

**NOVA SCOTIA COURT OF APPEAL**

**Cite as: Nova Scotia (Assessment) v. Huskins, 1994 NSCA 188**

**Clarke, C.J.N.S.; Matthews and Chipman, JJ.A.**

**BETWEEN:**

THE DIRECTOR OF ASSESSMENT

Appellant

- and -

GRACE E. HUSKINS and  
MUNICIPALITY OF THE  
DISTRICT OF ARGYLE

Respondents

) Randall R. Duplak, Q.C.  
) for the Appellant

) Grace E. Huskins  
) in Person

) Appeal Heard:  
) October 3, 1994

) Judgment Delivered:  
) October 3, 1994

**THE COURT:**

Appeal dismissed from decision of Nova Scotia Utility and Review Board respecting an assessment appeal and appeal allowed respecting its order of costs, per oral reasons for judgment of Clarke, C.J.N.S., Matthews and Chipman, JJ.A. concurring.



The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

On appeal from the Yarmouth-Clare Regional Assessment Appeal Court, the Nova Scotia Utility and Review Board, by its decision of April 25, 1994, allowed the appeal and increased the assessment of lands of the respondent from \$500.00 to \$1,200.00. It also awarded the respondent costs of \$200.00. The Director of Assessment, alleging errors in law, appeals from both.

The factual background is unique. The respondent acquired by separate deeds two lots of land with lake frontage but in total size insufficient to meet the municipal regulations on which to build a cottage. The husband of the respondent acquired by separate deeds two lots of land adjacent to those of the respondent which in total were sufficient in size to meet the municipal regulations on which to build a cottage that was landlocked but with road access. On one of these the respondent's husband built a cottage which is occupied by the spouses. From there, by crossing upon the respondent's land, access is gained to Kegeshook Lake at East Quinan.

The Director, for the year 1993, assessed the respondent's two lots of land as one lot with a value for assessment purposes of \$6,400.00. The Regional Assessment Appeal Court reduced it to \$500.00.

In a lengthy decision following a hearing, the Board, in applying s. 25 and s. 42(1) of the **Assessment Act**, R.S.N.S. 1989, c. 23, reasoned that the assessor properly considered the respondent's two lots as one stand alone assessable property separate from that of her husband. It concluded the assessor was in error by factoring in the increased "utility" the respondent receives from the generous property sharing arrangement which her husband permits by the use of his land.

After taking into account the evidence of property sales of somewhat similarly situate locations in the area, the Board determined the assessment fixed by the Regional Assessment Appeal Court was too low and increased it to \$1,200.00 for the year 1993.

In a proceeding such as this, the **Assessment Act** clothes the Board with broad powers. By s. 87(1), the Board inquires into the matter **de novo**. Section 87(2) gives the Board all the powers of the Regional Assessment Appeal Court which are far reaching and more fully described in s. 74.

The **Utility and Review Board Act**, S.N.S. 1992, c. 11, provides in s. 22:

22 (1) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact.

Against this legislative backdrop, the Board heard **de novo**, set forth its reasons, made findings of fact on the evidence and considered and applied the appropriate and relevant law. We are unable to conclude that it failed to exercise its jurisdiction or erred on any question of law so far as the assessment of the respondent's land is concerned.

As the Supreme Court of Canada observed in **Sun Life Assurance Co. of Canada v. Montreal**, [1950] 2 D.L.R. 785 (affirmed by the Privy Council [1952] 2 D.L.R. 81), the test for assessment purposes is not "value to the owner" as in expropriation but rather "what the building will command in terms of money on the open market". See p. 803, S.C.C.

Section 28 of the **Utility and Review Act** gives the Board a broadly based discretionary authority to award costs. In this instance the Board awarded costs against the Director in circumstances where the Director was otherwise successful in the result which increased the assessment on the respondent's property. The Board based its award in favour of the respondent on the fact that she had to travel to the hearing and take time off from her work to do so. Further it observed that "had the assessor's valuation been accepted by the Board, the tax payable on the property in issue would be less than \$100.00 per year". As a result the Board awarded costs against the otherwise successful litigant.

We are not satisfied that the Board has given reasons that are so exceptional or unusual as would cause the exercise of its discretion in a manner that differs from the usual reasons for an award of costs. Accordingly we set aside the order of costs made by the Board.

In the result the appeal of the Director on the matter of the assessment is dismissed and the appeal of the Director on the matter of costs is allowed.

There will be no costs awarded either party on the appeal in this Court.

C.J.N.S.

Concurred in:

Matthews, J.A.

Chipman, J.A.

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Respondents

**ORDER FOR JUDGMENT**

REASONS FOR JUDGMENT having been delivered by Clarke, C.J.N.S.;  
Matthews and Chipman, JJ.A. concurring;

IT IS ORDERED THAT the appeal is dismissed from the decision of the Nova  
Scotia Utility and Review Board dated April 25, 1994, whereby it determined the value  
for assessment purposes of lands of the respondent at East Quinan for the year 1993;

IT IS FURTHER ORDERED THAT the appeal is allowed from the same  
decision of the Nova Scotia Utility and Review Board whereby it ordered costs in favour  
of the respondent;

IT IS FURTHER ORDERED THAT no costs are awarded on the appeal in the  
Court of Appeal.

DATED at Halifax, Nova Scotia, this 3rd day of October, 1994.

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Registrar

