



PROPERTY ASSESSMENT APPEAL BOARD

# CPTA Legal Update Presentation

April 7, 2022

Simmi K. Sandhu,  
Chair



# Territorial Acknowledgement

The Board gratefully and respectfully acknowledges that our work spans across the traditional territories of 198 First Nations and 98 Métis chartered communities in British Columbia.

Our offices are located on the traditional and unceded territories of the Musqueam, Skwxwú7mesh, and Tsleil-Waututh First Nations.



# The Property Assessment System

- *Assessment Act* (the *Act*): provides for an annual assessment roll for the purpose of levying property taxes by taxing jurisdictions in the following calendar year.
- Section 19(2): Assessor must determine and enter on the assessment roll the actual value of land and improvements.
- For this purpose, BC Assessment uses a mass appraisal approach that involves the collection and analysis of market data to generate the assessed values through computer modeling.
- This changes when an appeal is filed and properties are individually reviewed and valued at which point evidence specific to the appealed property is presented.



# Reviews of Property Assessments

Four levels of review of property assessments:

- BC Assessment informal pre-roll and pre-hearing consultation: Property owners and third parties who have a complaint against the property assessment are encouraged to work with BCA to address their concerns prior to filing a formal complaint. Not mandatory.
- PARP: Formal complaints against the property assessment roll are first heard. PARP's purpose is to ensure that: assessments reflect actual values (market value); assessments are applied consistently within a municipality or rural area.
- PAAB: A person not satisfied with a decision of PARP may file an appeal to PAAB. The role of PAAB in relation to property assessment is to determine whether the property is assessed at actual (market) value; the property is properly classified; or an exemption from property taxation applies. PAAB is independent of both the Property Assessment Review Panels and BC Assessment.
- Courts: Affected parties can appeal to the Courts. An appeal can only be made on a question of law.



## Purpose of Property Assessment Appeal System:

- To provide checks on the assessment roll & to determine whether there is evidence to support the roll or evidence to support a change to the roll based on enumerated grounds.
- These reviews must be effective and fair, but also efficient and timely in the context of the annual roll.
- The Board's role in the system is to be a rigorous check on the assessment roll and an independent, neutral arbiter of appeals.



# The Property Assessment Appeal System

1. Property Assessment Review Panels are the first level of appeals.
  - Given the short legislated time frame and the volume of appeals, the Review Panels provide a relatively effective mechanism for correcting obvious errors in the roll and provide expedited and summary adjudication of complaints. The Review Panels are not well equipped to deal with complex appeals, in part, because of legislated time constraints.
  - Sec. 40 of Act: the complainant has the onus of proof before Review Panel



## Board's Mandate in Property Assessment System

2. The Board is the second level of formal appeals:
  - provides timely, efficient and cost effective resolution of appeals, usually involving complex valuation and legal issues.

*Vancouver Pile Driving Ltd. v. Assessor of Area #08* 2008 BCSC:

“(t)he statutory scheme (found in the *Assessment Act* and the *Administrative Tribunals Act*)..... contemplates a Board (1) with the power to reopen the whole question of the property’s assessment ‘to ensure accuracy and that the assessments are at actual value’; and (2) with the power to make rules and control its own procedures in order to fulfil its statutory mandate in a manner consistent with the principles of natural justice and in a timely way. ”



# Board's Inquisitorial Jurisdiction

Section 57: Board has discretion reopen property's entire assessment to ensure actual (market) value & equity

- What does an inquisitorial jurisdiction mean?
  - *De Novo* Process
  - No onus of proof on a party

Legislative rationale for this jurisdiction on the Board: to provide a rigorous, independent check on the assessment roll and to determine whether there is sufficient evidence to support the roll or change the roll based on enumerated grounds.





## Impact of Inquisitorial Jurisdiction on Board's Processes

- *De novo* appeal = can add issues not raised at first level or as a ground of appeal before the Board but balanced with processes in place to ensure that issues are identified and closed early leading to timely and efficient resolution of appeals



# Inquisitorial Jurisdiction: de novo process

## **Norske Skog v. Area 06 (2003 PAABBC 20031294):**

“The Board has an inquisitorial mandate to open the whole question of a property’s assessment to ensure accuracy. It also has the power to make rules, not inconsistent with the *Assessment Act*, for the conduct of appeals and to facilitate their just and timely resolution. The interests of ensuring accuracy and facilitating the efficient, just and timely resolution of appeals may sometimes conflict” The Board outlined factors outlined in a previous decision (Fletcher Challenge) it must consider when asked to permit or refuse the withdrawal of an appeal over the objection of a party, or to hear or refuse to hear a particular issue:

- the need to uphold the efficacy of the Board’s Rules and the appeal management process in general;
- the prejudice to the parties;
- the degree to which prejudice can be compensated by other means;
- the likelihood that the roll will be inaccurate and the extent of any inaccuracy;
- the public interest in fair and equitable assessment.

“On the one hand the Board strives to enforce its orders during appeal management to provide certainty to the process and prevent further delay in the resolution of appeals. ....(and) There may be some prejudice to the taxing jurisdiction in adding the issue at this stage of the proceedings in that they may have to change plans or make certain decisions because of a potential impact on taxation revenue that was not to this point anticipated. It seems contrary to the principle of consistency in taxation, however, to enable the issue to be argued with respect to one set of improvements but not another set of improvements at the same plant if, indeed, the circumstances of use are similar. “



# Inquisitorial Jurisdiction: withdrawals/recommendations

➤ **Withdrawals** –Board can decide not to accept a withdrawal

*Quintette Coal Ltd. v. Assessment Appeal Board of B.C. et al* (1986), 8 B.C.L.R. (2d) 51 (S.C) :

“True, litigants generally have the undeniable right to abandon their own proceedings. But appellants are not litigants. An assessment appeal invests the appeal board with the power and imposes upon it as well the duty of determining value by a number of means available to it. The process is essentially inquisitorial. On the other hand, processes before courts of law are adversarial. The court has, in the nature of things, to be responsive, and only responsive, to the litigant who seeks its aid. Unlike the Assessment Appeal Board, the court has no function if the litigant decides to quit. Thus the parallel contended for is inaccurate. The board may continue its inquiry whatever the wishes of an appellant. Thus the appellant may not be allowed to thwart the function of the board by withdrawal, once the appeal process has been put in motion. And even though put in motion by the appellant himself. And once put in motion, the board has a very broad jurisdiction. It is not governed by or confined to grounds of appeal alleged or submissions made to it by the appellant or appellants: *Assessment Commissioner of British Columbia v. Western Forest Indust. Ltd.* (1980), 25 B.C.L.R. 189, 118 D.L.R. (3d) 500 (C.A.).



# Inquisitorial Jurisdiction: dismissals

- **Dismissals** -only for non-compliance of a Board Order NOT for lack of evidence but subject to common law principles of fairness and natural justice

*Administrative Tribunals Act, S.B.C. 2004, c. 45:*

“Failure of party to comply with tribunal orders and rules

Sec. 18. If a party fails to comply with an order of the tribunal or with the rules of practice and procedure of the tribunal, including any time limits specified for taking any actions, the tribunal, after giving notice to that party, may do one or more the following:

- (a) schedule a written, electronic or oral hearing;
- (b) continue with the application and make a decision based on the information before it, with or without providing an opportunity for submissions;
- (c) dismiss the application.



# Inquisitorial Jurisdiction: dismissals

*Vancouver Pile Driving Ltd. v. Area 08* (2007 PAABBC 20070069), the Board held

“The Board as noted ...(it)..has an inquisitorial function and, short of a withdrawal of an appeal, the board must make a decision based on evidence, whatever that evidence might be. In addition, there is no burden of proof on an appellant and the fact that VPDL to date has not produced any evidence is not sufficient justification for an outright dismissal of the appeal.

We also find that section 18 provides the Board with a discretionary option of dismissing an appeal after the Board has given notice to the party affected. We find that the Board in this appeal has not chosen to do this and has not given any notice to the Appellant with respect to non-compliance with its orders. We do not consider the standard non-compliance paragraph (as set out above under the adjournment application discussion) to be the notice anticipated by section 18. In our view, section 18 requires the Board to provide specific notice to an appellant that it intends to dismiss an appeal in order to allow the appellant an opportunity to respond.”

Upheld on Stated Case



# Inquisitorial Jurisdiction: costs

➤ **Costs** – Rules of Practice & Procedure of the Board provides:

“21. (1) If the board finds that the conduct of a party or intervener has been frivolous, vexatious, egregious or an abuse of process, or that a party or intervener has unreasonably delayed or lengthened the proceeding or failed to comply with a direction or order of the board or with these Rules, the board may order that party or intervener to pay all or part of the costs of another party or intervener and all or part of the costs of the board in connection with the appeal.

(2) The board may order costs under subsection (1) on its own initiative or on the application of a party.”

Issue: Costs can be awarded if the conduct of the party is “frivolous, vexatious, egregious or an abuse of process” or “has unreasonably delayed or lengthened the proceeding or failed to comply with a direction or order of the board or with these Rules”



## Inquisitorial Jurisdiction: costs

- **Singh v. Area 15 (2021 PAABBC 20214506)** – the Appellant engaged in “deliberate and knowing attempt to secure a significant tax benefit to which he was not entitled. I am also of the view that the Appellant’s deliberate flouting of document production directions should also be taken into account.”
- **Gokey v. Area 25 (2019 PAABBC 20191496)**- “The property owners did not seek their costs and the Appellant does not appear to have been put on notice that costs were at issue. As the Appellant was not put on notice of this issue, I will not make any costs award in respect of this appeal.”
- **South Vancouver Parks Society v. Area 09 et al (2016 PAABBC 20160114)**- “...numerous submitted documents were not made exhibits in the hearing nor used to support the Appellant’s case.. in their final argument, the Society continued to make inappropriate remarks, such as saying that the Assessor’s witness ‘manufactured’ evidence in cross examination, that she was not independent or lacked competence, and then asked the Board to draw an adverse inference against the Respondents for failure to deliver documents notwithstanding several Board orders to the contrary...in final argument, both the Society’s representative and their lawyer apologized for statements that were made insinuating a “gift exchange” present in the process. This gesture came quite late in the proceedings, but nonetheless, was an effort to repair the professional damage caused by such serious and unfounded allegations...The Board accepts that these allegations of misconduct occurred and this conduct was frivolous, vexatious and egregious. ”



## Inquisitorial Jurisdiction: costs

**Area 08 v. Young Life Inc. (2005 PAABBC 20042391A)** – “At the end of the day, the Assessor did not comply with an order of the Board by delivering a late opinion including opinions outside of the proper scope of reply, and Young Life expended additional resources that need not have been expended as a result. The hearing was unnecessarily delayed because the Assessor withdrew from statements in the ASF. While I do not suggest that the Assessor’s conduct was in any way intentional, or that the Assessor was in any way acting in bad faith, the late delivery of an expert opinion including evidence that was not proper reply and contrary to previous agreements cannot go without consequence where, as here, the hearing was delayed as a result, there was prejudice to the other party, and much of the delay and extra cost could have been avoided”





# Inquisitorial Jurisdiction: No onus of Proof

*Assessor of Area 10-Burnaby-New Westminster v. Haggerty Equipment Co. Ltd.* (1997 SC 396 (BCSC) on the essential nature of the proceedings before the Board:

“The proceedings are inquisitorial and not adversarial.... Accordingly, it is up to both the Assessor, the City and the respondent to put whatever evidence before the Board which they think would be of assistance to the Board in its deliberations and up to the Board to requisition evidence which it believes would be of assistance. Because the proceedings are inquisitorial, the onus is really on no party. However, it will obviously be in the interests of all parties to present the evidence which best supports the position which is most advantageous to them. Once all of the evidence is available, the role of the Board is then this:

The Board should then weigh all of the vive voce testimony, as well as the documentary evidence submitted, and then accept or reject in whole or in part the various witnesses' testimony and/or opinions and accept in whole or in part the documentary evidence, and finally arrive at its own conclusion on what the ‘actual value of the improvements’ was.”



# Inquisitorial Jurisdiction: sufficiency of evidence

- **Lack of Evidence:** The Board can not rely on an onus of proof to dismiss appeals or confirm assessments (eg when an appellant has not provided sufficient evidence to prove an inaccuracy).

Court in *Vancouver Pile Driving Ltd. v. Assessor of Area #08 2008 BCSC* quoting *Incentive Enterprises Ltd. v. Assessor of Area 15 (1996)*, B.C. Stated Case 387 (S.C) :

“The thrust is that the Board must have evidence before it to determine the value and act on that evidence. ...If such a submission had been made, the Board would have put its mind to the evidence, limited though it was, and decided the appeal on the basis of the evidence. However, the motion put was a no-evidence-motion, and the Board accepted that motion summarily. From the transcript it seems clear that it did not decide on evidence. It imposed a burden of proof on the Appellants and dismissed the appeal on no evidence. In my view that was an erroneous approach to the issue before it; the error was an error of law.”



# Inquisitorial Jurisdiction: sufficiency of evidence

- Both parties have a burden of proof
- Parties have an obligation to bring evidence to prove their case on a balance of probabilities

*Petro-Canada Inc. (Gulf Canada Ltd.) v. Assessor Area 12 - Coquitlam, 1991,*  
Vancouver Stated Case No. 321:

“The Board cannot be faulted for counsel's election not to call specific evidence or to make submissions on particular issues or to apply to re-open the hearing for either or both of those purposes. It is counsel's obligation to determine the evidence put before the Board for its consideration and the Board's obligation to consider that evidence in accordance with applicable statutory and case authority.”



# Opinion evidence before the Board

- Lay opinions
- Opinions from witnesses (expert or lay) who are not necessarily independent of party
- Sometimes expert witness is also advocate
- Opinions on matters within expertise of tribunal
- Opinion on the “ultimate issue” ie what is the actual value of the property?
  - Key questions: To what extent do these factors affect the weight and reliability of the evidence?



# Factors affecting reliability of opinion evidence

- Qualifications/expertise:
  - Is the expert offering opinions within the scope of his or her alleged expertise?
    - BUT –appropriate qualifications and experience won't necessarily make the expert's evidence reliable – see for example *Rainbow Country Estates v. Whistler* 2010 BCSC 300
- Independence/impartiality of expert
- Objectivity:
  - Is expert crossing the line into advocacy?
  - Does the expert's evidence advocate for a particular result or does it seek to objectively assist the Board in its determination
- Extent to which underlying facts are proven or need to be proved
  - Are underlying facts in dispute?



## Factors affecting reliability of opinion evidence

- Extent to which supporting evidence is provided or inferences are supported by other evidence
  - Reliance documents, test results, raw data
  - Is the evidentiary basis for the opinion sound?
  - Eg. Appraisal context – market data to support adjustments
- Analysis
  - Is there any?
  - Is it internally consistent?
  - Is the analysis logical?
  - Is it supported by evidence?



# Questions & Wrap up

Thank you

If you have any questions, please contact Simmi K. Sandhu, Chair,  
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