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THE CORPORATION OF THE TOWN OF COPPER CLIFF .... APPELLANT;

AND

THE DEPARTMENT OF MUNICIPAL AFFAIRS FOR THE PROVINCE OF ONTARIO, THE CORPORATION OF THE TOWNSHIP OF NEELON & GARSON, *ET AL.* .....RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Taxation—Apportionment among municipalities of cost of maintaining home for the aged—Revision and equalization of assessment rolls by Department of Municipal Affairs—Appeal to Ontario Municipal Board from equalization report—Stated case submitted by Municipal Board—The Homes for the Aged Act, 1955 (Ont.), c. 30, ss. 1(c) (1956 Am., c. 30, s. 1), 19(1)—The Assessment Act, R.S.O. 1950, c. 24, s. 97 (17) (1955 Am., c. 4, s. 24).

The Homes for the Aged Act of Ontario, as amended, provided that the cost of maintaining homes would be defrayed by municipalities in proportion to their last revised assessment rolls as revised and equalized by the assessor of the territorial district, or if there was no district assessor, by the Department of Municipal Affairs. The department prepared an equalization report for the district of Sudbury by which the local assessment in the municipality of Copper Cliff was greatly increased. The equalization report took into consideration a smelter that had not been assessed by the municipality. The Town of Copper Cliff appealed from this report to the Ontario Municipal Board. Shortly thereafter, an amended equalization report, which purported to amend the earlier one, was forwarded to the municipalities concerned. The amended report was also appealed, and a request was made by the present appellant that a case be stated by the Board for the opinion of the Court of Appeal upon certain questions of law. Leave to appeal from the judgment of the Court of Appeal was granted by this Court.

Held: The appeal and cross-appeal should be dismissed.

1. The Department of Municipal Affairs had jurisdiction to make the equalization report.
2. The report did not require the signature of the Minister of Municipal Affairs.
3. The legislation did not contemplate a succession of equalization reports for any one year. The first report alone was authorized and was to be considered.
4. In preparing its equalization report, the department was not restricted to a mere examination of the assessment rolls of the interested municipalities. Everything which was done by the department came under the heading of revision and equalization.

*PRESENT: Kerwin C.J. and Locke, Cartwright, Judson and Ritchie JJ.

5. The jurisdiction of the Ontario Municipal Board was not limited merely to a dismissal of the appeal from the equalization report or to a granting thereof by setting aside the report, but this did not mean that the Board had jurisdiction to determine whether a particular property was or was not assessable. *Toronto v. Olympia Edward Recreation Club Ltd.*, [1955] S.C.R. 454, distinguished; *Metropolitan Toronto v. Eglinton Bowling Co.*, [1957] O.R. 621, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1], dealing with questions of law submitted to that Court by the Ontario Municipal Board. Appeal and cross-appeal dismissed.

J. T. Weir, Q.C., and *B. M. Osler, Q.C.*, for the appellant.

J. E. Eberle, for the respondents.

The judgment of Kerwin C.J. and of Judson and Ritchie JJ. was delivered by

THE CHIEF JUSTICE:—The Corporation of the Town of Copper Cliff appealed from a judgment of the Court of Appeal for Ontario[1], dated June 24, 1957, and, objection having been taken, leave to appeal was granted by this Court at the opening of the argument.

At the outset attention should be drawn to the time that has elapsed since the judgment of the Court of Appeal in a matter affecting the proper amount of the assessment roll of the appellant for the year 1954 as equalized for the purpose of defining its proportion of the cost of maintaining a home for the aged under *The Homes for the Aged Act*, Statutes of Ontario 1955, c. 30, as amended in 1956. Notice of appeal to this Court was given October 11, 1957, by Copper Cliff and the Corporation of the Town of Frood Mine. A notice of cross-appeal by the respondent, The Department of Municipal Affairs for the Province of Ontario, was dated October 17, 1957. On December 21, 1959, Frood Mine gave notice of discontinuance of its appeal. Copies of these notices were duly filed in the office of the Registrar of this Court, but it was only in March 1960, that a motion was launched to dismiss the appeal for want of prosecution. When the matter came before a member of this Court, to whom the Registrar had referred the motion, an order was made putting the appellant upon terms as to the filing of the case and factums for the October

[1] [1957] O.W.N. 411, 9 D.L.R. (2d) 630.

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1960 sittings. It is true that by an amendment to *The Homes for the Aged Act* (subs. 3 of s. 4 of c. 45 of the Statutes of 1957), subs. 5 of s. 19 of the Act was added, but this cannot account for or excuse the delay.

There is a home for the aged in the District of Sudbury and it has been taken for granted that that home had been established under s. 4 of the Act, because the parties to this appeal agreed that subs. 1 of s. 19 applies:

> 19. (1) The cost of maintaining a home established under section 4 shall be defrayed in each year by the municipalities in the territorial district in proportion to the amounts of their assessments according to their last revised assessment rolls as equalized.

An amendment to the Act, s. 1 of c. 30 of the Statutes of Ontario for 1956, which came into force as of January 1, 1955, added clause (*c*) to s. 1 of the Act, which now reads, with the introductory words, as follows:

> 1. In this Act,
>
> .....
>
> (*c*) "last revised assessment rolls as equalized" means last revised assessment rolls as revised and equalized for the purposes of this Act by the assessor of the territorial district, or, if there is no district assessor, by the Department of Municipal Affairs.

At the outset it is important to bear in mind the distinction between counties and territorial districts in Ontario. *The Territorial Division Act,* R.S.O. 1950, c. 388, provides that the province shall consist of counties and districts. In the list of districts is "The Territorial District of Sudbury", consisting of the City of Sudbury, eight towns, including Copper Cliff and Frood Mine. It was not made clear how and when the Improvement District of Renabie came into being, but no party took exception to the fact that that Improvement District appears in the equalization report to be mentioned shortly. By s. 97 of *The Assessment Act,* R.S.O. 1950, c. 24, as amended, provision is made for the appointment by the Minister of Municipal Affairs of a district assessor for any territorial district described in *The Territorial Division Act.* By subs. 17 of that section "if any municipality or locality in a district is dissatisfied with the last revised assessment as equalized for any purpose by the district assessor or by the department", which means the Department of Municipal Affairs, "the municipality or trustees of an improvement district may appeal to the

Ontario Municipal Board". There being no district assessor in the District of Sudbury, the department made a 1955 equalization report, dated January 30, 1956, with explanatory notes. Copper Cliff and Frood Mine appealed from this report to the Municipal Board. By a letter dated March 13, 1956, the Director of Municipal Assessment wrote the Clerk of Copper Cliff that he had been instructed by the Minister of Municipal Affairs to forward an amended 1955 equalization report, made under the provisions of the Act. This report purported to supersede the earlier one of January 30th. An appeal by the same two municipalities was launched against this report. When both appeals came before the Board the two municipalities requested that a special case be stated for the opinion of the Court of Appeal, in accordance with s. 96 of *The Ontario Municipal Board Act,* R.S.O. 1950, c. 262, as amended. I agree with the Court of Appeal that we need not concern ourselves with the later report.

The first report increased the 1956 local assessment of Copper Cliff from $8,625,264 to $49,627,520. At the request of the council of Copper Cliff, the supervisor of municipal assessment informed it of the basic principles applied in equalizing the assessment. It is sufficient to state that in applying these principles the supervisor explained that the equalization report had taken into consideration property that had not been assessed in Copper Cliff,—apparently a smelter which had been omitted being responsible for the great increase noted above. In the case of some municipalities, assessments were added to cover buildings erected after the return of the local assessment roll and for other reasons, in accordance with s. 51(*a*) of *The Assessment Act,* as amended.

The words "for any purpose", which have been underlined in the extract from subs. 17 of s. 97 of *The Assessment Act,* quoted above, should be noted, as it is important to bear in mind that the last revised assessment of Copper Cliff was equalized for the purpose of fixing that municipality's proportion of the cost of maintaining the Sudbury District Home for the Aged.

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As is pointed out by Aylesworth J.A., speaking for the Court of Appeal, the case as stated by the Board is most unsatisfactory, but I agree that that learned judge has correctly stated the questions to be answered as follows:

(1) Had the Department of Municipal Affairs in 1956, jurisdiction to make an Equalization Report? This question is academic so far as future years are concerned by reason of a subsequent amendment to the Home for the Aged Act, enacted in 1957.

(2) Is the January 1956 Equalization Report of the Board a nullity, by reason of the fact that it does not bear the signature of the Minister of Municipal Affairs?

(3) Did the Department of Municipal Affairs have jurisdiction to make its so-called amended Equalization Report in March, 1956, having already delivered its Equalization Report in January of that year?

(4) In making its Equalization Report, was the Department of Municipal Affairs restricted merely to an examination of the assessment rolls of the interested municipalities as those rolls were closed pursuant to Section 53 of The Assessment Act and as those rolls had been revised and certified, pursuant to Section 54, of The Assessment Act, for the purpose of ascertaining whether the valuations of real property, made by the assessors in each municipality, bear a just relation one to another, and for the purpose of increasing or decreasing the aggregate values shown in the local assessments, by adding or deducting so much percent as, in the opinion of the Department, was necessary to produce a just relation between such valuations?

(5) Is the jurisdiction of the Ontario Municipal Board on the applications to it by way of appeals from the said Equalization Report limited merely to a dismissal of the appeal or to a granting thereof by setting aside the Equalization Report?

I agree with the Court of Appeal that Question 1 should be answered in the affirmative. Clearly, by the relevant statutes quoted above, the Department of Municipal Affairs had jurisdiction to make the equalization report of January 30, 1956.

With reference to Question 2, the Court of Appeal decided that the January 1956 equalization report was not a nullity by reason of the fact that it did not bear the signature of the Minister of Municipal Affairs. It was upon this point that the cross-appeal to this Court was launched and argued. *The Executive Council Act,* R.S.O. 1950, c. 121, provides by s. 1 that the Executive Council shall be composed of such persons as the Lieutenant-Governor from time to time appoints. Section 2 provides that the Lieutenant-Governor may appoint under the Great Seal from

among the Ministers of the Crown certain named Ministers to hold office during pleasure, among them being a Minister of Municipal Affairs. Section 5 reads as follows:

> 5. No deed or contract in respect of any matter under the control or direction of a minister shall be binding on His Majesty or be deemed to be the act of such minister unless it is signed by him or is approved by the Lieutenant Governor in Council.

The Department of Municipal Affairs Act, R.S.O. 1950, c. 96, as amended, provides for a Department of Municipal Affairs over which the Minister shall preside. While subs. 1 of s. 2 states "The Minister shall have power and authority to act for and on behalf of the Department", subs. 3 provides for the appointment by the Lieutenant-Governor in Council of such officers, clerks and servants as from time to time may be deemed necessary for the proper conduct of the business of the department. By s. 3 the department is to administer all acts in respect to municipal institutions and affairs. It appears to me to be clear, in view of these enactments, that the Court of Appeal was correct in answering Question 2 in the negative.

I agree with the Court of Appeal's answer to Question 3 and have nothing to add to the reasons given by that Court for its answer in the negative.

With respect to Question 4, I agree with the Court of Appeal for the reasons given by it that everything done by the department in preparing the report of January 1956, comes under the heading of revision and equalization.

As to Question 5, it should be reiterated that the equalization is made for the purpose of defining the share of each municipality in the territorial division of the cost of maintaining the home for the aged, which is to be in proportion to the amounts of their assessments according to their last revised assessment rolls as equalized which, as shown by the amendment of 1956, means "as revised and equalized". We are not concerned with the amendments to s. 80 of *The Assessment Act* dealing with appeals to the Municipal Board from a County Judge, nor with appeals to the Court of Appeal from a County Judge, nor with the amendment in 1956 to *The Assessment Act* which added s. 81(*a*) thereto. As has been pointed out, this is an appeal under s. 97 of *The Assessment Act*. The Board is to determine

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whether the equalization report was proper and is not concerned with the question of whether the smelter, for instance, referred to above, is or is not assessable or taxable in Copper Cliff.

The appeal and cross-appeal should be dismissed without costs.

LOCKE J.:—This is an appeal by leave granted by this Court from a judgment of the Court of Appeal for Ontario[1] dealing with questions of law submitted to that Court in a case stated by the Ontario Municipal Board, a body constituted under the provisions of *The Ontario Municipal Board Act*, R.S.O. 1950, c. 262.

The Town of Copper Cliff is one of the 29 municipalities in the District of Sudbury and, as such, liable to contribute to the establishment and maintenance of a home for the aged in that district by reason of s. 4 of *The Homes for the Aged Act*, 1955.

By s. 19(1) of the last mentioned Act it is provided that:

> The cost of maintaining a home established under section 4 shall be defrayed in each year by the municipalities in the territorial district in proportion to the amounts of their assessments according to their last revised assessment rolls as equalized.

By s. 1 of c. 30 of the Statutes of Ontario for 1956 there was added to s. 1 the following:

> (*c*) "last revised assessment rolls as equalized" means last revised assessment rolls as revised and equalized for the purposes of this Act by the assessor of the territorial district, or, if there is no district assessor, by the Department of Municipal Affairs.

Acting under these powers the department prepared and forwarded to the Town of Copper Cliff and other municipalities in the district who were liable to contribute to the support of the home for the aged a document described as the 1955 equalization report. According to the 1954 assessment rolls of the town, properties in the town were assessed for a total amount of $8,625,264 and the department's equalized assessment raised this figure to $49,627,520. This was forwarded to the clerk of the town by the director of municipal assessment on January 30, 1956. The council of the town, by letter dated February 3, 1956, addressed to the Department of Municipal Affairs, asked it for certain

[1] [1957] O.W.N. 411, 9 D.L.R. (2d) 630.

information as to the manner in which the equalized assessment had been made. This was answered by a letter from the supervisor of municipal assessment under date February 20, 1956. The great disparity between the total assessment of the town and that in the equalized assessment of the department was mainly attributable to the fact that the town had not assessed the smelter of the International Nickel Co. Ltd.

On March 13, 1956, the director of municipal assessment forwarded an amended 1955 equalization report for the district to the municipalities concerned.

In February 1956 the Town of Copper Cliff appealed to the Ontario Municipal Board from the equalization report forwarded to it in January under the provisions of s. 97(17) of *The Assessment Act,* R.S.O. 1950, c. 24, and, when the second equalization report was received, also appealed from it. These appeals came before the Municipal Board and the request was then made by the present appellant that a case be stated for the opinion of the Court of Appeal upon certain questions of law under the terms of s. 96 of *The Ontario Municipal Board Act.* By an order of the Board dated November 14, 1956, it was directed that this be done.

The questions of law submitted for the opinion of the court are more conveniently summarized and stated in the judgment of the Court of Appeal delivered by Aylesworth J.A. and are as follows:

(1) Had the Department of Municipal Affairs in 1956, jurisdiction to make an Equalization Report? This question is academic so far as future years are concerned by reason of a subsequent amendment to the Home for the Aged Act, enacted in 1957.

(2) Is the January 1956 Equalization Report of the Board a nullity, by reason of the fact that it does not bear the signature of the Minister of Municipal Affairs?

(3) Did the Department of Municipal Affairs have jurisdiction to make its so-called amended Equalization Report in March, 1956, having already delivered its Equalization Report in January of that year?

(4) In making its Equalization Report, was the Department of Municipal Affairs restricted merely to an examination of the assessment rolls of the interested municipalities as those rolls were closed pursuant to Section 53 of The Assessment Act and as those rolls had been revised and certified, pursuant to Section 54, of The Assessment Act, for the purpose of ascertaining whether the valuations of real property, made by the assessors in each municipality, bear a just relation one to another, and for the purpose of increas-

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ing or decreasing the aggregate values shown in the local assessments, by adding or deducting so much percent as, in the opinion of the Department, was necessary to produce a just relation between such valuations?

(5) Is the jurisdiction of the Ontario Municipal Board on the applications to it by way of appeals from the said Equalization Report limited merely to a dismissal of the appeal or to a granting thereof by setting aside the Equalization Report?

The Home for the Aged Act, 1955, provides for the establishment and maintenance of persons over the age of 60 years who are unable to care for themselves, whether through the disabilities of age or sickness or mental incompetence. The home for the district in question is situated in Sudbury and all persons eligible for admission to it resident in the district and complying with the provisions of the Act may be admitted. The cost of a home to which s. 4 applies may be contributed to the extent of fifty per cent by the province; the balance is to be provided by the municipalities in proportion to the amount of their assessments, as required by s. 19.

By s. 33 of *The Assessment Act*, land is to be assessed at its actual value, subject to the provisions of that section. If any municipality in the district fails to assess the property within its limits which are subject to assessment and taxation as required by s. 33, or if there is omitted from the assessment roll properties liable to assessment and taxation, the result is, of necessity, that the municipality does not pay its fair share toward the support of the home for the aged and an undue burden is cast upon the other municipalities in the district. It is, apparently, to guard against any evasion of this statutory obligation that the provision is made for equalization and revision.

I see no ambiguity in the language of s. 19 as amended and I agree with Aylesworth J.A. that the first question should be answered in the affirmative.

The January equalization report was not signed by the Minister of Municipal Affairs, being merely forwarded to the town by the director of municipal assessment. The language of the 1956 amendment to s. 1 which defines the expression "their last revised assessment rolls as equalized" in s. 19(1) declares this to mean the last revised assessment roll, as revised and equalized for the purposes of the Act

by the Department of Municipal Affairs. There is no requirement that the equalization report should be signed by the Minister and, in my opinion, that is unnecessary. The second question should be answered in the negative.

As to the third question, I agree with the answer of Aylesworth J.A. that the legislation does not contemplate a succession of equalization reports, but one only, and that it is the first alone that was authorized and is to be considered.

As to the fourth question, the department is authorized and required not merely to equalize but to revise the asssessment. To correct assessments which would not comply with s. 33 of *The Assessment Act* and to include property which had not been assessed at all was a proper exercise, in my opinion, of the powers given to the department and the question should be answered in the negative.

The fifth question restates the matter raised by paragraph 12 of the special case.

In my opinion, this question should be answered by a simple negative. I think it inadvisable in answering it to attempt to define the limits of the jurisdiction vested in the Municipal Board by subs. (17) of s. 97 of *The Assessment Act* and s. 40 of *The Municipal Board Act* and that any question respecting that jurisdiction should be submitted in a concrete form stating the exact matter in respect of which it is questioned.

In the answer given to this question by Aylesworth J.A. the following passage appears:

> I think the purpose, intent and scheme of the legislation and in particular the provisions of Section 97 of the Assessment Act, as amended, envisage the Board, sitting in appeal, dealing with the Report at large and determining all questions of fact and of law raised in and relevant to the appeal.

I do not construe this language as meaning that the Board, contrary to what was decided by this Court in *Toronto v. Olympia Edward Recreation Club Ltd.*[1], and by the Court of Appeal in *Metropolitan Toronto v. Eglinton Bowling Co.*[2], has jurisdiction to determine whether a particular property is or is not assessable. The former case dealt with the powers of the Board to decide such questions

[1] [1955] S.C.R. 454, 3 D.L.R. 641. [2] [1957] O.R. 621.

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of law under the powers given to it by ss. 80(6) and 83 of *The Assessment Act* of 1950, as amended, and the decision applies with equal force to the determination of such questions under s. 97, as amended. Had this been intended, no doubt it would have been pointed out how these cases were to be distinguished, but neither case is mentioned.

I would dismiss both the appeal and the cross-appeal.

CARTWRIGHT J.:—The relevant facts and the questions of law which were raised for the decision of the Court of Appeal in the case stated by the Ontario Municipal Board (which were conveniently summarized in the form of five questions by Aylesworth J.A.) are set out in the reasons of other members of the Court.

I agree with the Chief Justice and with my brother Locke that the first three of these questions were answered correctly by the Court of Appeal.

Questions (4) and (5) read together appear to me to involve a question of considerable difficulty.

It is clear from the material in the record that in making the equalization of the last revised assessment rolls of the municipalities in the territorial district for the purposes of *The Homes for the Aged Act* the Department of Municipal Affairs included in the amount at which it equalized the last revised assessment roll of the appellant a sum of about $40,000,000 which it regarded as the amount at which a smelter which had been omitted from the last revised assessment roll ought to have been assessed.

It appears to me that in reaching the decision to add this amount the department must have considered and decided the question whether or not this smelter was assessable. It is true that the decision of that question by the department or the Board would not, as between the owner of the smelter and the Town of Copper Cliff, render the former liable to taxation in respect of the smelter; it was, however, in my opinion, a necessary and not merely an incidental step in arriving at the end result as to the total amount at which the roll of the appellant should be equalized. In view of the decision of the majority of this Court in *Toronto v. Olympia Edward Recreation Club Ltd.*[1], I find some difficulty in holding that either the Department of Municipal

[1] [1955] S.C.R. 454, 3 D.L.R. 641.

Affairs or the Ontario Municipal Board was clothed with the necessary jurisdiction to decide, even for the limited purpose of making the equalization, the question whether or not the smelter was assessable.

However, as if we were untrammelled by authority I would have no hesitation in agreeing that the appeal and cross-appeal fail and as I understand that all the other members of the Court are of opinion that there is a sufficient difference between the circumstances of the case at bar and those of the *Olympia* case to prevent the last mentioned judgment being decisive of the case before us, I am content to concur in the disposition of the appeal and cross-appeal proposed by the Chief Justice and by my brother Locke.

Appeal and cross-appeal dismissed without costs.

Solicitors for the appellant: Osler, Hoskin & Harcourt, Toronto.

Solicitors for the Department of Municipal Affairs for the Province of Ontario: Kimber, Dubin & Eberle, Toronto.

Solicitors for the Corporation of the Township of Neelon and Garson: Waisberg & Waisberg, Sudbury.

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*PRESENT: Taschereau, Fauteux and Abbott JJ.

[1] [1961] Que. Q.B. 173.