the *Assessment Act* appeal process rather than with Justice Fleming’s decision. Most of Mr. Goldberg’s written and oral submissions either reiterated these general defects or focused on the Costs Decision. It is unclear how these broad allegations—many of which Mr. Goldberg also argued before Justice Fleming—demonstrate an error in the Appeal Decision. Again, that decision turned on the findings that the grounds of appeal Mr. Goldberg wished to raise had either been rejected by the Board and should be challenged on judicial review, or were not questions of law and accordingly could not be considered as per the *Assessment Act*. Mr. Goldberg offered no clear argument for why these conclusions were in error, and I struggle to see any on the record before me. To the extent that Mr. Goldberg’s appeal is directed at Justice Fleming’s dismissal of his constitutional challenge, or seeks to raise new constitutional issues before this Court, I see little merit to these grounds.

[27] In Mr. Goldberg’s affidavit and in oral submissions before me, he focused heavily on the Costs Decision, specifically Justice Fleming’s award of travel costs. Mr. Goldberg argues the Assessor, as a government agency, was not entitled to travel costs for their counsel as there are “many qualified lawyers in Vancouver”. He also claims that “Justice Fleming failed to address this issue except by ignoring it”. In support of this argument, he relies on the case of *British Columbia (Attorney General) v. 992704 Ontario Limited*, 2023 BCCA 346 [992].

[28] There is no merit to these arguments. Justice Fleming did address the issue of travel costs for out of town counsel, noting that parties are not “obligated to retain local counsel” and that it was reasonable for Mr. Goldberg to pay the travel costs in the circumstances: Costs Decision at para. 20.

[29] The 992 decision does not assist Mr. Goldberg. In 992, this Court declined to order costs against the Attorney General despite the appellant’s argument that it was entitled to costs as a public interest litigant. 992 does not deal with the issue in the Costs Decision, which was whether the Assessor should bear their own costs on the

basis of the public interest exception. Moreover, the mere fact the public interest exception may have applied in other cases does not demonstrate an error in the Costs Decision. Justice Fleming relied on the applicable legal principles to determine whether the Assessor was entitled to costs based on the circumstances of the case before her. Mr. Goldberg has pointed to no error in her analysis which would entitle a reviewing court to disturb that finding.

[30] Due to the lack of clarity on precisely what errors Mr. Goldberg is alleging, especially in regards to the Appeal Decision, it is difficult to say conclusively that there is no merit to his appeal. However, I would note that Mr. Goldberg bears the onus of satisfying me that his appeal ought to be removed from the inactive list, which includes demonstrating that there is some merit to his appeal: *Kar Recovery* at para. 30. He has failed to demonstrate that his appeal has any merit.

[31] More critically, even if there could be some slight merit to Mr. Goldberg's appeal, this is not determinative if the other factors militate against reactivating the appeals: *Kar Recovery* at para. 31. Here, the other factors weigh heavily against Mr. Goldberg. Mr. Goldberg has failed to provide an adequate explanation for the lengthy delay. In addition, the delay is prejudicial to the respondents, especially in the context of *Assessment Act* proceedings. In these circumstances, it is not in the interests of justice to reactivate the appeal.

Disposition

[32] I dismiss Mr. Goldberg's application. Having done so, there is no need to address the question of an extension of time.

[33] As the statutory time limit for remaining on the inactive list expired on April 3, 2025, Mr. Goldberg's appeal is dismissed as abandoned: *Court of Appeal Rules*, R. 51(1).

"The Honourable Mr. Justice Butler"