

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *992704 Ontario Limited v. Assessor of Area #09 – Vancouver Sea to Sky*,  
2025 BCSC 1121

Date: 20250617  
Docket: S208330  
Registry: Vancouver

Between:

**992704 Ontario Limited**

Applicant

And

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

Respondents

Before: The Honourable Justice Morishita

## **Reasons for Judgment**

Counsel for the Applicant:

I. Bern

Counsel for the Respondents:

K. Bellis

Place and Date of Hearing:

Vancouver, B.C.  
February 11, 2025

Place and Date of Judgment:

Vancouver, B.C.  
June 17, 2025

**Introduction**

[1] This is an appeal of a costs decision of the Property Assessment Appeal Board that is brought under section 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 [Assessment Act].

**Background**

[2] The applicant, 992704 Ontario Limited (“992704 Ontario”), owns property in the Southlands area of Vancouver. In 2019, the respondent Assessor assessed the value of the property at \$3,431,000.

[3] Under the *Assessment Act*, a person may file a complaint about an assessment on any of five enumerated grounds, including that a property is not assessed at actual value.

[4] The Property Assessment Review Panel (“Panel”) is the first level of adjudication for complaints under the *Assessment Act*.

[5] If a person wishes to appeal a decision made by the Panel, they can appeal to the Property Assessment Appeal Board (“Board”).

[6] 992704 Ontario disagreed with the assessment, and filed a complaint on the grounds that the assessed value of the property was too high and not equitable with similar properties.

[7] The Panel upheld the assessed value.

[8] 992704 Ontario appealed the Panel’s decision to the Board.

[9] During the course of the Board proceeding, the Assessor filed a response requesting that 992704 Ontario’s counsel be sanctioned for alleged inappropriate conduct during the proceeding. In response, 992704 Ontario filed a reply requesting that the Assessor’s request for sanctions be dismissed and seeking a costs award of \$25,000 against the Assessor.

[10] The Board confirmed the Panel’s decision and found that the assessed value of \$3,431,000 was the actual value of the property and was equitable.

[11] The Board found that the circumstances of the case did not warrant an order sanctioning 992704 Ontario’s counsel.

[12] In addition, the Board found that the Assessor’s conduct did not warrant an award of costs against it.

[13] 992704 Ontario appeals the Board’s decision to not award costs against the Assessor.

### **Statutory Framework**

[14] In *TELUS Communications Inc. v. British Columbia (Assessor of Areas #08/09 - Vancouver Sea to Sky Region)*, 2024 BCSC 2210, Justice Hughes provides an excellent summary of the applicable statutory framework. Justice Hughes writes:

[13] The *Assessment Act* creates adjudicative processes for the annual valuation and classification of real property in British Columbia to facilitate taxation. Each year, an assessor appointed by BC Assessment completes an assessment roll containing a list of each property in each assessment area. When the assessment roll is complete, a notice of assessment is mailed to each person named in therein.

[14] Section 32(1) of the *Assessment Act* provides that any person may file a complaint about an entry in an assessment roll. The grounds upon which a complaint can be filed include that an exemption from municipal property tax has been improperly allowed or disallowed by BC Assessment: *Assessment Act*, ss. 32(2)-(4).

[15] To make a complaint, a person must file a notice of complaint with the assessor who conducted the impugned assessment by no later than January 31 of the year following completion of the assessment roll. In practice, this is done by emailing a notice of complaint to the BC Assessment office for the relevant assessment area: *Assessment Act*, ss. 33(1)-(2), 35. If a notice of complaint is not resolved by BC Assessment directly, a hearing is scheduled before PARP before March 15 of that year.

[16] Under s. 50(1) of the *Assessment Act*, a person who is dissatisfied with a PARP decision can appeal to the Board. [...]

[...]

**Court’s jurisdiction on a stated case**

[17] The court’s jurisdiction to hear and determine the stated case arises from s. 65 of the *Assessment Act*, which provides for review of Board decisions by this Court on questions of law:

**Appeal of board decision on question of law**

- 65** (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a treaty first nation, the government, the Nisga'a Nation or the assessment authority, 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.
- (2) Within 21 days after receiving the decision referred to in subsection (1), the person must deliver to the board a written request to refer the decision to the Supreme Court, and include in the request the question of law to be referred.
- (3) On receipt of the request under subsection (2), the board must promptly provide written notice of the request to
- (a) the parties to the appeal from which the reference is requested and any intervenors, and
  - (b) the chief executive officer of the assessment authority.
- (4) Within 21 days after receiving the request under subsection (2), the board must file the stated case with the court registry, including the decision on appeal, a statement of the facts and all evidence material to the stated case.
- (5) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).
- (6) Subject to subsection (7), the court must hear and determine the stated case and within 2 months give its decision.
- (7) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.
- (8) The costs of, and incidental to, a stated case under this section are at the discretion of the court.

...

[18] The Court cannot consider a question that has not been stated or alter the questions stated: *Broadway Properties Ltd. v. Vancouver (Assessor of Area #09)*, 2007 BCCA 298 at para. 8. In considering the stated questions, the Court is restricted to the facts set out in the stated case and the decision,

and may not substitute its own factual findings or weigh and consider the sufficiency of the evidence: *Kuhn v. Assessor of Area #14 – Surrey/White Rock*, 2016 BCSC 448 at para. 16; *Virani v. British Columbia (Assessor of Area No. 11 – Richmond/Delta)*, 2013 BCSC 214 at para. 11.

**Facts on Stated Case**

[15] As Justice Hughes notes in *TELUS Communications Inc.*:

[19] The purpose of the statement of facts in the stated case is to ensure that there is sufficient factual material necessary to raise and argue a point of law: *Allard v. Assessor of Area #10 – North Fraser Region*, 2010 BCCA 437 at para. 114, citing *Petro Canada Inc. v. British Columbia (Assessor of Area #12 - Coquitlam)*, 1991 CanLII 934 (B.C.S.C.) [*Petro Canada*].

[20] All facts must be found in the stated case, and the Court may not substitute findings of its own: *Allard* at para. 112. The Court cannot go beyond the facts stated by the Board in the stated case in order to interpret those facts or make independent findings or inferences of fact, but can refer to the evidence with respect to uncontroverted facts: *Allard* at para. 117.

[21] The evidence filed in support of the stated case can, however, assist the Court in determining whether there was any evidence at all that was logically probative of the conclusions reached by the Board: *Allard* at para. 114, citing *Petro Canada* at para. 5. The Court may also refer to the evidence to “flesh out” or amplify the statement of facts in the stated case with respect to uncontroversial facts: *Allard* at para. 116.

[16] The facts set out in this stated case are as follows:

- a) This appeal is from the decision of the 2019 Property Assessment Review Panel ("PARP"), which upheld the 2019 assessed value of the property at \$3,431,000.
- b) The property is a bare land strata townhouse located in the Southlands area of Vancouver with a municipal address of 2288 Yewbrook Place ("the subject"). The townhouse sits on a 4,318 square foot lot with improvements of 5,067 square feet.
- c) After written submissions were filed, the Appellant through its counsel applied to cross-examine the Assessor's expert. After submissions were exchanged on that issue, the Board Vice-Chair issued an order refusing to grant in-person cross-examination but allowing the Appellant to ask questions of the expert in writing. The order required that any questions and answers would form part of the written submissions in the appeal. The Appellant did not avail itself of that opportunity, but did provide a reply submission.
- d) The Assessor then filed a response requesting the Appellant's counsel be sanctioned for inappropriate conduct. With the Board's leave, the

Appellant filed a reply requesting the Assessor's request for sanctions be dismissed and for a cost award of \$25,000 against the Assessor.

- e) Preliminary issues before the Board included the Assessor's request for a sanction against the Appellant's counsel, and the Appellant's reply seeking costs against the Assessor and requesting the Assessor's request for sanctions be dismissed.
- f) The Board held that it was obvious from a review of the submissions in this appeal there is a history of dealings between the Appellant's counsel and the Assessor.
- g) The Board found that any procedural conduct that may have occurred in prior appeals did not concern the Board here.
- h) The Board considered that under corporate law the Appellant company is a separate entity to any director. They are not the same legally. For this reason, the Board agreed with the Appellant's counsel that the Assessor's characterization of the impact of his representation is not correct. Similarly, law societies mandate that lawyers must act in the best interests of their client. So the Appellant's counsel, as counsel, has a similar duty imposed as director. There is no apparent conflict then between the lawyer as director and the lawyer as counsel.
- i) In regard to Appellant's counsel seeking cross-examination of a witness, the Board found that is not an appropriate basis for a sanction order where, especially as in this appeal, the disparity in actual value opinions by the parties is so large. In receiving instead an order for written questions only, counsel was then faced with a decision to pursue written questions or not and, ultimately, whether that would be in his client's best interests. The decision to not pursue written questions does not prove a delay, a waste of the Board's time, or vexatious conduct by counsel.
- j) The Board found this is not a case in which the order requested by the Assessor is warranted.
- k) The Board found cost awards are reserved for exceptional and rare cases.
- l) The Board held both parties vigorously contested this appeal and this was not conduct worthy of sanction. In making an application for the order requested, the Assessor's conduct is not egregious. Granted there was some extra energy expended by the parties to bring and respond to the application and by this Board in making this decision.
- m) The Board could not find, however, that amounts to a prolonging of the process or a waste of time and resources of the Board and parties. It is merely part of the process. The Board did not view this as a case for the application of rule 21.

- n) There were two substantive issues, namely is the assessed value too high and is the assessment equitable.
- o) The Board did not accept either the Appellant's or the Assessor's value conclusions.
- p) The Board found the PARP value at \$3,431,00 [sic] was the actual value of the subject and the value to be equitable.
- q) The Board confirmed the decision of the 2019 Property Assessment Review Panel for the subject property.
- r) A copy of the Board's decision dated July 16, 2020 is attached as Schedule "A" to this Notice of Stated Case.

**Question on Stated Case**

[17] The question for determination by the Court in this stated case is as follows:

Did the Property Assessment Appeal Board (the "Board") err in law when, having regard to the specific facts and chronology of the Appeal to the Board, it did not order that the Assessor pay all or part of the costs of the Appellant in connection with the Appeal to the Board, pursuant to S.21(1) of the Board's Rules, and S. 60 of the Assessment Act.

**Analysis**

[18] The Assessor submits that the Court does not have jurisdiction to deal with an appeal of a costs decision by way of a stated case. In support of this position, they rely on *South Vancouver Parks Society v. Assessor of Area #09*, 2017 BCSC 631.

[19] *South Vancouver Parks Society* was a stated case where the appellant society sought to appeal the Board's decision to award costs against it in favour of the property owner. The costs question in that stated case was as follows:

Did the board err in law in finding that conduct of the Appellant's representatives, both specified in the reasons and not specified in the reasons, was frivolous, vexatious and egregious and as such an award of costs be made against the Appellant in favour of the Respondent [property owner]?

[20] Justice Holmes, as she then was, held that s. 65 of the *Assessment Act* does not permit a stated case appeal to proceed on a costs award alone. More specifically, Justice Holmes held that a costs award is not a "decision of the board on appeal" as is required by section 65(1). Justice Holmes writes:

[34] I turn to consider whether the Society is nonetheless a person affected by the limited aspect of the decision that relates to the costs award. The parties agree that the court has the authority to allow one or more questions to proceed on the stated case appeal, and not the others. Should the stated case appeal proceed on, only, question four, relating to the costs award?

[35] In my view, it should not. Section 65, focused as it is on questions of law, does not appear to contemplate stated case appeals of costs awards from misconduct in the proceedings below. As Mr. Hallsor noted, other avenues are available for disputing costs awards based on misconduct, such as judicial review.

[36] Also, the costs award does not appear to be “a decision of the board on appeal”, as s. 65 requires, because the order for costs was made for the first time at the appeal board hearing.

[37] By limiting the right of appeal to “a decision of the board on appeal”, the legislature must surely have intended a narrower scope than, simply, “a decision of the board”. Otherwise, the words “on appeal” would be superfluous.

[38] The costs award was not “on appeal” before the board. It was made by the board as a result of conduct during the appeal process.

[21] 992704 Ontario says that *South Vancouver Parks Society* is wrongly decided. They note that the Panel has no ability to award costs, thus the issue of costs cannot be before the Board on appeal. 992704 Ontario submits that if the reasoning in *South Vancouver Parks Society* is correct, there would be no other way for a party to appeal a costs order of the Board. Further, 992704 Ontario submits that a costs order is a question of law. As such, before it can apply for judicial review it has to first exhaust the remedies within the *Assessment Act*.

[22] In my view, Justice Holmes’s decision and reasoning in *South Vancouver Parks Society* is dispositive of this issue. The Board’s decision in this case to not award costs against the Assessor was not “on appeal” before it. 992704 Ontario’s claim for costs was based on the Assessor’s conduct during the appeal process. Accordingly, I dismiss the stated case on this basis.

[23] Nevertheless, I would add that contrary to the submission of 992704 Ontario’s, judicial review is available. As noted by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 52, the existence of a statutory right of appeal does not, on its own,

preclude judicial review of decisions to which the statutory appeal mechanism does not apply. In other words, the law contemplates a person pursuing both a statutory appeal on questions of law and a judicial review on questions of fact, and mixed fact and law: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, at para. 48.

[24] Justice Hughes in *TELUS Communications Inc.* helpfully summarizes how questions of law are construed in the context of section 65(1) of the *Assessment Act*. Justice Hughes writes:

- [29] In this context, questions of law are construed generously and include:
- a) a misinterpretation or misapplication by the Board of a section of the *Assessment Act*;
  - b) a misapplication by the Board of an applicable principle of general law;
  - c) where the Board acts without any evidence;
  - d) where the Board acts on a view of the facts which cannot reasonably be entertained; or
  - e) where the method of assessment adopted by the Board is wrong in principle.

See *Home Depot Holdings Inc. v. British Columbia (Assessor of Area #10 – North Fraser Region)*, 2016 BCCA 511 at para. 10 [Home Depot]; *Teck Coal Limited v. Assessor of Area #22 – East Kootenay*, 2022 BCSC 2013 at para. 8; see also *North Vancouver (District) v. Seaspan ULC*, 2021 BCSC 1345 at para. 34 [Seaspan], aff'd 2022 BCCA 433; *Gemex Developments Corp. v. Coquitlam Assessor, Area No. 12*, 62 B.C.L.R. (3d) 354, 1998 CanLII 6466 (C.A.) at para. 9

[25] In my view, the Board's decision not to award costs is not a question of law under the *Assessment Act*.

[26] Although questions of law under the *Assessment Act* are construed generously, there is nothing in the statement of facts that demonstrate (1) a misinterpretation or misapplication by the Board of a section of the *Assessment Act*; (2) a misapplication by the Board of an applicable principle of general law, (3) that the Board acted without any evidence, and (4) that the Board acted on a view of the facts which cannot be reasonably entertained. The method of assessment is not relevant to the stated case question.

[27] As such, the Board's refusal to exercise its discretion to award costs is not a question of law under the *Assessment Act*.

**Conclusion and Costs**

[28] The stated case is dismissed.

[29] Section 65(8) of the *Assessment Act* grants the Court the discretion to award the costs of, and incidental to, a stated case. The Assessor has been successful in this proceeding and is presumptively entitled to its costs at Scale B. If 992704 Ontario seeks a different order, it shall file written submissions that must not exceed 2,500 words within 28 days of the release of these reasons. The Assessor shall file reply submissions that must not exceed 2,500 words within 14 days of receiving 992704 Ontario's submissions. If 992704 Ontario does not file submissions within the deadline above, the Assessor is awarded its costs at Scale B.

“Morishita J.”