

In the Court of Appeal of Alberta

Citation: Calgary (City) v. Alberta (Municipal Government Board), 2008 ABCA 187

**Date: 20080521
Docket: 0701-0079-AC
Registry: Calgary**

Between:

The City of Calgary

**Respondent
(Appellant)**

- and -

The Municipal Government Board

**Respondent
(Respondent)**

- and -

Hudson's Bay Company

**Appellant
(Respondent)**

The Court:

**The Honourable Madam Justice Elizabeth McFadyen
The Honourable Mr. Justice Keith Ritter
The Honourable Madam Justice Patricia Rowbotham**

**Reasons for Judgment Reserved
of The Honourable Madam Justice McFadyen
Concurred in by The Honourable Mr. Justice Ritter
Concurred in by The Honourable Madam Justice Rowbotham**

Appeal from the Order by
The Honourable Madam Justice C.S. Phillips
Dated the 29th day of January, 2007
Entered on the 20th day of March, 2007
(2007 ABQB 47, Docket: 0601 02295)

**Reasons for Judgment Reserved
of The Honourable Madam Justice McFadyen**

[1] The main issue in this appeal is whether the Hudson's Bay Company ("the Bay") is entitled, under s. 460(3) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 [*MGA*], to make a complaint to an assessment of property that it occupies as a tenant.

FACTS

[2] The City of Calgary ("the City") issued its 2004 property assessments to the owners of four Calgary shopping centres (Southcentre Mall, Sunridge Mall, Chinook Centre, and Deer Valley Shopping Centre) as the assessed persons. In each case, the Bay, or its wholly owned subsidiary, Zellers Inc., are anchor tenants in the shopping centres, and their leases required payment by them of the proportionate share of property taxes based on the space occupied by them as anchor tenants.

[3] The Bay also owns the downtown Bay store, and is the "assessed person" in respect of that property. There is no evidence that Zellers owns property in Calgary.

[4] The owners of each shopping centre filed a complaint with the Assessment Review Board ("ARB"). The owners subsequently reached settlements with the City, and the ARB accepted the agreed revised property assessments, and issued the necessary orders.

[5] The Bay, on its own behalf and on behalf of Zellers, also filed separate complaints in regard to these assessments, disputing the assessments in respect of the space occupied by the Bay or Zellers, as the case may be. These complaints were dismissed by the ARB on the basis that it had no jurisdiction to hear the complaints because it had already decided the assessments by accepting the settlements of the City and the owners. Although the Bay filed separate complaints, it had not been invited to participate in the settlement negotiations, which resulted in the settlement and reassessment.

[6] The Bay appealed to the Municipal Government Board ("MGB").

DECISIONS BELOW

A. Municipal Government Board

[7] The MGB decided that the Bay was entitled to file a complaint against the assessments on the basis that ss. 460(3) and (4) provide that "an assessed person" may make a complaint respecting "any assessed property or tax." Although it recognized that the Bay was not the "assessed person" for the assessed properties that were the subject matter of the complaints, the MGB concluded that the Bay was an "assessed person" entitled to file the complaint because it owned other property that was the subject of an assessment. The MGB considered the wording of s. 460(3) to be broad enough to permit that interpretation, and that no policy reason existed to justify restricting the right of

complaint only to owners of the assessed property. The MGB determined that multiple complainants would not overburden the complaint process.

B. Court of Queen's Bench

[8] The City of Calgary applied for judicial review of the MGB's decision: *Calgary (City) v. Alberta (Municipal Government Board)*, 2007 ABQB 47, 70 Alta. L.R. (4th) 98. The chambers judge conducted the pragmatic and functional analysis anticipated by *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, 160 D.L.R. (4th) 193 [*Pushpanathan*] and concluded that the standard of correctness applied. She further concluded that the MGB erred in its interpretation of s. 460(3), as the term "an assessed person" refers only to the assessed person for the property that is subject to the complaint. Therefore, the *MGA* only permitted the shopping centre owners to file complaints to the assessments. She came to this conclusion by considering s. 460(3), together with ss. 284(1)(a) and 304, and found that the *MGA* requires a connection between an assessed person and the particular property in question, so "an assessed person" in s. 460(3) should be read as "*the owner of the assessed property*": at para. 81 [emphasis in original]. She also determined that "a taxpayer" refers to a payer of property tax and that it must be the person liable for tax on the property in question, which meant essentially that "an assessed person" and "a taxpayer" are the same person - the owner of the property. As the Bay and Zellers were not owners of the properties subject to the complaints, they could not complain about the assessments.

LEGISLATION

[9] Section 460 of the *MGA* sets out the procedure for complaints against property assessments, and defines who may make a complaint:

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

...

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

[10] The definitions for "tax", "taxpayer", "assessed person" and "assessed property" are also relevant, and are defined as follows:

1(1)(aa) "tax" means

(i) a property tax,

(ii) a business tax,

- (iii) a business revitalization zone tax,
- (iii.1) a community revitalization levy,
- (iv) a special tax,
- (v) a well drilling equipment tax,
- (vi) a local improvement tax, and
- (vii) a community aggregate payment levy;

1(1)(bb) "taxpayer" means a person liable to pay a tax;

...

284(1) In this Part and Parts 10, 11 and 12,

(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;

(b) "assessed property" means property in respect of which an assessment has been prepared or adopted;

[11] Section 304, which is referred to in the definition of assessed person, provides, in part:

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

Column 1 Assessed Property

...

(b) a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;

Column 2 Assessed Person

...

(b) the owner of the parcel of land;

[12] Other provisions of the *MGA* use the phrase "an assessed person", and are also relevant to its interpretation. In particular, ss. 299(1) and 300(1) provide:

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

ISSUES

- A. Did the chambers judge select the appropriate standard of review?
- B. Does s. 460(3) limit the right of complaint about a property assessment to “the owner of the assessed property?”

STANDARD OF REVIEW

[13] This Court reviews the chambers judge’s selection of the standard of review on the standard of correctness: *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226 at para. 43 [*Dr. Q*]. If the court decides that the chambers judge adopted the appropriate standard of review, the court must also decide whether that standard was correctly applied: *Alberta (Minister of Municipal Affairs) v. Municipal Government Board*, 2002 ABCA 199 at paras. 16-26, 312 A.R. 40 [*Telus*].

[14] After conducting a pragmatic and functional analysis, the chambers judge concluded that the correctness standard of review applied. The parties’ submissions before us on this issue were similarly premised on the pragmatic and functional approach. However, the Supreme Court has since reconsidered the analytical process employed by a court to ascertain the appropriate standard of review in the judicial review of administrative tribunal decisions: *Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

[15] In light of that development, we invited the parties to make additional submissions on the standard of review. Taking into account those submissions, we will assess the standard of review based on the principles enunciated by the Supreme Court in *Dunsmuir*, rather than conducting a review of the “functional and pragmatic” approach undertaken by the chambers judge.

[16] The most fundamental change flowing from the majority decision in *Dunsmuir* is that only two standards of review will apply: correctness and reasonableness (para. 34). The analysis to be undertaken in determining which standard applies need not be exhaustive. The first step involves a review of existing case law to assist in identifying the standard of review to be applied: para. 58. Where such an inquiry does not provide a ready answer, the court will need to undertake a “contextual” analysis to identify the proper standard of review. Such an approach involves consideration of a number of relevant factors, including the existence of a privative clause, the purpose of the tribunal as determined by interpretation of the enabling legislation and whether it is a discrete and special administrative regime, the nature of the question at issue, and the tribunal’s expertise. However, not every factor will necessarily be considered “as some may be determinative.”

[17] Particular attention should be given to the nature of the question in dispute, as the Supreme Court considered a deferential approach as necessary where the nature of the question is one of fact, one of law and fact where they cannot be readily separated, and questions of policy or discretion: para. 53. Nonetheless, questions of law may still be subject to deference. The majority in *Dunsmuir* listed several examples where the correctness standard of review will be appropriate, such as:

- general questions of law that are “both of central importance to the legal system as a whole and outside of the adjudicator’s specialized area of expertise”: see paras. 55 & 60; and
- “true” questions of jurisdiction or *vires*, which were defined as those questions where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter: see para. 59.

[18] The nature of the question in this appeal, whether a party is entitled to file a complaint, is a question of law involving the interpretation of s. 460(3) of the *MGA*. This question involves the MGB interpreting its own statute, and typically will be subject to deference: *Dunsmuir*, at para. 54. Moreover, while the appeal involves an issue of law, it also requires consideration of policy issues, since a proper interpretation of the *MGA* in this instance requires an understanding as to the effective functioning of the complaint process and considers the extent to which an assessed person or taxpayer has an interest in making a complaint of another person’s property assessment. The MGB is particularly familiar with such issues, and is well-suited to address these considerations. This question of law does not fall within the scope of one of the examples cited in *Dunsmuir*; it is not a jurisdictional question in the narrow sense (see *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485), and it does not constitute a question of importance to the legal system as a whole. These comments apply to the standard of review applicable to the interpretation of s. 460(3) of the *MGA*, and do not necessarily govern the standard of review applicable to other MGB decisions.

[19] The Supreme Court in *Dunsmuir* also pointed out that the existence of a privative clause is a “strong indication” of the legislative intent to give deference to the decision of the administrative tribunal: para. 52. While the *MGA*’s privative clause has been characterized as “weak,” it nonetheless signals that some deference should be given to the MGB’s decisions: *Telus* at para. 31.

[20] Taking these factors into account leads to the conclusion that the standard of reasonableness applies to a review of the MGB’s decision. Reasonableness, according to the majority of the Supreme Court in *Dunsmuir*, requires that deference be accorded to the underlying decision, which “imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law,” (para. 48) and “implies that courts will give due consideration to the determinations of decision makers” (para. 49).

[21] The appropriate standard of review is reasonableness. The question on this appeal is the reasonableness of the decision of the MGB that “any assessed person” has the right to file a complaint about an assessment, and that the right is not limited to the assessed person named in the assessment rolls for the property that is the subject of the complaint.

POSITION OF THE PARTIES

[22] The chambers judge determined that the MGB erred in its interpretation of s. 460(1), and concluded that the only person who can make a complaint is the person whose name appears on the assessment roll as the “assessed person” with respect to the assessed property referred to in the complaint. On appeal, the appellant submits that the chambers judge erred in this conclusion. The appellant says that the ordinary meaning of the words used in s. 460(1), as read in the context of the *MGA* as a whole, permits an appeal by any assessed person in respect of any assessed property. The appellant submits that the chambers judge erred in deciding that “an assessed person” in s. 460(3) has the same meaning as the phrase “the assessed person” in s. 304(1)(b).

[23] The respondent adopts the reasons of the chambers judge’s and submits that the phrase “assessed person” used in s. 460(1) is determined by s. 304(1).

ANALYSIS

[24] The modern, preferred approach to statutory interpretation mandates that the Court interpret the words of the legislative provision in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature: *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 21; *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26.

Ordinary Meaning

[25] The MGB appropriately noted that s. 460 addresses the question of who may file an assessment complaint, and considered the ordinary meaning of ss. 460(3) and (4) to be clear. Read together, they provide that “an assessed person” may make a complaint relating to “any assessed property.” The MGB considered that this wording provided broad appeal rights to assessed persons to make a complaint about property assessment, including persons other than those whose name appears on the assessment roll as the assessed person of the subject property.

[26] This approach is certainly reasonable, as the ordinary meaning of “an assessed person” and “a taxpayer” is not restrictive. “A” and “an” are indefinite articles, defined as “one, some, any”: *Canadian Oxford Dictionary*, 2d ed., s.v. “a”. The ordinary meaning implies that any assessed person or taxpayer may make a complaint in respect of any assessed property.

[27] The ordinary meaning is confirmed by the definitions for “assessed person” and “assessed property”, which provide that an assessed person is any person whose name appears on an assessment roll. That language indicates a broad unrestricted interpretation.

[28] The respondent submits that s. 304(1) defines the term “assessed person.” However, s. 304(1) does not purport to define the terminology used in the *MGA*, but merely sets out what information is to be included in the assessment rolls, and identifies and links the assessed person and the specified classes of property. Nothing in this language requires a linkage between the person who may make a complaint and the property in respect of which the complaint is made. Had the Legislature intended to restrict the right of complaint to the person who owned or was the assessed person in respect of the assessed property that is the subject matter of the complaint, it could easily have said so.

Consistency of Meaning

[29] Legislation must be read in context and other parts of the statute inform the ordinary meaning of the provision in question: Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3d ed. (Scarborough: Thomson Canada Limited, 2000) at 309. Similarities and differences in choice of words are significant. “It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings”: Ruth Sullivan, *Driedger on the Construction of Statutes*, 4th ed. (Markham: Butterworths Canada Ltd., 2002) at 162.

[30] Generally, when ss. 460(3) and (4) are read with other parts of the statute, the ordinary meaning is reinforced. For instance, the MGB considered s. 462(1)(b) to be instructive. It requires the designated officer to, at least fourteen days prior to the hearing, notify “the municipality, the complainant, and **any assessed person other than the complainant who is affected by the complaint**, of the date time and location of the hearing.” [emphasis added] This provision recognizes that the complainant and the assessed person for the property that is the subject of the complaint may be two distinct entities, and ensures that notice of a hearing is given to the owner of the assessed property where the complaint is made by someone other than the owner.

[31] The chambers judge reasoned that this provision did not refer to the owner but to the assessed owners of other similarly situated assessed properties. However, the complaint process under the *MGA* deals with individual complaints relating to individual properties, and nothing in the *MGA* suggests that an ARB decision relating to the assessment of one property will bind or affect owners of unrelated similarly situated properties. If the *MGA* intended to refer only to owners of similarly situated properties, some guidance would have been provided as to the manner in which the officer would decide what constituted a similarly situated property.

[32] Certainly, other sections of the *MGA* clearly identify when the assessed person of the subject property is specified and when the more general term is used. In particular, s. 304(1) provides that

the name of “the person” described in column 2 must be recorded on the assessment role as “the assessed person” in respect of “the assessed property” described in column 1.

[33] Where the Legislature intended to link an assessed person to that assessed person’s assessed property, it has expressly done so. Specifically, s. 299(1) permits “an assessed person” to request sufficient information to show how the assessor prepared the assessment “of that person’s property.” If “an assessed person” meant “*the* owner of *the* assessed property”, or “the assessed person in respect of the assessed property”, it would be unnecessary to use the words “of that person’s property”. To cite another example, s. 300(1) permits “an assessed person” to request a summary of the assessment for any assessed property in the municipality. The wording in ss. 300(1) and 460(4), both of which use the term “an assessed person”, can only be consistent if “an assessed person” means any person who is named on an assessment roll, whether or not she is the owner of the subject property. If “any assessed property” is limited to only the property owned by that person, s. 300(1) would be meaningless. Section 460(4) would still have meaning, as allowing any assessed person to make a complaint about her own property, but it would be inconsistent with s. 300(1) despite containing the same words.

[34] The City submits that the broad interpretation suggested by the Bay will render the complaints process unworkable. The MGB decided otherwise, and noted in its reasons that multiple complaints have not caused significant problems to date. Section 460(3) limits the right make a complaint to assessed persons or taxpayers, both of whom have an interest in the fairness of the tax regime. Owners of assessed property and other taxpayers have an interest in ensuring that other assessments reflect full value, and could have reason to make a complaint. This issue deals largely with policy and the efficient functioning of the appeals process provided by the *MGA*, and deference must be accorded to the MGB decision.

[35] For these reasons, the MGB’s decision is reasonable.

[36] Another issue raised in this appeal was whether the appeal before the MGB is an appeal on the record or *de novo*. This issue was raised only in the context of the City’s concern about records before the MGB, and had no effect on the decision reached. In fact, the ARB refused to hear the Bay’s complaint and made no decision as to the merits. For this reason, it is unnecessary to decide this issue in the context of this case.

[37] Nor is it necessary to decide in this case whether the MGB has authority to return an assessment to the ARB for decision. I assume that the MGB has the authority to do so. However, having regard to the delay resulting from the lengthy review and appeal process, the complaints should be decided by the MGB.

CONCLUSION

[38] The Bay is an assessed person, by virtue of its ownership of the downtown Bay store. It therefore has the right to make a complaint about the assessment of the shopping centres in question. Zellers is not a party to this appeal. The appeal is allowed and returned to the MGB for decision.

Appeal heard on October 10, 2007

Reasons filed at Calgary, Alberta
this 21st day of May, 2008

McFadyen J.A.

I concur:

Ritter J.A.

I concur:

Rowbotham J.A.

Appearances:

G.J. Ludwig

J.B. Laycraft, Q.C.

for the Appellant

L.J. Gosselin

for the Respondent, The City of Calgary

M.J. d'Alquen

for the Respondent, The Municipal Government Board