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THE CORPORATION OF THE DISTRICT OF BURNABY

v.

SIMON FRASER UNIVERSITY

Supreme Court of British Columbia (No. X1191/67)

Before: MR. JUSTICE T.A. DOHM

Vancouver, February 8, 1968

E.E. Hinkson and R.R. Holmes for the Appellant
S. Hebenton for the Respondent

Reasons for Judgment

Simon Fraser University came into existence as a body politic and corporate by way of the *Universities Act* in 1963. This University then acquired approximately 1,200 acres of land from The Corporation of the District of Burnaby by way of deed, and at the date of this application Simon Fraser University is the owner of the said land.

When the University acquired the land it was encumbered with certain charges, including easements in favour of the British Columbia Power Authority, Imperial Oil Limited, and Trans Mountain Oil Pipeline Company, as well as leases in favour of a rifle-range club, two transmission towers, and a second rifle range.

In order to consolidate the titles, surrenders were taken of the aforementioned leases and new leases were executed by the University in favour of the holders of the old leases, and subsequently the University granted new leases to some further tenants, including a bank, a barber shop, an archery range, and a gas-station. All of these lessees pay rents to Simon Fraser University and, of course, none of them are colleges affiliated with Simon Fraser University.

The Corporation of the District of Burnaby now desires to know whether the lands leased out by the University are liable to taxation under the *Municipal Act*, the *Public Schools Act*, and the *Taxation Act*.

The pertinent section which requires interpretation by the Court is section 40 of the *Universities Act*, which reads as follows:

> 40. The property, real and personal. vested in a University is exempt from taxation under the *Municipal Act*, the *Public Schools Act*, and the *Taxation Act*; and any real property so vested which is disposed of by lease to a college affiliated with the University, so long as it is held for college purposes, continues to be entitled to the exemption from taxation provided in this section. *[The underlining is mine.]*

These first underlined words are all-encompassing general words and are absolutely clear.

The additional words which refer to leases to affiliated colleges bring about the present ambiguity which gives rise to the different interpretations placed on this section by The Corporation of the District of Burnaby and by Simon Fraser University. It is urged by Burnaby that the clause referring to the affiliated colleges' leases limits the general immunity granted by the first general words. Burnaby argues that by referring to affiliated colleges the Legislature intended to exclude any other properties leased to others.

The University takes the position that the clear and unequivocal general words grant an exemption to the University from the taxation under the three statutes regardless of whether they have leased out parts of the property and are receiving rents therefrom. The University takes the position that the additional words were intended by the Legislature as merely a safeguard to see that the leases previously granted to any affiliated colleges by any British Columbia University under this statute "continues" to be entitled to the exemption.

Both counsel have agreed I should look at the history of this legislation in order to ascertain the intention of the Legislature when it enacted the present section 40 and, of course, there is ample authority for my so doing. In the year 1908 a similar section (then numbered section 47) read as follows:

> The property, real and personal, vested in the University, being actually occupied or used by the University in the conduct of any part of its educational system, shall not be liable to taxation for Provincial, municipal, or school purposes, but shall be exempt from every description of taxation.

In the year 1916 this section (also numbered 47) read as follows:

> The property, real and personal, vested in the University shall not be liable to taxation for Provincial, municipal, or school purposes, but shall be exempt from every description of taxation until disposed of by sale, lease, or otherwise. *[The underlining is mine.]*

In the year 1925 this section (also numbered 47) was amended as follows:

Section 47 of said chapter 265 is amended by adding thereto the words "and any real property so vested which is disposed of by lease to a college affiliated with the University shall. so long as it is held for college purposes, continue to be entitled to the exemption from taxation provided in this section." *[The underlining is mine.]*

In the year 1960 this section (then numbered 51) read as follows:

> The property, real and personal, vested in the University is not liable to taxation for Provincial, municipal, or school purposes, but is exempt from every description of taxation until disposed of by sale, lease, or otherwise; and any real property so vested which is disposed of by lease to a college affiliated with the University, so long as it is held for college purposes, continues to be entitled to the exemption from taxation provided in this section. *[The underlining is mine.]*

The underlined words in the 1960 section were removed by the Legislature in 1963 in the section with which I am here concerned.

The pattern of the above legislative enactments demonstrates quite clearly that the Legislature originally in 1908 enacted, by clear and unambiguous language, that all property, real and personal, vested in a University should "be exempt from every description of taxation," providing that the land was actually occupied or used by a University in the conduct of any part of its educational system. In 1916 a change was made, again in clear and unambiguous language, and the Legislature at that time exempted the property vested in a University, whether actually occupied or used by a University in the conduct of its educational system or not, from any

description of taxation until a University disposed of any of the property so vested by sale, lease, or otherwise.

It is difficult to understand why the word "sale" was used, because a sale of property would divest the University of any interest in the property.

It is in the year 1916 that property disposed of by sale, lease, or otherwise was no longer protected from the incidence of taxation.

In 1925 the section as enacted in 1916 was continued but amended to exclude from property disposed of by sale, lease or otherwise, any property specifically disposed of by lease to an affiliated college.

In 1925, therefore, the Legislature in simple language enacted

> (a) that property vested in a University was completely exempt from taxation, and property leased out to an affiliated college in the terms set forth in the section as amended in that year "continued" to be exempt; and
>
> (b) that property disposed of by sale or lease (except to an affiliated college) or otherwise should not be excluded from taxation but specifically subject to the taxation laws of the Province.

In 1960 the same concept was retained in clear and unambiguous language.

It would appear, therefore, that since 1916 the legislation specifically excluded from the tax-exempt provisions lands disposed of by a University by sale, lease, or otherwise (except lands leased to an affiliated college) as described in the section. It was obvious that during the said period the Legislature spelled out and used specific words to declare what disposition of property vested in a University should be subject to taxation in order to exclude such lands from the general and unequivocal language used to declare that all property, real and personal, vested in a University should be tax exempt.

Mr. Hinkson in his very able argument on behalf of Burnaby states that if this section in the 1963 statute is construed according to its plain meaning, then I shall be imputing to the Legislature that they passed a law inconsistent with previous legislation and inconsistent with the history of this matter.

Mr. Hebenton, with equal vigour, argues that this is not a sufficient reason for not giving to the section the plain meaning of the words used.

In deciding the intention of the Legislature I keep in mind the following:

> (a) The section itself has the object of exempting from taxation and, this being so, the wording should be interpreted to effect that object:
>
> (b) Any change in language is some indication of the change of intention on the part of the Legislature.[1]

Why were the words "disposed of by sale, lease, or otherwise" deleted from this section by the Legislature? If the historic pattern of words used were considered necessary to express the true intent of the Legislature during the 47-year period referred to, why then would the words be deleted, unless the clear intention of the Legislature was to completely exempt from taxation all property, both real and personal, vested in a University, including affiliated colleges? To say that because lands leased to an affiliated college in the conditions set forth in section 40 of the present Act gives rise to an implication that other leases are therefore subject to tax, is to ask this

Court to interpret the section in its wording as it was during the preceding 47 years. How can a Court do so in view of the legislative enactments analysed? It is said that where words used in a statute are not ambiguous or confusing, its interpretation should not be affected by a comparison of language used with that of previous legislation on the subject. However, because of the submission made that there is an implied right to tax, with which submission I do not agree, and because I was urged by both counsel to do so, I have allowed myself to review the legislative enactments passed as set forth above since the year 1908. I am of the opinion that the Legislature of British Columbia, when departing from the language used previously, did so intentionally and deliberately.[2]

Mr. Hinkson very properly points out that this is an exempting section and not a taxation section. However it is put, the submission of the Corporation of Burnaby is to the effect that that section as now enacted gives the Corporation of Burnaby the right to tax upon an implied condition. Here I have in mind what was said by Rowlatt, J., when, in discussing the meaning of the words "that in a taxation Act clearer words are necessary in order to tax a subject," he said:

> It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.[3]

The general wording used in the present section 40, together with the deletion of the previous words which appeared in the 1960 section, lead me to the opinion that the Legislature intended to exempt the British Columbia Universities from all Provincial forms of taxation. Had the Legislature intended the exemption to be restricted, it could have inserted the previous words which clearly restricted the exemption.[4]

Accordingly I am of the opinion that the real property vested in the Simon Fraser University does not cease to be exempt from taxation under the *Municipal Act*, *Public Schools Act*, and *Taxation Act* by reason of the University having granted leases to some one other than a college affiliated with the University. I find that the Simon Fraser University has not disposed of real property but has granted leases to the companies and organizations set forth in the notice filed herein. Section 40 as presently worded gives to Simon Fraser University exemption from taxation by The Corporation of the District of Burnaby under the *Municipal Act*, the *Public Schools Act*, and *Taxation Act* in relation to real property leased to the persons or associations hereinbefore referred to.

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[1] *Grey* v. *I.R.C.* (1958) chap. 690, affirmed (1960) A.C. 1.
[2] See Shorter, J. A., in *Regina* v. *American News Company Limited* (1957) O.R. 145, at pp. 173-4.
[3] *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* L.R. (1921) 1 K.B.D. 64, at p. 71. *See also Halsbury* (3rd ed.) Vol. 20, Article 32, at p. 28, and Vol. 36, para. 633, at p. 416.
[4] *R.* v. *Lowden* (1914) 1 K.B. 144.