SCC File No. 36478

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

B E T W E E N:

MUSQUEAM INDIAN BAND

APPELLANT

-and-

MUSQUEAM INDIAN BAND BOARD OF REVIEW, ASSESSOR FOR THE MUSQUEAM INDIAN BAND, AND SHAUGHNESSY GOLF AND COUNTRY CLUB

RESPONDENTS

-and-

COUNCIL FOR THE ADVANCEMENT OF NATIVE DEVELOPMENT OFFICERS

INTERVENER

FACTUM OF THE RESPONDENT, ASSESSOR FOR THE MUSQUEAM INDIAN BAND

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

CREASE HARMAN LLP
8th Floor – 1070 Douglas Street
Victoria, BC V8W 2S8

R. Bruce Hallsor
Greer Jacks
Tel: (250) 388-5421
Fax: (250) 388-4294
Email: hallsor@crease.com
gjacks@crease.com

Counsel for the Respondent, Assessor for the Musqueam Indian Band

SUPREME ADVOCACY LLP
340 Gilmour Street, Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Respondent, Assessor for the Musqueam Indian Band

MANDELL PINDER LLP
422 - 1080 Mainland St.
Vancouver, BC V6B 2T4

Maria Morellato, Q.C.
James I. Reynolds
Leah Pence
Tel.: (604) 566-8563
Fax: (604) 681-0959
Email: maria@mandellpinder.com
jim@mandellpinder.com
leah@mandellpinder.com

Counsel for the Appellant, Musqueam Indian Band

GOWLING WLG (CANADA) INC.
160 Elgin Street, 26th Floor
Ottawa, ON K1P 1C3

Guy Régimbald
Tel.: (613) 786-0197
Fax: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

Ottawa Agent for Counsel for the Appellant, Musqueam Indian Band

HUNTER LITIGATION CHAMBERS
2100-1040 West Georgia Street
Vancouver, BC V6E 4H1

John L. Hunter, Q.C.
Tel: (604) 891-2401
Fax: (604) 647-4554
Email: jhunter@litigationchambers.com

FARRIS, VAUGHAN, WILLS & MURPHY LLP
2500 – 700 West Georgia Street
Vancouver, BC V7Y 1B3

Ludmila Herbst, Q.C.
Tel: (604) 661-1722
Fax: (604) 661-9349
Email: lherbst@farris.com

Counsel for the Respondent, Shaughnessy Golf and Country Club

SUPREME ADVOCACY LLP
340 Gilmour Street, Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Respondent, Shaughnessy Golf and Country Club

RAYMOND J. RICHARDSON
Barrister and Solicitor
3340 Garibaldi Drive
North Vancouver, BC V7H 2S4

Tel: (604) 924-3994
Fax: (604) 924-3995
Email: rayr@telus.net

Counsel for the Respondent, Musqueam Indian Band Board of Review

NANDA & COMPANY
3455 Manulife Place
10180- 101 Street N.W.
Edmonton, AB T5J 4K1

Avnish Nanda
Tel: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

Counsel for the Intervener, Council for the Advancement of Native Development Officers

TABLE OF CONTENTS

DESCRIPTION **PAGE**

PART I –OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This appeal concerns the interpretation of the *Musqueam Indian Band Property Assessment Bylaw* (the "Bylaw") with regard to the assessment of the land known as Musqueam Indian Reserve #2 (the "Property") that is currently occupied by the Shaughnessy Golf and Country Club (the "Club").

2. Complications with the interpretation of the Bylaw emanate from the long and complex history of the 75 year lease of the Property that was signed in 1958 between the Government of Canada (the "Crown") and the Club (the "Lease"). Complex aspects of the Lease include the *sui generis* nature of aboriginal land, and the unique way in which reserve land must be alienated through the Crown under the provisions of the *Indian Act*.

3. This case is further complicated by the legislative changes that have occurred since the execution of the Lease and a rapid increase in property values in the area. The Lease also has a long and complex history of litigation throughout the decades and multiple levels of court, including this Honourable Court.

B. Response to the Appellant's Statement of Facts

4. The facts of this case are undisputed and are based upon the agreed facts of the parties from the stated case at the British Columbia Supreme Court.[1]

5. The Relevant Facts include the findings of fact in the *Guerin* series of decisions.[2] Madam Justice Maisonville at the B.C. Supreme Court level requested that the parties compile an agreed

---

[1] Notice of Stated Case, Relevant Facts ("Facts") [Appellant's Record ("AR") Vol II, Tab 8] at para. 2-3); see also *Musqueam Indian Band Board of Review v. Musqueam Indian Band*, 2013 BCSC 1362 ("Musqueam BCSC") [AR Vol I, Tab 1] at para. 7.

[2] *Musqueam* BCSC (*supra*) [AR Vol II Tab 8] at para. 6; *Guerin v. R*, [1984] 2 S.C. R. 335 ("Guerin") [Respondent's Book of Authorities ("RBA") Tab 11].

statement of facts determined in *Guerin*; the parties did so and the Court reproduced these at pages 53-91 of Appendix A to the reasons for judgment.[3]

PART II- STATEMENTS IN ISSUE

6. The Musqueam Indian Band emphasizes their powers of self-government.

7. The Assessor respectfully submits that this case is not about the nature of aboriginal self-government; it is about the proper interpretation of the Bylaw. Although the Bylaw is specific to the Property and this dispute has its own unique peculiarities, the Court of Appeal was correct in identifying many common law principles that are relevant when interpreting it.

8. Within the Bylaw, the Assessor is permitted wide discretion when ascertaining the market value of the Property. At subsection 26(3) the Bylaw provides that the Assessor may consider "any other circumstance affecting value" and at subsection 26(3.2) the Assessor is permitted to consider restrictions on the use of the land and improvements that have been "placed by the band".

9. In performing its duty under the Bylaw, the Assessor properly applied the Bylaw and in doing so considered all of the circumstances affecting the market value of the Property.

10. The Assessor respectfully submits that the Court of Appeal of British Columbia did not err in its decision, it properly interpreted and applied the Bylaw within the context of its long and complex history, and did not disregard the annual nature of assessment appeals.

11. It is respectfully submitted that this appeal should be dismissed.

---

[3] *Musqueam* BCSC (*supra)* [AR Appendix A Vol I Tab 1] at para. 7.

PART III – STATEMENT OF ARGUMENT

A. The Court of Appeal Respected the Band's Legislative Authority

12. The Band asserts that the effect of the Court of Appeal's decision is to abrogate their right to govern their land. The Assessor respectfully submits that this is not true.

13. Although the Lease preceded the legislation that enabled the Band to enact the Bylaw, based on a proper interpretation of the Bylaw and relevant tenets of Canadian property assessment law, the Assessor respectfully submits that the restriction in use contained within the Lease is a valid consideration for the assessor to consider with respect to the market value of the Property.

14. The situation at issue is similar to other instances in which the taxation authority places a restriction on the use of the property to be assessed. In those circumstances, the assessed value of the property reflects the restricted use thereof.

15. In seeking leave to appeal to this Court and in their Factum, the Band asserts that at the heart of this dispute is a fight against discrimination and for self-government.

16. At paragraph 105 of their Factum, the Band asserts: "justice demands that the Band's decisions on how to legislate in relation to its reserve lands – its true purposes in its dealings relating to its reserve lands, such as whether to follow provincial legislation or not – be respected."[4]

17. It is indisputable that the Band has the jurisdiction to legislate with regard to the assessment and taxation of their lands. It is respectfully submitted, however, that the Band proclaims their powers in this regard too broadly; their powers are not unfettered.

---

[4] Factum of the Appellant at para. 105.

18. It is important to note that the unanimous Court of Appeal decision acknowledged the Band's jurisdiction over assessment and taxation and respected the way in which the Band exercised its authority. It is submitted that the Court of Appeal properly applied the Bylaw, which it noted was enacted with significant similarities to the provincial assessment regime, "particularly with respect to valuation".[5]

19. Although there are many similarities with the BC *Assessment Act*, the Court of Appeal correctly recognized that the Bylaw would prevail over the common law if the two conflicted. This is a basic principle of our legal system, but in the circumstances of this dispute is a very important acknowledgment of First Nation's jurisdiction over the assessment and taxation of their reserve lands and should allay the Band's concerns with regard to the respect of their legislation.

20. The Court of Appeal stated:

> *"Section 26(3.2) must supersede any common law principle that would work a result contrary to its application. It is part of the scheme of the bylaw that the Band had approved for assessment of land values that are determinative of the tax revenue it derives."*[6]

21. The Band asserts that the Bylaw should be given a broad reading since it was enacted pursuant to s. 83 of the *Indian Act* and the provisions of such legislation, as stated by this Honourable Court in *Osoyoos Indian Band v. Oliver (Town),*[7] should be interpreted broadly if those provisions are aimed at maintaining Indian rights and provisions that could limit or abrogate those rights should be interpreted narrowly.

22. It should be noted that this Honourable Court also highlighted the following principle in those same paragraphs:

---

[5] *Musqueam Indian Band Board of Review v. Musqueam Indian Band* 2015 BCCA 158 ("*Musqueam* BCCA") [AR Tab3] at para15.
[6] *Musqueam* BCCA (*supra*), [AR Tab 3] at para. 14.
[7] *Osoyoos Indian Band v Oliver (Town)*, 2001 SCC 85 ("Osoyoos Indian Band") at para. 48 [RBA Tab 17].

> *At the same time, I do not accept that this salutary rule that statutory ambiguities must be resolved in favour of the Indians implies automatic acceptance of a given construction simply because it may be expected that the Indians would favour it over any other competing interpretation. It is also necessary to reconcile any given interpretation with the policies the Act seeks to promote. [Emphasis in original.]*[8]

23. The Assessor is not asserting that the interpretation of the Bylaw should favour either party. It is submitted that the provisions of the Bylaw at issue concern occupiers of the Property. The fact that the interpretation advanced by the Band in this instance would result in a financial windfall for the Band does not mean that the interpretation they are seeking is about the rights of Indians.

24. Further to the aims and policies of the enabling sections of the *Indian Act*, the Band cites the policies and aims of the *First Nations Fiscal Management Act*[9] ("FNFMA") for the similar propositions.

25. It is important to note that the policies and aims of First Nation's enabling legislation include the rights and interests of people and groups that can be affected by First Nation legislation, including taxpayers.

26. The First Nations Tax Commission ("FNTC"), which was created pursuant to s. 83 of the *Indian Act*, has a Taxpayer Relations Policy. The FNTC website describes the Taxpayer Relations Policy as follows:

> *"This policy, as part of the taxation by-law review and approval process, assists the FNTC in reviewing First Nation processes for coordination with taxpayer interests on reserve land with the objective of ensuring the integrity of the First Nations property taxation system."*

27. The FNTC Taxpayer Relations Policy itself provides guiding principles of the policy at section 1. These guiding principles are as follows:

---

[8] *Osoyoos Indian Band* (*supra*) at para 49 [RBA Tab 17].
[9] *First Nations Fiscal Management Act* 2005, c. 9, s.1; 2012, c.19, s.658 [RBA Tab 22].

(a) Build and maintain trust and a sense of community among First Nations and their taxpayers.
(b) Recognize First Nation autonomy and jurisdiction.
(c) Provide opportunities where taxpayers are heard and can influence decisions that affect them.
(d) Ensure that approaches are durable, stable, and long lasting.
(e) Establish procedures that are transparent to the public.
(f) Maximize efficiency and ease of operation for all parties.
(g) Operate in a fair and unbiased manner.
(h) Create provisions for amendments and improvements as circumstances change.
(i) Contain measures of accountability and responsibility.
(j) Provide accurate, timely and understandable information to taxpayers.
(k) Acknowledge and respect local conditions, customs, and traditions.
(l) Incorporate effective mechanisms for dispute resolution.

28. It is clear that the policies and aims of First Nations assessment and taxation legislation do not just consider the First Nations interest in them, but also include the rights of taxpayers, including notice of events that could affect them and the operation and application of laws that are fair and unbiased.

29. It is difficult to conceive of an interpretation of the Bylaw that would be less fair than requiring the Club to pay taxes based on a highest and best use of the Property that is not attainable by the Club as a result of the restrictive use that they may put the land according to the Lease.

30. There is no evidence that the interpretation of the Bylaw that the Band itself did not conceive until fifteen years after its enactment would have received Ministerial approval. More importantly, in the context that it was written, the Court of Appeal correctly interpreted and applied the Bylaw. In doing so, no rights of the Band or precedents for future First Nations bands have been abrogated.

B. The Meaning of "Restriction" in the Bylaw

31. *Central Park Citizen Society*[10] is cited by the Band for the proposition that agreements that are personal to the landowner should not be considered by the Assessor and that only agreements that are binding on subsequent purchasers affect the market value of the Property and should be taken into account.

32. The above proposition that *Central Park* is cited for must be adapted to the facts of the case at hand because of the *suis generis* nature of aboriginal land. As Dickson J stated in *Guerin*:

> *"…the Band is not a party to the ultimate sale or lease, as it would be if it were the Crown's principal. I repeat, the fiduciary obligation which is owed to the Indians by the Crown is sui generis. Given the unique character both of the Indians' interest in land and of their historical relationship with the Crown, the fact that this is so should occasion no surprise."*[11]

33. It was held in *Central Park* that before restrictions can affect the value of property, they must be restrictions that are binding and enforceable against a subsequent purchaser of the property and the owner of the land must not have the unilateral ability to remove the restrictions.[12] Tysoe J. stated that "the market only considers actual use if it would not be possible for a purchaser to change the use".[13] In this regard, it must be noted that there can be no purchaser of the Property, nor can the Club sublet the Property to an occupier that could change the permissible use of the Property because clauses 5 and 6 of the Lease are very clear that the only permitted use of the Property is as a golf and country club.

34. In *Canadian National Railway Company v. Vancouver*[14] the use of the subject land was restricted to railway terminal purposes by agreement between the owner and the City. The B.C. Court of Appeal held that the restriction should be taken into account when determining the assessed value of the property. O'Halloran J.A. said the following:

---

[10] *British Columbia (Assessor of Area No. 10- Burnaby/New Westminster) v. Central Park Citizen Society* [1993] B.C.J. No. 2260 ("Central Park") [RBA Tab 4].
[11] *Guerin* (*supra*) [RBA Tab 11]
[12] *Central Park* (*supra*) at para 45 [RBA Tab 4].
[13] *Central Park* (*supra*) at para. 29 [RBA Tab 4].
[14] *Canadian National Railway Company v. Vancouver (City)* [1950] 2 W.W.R. 337 (B.C.C.A.), ("Canadian National Railway") at para. 10 [RBA Tab 6].

> *"If land en bloc cannot be used for other than railway terminal purposes, that factor alone must make it inequitable to assess it at the same value as surrounding lands subdivided into choice small parcels for industrial sites understandingly in demand by expanding business in a large city."*[15]

35. O'Halloran then summarized his views in the following words:

> *"If land by statute, agreement with the city (as here), or otherwise, is restricted to the special use to which it is put, then the assessment rationally must be related to its value in that use, even though the land would be properly assessable at a much higher figure if it could be put to some other use."*[16]

36. Although *Central Park* and *CNR v. Vancouver* did not involve occupied land, they are still comparable to the case at hand because the use restriction contained in the Lease was placed on the Property in 1958 by the taxing authority itself, the Crown. This occurred after a valid surrender of the Property by the Band. This is not a situation where the property is being deliberately underutilized, the Club is merely abiding by the restricted use provisions in the Lease.

37. In circumstances where the restrictions on the use of the land are imposed by the taxation authority itself, it is proper to recognize the effect of those restrictions on the value of the land. The Court of Appeal correctly identified that the fact that the restriction in this circumstance is contained in a lease does not alter this.[17]

38. The Band argues though, at paragraph 58 of their Factum that "the ordinary and legal meaning of a 'restriction' that is 'placed by the Band' as used in s. 26(3.2) of the Bylaw means that the restriction must run with the land such that it would bind successive occupiers, and must

---

[15] *Canadian National Railway* (*supra*) at p. 341 [RBA Tab 6].
[16] *Canadian National Railway* (*supra*) at para. 18 [RBA Tab 6].
[17] *Canadian National Railway* (*supra*) at p. 344 was relied on by: *Assessor of Area #08 v. Western Stevedoring Co. Ltd.*, 2006 BCSC 509 [RBA Tab 2]; *Vancouver Pile Driving Ltd. v. Assessor of Area #08 – Vancouver Sea to Sky Region*, 2008 BCSC 810 [RBA Tab 20]; and *Assessor of Area #09 – Vancouver v. UBC Property Trust*, 2008 BCSC 822 [RBA Tab 1].

be one that was put or imposed by Musqueam itself, and not one that was put on the Property by the Club, the Crown, or any other person".[18]

39. In *Assessor of Area #08 v. Western Stevedoring Co. Ltd.* the assessment of two deep sea break bulk terminal facilities and berth corridors owned by the Federal Crown and administered by the Vancouver Port Authority were at issue. Under the lease to Western, the lands were restricted to use as a break bulk facility. Using a direct comparison approach, the Assessor compared sales of properties with marine industrial use and valued the land on that basis.

40. The Honourable Madam Justice Bennett commented:

> *"…in this case, it was a given that the restriction did affect the value. To give the most obvious example, none of the parties were suggesting that the property should be assessed as if it were available to build waterfront condominiums. Therefore, in this case, the value would have to reflect the restriction on the property to some degree."*[19]

41. It cannot reasonably be maintained that the use restriction in the Lease does not affect the actual value of the Property, as that phrase is used in the Bylaw.

42. In *UBC Property Trust*, the Honourable Madam Justice Loo put it this way when explaining the effects of the use restriction in the lease at issue:

> *"It is not Dominion who has the opportunity to redevelop the land; it is the Appellant. There is no evidence to show that the owners would allow Dominion (as the occupier) to redevelop the land in accordance with the zoning. In fact, the evidence of the use restriction and of the short-term nature of the lease demonstrates otherwise. As in BC Rail Partnership et al v. Area 08 (2007 PAABBC 2000700004, para 27), there is no "reasonable expectation" that the owners as the landlord would allow a use other than that specified in the lease.*

43. In *Central Park* Tysoe J. stated:

> *"I certainly accept that if a landowner enters into an agreement for the purpose of lowering the assessed value of the land, such an agreement should properly be*

[18] Factum of the Appellant at para 58.
[19] *Assessor of Area #09 – Vancouver v. UBC Property Trust*, 2008 BCSC 822 ("UBC Property Trust") at para. 30 [RBA Tab 1].

> *ignored. But if a landowner enters into an arm's length arrangement with a bona fide purpose and an incidental consequence of the arrangement is a reduction in the value of the land, I have difficulty seeing why the arrangement should not be taken into account for assessment purposes unless the municipality has agreed to it.*
>
> *Landowners frequently take action that affects the value of their property without obtaining the concurrence of the municipality. In most cases the step taken by the landowner will increase the value of the property but it is certainly foreseeable that a landowner could do something that physically changes the land in a negative fashion. For example, a landowner may tear down or otherwise remove a valuable improvement on the land with the unfulfilled intention of erecting a new improvement. I do not think that it can be seriously suggested that the property should be assessed as if the improvement remained on the land unless the municipality had agreed to its removal or has agreed that its removal will not affect the assessed value of the land."*[20]

44. At paragraph 51 of its Factum, the Band states that the restriction in the Lease "does not run with the land, it is personal to the Club, and therefore is not a 'restriction' that may be taken into account for the purpose of s. 26(1) of the Bylaw".[21]

45. The Bylaw does not direct the Assessor to give the term "restriction" such a confined meaning. As the Court of Appeal commented at paragraph 14 of its decision regarding the restriction in the Lease:

> *"Had the Band sought to further narrow the meaning or applicability of what constitutes a "restriction" that may be considered, it could easily have done so, although approval for its by-law might then have become questionable."*[22]

46. Regardless of the interpretation of the term "restriction" in section 26 of the Bylaw, subsection 25.1(2) (b) of the Bylaw deals with valuation and provides that the actual value of property for an assessment roll is to be determined as if on the valuation date "the permitted use of the property and of all properties were the same as on October 31 following the valuation date."[23] This provision makes it clear to the Assessor that the permitted use of the Property is a

---

[20] *Central Park* (*supra*) note 29 at pg. 11 [RBA Tab 4].
[21] Factum of the Appellant at para. 51.
[22] *Musqueam* BCCA (*supra*), [AR Tab 3] at para. 14.
[23] *Musqueam Indian Band, Property Assessment Bylaw*, PR-96-01 (AR Vol III Sch. J)

pertinent consideration for the Assessor to consider when determining actual value of the Property.

C. Principles of Interpretation: The Context of the Bylaw

47. The crux of this case is the proper interpretation and application of the Bylaw. Although assessments under the Bylaw are specific to each particular taxation year, in order to properly interpret the Bylaw in context, the long history of the Lease necessitates retrospective considerations; considerations that are unique to reserve lands but can be analogized to long standing tenets of assessment law in British Columbia.

48. The Assessor submits that it has applied the Bylaw correctly and that the BC Court of Appeal did not err when it concluded that the use of the Property as a golf and country club, as provided in the lease, was a "restriction" that was "placed by the band" and could be considered in determining the Property's actual value under section 26 of the Bylaw.

49. The Assessor agrees with the Band that the modern rule of statutory interpretation requiring reading "the words of an Act… in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"[24] is the proper approach to the interpretation of the Bylaw. The Assessor concedes that Parliament here should be interchanged with the Band, as the Band was the legislator in this instance; although it should be noted that the Band does not have unfettered discretion to pass any legislation it chooses, as the Bylaw is subject to the approval of the Minister of Indian Affairs and Northern Development (the "Minister").

50. Pursuant to subsection 83.4 of the *Indian Act,* the Minister has discretion to reject certain parts of First Nations bylaws. There has been no evidence put forward that would indicate that the Bylaw would have been approved if it were to be interpreted in the manner that the Band

[24] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada Inc.) ("Sullivan") at pgs. 267-270, 404-406 [RBA Tab 20]; also see (Appellants BOA Tab 26); *BO10 v. Canada (Citizenship and Immigrations),* 2015 SCC 58 at para 29 [RBA Tab 3]; also see (Appellants BOA Tab 3).

now suggests. Evidently, the Band itself only conceived of the interpretation of the Bylaw it is proffering in this appeal in 2011 - fifteen years after the Bylaw was passed.

51. The fact that the Band did not construe its own Bylaw in the manner it has proffered since the genesis of this dispute is not arguing that the Band is in any way prevented from appealing the annual assessments of the Property, but it does militate against the Band's argument that the crucial 1996 amendment to the Bylaw was made with the "clear legislative intent"[25] that the Band contends.

52. When construing the 1996 amendment to the Bylaw in the context in which it was written, it is important to remember that the Band at that time was not able to place restrictions on the use of the Property without doing so through the Crown. This was also the case in 1958 when the Lease was signed.

53. The Band argues that the Framework Agreement that it was a signatory of in 1996 was significant with regard to the amended Bylaw in that year. There is a factual disconnect with this argument though. In 1996 the powers that the Framework Agreement envisioned were, to borrow the words of the B.C. Supreme Court "speculative".[26] This is because Federal implementing legislation had to first be enacted in order to ratify the agreement, which did not occur until the 1999 *First Nations Land Management Act.*[27] Further, the Band would have to create and have approved a land code (which the Band had not done at the genesis of this appeal, nor has it done so at the date of this submission). Therefore, the Court of Appeal correctly read the Bylaw within the context of its enactment.

54. The "placed by the band" clause in ss. 26(3.2) of the Bylaw replaced the wording "by an interest holder" in the 1991 version. The Court of Appeal noted that the former wording was not ideal because it could allow a lessee to reduce the assessed value of the land by unilaterally

---

[25] Memorandum of Argument of the Appellant at para 4.
[26] *Chapman v. Her Majesty the Queen,* 2001 BCSC 420 at para. 83, aff'd *Chapman v. Canada (Minister of Indian and Northern Affairs),* 2003 BCCA 665 at para 43 [RBA Tab 7].
[27] *First Nations Fiscal Management Act* 2005, c. 9, s.1; 2012, c.19, s.658 [RBA Tab 22].

restricting the use of the Property.[28] The Court noted that this issue was remedied by the 1996 amendment to the Bylaw which substituted the words "placed by and interest holder" with the words "placed by the band".

55. The Court noted:

> *What emerges is the clear intention the Band had to have restrictions it places on the use of land and improvements taken into account for assessment purposes under its [1996 Bylaw] in the same way contractual restrictions on the use that occupiers may make of land and improvements owned by the Crown, tax-exempt owners, or municipalities are to be considered under the Assessment Act in curing unfairness recognized in the 1985 amendments to that Act.*[29]

56. Where the words of an Act can support more than one reasonable meaning, "the ordinary meaning of the words play a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole".[30]

57. As mentioned above, the entire context of the Bylaw includes a long and complex history. The *sui generis* nature of aboriginal land is a very pertinent consideration in the interpretation of the Bylaw because it provides meaning to the Bylaw, especially subsection 26(3.2), which the BC Supreme Court held was inapplicable because it could not affect closed transactions.[31] In the context of the Bylaw when it was written, subsection 26(3.2) cannot be operative because the Band was not able to unilaterally place restrictions on its own land at that time.

58. The only way in which the Band could lease the Property to the Club was by first surrendering the land to the Crown, with the Crown then leasing the land to the Club on behalf of the Band. In the *Guerin* litigation, the Band chose not to question the validity of the surrender of the Property or the Lease but instead to pursue damages from the Crown for breaching its

---

[28] *Musqueam* BCCA (*supra*), [AR Vol I Tab 3] at para. 19.
[29] *Musqueam* BCCA (*supra*), [AR Vol I Tab 3] at para. 21.
[30] *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para 10 [RBA Tab 5].
[31] *Musqueam* BCSC (*supra*) [AR Vol II Tab 8] at para 87.

fiduciary duty to the Band by entering into the Lease. The Band was successful and was awarded $10 million.

59. As Justice Collier in *Guerin v. The Queen* stated:

> *"The resolution passed by the Band Council approving the submission to the Band of the surrender documents for the leasing of the 162 acres of land, does not refer to an unqualified surrender for leasing to anyone. Its whole implication is that the contemplated surrender was for the purposes of a lease with the golf club on terms."*[32]

60. The Band continues to argue that only restrictions consented to by a majority of the electors of the Band are relevant for the purposes of ss26 (3.2) pursuant to paragraph 2(3)(a) of the *Indian Act*.

61. To be a valid surrender under subsection 39(1) of the *Indian Act*[33] it must have been made to Her Majesty, assented to by a majority of the electors of the Band, and accepted by the Governor in Council. In agreeing to all the facts of *Guerin*, the Band has conceded that the surrender is valid, and thus, that it was assented to by a majority of the electors of the Band.

62. In the penultimate paragraph of *Musquem v. Canada*, Joyal J stated:

> *"The whole of the previous action, [Guerin v. The Queen, [1984] 2 S.C.R. 335] in my view, constituted formalized debate on public law and public authority and was posited by the Band itself on the premis[e] that both the surrender and resulting lease were valid, binding and enforceable instruments."*[34]

63. In agreeing to the findings of fact in the *Guerin* decisions, including that the surrender was valid, the Band has agreed that a majority of the Band members assented to the Lease. The Band is thus deemed to have assented to the surrender of the Property by majority and thus, in the entire context of the Lease, it can rightfully be said that the use restriction in the Lease was "placed by the Band".

---

[32] *Guerin* (*supra*) [RBA Tab 11] [AR Vol 1 Tab B]
[33] *Indian Act* R.S.C. 1952, c. 149 [RBA Tab 23].
[34] *Musqueam Indian Band v. Canada*, [1990] 2 FC 351 ("Canada") [RBA Tab 15]

64. The Band is attempting to achieve indirectly, through their suggested method of interpretation of their own Bylaw, an objective that is contrary to the position that they relied on in order to obtain a favourable judgment in this Honourable Court in *Guerin*. The Band, though, contends that "in that award, Musqueam was not compensated for any losses of tax revenue in relation to the Property. The Band was not, at the time of this Court's decision in *Guerin*, exercising its taxation jurisdiction".[35]

65. In *Guerin* the band was compensated on a restitutionary basis. In *Musqueam Indian Band v. Canada* Joyal J. stated the following about the *Guerin* litigation:

> *"Damages were assessed against the Crown in that earlier case and it is clear on reading the judgments at both the trial and the Supreme Court level that such damages were assessed on the basis of full recovery to the Band for any loss suffered as a result of the Crown's breach. The doctrine of restitution was fully respected in the assessment process and the nature of this restitution in monetary terms was to provide the Band with the kind of compensation for all losses, past, present and future suffered by the Band."*[36] [Emphasis added]

66. In Waters' Law of Trusts in Canada the author concludes a section of the book titled "The Measure of Damage Sustained by the Beneficiary" by stating:

> *"The more generous approach, typified by Guerin v. R [[1984] 2 S.C.R. 335, 13 D.L.R. (4th) 321 (S.C.C.)], is sometimes described by saying that the claimant is not concerned with rules governing remoteness of damage, in the sense of non-foreseeability of the loss, nor with mitigation. It might be more accurate, reaching back to McNeil v. Fultz [(1906), 38 S.C.R. 198 (S.C.C.)] to describe this approach by saying that evidentiary difficulties concerning the extent of the loss will be resolved against the defendant who wrongfully created those difficulties."*
> …
> *"In this context, if the court is to resolve the evidentiary issue regarding quantum of loss against the breaching trustee, it is not unreasonable to say that the loss will be taken as the highest amount it could be, consistently with the evidence before the court".*[37]

67. It is therefore incorrect for the Band to state that they were not compensated in *Guerin* for an impairment on their potential tax revenue. At that time, as the Band notes, the Band was not

---

[35] Factum of the Appellant at para 3.
[36] *Canada* (supra) [RBA Tab 15] [AR Vol III Tab F]
[37] *Waters' Law of Trusts in Canada* (3rd edition), Thompson Canada Limited, Toronto, 2005, p. 1224-1225 [RBA Tab 21].

able to exercise its taxation jurisdiction. However, this Honourable Court compensated the Band at the highest amount consistent with the evidence before it at that time for all losses, past, present and future.

68. Rising prices of real estate in Vancouver and legislation enabling First Nations taxation bylaws have occurred in the years since *Guerin*. However, the Band should not be permitted to construe the restriction in the Lease as something that does not affect the value of the Property when this exact issue was what they argued reduced the amount of income they could receive from the Property in *Guerin* and were compensated for that detriment.

69. In *Musqueam Indian Band v. Canada*, Joyal J stated at paragraph 78:

> *"No comment which I might make in that regard will eliminate this troubling and sombre perspective nor remove the continuing suspicion that once again the Band's individual and collective rights made all the more evident by increasing levels of group consciousness, have been denied. The Band's only recourse is to find some means of getting more money, or better still, to have the current lease cancelled, obtain possession of the lands and proceed afresh with their development."*[38]

70. In this context, to pursue an assessment appeal that seeks to ignore the legal restriction that is contained in the Lease between the Crown and the Club is an abuse of process. It would set a dangerous precedent if this appeal were allowed and the effects of the Lease were reconstrued to the Band's benefit and the Club's detriment after the Band has been compensated previously for the Crown's breach with regard to the Lease. This would certainly not be in the interest of maintaining the trust and a sense of community among First Nations and their taxpayers.

D. "Placed by the Band"

71. At paragraph 28 of the Court of Appeal's decision the Court explained that there were no words read into the Bylaw:

> *"The circumstances under which the Crown and the Club entered into the lease were unusual in a legal context in that, although the Band wished to exercise its*

[38] *Canada* (*supra*) at para. 78 [RBA Tab 15].

> *interest in the property by leasing it for the construction of a golf course, it could not do so; only the Crown could enter into a lease of the land. But the Crown could not do that without the Band first surrendering the property as it did. The Crown was clearly acting "on behalf of" the Band in entering into the lease, but it is not necessary that those words be read into s. 26(3.2) to establish the use of the property was a restriction placed by the Band. The Band placed the restriction on the Club's use of the property when it surrendered the property to the Crown."*[39]

72. The Court of Appeal interpreted the Bylaw correctly and in the manner that the Band asserts is correct as well, that is, harmoniously with the context of the Bylaw as a whole. In doing so, the Court reasoned that in order to give the subsection any meaning, subsection 26(3.2) would have to be read to mean "any restriction placed on the use of the land and improvements by or on behalf of the Band".[40] The Court reasoned that "if it were otherwise, the section would be meaningless because the Band cannot unilaterally restrict the use of reserve land".[41]

73. Since *Guerin*, the Federal Government has enacted the *First Nations Land Management Act* ("FNLMA"), which gives a First Nation jurisdiction to legislate certain matters within its reserve if it takes the appropriate measures to transfer the jurisdiction from the Federal Government to itself. Although the Band is scheduled under that Act, it has never completed the required steps to transfer jurisdiction from the Federal Crown to the Band over land management. Other than through a Crown lease, the Band does not have jurisdiction to impose restrictions on the use of its land and certainly in 1957 only the Crown had jurisdiction to deal with the reserve land of the Band. The restrictions placed by the Crown on the Band's behalf are therefore relevant for assessment purposes.

74. Dickson J in *Guerin v. The Queen* at page 376 stated:

> *"An Indian Band is prohibited from directly transferring its interest to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the Crown then acting on the Band's behalf."*

---

[39] *Musqueam* BCCA (*supra*) [AR Vol I] at para. 28
[40] *Musqueam* BCCA (*supra*) [AR Vol I] at para 28.
[41] *Musqueam* BCCA (*supra*) [AR Vol I] at para 29.

75. Not only was the approach taken by the Court of Appeal correct in law, it is objectively appropriate with regard to the context of the Lease and its litigious history.

E. "Any Other Circumstance Affecting Value"

76. The Assessor respectfully submits that the Band has not provided any evidence that the Assessor has not valued the Property at "actual value" according to Section 26 of the Bylaw.

77. The Assessor submits that, notwithstanding the instruction to value the Subject Property as if it were in fee simple title and located off a reserve, there are a number of considerations that must affect the assessment of the Subject Property and that the Assessor is permitted to consider under the Bylaw.

78. Under subsection 26(3) of the Bylaw the Assessor is permitted discretion to consider "any other circumstances affecting the value of the land". In this regard, it must be noted that the Property has no zoning in place. In order for a developer to use this land, they would have to submit an application to the Department of Indian Affairs and acquire the requisite zoning before applying for any building permits. There are no guarantees in such applications, and these obstacles and uncertainties must be reflected in the market value of the Property.

79. The fact that the Band lacks a valid land code under the FNLMA is a further impediment to development and thus a further negative issue pertaining to the actual value of the Property. A code replaces the Indian Act provisions on registration of interests in First Nation lands, and removes Indian and Northern Affairs Canada from the lands management process to a greater extent.

80. Without a valid land code in place, the legal vehicle for land development on a reserve is a head lease between Indian and Northern Affairs Canada and the developer. Purchasers' sublease titles flow from the head lease. As a result, the terms of the head lease are critical to the success of any potential development. The head lease can take many forms, although only a few will be attractive to all parties involved.

81. Potential developers would have a multitude of considerations in respect of determining the marketability of the Property, including:

a) Payment of rent (having it fully prepaid or prepaid for portions of land as they are subleased is important for marketability).
b) Mortgageability of the subleases (the subleases must permit sublesees to mortgage the sublease, and various provisions must be included to make the sublease attractive to lenders).

82. Without a development approval process and zoning bylaws in place (like the Property) it is crucial that the developer and the First Nation enter an agreement pertaining to zoning, jurisdictional issues, the development approval process, services and facilities, parks requirements, access requirements, heritage matters, cost contributions, latecomer charges, property taxes, rights of way, assignability, discrimination, and dispute resolution.

83. As alluded to above, any First Nation land that is to be developed will be subject to a heritage survey prior to commencement. Without a survey in place to confirm the exact process that will be followed in the event heritage items are discovered in the course of development, and to predetermine the cost contributions that will be required from the developer should heritage matters arise, uncertainties abound.

84. The Band has not adduced evidence to show that the Assessor did not assess the Property at "actual value" under subsection 26(1). It is respectfully submitted that all of the aforementioned factors negatively impact the market value of the Property, that the Assessor has reasonably taken them into account when using his discretion afforded under the Bylaw, and has properly recorded "actual value" on the roll pursuant to subsection 26(2).

F. Discretion

85. Subsections 26(3) and 26(3.2) of the Bylaw, by using the word "may", confer a discretion on the Assessor to consider what he or she believes is relevant to the task at hand. This interpretation is supported by the case authority interpreting section 19 of the *Assessment Act*, and that authority is relevant for the purposes of interpreting the Band's Bylaw as well.

86. In Sullivan, Construction of Statutes, the author notes that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile.[42]

87. This is consistent with the position of this Honourable Court in *Friesen.* Words in legislation are to be construed without adding or deleting words, or otherwise rewriting the legislation.[43]

88. If subsection 26(3) of the Bylaw were to be construed as not affording the Assessor discretion, such an interpretation would be ignoring the words "may… give consideration to present use, location, original cost, replacement cost, revenue or rental value, selling price of the land and improvements and comparable land and improvements both within and without the reserve, economic and functional obsolescence, the market value of comparable land and improvements both within and without the reserve, jurisdiction, community facilities and amenities, and any other circumstance affecting the value of the land and improvements…", thereby rendering all of these words pointless. This would be an absurd interpretation according to Sullivan, and an incorrect interpretation according to this Honourable Court. The Assessor agrees.

89. In interpreting the same phrase as contained in subsection 26(3) of the Band's Bylaw, the Property Assessment Appeal Board of British Columbia in *Hacket v Area 09* stated at paragraph 89 that:

> *"Section 19(3)(h) provides the Assessor with the discretion to consider 'any other circumstances affecting the value of the land and improvements'. The Board finds that the climate of uncertainty surrounding these properties, resulting from the applicable legislation, the difficulties encountered in excavating so much as a fence post hole, the concern of First Nations, and the degree of public concern, is a negative 'circumstance affecting the value', and should be considered in determining the value for assessment purposes."*[44]

---

[42] *Sullivan* (*supra*) at p. 88 [RBA Tab 20].
[43] *Friesen v. Canada*, [1995] 3 SCR 103 at pg. 121 [RBA Tab 9].
[44] *Hacket v Area 09* (2002) PAABBC 2001 6551 [RBA Tab 12].

90. It must be noted that the standard for questioning the discretion of the Assessor is a high one. In *Brotherton v. City of Medicine Hat,* Mr. Justice Stuart stated:

> *". . . in my opinion this is a matter of discretion with the assessor, and unless a case of gross unfairness or injustice is made out, I do not think I ought to interfere."*

Blair J. specifically endorsed this comment in *Fox v. Merritt (City of).*[45]

91. In *Schalk v. Regina (City)* Bayda C.J.S. said:

> *"True, in some instances the assessor exercised the discretion bestowed upon him by the Manual in a way and in a manner that I may not necessarily have done had I been the Assessor, but that is irrelevant. So long as he exercised his discretion within the bounds prescribed for him by the Manual, a court ought not to intervene. In the end, I concluded that the applicants' complaints and thus their grounds of appeal are, in essence, complaints about the manner in which the Assessor exercised his discretion."*[46]

92. In *Northwest Holding Society v. The Corporation of Delta*[47] the Assessor was tasked with assessing certain lands located on Indian reserve land and subject to a lease wherein the Crown was the lessor and the lessee's were all part of a non-profit society. The use of the lands was restricted to single family residences and related purposes only.

93. At that time, section 335 of the *Municipal Act* applied to the assessment of lands in which the fee-simple "is in the Crown or some other person or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown".

94. The assessor was asked a number of questions pertaining to the valuation of the properties before the Assessment Appeal Board. The assessor responded that he did not take into account revenue or rental value, but that he did account for the fact that there were leasehold interests on the property and that there were restrictions on title.

---

[45] *Brotherton v. City of Medicine Hat,* (1907) A.L.R. 119 (Alta. K.B.) at p. 121 in *Fox v. Merritt (City of)* (1998), 937 (BC SC) [RBA Tab 9].
[46] *Schalk v. Regina (City)* (2000) SKCA 140, at para. 10 [RBA Tab 18].
[47] *Northwest Holding Society v. Corporation of Delta* (1966) SC 050 NW *Holding Society v. Delta*; SC 050cont *NW Holding Society v. Delta* ("Northwest") [RBA Tab 16].

95. The type of restrictions that were recognized by the assessor included that the lessees were unable to get mortgages for the property, and that no liquor was allowed on the property. He also stated that "there is not freedom with the lands that the freeholder would have. You're not allowed to cut down trees without the permission of the lessor."[48]

96. The assessor further stated, when questioned, that when he was determining actual value he assumed that it was freehold land that was subject to certain restrictions rather than leasehold land in the sense of the revenue or rental value.

97. At the Court of Appeal, Mr. Justice Norris endorsed the assessor's approach as correct and stated:

> *"In my opinion it is inescapable that the assessment of the leasehold interests in the Indian lands referred to "at the actual value of the lands and improvements" being substantially the value of the freehold, was an assessment on proper principles, and the appeal must be dismissed."*[49]

98. It is respectfully submitted that many of the Band's contentions are based on their grievances with the discretion exercised by the Assessor as provided under the Bylaw. Without any provisions in the Bylaw purporting to fetter this discretion, the comment above by Justice Stuart and endorsed by Blair J is germane. The high standard of "gross unfairness or injustice" must be proven in order for a court to question the expert discretion of the Assessor.

99. The definition of "actual value" and the inclusion of this phrase in subsections 26(1) and 26(2) does not disentitle the Assessor from the discretion afforded under subsections 26(3) and 26(3.2). When determining actual value, the Assessor has the discretion to consider all relevant factors.

100. Not only are the assessment principles proffered by the Band for the Property incorrect in law, the result would be inequitable to the Club who would be subjected to a substantial tax increase that is not commensurate with the permissible use of the Subject Property.

---

[48] *Northwest* (*supra*) at pg. 264 [RBA Tab 16].
[49] *Northwest* (*supra*) at pg. 268 [RBA Tab 16].

G. Other Contextual Considerations

101. At paragraph 70 of the Band's Factum they cite the *United Nations Declaration on the Rights of Indigenous Peoples* as a relevant context for interpreting and understanding the Bylaw. The Assessor agrees that international legal concepts are apposite in this dispute because of the complicated and complex context that created it and the First Nations enabling legislation that further complicates the situation.

102. In this regard, the Assessor would like to highlight the fact that clause 12 of the Lease provides that the Lease is binding upon the parties and their respective successors and assigns.[50]

103. The two parties to the Lease are the Crown and the Club. In the circumstances of this dispute, the Band is the successor to the Crown. Therefore, viewed in this manner, the Band is the party to the Lease and the use restriction on the Property was placed by the Band.

104. The line of reasoning from the *Case Concerning the Gabcikovo-Nagymaros Project*[51] from the International Court of Justice ("ICJ") is apt here. In that case, the ICJ was tasked with analyzing a treaty that Czechoslovakia entered into in 1977 with Hungary. Specifically, the Court was asked whether Slovakia became a party to the 1977 treaty as successor to Czechoslovakia. Hungary was arguing that one party to the treaty (Czechoslovakia) no longer existed and therefore the treaty ceased to be in force. Slovakia, as a successor state, was held to be bound by the Treaty, regardless of its separation with Czechoslovakia.

105. No party to this appeal disputes that aboriginal self-government is an important concept to First Nations in Canada and that Federal legislation has endorsed this concept in many ways. However, the legislation that has enabled aboriginal self-government does not operate in a vacuum. First Nations are not able to completely divorce themselves from facts, circumstances

---

[50] Lease dated January 22, 1958 between Her majesty Queen Elizabeth The Second in right of Canada and Shaughnessy Heights Golf Club [AR Vol II, Tab 8]

[51] *Case Concerning the Gabcikovo-Nagymaros Project*, (Hungary/Slovakia), International Court of Justice [RBA Tab 10].

and legal instruments that preceded their ability to self-govern; they are not able to legislate and impose their laws on non-aboriginal taxpayers in unfair and malicious ways.

106. Although the Band does not yet have a valid land code under the FNLMA, the Band cites that legislation in order to buttress its assertion of self-government. Subsections 16(2) and 16(3) of the FNMLA provide:

> (2) Subject to subsections (3) and (4), interests or rights in and licences in relation to First Nation land that exist on the coming into force of a land code continue in accordance with their terms and conditions.
> (3) On the coming into force of the land code of a First Nation, the rights and obligations of Her Majesty as grantor in respect of the interests or rights and the licences described in the First Nation's individual agreement are transferred to the First Nation in accordance with that agreement.

107. Therefore, although the Bylaw was enacted under s. 83 of the *Indian Act*, the FNLMA provides insight into the aims and purposes of First Nation enabling legislation, as the Band itself asserts at paragraph 72 of its Factum. The aims and purposes of First Nation enabling legislation preclude the ability of First Nations to completely divorce all facts and circumstances that preceded the enabling legislation. In fact, the Band assumes many of the rights and obligations of the Crown with regard to agreements that the Crown entered into on the Band's behalf, including the Lease.

108. In the Bylaw, "Band" is defined to mean "the Musqueam Indian Band, being a band within the meaning of section 2(1) of the *Indian Act*." The Band contends at paragraph 58 of their Factum that restrictions must be "imposed by Musqueam itself in order to be considered by the Assessor, and not one that was put on the Property by the Club, the Crown, or any other person."

109. To be a valid surrender under the *Indian Act*, the surrender must be made to Her Majesty, assented to by a majority of the electors of the Band, and accepted by the Governor in Council (s. 39(1)). The surrender in 1957 was valid.

110. It is within this context that the Bylaw should be interpreted. This interpretation is congruent with the Court of Appeal's reasoning that "the Band placed the restriction on the Club's use of the property when it surrendered the property to the Crown"[52] and it is also congruent with the Band's proclamations for self-government through the aforementioned enabling legislation.

111. Through a valid surrender of the Property to the Crown, which was the taxing authority for the Property at the time, the Band placed the use restriction on the Property. Intervening enabling legislation has permitted the Band to be the taxation authority on the Property, but it does not allow the Band to divorce itself from the facts and circumstances of the Lease in which it was compensated on a restitutionary basis.

H. Conclusion

112. The Assessor respectfully submits that the Court of Appeal made no error in its decision. The Court of Appeal properly interpreted the Bylaw with reference to the complicated and convoluted history of this matter.

113. The Band has not adduced any evidence that the Property has not be valued at its highest and best use.

114. The Band's self-government rights have not, as they claim, been abrogated. The Band's contentions that their legislation has not been respected by the Court of Appeal are untrue and inaccurate. The Band does not have unfettered discretion to legislate in any manner it chooses. The enabling legislation of First Nations Bylaws requires Ministerial approval and mandates fairness, transparency and predictability to the taxpayers.

PART IV –SUBMISSIONS CONCERNING COSTS

115. The Assessor seeks its costs in this matter.

---

[52] *Musqueam* BCCA (*supra*) [AR Vol I] at para. 29

PART V – ORDER SOUGHT

116. The Assessor seeks the dismissal of this appeal in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Victoria, in the Province of British Columbia, this 29th day of March, 2016.

R. Bruce E. Hallson
Counsel for the Respondent,
Assessor for the Musqueam Indian Band

Greer M. Jacks
Counsel for the Respondent,
Assessor for the Musqueam Indian Band

PART VI – TABLE OF AUTHORITIES

Tab	Authority	Reference in Argument
1.	*Assessor of Area #09 – Vancouver v. UBC Property Trust, 2008 BCSC 822 at paragraph 30.*	Paras. 37, 39, 40
2.	*Assessor of Area #08 v. Western Stevedoring Co. Ltd., 2006 BCSC 509*	Para. 37
3.	*B010 v Canada (Citizenship and Immigration),* 2015 SCC 58, 390 DLR (4th) 38547	Para. 49
4.	*British Columbia (Assessor of Area No. 10- Burnaby/New Westminster) v. Central Park Citizen Society* [1993] B.C.J. No. 2260	Paras. 31, 33, 43
	Brotherton v. City of Medicine Hat, (1907) A.L.R. 119 (Alta. K.B.)	Para. 90
5.	*Canada Trustco Mortgage Co v Canada*, 2005 SCC 54, [2005] 2 SCR 60147	Para. 56
6.	*Canadian National Railway Company v. Vancouver (City)* [1950] W.W.R. 337 (B.C.C.A.)	Paras. 34, 35, 37
7.	*Chapman v. Her Majesty the Queen,* 2001 BCSC 420 *at para. 83, aff'd Chapman v. Canada (Minister of Indian and Northern Affairs),* 2003 BCCA 665 at para 43.	Para.53
8.	*Fox v. Merritt (City of)* (1998), 937 (BC SC)	Para. 90
9.	*Friesen v. Canada*, [1995] 3 SCR 103	Para. 87
10.	*Gabcikovo-Nagymaros Project*, (Hungary/Slovakia), International Court of Justice. September 25, 1997	Para. 104
11.	*Guerin v. R,* [1984] 2 S.C.R.	Paras. 5, 32, 59
12.	*Hacket v Area 09* (2002) PAABBC 2001 6551	Para. 89
13.	*Musqueam Indian Band Board of Review v. Musqueam Indian Band,* 2013 BCSC 1362	Paras. 5, 57
14.	*Musqueam Indian Band Board of Review v. Musqueam Indian Band*, 2015 BCCA 158	Paras.18, 20, 45, 54, 55, 71, 72, 110
15.	*Musqueam Indian Band v. Canada*, [1990] 2 FC 351	Paras. 62, 65, 69
16.	*Northwest Holding Society v. Corporation of Delta* (1966) SC 050 NW *Holding Society v. Delta*; SC 050cont *NW Holding Society v. Delta*	Paras. 92, 95, 97
17.	*Osoyoos Indian Band v Oliver (Town),* 2001 SCC 85	Paras. 21, 22
18.	*Schalk v. Regina (City)* (2000) SKCA 140	Para. 91
19.	*Vancouver Pile Driving Ltd. v. Assessor of Area #08 – Vancouver Sea to*	Para. 37

	Sky Region, 2008 BCSC 81	
	Other Sources	
20.	Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada Inc.)	Paras. 49, 86
21.	Waters' Law of Trusts in Canada (3rd edition), Thompson Canada Limited, Toronto, 2005, p. 1224-1225.	Para. 66

PART VII – STATUTORY PROVISIONS

Tab	Statute and Bylaw	Reference in Argument
22.	*First Nations Fiscal Management Act* 2005, c. 9, s.1; 2012, c.19, s.658	Para. 23
23.	*Indian Act* R.S., c. I-6, s.1	Para. 61
24.	*Municipal Act*, [RSBC 1996] c. 323 changed name to *Local Government Act*, [RSBC] 2015 c.1	Para. 93
25.	Legal Code of the Musqueam Indian Band; *Musqueam Indian Band, Property Assessment Bylaw*, PR-96-01	Para. 46