The following version is for informational purposes only

BRITISH COLUMBIA FOREST PRODUCTS LIMITED

v.

CORPORATION OF THE DISTRICT OF MAPLE RIDGE

Supreme Court of British Columbia (No. 531/57)

Before: MR. JUSTICE HARRY J. SULLIVAN

Vancouver, August 28, 1957

H.P. Legg for the Appellant
Kemp Edmonds for the Respondent

Reasons for Judgment

This is an appeal, on law only, brought pursuant to the provisions of the *Assessment Equalization Act* concerning the assessment of appellant's machinery and structural improvements in the District of Maple Ridge for the year 1957.

The case stated by the Assessment Appeal Board is as follows:-

The appeal of British Columbia Forest Products Limited to the Assessment Appeal Board was heard at the Municipal Hall, Haney, in the Municipality of Maple Ridge, in the Province of British Columbia, on the 22nd day of March, 1957. The decision of the Assessment Appeal Board dismissing the appeal was rendered on Thursday, the 23rd day of May, 1957, and by correspondence addressed to the Board, the appellant did, on Friday, the 31st day of May, 1957, require the Board to submit the case for the opinion of the Supreme Court of British Columbia on a question of law only.

The facts are as follows:

(1) The assessments which are the subject of these proceedings were made in respect of structural improvements located on Lot F of Block A of Block 278, District Lot 281, and in respect of machinery upon the said lot and in respect of structural improvements located upon Lot 3, Block A of Block 278, District Lot 281, and structural improvements and machinery located on District Lot 278, Group 1, all within the Municipality of Maple Ridge.

(2) The total assessments made by the Assessor in respect of structural improvements and machinery were as follows:

(a) Improvements on Lot F of Block A of Block 278 of District Lot 281-$976.381.

(b) Machinery on Lot F of Block A of Block 278 of District Lot 281$927,602.

(c) Improvements on Lot 3 of Block A of Block 278 of District Lot 281-$3,661.

(d) Improvements-warehouse lease, District Lot 278, Group 1, Plan 6095-$22,561.

(3) The assessments quoted in the foregoing paragraph were reduced by the Court of Revision as follows:

(a) Improvements on Lot F of Block A of Block 278 of District Lot 281-$936.811.

(b) Machinery on Lot F of Block A of Block 278 of District Lot 281$876,549.

(c) Improvements on Lot 3 of Block A of District Lot 278/281$2,977.

(d) Improvements-warehouse lease, District Lot 278, Group 1, Plan 6095-$21,796.

(4) The assessment of the improvements and machinery was calculated by the industrial appraiser, Oldham, by taking the 1956 new replacement values of such improvements and machinery from an insurance appraisal made by General Appraisal Company Limited, one of the records of British Columbia Forest Products Limited. The appraiser personally inspected the structural improvements and machinery, and before applying factors for depreciation and obsolescence in respect of each structural improvement and piece of machinery in order to calculate 60 per cent of the 1953 replacement value subtracted the sum of $68,245 from the total of all structural improvements. After applying depreciation and obsolescence factors, he then applied a 10-per-cent over-all deduction for structural improvements and a 5-per-cent over-all deduction for machinery and used the resulting figures as the assessed value. In most instances the 1956 new replacement values which he used as a starting point for making his calculations both in respect of machinery and structural improvements were identical with the General Appraisal Company Limited figures.

(5) The Provincial Government manual, which is a table of replacement cost values calculated as of the year 1941 with instructions for converting such values to 1953 replacement cost values, is made available to Assessors of the Province for use in calculating the assessed values of buildings and machinery. These buildings include sawmills and sawmill machinery and equipment. The Assessment Appeal Board found that: "The manual was issued at the time as a guide to the Assessors of the Province, and the Board finds as a fact that the values suggested in the manual are the minimum values and even allowing for the change in the price level are not realistic in the 1953 market. The manual is, and can only be, a guide. The Assessor is not required to abide by the pricing suggested in the manual. The Board is well aware that basically the 1941 manual issued by the Provincial Government suggests rather low figures, with one notable exception which deals with residential improvements."

(6) The appellant adduced evidence that if the Provincial Government manual had been used in calculating the assessment in respect of the structural improvements of the appellant referred to in paragraph 2, subparagraphs (a), (c), and (d) hereof, the assessment in respect of such improvements would have been $520,013 as compared with the total of $1,002,260. The appellant adduced further evidence that the assessment in respect of its machinery referred to in paragraph 2, subparagraph (b) hereof, was 49.3 per cent over assessed compared with Provincial Government manual assessment figures, and that, had the Provincial Government manual been used in assessing machinery, the total assessment would have been $639,391 as compared with $927,602. The respondent adduced evidence that had the Provincial Government manual been used, the assessment would have been approximately the same as the result which the appraiser had reached.

(7) The Provincial Government manual was used in calculating the assessment of structural improvements and machinery of three sawmills in the municipality-namely, G. E. Savage Lumber Co. Ltd., Border Lumber Co. Ltd., and Cariboo Timber Products Ltd.- to arrive at 60 per cent of the 1953 replacement values.

(8) The Assessment Appeal Board found that: "It should be noted that the structures under appeal house machinery used in the complete manufacturing and processing of lumber from the raw log to the finished product ready for the retail market. A great deal of evidence was produced by the appellant with reference to the assessment upon certain other much smaller mills in the same area in an attempt to show that these were assessed on a very much lower basis. The reply of the Assessor was that new appraisals were made upon these plants but they arrived too late to be included in the 1957 assessment roll. Irrespective of the assessments upon the appellant's improvements as compared to these other mills, the Board finds that the improvements under appeal are not similar to the others referred to. The appellant operates a fully integrated lumber manufacturing operation. To say that such an operation is similar to a sawmill is to ignore the plain facts of the case. In the circumstances the Board finds that the comparisons submitted by the appellant are not relevant to the valuation applied to the structural improvements under appeal."

(9) It was found that the appellant had failed to prove that the assessments in respect of its machinery were excessive.

(10) There was no evidence that the assessments of the appellant were in excess of actual value.

(11) A certified copy of the evidence adduced at the hearing of the appeal by the Assessment Appeal Board is filed herewith together with Exhibits 1 A and B to 23, inclusive, referred to in the said certified copy of the evidence as required by section 51, subsection (5), of the *Assessment Equalization Act*.

The Assessment Appeal Board, after hearing evidence and argument and hearing witnesses, dismissed the said appeal, with written reasons attached hereto.

Pursuant to section 51, subsection (2), of the *Assessment Equalization Act* aforesaid and as required by British Columbia Forest Products Limited, being a person affected by the decision of the Assessment Appeal Board in the appeal, the said Assessment Appeal Board submits this stated case and humbly requests the opinion of this Honourable Court on the following questions of law:

"1 Did the Assessment Appeal Board err in law in holding that the comparisons between the assessments in respect of the appellant's structural improvements and the assessments in respect of structural improvements of G. E. Savage Lumber Co. Ltd., Border Lumber Co. Ltd., and Cariboo Timber Products Ltd. were not relevant?

"2. Did the Board err in law in sustaining the assessment calculated upon a basis other than the Provincial Government manual when this manual had been used in assessing the structural improvements and machinery of G. E. Savage Lumber Co Ltd Border Lumber Co. Ltd., and Cariboo Timber Products Ltd.?"

The reasons for judgment of said Assessment Appeal Board are attached to the case stated and it may be helpful to set them out in full as follows:-

Friday, the 22nd day of March, 1957.

This appeal was heard in the presence of Mr. H. P. Legg of counsel for the appellant and the Assessor appeared in person.

The appeal relates to the assessment of structural improvements located on Lot F of Block 278 in District Lot 281, the machinery assessment upon the same lot and the

improvement assessment upon Lot 3, Block A of Block 278, District Lot 281, as well as the improvements and machinery located on District Lot 278, Group 1.

With respect to the appeal against the assessment upon machinery the Board finds as a fact that insufficient evidence was produced on behalf of the appellant to discharge the onus resting upon it to prove that the assessment upon the machinery was wrong. Two examples were given, and only two, with respect to the assessment upon machinery. These examples, which were calculated upon the basis of 1957 list prices, did not take into account the condition of the respective comparisons which the appellant was attempting to make. Inasmuch as there is no evidence before the Board that the machinery compared was the same machinery nor in the same condition, the Board finds that the appellant failed to prove that such assessment is excessive. Accordingly. the appeal with respect to machinery is dismissed.

However, the appellant presented considerable evidence with respect to the assessment upon the structural improvements located upon the lands above described.

The appellant's evidence, largely from Mr. Page-Wilson, a former Provincial Assessor, endeavoured to establish that the structural improvements under appeal were over-assessed. Mr. Page-Wilson referred in some detail to the Provincial assessment manual issued in 1941. The manual was issued at the time as a guide to the Assessors of the Province, and the Board finds as a fact that the values suggested in the manual are the minimum values and even allowing for the change in the price level are not realistic in the 1953 market. The manual is, and can only be, a guide The Assessor is not required to abide by the pricing suggested in the manual. The Board is well aware that basically the 1941 manual issued by the Provincial Government suggests rather low figures, with one notable exception, which deals with residential improvements.

It should be noted that the structures under appeal house machinery used in the complete manufacturing and processing of lumber from the raw log to the finished product ready for the retail market. A great deal of evidence was produced by the appellant with reference to the assessment upon certain other much smaller mills in the same area in an attempt to show that these were assessed on a very much lower basis. The reply of the Assessor was that new appraisals were made upon these plants but they arrived too late to be included in the 1957 assessment roll. Irrespective of the assessments upon the appellant's improvements as compared to these other mills, the Board finds that the improvements under appeal are not similar to the others referred to. The appellant operates a fully integrated lumber manufacturing operation. To say that such an operation is similar to a sawmill is to ignore the plain facts of the case. In the circumstances the Board finds that the comparisons submitted by the appellant are not relevant to the valuation applied to the structural improvements under appeal.

The Board is, in any event, further reinforced in this matter by the decision in 1950 of the Honourable Mr. Justice Coady in the Supreme Court of British Columbia. *In the matter of the* Municipal Act *and in the matter of 76 appeals from the Court of Revision for the Municipality of Burnaby*. The Board respectfully quote the learned Judge, as follows: "When the evidence of the Assessor is considered as a whole, however, I do not think that it necessarily carries the inference which counsel submits that it does that all other parts of the municipality exclusive of Kingsway are at present under assessed and that consequently there is no fair and just relationship now existing following the re-assessment of Kingsway, and as a consequence the Kingsway assessment must be set aside or materially reduced. What the Assessor will discover upon a re-assessment of other areas in a municipality in the carrying out of his proposed program of re-assessment I cannot anticipate. He apparently expects to find inequalities and he probably will, but that is not sufficient to justify me on the evidence before me in interfering with the assessment made upon Kingsway." Aside from the difference in the

> property under appeal the Board can find no difference in principle from that laid down by the learned Judge. In these circumstances the Board must dismiss the appeal.
>
> While the general method by which the assessment was reached may be open to some criticism in detail, the over-all result is, in the opinion of the Board, as a question of fact, quite fair. The Board is of the view that the Assessor used the wrong factor in reaching his assessment. It should be borne in mind that he started from insurance appraisal values, which are normally high. The Assessor, however, all owed an effective deduction of 17 per cent for this factor. The allowance to be made for this is arbitrary and cannot be accurately ascertained. It is not for the Board to say that the Assessor was wrong in this aspect of the matter. Following his 17 per cent discount, he proceeded to value the property upon the basis of the appraisal subject to this discount. In this the Assessor fell into error. The appraiser should have taken the insurance valuation, applied the appropriate deduction for the so-called contingencies applicable to any insurance appraisal, and, having done so, he should then have calculated 60 per cent of the value factored to 1953 replacement cost. The factor used was the 1955 factor, which is too high and did produce a value which the Board originally felt was excessive; however, upon a recalculation on a basis which the Board considers right, the assessment on structural improvements turns out to be higher than that presently fixed.
>
> For the information of both parties the Board took the original insurance appraisal, deducted approximately $68,000, which the appraiser deducted, took 10 per cent off to make allowance for the contingencies which affect insurance appraisals, and then factored the 1956 value to 1953. Sixty per cent of that valuation is $1,012,000 approximately. In the opinion of the Board the foregoing is the proper method to assess the improvements under appeal. This assessment is slightly higher than the actual assessment fixed by the Court of Revision. The additional 5 per cent allowed below is dubious at least.
>
> The appeal is therefore dismissed and the respondent is entitled to his costs in accordance with the provisions of the *Assessment Equalization Act*.

In my opinion both questions submitted by the stated case must be answered in the negative for reasons which I expressed fully (and, I fear, repetitiously) during the course of argument.

Prefacing the brief summary of such reasons set out hereunder I first draw attention to the interesting facts following:

> (a) Paragraph 10 of the stated case stipulates "there was no evidence that the assessments of the appellant were in excess of actual value."
>
> (b) The governing statutory provisions-namely, section 37 (1) of the *Assessment Equalization Act* (which are identical)-require that "land and improvements shall be assessed at their actual value."
>
> (c) Learned counsel for appellant, in the course of ably presented argument, frankly stated to me that the assessments of his client's machinery and structural improvements here in question are not greater than the "actual value" which the Assessor is required by Statute to levy.

In that setting and against that background, counsel urged that I should find that error in law was committed by the Assessment Appeal Board, and that, in effect, I should cause a reassessment of appellant's machinery and structural improvements to be made based upon a formula which the Assessor, the Court of Revision, and the Assessment Appeal Board all consider inappropriate for such purpose and which admittedly would result in the assessment of appellant's machinery and structural improvements at less than "actual value," as required by Statute.

This ambitious proposal was based (a) upon the suggestion that such formula was used in the assessment of machinery and structural improvements of three small mills in Maple Ridge Municipality which appellant contends are comparable to its operation but which the Assessment Appeal Board found, as a fact, to be so dissimilar as to afford no basis of sound comparison, and (b) upon counsel's interpretation of section 46 (1) of the *Assessment Equalization Act*, which provides as follows:

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board, unless:
>
> (a) The value of the individual parcel under consideration bears a fair and just relation to the value at which other lands and improvements are assessed in the municipal corporation or rural area in which it is situate; and
>
> (b) The assessed values of such land and improvements are not in excess of actual value as determined under section 37.

As indicated by the terms of the stated case, a manual was at one time issued by Provincial Government Authorities for the assistance of Assessors in calculating the assessed values of buildings and machinery, which manual contained a table of replacement cost values of, inter alia, sawmill machinery and structural improvements as of the year 1941 and set out a formula for converting such 1941 values to replacement costs as at 1953 (the year of enactment of the *Assessment Equalization Act*). Such formula was applied by the Assessor in calculating the assessments of G. E. Savage Lumber Co. Ltd., Border Lumber Co. Ltd., and Cariboo Timber Products Ltd. in the Municipality of Maple Ridge, and appellant for that reason contends that, as matters of law, (a) its assessments must be calculated by application of the same formula, and (b) its machinery and structural improvements must be compared to those of the other mills mentioned and its assessment made to conform to theirs.

This contention is met by the fact (as the case stated indicates and the transcript of evidence discloses) that the Assessment Appeal Board heard a great deal of evidence by which appellant attempted to prove that its improvements were similar to those of the smaller operations named and were nonetheless assessed at a much higher rate by comparison. The Assessment Appeal Board did not exclude such evidence but, having heard the witnesses and weighted the evidence adduced, found against the claim of inequality and held that the several milling operations cited as examples were not comparable. That finding was a finding of fact-not of law-and I am without power in these proceedings to disturb it. It is axiomatic that any comparison of properties must depend for its validity upon the likeness of the properties being compared, and here the element of likeness has been negatived by the fact-finding tribunal. It might be further noted that there is nothing in the record to indicate what number of mills are operating in Maple Ridge Municipality or that appellant's assessments do not conform to the great majority of them. Indeed, the record suggests that the assessments of the three small mills selected by appellant for purposes of comparison were out of line with the prevailing assessments of mills in the municipality and had been raised prior to the date of hearing of the appeal herein although too late for inclusion in the 1957 assessment roll.

The Provincial Government manual, which is the subject of Question 2 herein, has not the force of law. As stated, it was intended to be and could only be a guide to Assessors in computing replacement costs, and, of course, other factors than replacement cost must be taken into consideration by an Assessor in the discharge of his duties. These factors are set out in section 37 (1) of the *Assessment Equalization Act*, where the language employed is identical with that of section 238 (1) of the *Municipal Act* and section 30 of the *Taxation Act*. The section provides:-

> 37. (1) Land and improvements shall be assessed at their actual value. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such lands and

> improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and the actual value of the land and improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of such value; and without limiting the application of the foregoing considerations where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

As learned Judges have pointed out, the provision just quoted is more wide and flexible in its terms than the provisions of other Statutes considered in cases wherein Courts have been required to deal with this difficult matter of assessment. Its terms were the subject of comment by Chief Justice Gordon Sloan (there dealing with section 30 of the *Taxation Act*) in *Regina* v. *Penticton Sawmills Ltd.* (1953) 11 W.W.R. (N.S.) 351, where he said, at page 353: "It seems to me that section 30, in its present form, clothes the Assessor with a very wide and flexible discretion as to the methods he may pursue in his determination of 'actual value.'"

It must be remembered that the Court no longer has power to review an Assessor's computations of actual value and, where proper principles have been applied and followed, may not substitute its own opinions for his. The power of review formerly exercisable by the Court is now vested in the Assessment Appeal Board for the reason, I suppose, that in the opinion of the Legislature the judiciary is not possessed of those special and technical qualifications which are necessary for completion of a satisfactory job of equalized assessment.

Keeping, then, within the field of the Court's restricted field in assessment matters, I find it impossible to give effect to appellant's submission that its assessments in this case were arrived at by application of any wrong principle or that they were made in non-conformity with a proper exercise of the discretionary powers vested in Assessors by Statute.

I find that no error in law was committed by the Assessment Appeal Board in either of the respects suggested by the questions submitted.