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Appeals Administrator
Prince Edward Island Regulatory & Appeals
Commission

Date Issued: July 27, 2021
Docket: LT20002
Type: Real Property
Tax Appeal

INDEXED AS: David R. Sanderson v. Minister of Finance

Order No: LT21-01

BETWEEN:

DAVID R. SANDERSON

Appellant

AND:

MINISTER OF FINANCE

Respondent

REASONS FOR DECISION

Panel Members:

J. Scott MacKenzie, Chair
M. Douglas Clow, Vice-Chair

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1. BACKGROUND

- 1) This is an appeal by David R. Sanderson (the “Appellant”) under the *Real Property Assessment Act* and the *Real Property Tax Act* in relation to PIDs 711580 and 738336 (“Properties”). The appeal arises from a decision by the Provincial Tax Commissioner (“Respondent”) that the person in whose name the Properties were assessed was a non-resident, therefore ineligible for the provincial tax credit.
- 2) There are three main issues before the Commission:
 1. Is this appeal appropriate to be determined without an oral hearing?
 2. Does the Commission have the authority to issue a retroactive award earlier than 2019?
 3. Is the Appellant entitled to the provincial tax credit prior to October 2, 2019?
- 3) After giving careful and full consideration to the evidence presented in this appeal, reviewing the submissions of the parties and examining the applicable law, it is the decision of the Commission to dismiss the appeal.

2. DISCUSSIONS & FINDINGS

Issue #1 – Is this appeal appropriate to be determined without an oral hearing?

- 4) The Commission has the discretion to determine a matter without an oral hearing under its Rules of Practice & Procedure.
- 5) The *Real Property Assessment Act* and the *Real Property Tax Act* allow the Commission to order that written submissions be filed in the place of an oral hearing, with the consent of the parties¹.
- 6) Both parties consented to a written appeal. The parties provided written submissions containing sufficient evidence and argument to allow the Commission to determine this matter fairly. The main issues before the Commission are legal ones. No issue of credibility arises, and the parties do not appear to dispute any material facts. We were also in the midst of a global pandemic. For these reasons, the Commission agreed with the parties that an oral hearing was not necessary in the circumstances. This matter can be determined fairly on the merits in writing.

Issue #2 – Does the Commission have the authority to issue a retroactive award earlier than 2019?

- 7) Any person who receives a notice of assessment, notice of taxation, or an amendment thereto, is entitled to refer the matter to the Minister, also known as a referral, within ninety days after the mailing of the notice². The prescribed ninety-day timeline in the legislation

¹ *Real Property Assessment Act*, ss. 29(3) and *Real Property Tax Act*, ss. 27(3)

² *Real Property Assessment Act*, s. 20 and *Real Property Tax Act*, s. 33

has the effect of limiting the referral or appeal, as the case may be, to the notice or amended notice issued in the most recent tax year. These are legislative choices that the Commission is obligated to respect and follow.

- 8) The Commission summarized the referral process under the *Real Property Assessment Act* in *Bergman and Adams v. Provincial Treasurer* (Order LT05-01) [*Bergman*], at paragraph 8:

[8] Sections 20 through 34 of the Act deal with the right of a taxpayer to appeal a real property tax assessment. The Act effectively provides two levels of appeal. First there is an internal appeal, termed as a "referral", which is filed by the taxpayer with the Minister (Provincial Treasurer) following receipt of a notice of assessment. Under the referral process the Provincial Treasurer reconsiders the assessment and provides a decision to the taxpayer. At the end of the referral process the taxpayer has the right, pursuant to the requirements of section 22, to file an appeal with the Commission to have the assessment vacated or varied.

- 9) Accordingly, after the Minister has made a decision on referral, the Appellant has the right to appeal the matter to the Commission³.

- 10) The scope of this right of appeal was addressed in *Natalie MacKinnon v. Provincial Treasurer* [*MacKinnon*], where it was determined that only the assessment for the current tax year can be appealed to the Commission. In *MacKinnon*, the Commission determined that neither the Minister nor the Commission has the legal authority to provide any further retroactivity than is set out in the Act and Regulations⁴.

- 11) On the issue of retroactivity, the Commission in *Bergman* found that section 32 of the *Real Property Assessment Act* had the effect of limiting the retroactivity of the Commission's decision and as such, the Commission concluded it did not have the jurisdiction to make a retroactive award earlier than the date of the assessment under appeal:

32. A decision of the Commission has effect from January 1 in the year for which the assessment appealed from was made, and any changes required to be made by the Minister as a consequence of the decision shall be made by the Minister within thirty days after the Commission has made its decision.

- 12) As a result, the Commission concluded it did not have jurisdiction to make a retroactive award earlier than the date of the assessment under appeal:

[15] ... The Commission, as a creation of statute, is bound by statute and the Act makes the effective date of the Commission's decision clear. The Commission does not have the jurisdiction to award retroactivity earlier than this date.

³ *Real Property Assessment Act*, s. 22 and *Real Property Tax Act*, s. 35

⁴ Order LT12-04, paras. 11-13

- 13) Retroactive adjustments are provided for in limited situations (in the case of errors or omissions), such as under section 4(1) of the *Real Property Assessment Act* Regulations and section 7(1) of the *Real Property Tax Act* Regulations, which suggests that retroactive adjustments are not generally available. These statutes provide for a two-year period in which the Respondent can correct an error or omission. There is no indication that the Legislature intended for retroactive adjustments to be available more generally. Obviously, it is always open to the legislature to amend the law to take account of other circumstances that may warrant retroactive adjustments.
- 14) On November 1, 2019, two amended notices of assessment and amended notices of taxation were mailed in the name of the Appellant. Immediately prior to the date of the amended notices, on October 30, 2019, the Appellant wrote a letter to the Respondent requesting a retroactive provincial tax credit effective as of December 31, 1994.
- 15) On November 18, 2019, the Respondent denied the relief requested, indicating that it would be willing to review the evidence and consider an award of retroactivity if government administrators caused an error in the delay.
- 16) By letter dated December 10, 2019, the Appellant confirmed he was not claiming a governmental error or delay in assessing the provincial tax credit. While the Appellant states that he had verbal conversations with individuals at the real property tax office a number of years ago, it is not alleged by the Appellant that any written referral was made before 2019.
- 17) Both the Respondent and the Commission are limited by statute to January 1st of the year in which the notice is appealed. The date of the amended notice was November 1, 2019. This Commission does not have the authority to make retroactive awards, except in the case of an error or omission, which has not been claimed by the Appellant. Despite the unfortunate and tragic circumstances of this case, the Appellant has no right of appeal for tax years prior to 2019.

Issue #3 – Is the Appellant entitled to the provincial tax credit prior to October 2, 2019?

- 18) The Appellant is seeking a retroactive reimbursement of the provincial tax credit from December 31, 1994 to October 1, 2019 in the amount of \$7,771.00.
- 19) The *Real Property Tax Act* provides a provincial tax credit to resident persons or resident corporations in whose name non-commercial realty is assessed:
 5. Subject to the regulations, a person in whose name non-commercial realty is assessed pursuant to the Real Property Assessment Act who is a resident person or a resident corporation, except a person or corporation holding in trust such realty owned by a non resident person or non-resident corporation, is eligible to receive a tax credit at the rate of \$0.50 per \$100.00 of assessment⁵.
- 20) The Regulations further define the circumstances in which a person is entitled to the provincial tax credit:

⁵ *Real Property Tax Act*, RSPEI 1988, c R-5, s. 5

24(2) No person or corporation shall be entitled to the credit referred to unless the property is

(a) assessed in the name of that person or corporation pursuant to section 10 of the Real Property Assessment Act; or

(b) vested in a resident person or resident corporation by a registered document as a life interest.

- 21) Until October 2, 2019, the Properties were assessed in the name of Robert Bruce Sanderson ("Sanderson"). Sanderson was assessed as a non-resident because his last known address was in Ontario. Sanderson is the brother of the Appellant. The Appellant is a resident of Prince Edward Island.
- 22) By order of the Supreme Court of Prince Edward Island dated August 9, 2019 ("Court Order"), Sanderson was presumed to have died on December 31, 1994. On September 11, 2019, letters of administration were granted naming the Appellant the sole surviving heir of Sanderson's estate.
- 23) On October 2, 2019, the Properties were transferred to the Appellant by deed registered in the Kings County Office of the Registrar of Deeds. The Appellant was found to be eligible for the provincial tax credit effective October 2, 2019 and the credit was applied to his account in relation to the Properties.
- 24) It is undisputed that the Appellant paid the property taxes on the Properties on Sanderson's behalf since September 2, 1997, when he paid all outstanding arrears, until such time as the Properties were transferred to the Appellant on October 2, 2019.
- 25) The Appellant requested a provincial tax credit equal to \$7,771.00 as he was a resident of Prince Edward Island between December 31, 1994, being Sanderson's presumed date of death, and October 1, 2019.
- 26) The Respondent denied the relief requested because until October 2, 2019, the person in whose name the Properties were assessed was a non-resident and therefore not eligible for the provincial tax credit under section 24(2) of the *Real Property Tax Act* Regulations. The Respondent's position is that the Appellant is not entitled to a tax credit prior to October 2, 2019 because the Properties were not assessed in the name of the Appellant until such time as he became the registered owner.
- 27) The Commission finds that during the period of time at issue, being December 31, 1994 to October 1, 2019, the non-commercial realty was assessed in the name of Sanderson, a non-resident, and therefore not eligible for the provincial tax credit. In determining whether a credit was owed, the Respondent properly considered the person in whose name the Properties were assessed. That is the statutory and regulatory direction to the Respondent, and it was respected by the Respondent.
- 28) Once ownership of the Properties was transferred by deed on October 2, 2019, the Respondent then applied the provincial tax credit to the account of the Appellant. The Commission finds that until the deed was registered, there was no legal change in the ownership of the Properties or the residence of the owner. Until the registration of the

deed, there was no legal document registered to vest the Properties in a resident person or corporation.

- 29) Section 12 of the *Real Property Assessment Act* requires that the Minister assess real property in the name of its owner, subject to certain situations:

(1) Except as otherwise provided in this section, the Minister shall assess the real property in the name of its owner.

- 30) The Appellant takes the position that the Respondent erred in its decision to deny the relief requested by failing to take into account its discretion under section 12. The Appellant argues that the Respondent failed to consider the impact of the order dated August 9, 2019, wherein the Supreme Court of Prince Edward Island found that Sanderson was presumed to have died as of December 31, 1994 and, as of that date, the Properties should be assessed in the name of the Appellant as the sole heir of the deceased per section 12(3) of the *Real Property Assessment Act*:

Part of estate of deceased person

(3) Where the real property forms part of the estate of a deceased person, the Minister shall assess it

(a) in the name of the estate;

(b) in the name of the heirs or devisees without designating them;

(c) in the name of any one heir or devisee; or

(d) where the interests are known to the Minister, in the names of the beneficiaries respectively.

- 31) The Appellant argues that the Respondent has additional discretion to assess the Properties under section 12(13) of the *Real Property Assessment Act* when the owner of the property is not ascertainable:

Owner not ascertainable

(13) Where the Minister cannot ascertain the name of the owner of real property, the Minister may assess it in the name of the person having apparent control over it.

- 32) After careful consideration of the Respondent's statutory discretion set out in the *Real Property Assessment Act*, the Commission finds that the Appellant had no legal standing in relation to taxation of the Properties prior to the Court Order issued on August 9, 2019.

- 33) The Respondent was able to ascertain the name of the owner of the Properties. The owner of the Properties until October 2, 2019, was Sanderson. The Commission finds there is nothing in the record to suggest the Respondent unjustly withheld its discretion under section 12.

- 34) Prior to the August 9, 2019 Court Order, the Respondent had no ability to ascertain that there was an estate, therefore it could not have assessed the Properties in either the name of the estate or in the name of any of the heirs or beneficiaries of the estate.
- 35) Based on all the evidence before the Commission, it is found that until the deed was registered on October 2, 2019 transferring registered title to the Properties to the Appellant, the assessment under section 10 of the *Real Property Assessment Act* was properly in the name of Sanderson, a non-resident, thus not entitled to the provincial tax credit.
- 36) For the above reasons, the Appellant was not entitled to a provincial tax credit for the Properties until October 2, 2019.

3. CONCLUSION

- 37) An Order will therefore be issued dismissing the appeal.

ORDER

WHEREAS the Appellant has appealed a decision by the Provincial Tax Commissioner pertaining to provincial tax credits available to residents of Prince Edward Island;

AND WHEREAS the Commission heard the appeal by way of written submissions;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act*, the *Real Property Assessment Act*, and the *Real Property Tax Act*;

IT IS ORDERED THAT the appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, this 27th day of July, 2021.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Vice-Chair

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.