CITY OF PENTICTON

v.

KETTLE RIVER AND PRINCETON ASSESSMENT DISTRICTS

Supreme Court of British Columbia (No. X672/68)

Before: MR. JUSTICE W.R. MCINTYRE

Vancouver, December 6, 1968

H.J. Hamilton for the Appellant
G.R. Munch for the Respondent

Reasons for Judgment

The appellant City of Penticton is the registered owner of lands in the Kettle River and Princeton Assessment Districts. These lands are wholly exempt from taxation under section 24 (b) of the *Taxation Act*. The lands are not assessed by the Provincial Assessor. No notice of assessment is sent by him to the appellant city. The lands are not included in any assessment roll.

The appellant city says that the lands while not taxable must nevertheless be assessed. It is contended that this is necessary for the proper computation of Provincial grants payable under section 184 of the *Public Schools Act*. The city appealed against the non assessment of these lands to the Assessment Appeal Board. The appeal was dismissed on the 4th of June, 1968. The city now comes before this court, on a stated case under section 51 of the *Assessment Equalization Act*. The narrow question which I must answer is stated in the case in the following terms :

> "Was the Board correct in confirming that the Provincial Assessor is not required to assess, send out assessment notices for, or include on the assessment roll the property owned by the city and other nontaxable owners situate within the said assessment district?"

The Assessment Appeal Board based its conclusions upon the definition of assessment found in the *Assessment Equalization Act*. Assessment is there defined as "a valuation of real property for taxation purposes." The Board says that this land being exempt from taxation cannot be valued for a taxation purpose. The Assessor, it says, is right in taking the view that the land need not be assessed. Council for the appellant city says that assessment and taxation are separate matters and have been so treated in the relevant statutes. Furthermore to give proper effect to section 184 of the *Public Schools Act* and section 53 (3) of the *Assessment Equalization Act*, this land must be assessed.

There can be no doubt that there is a difference between assessment and taxation. This appears from a reading of the relevant statutes, and the difference was noted by Tysoe, J.A., in *MacMillan, Bloedel & Powell River Ltd.* v. *Attorney General of British Columbia* (B.C. Court of Appeal June 9, 1966, unreported), at page 17 of his judgment, where he stated:

> There is a distinct difference between the assessment of land or other property and the assessment of taxes, and this difference clearly appears in the *Taxation Act*. The assessment of land or other property is the ascertainment and fixing of the value of it for taxation purposes. The assessment of a tax is the calculation and fixing of the amount of the tax.

It does not follow that because land is exempt from taxation it is therefore exempt from assessment. The *Assessment Equalization Act* and the *Taxation Act* require the assessment of all lands, whether taxable or not. Section 74 of the *Taxation Act* requires the inclusion in the Notice of Assessment of a statement of the value of land and improvements exempt from taxation, and section 38 of the *Assessment Equalization Act* imposes the same requirement for the Assessment Roll itself. Section 8 of the *Assessment Equalization Act* refers to all lands, and section 24 of the *Taxation Act*, which creates the exemption from taxation, does not exempt the land from assessment. To enable the Assessor to comply with these sections he must, of course, assess all land, whether it be taxable or not.

More significant, however, in my view, is section 184 of the *Public Schools Act*. It sets out the formula to be used in sharing costs between the Provincial Government and the constituent parts of each school district, and it provides:

> . . . and for this purpose and for the computation of grants to be made under this Division, where assessed values are required, the assessed values used shall consist of the value of all land and seventy-five per centum of the value of improvements for the year, as defined in, and as certified to the Department under, the *Assessment Equalization Act*. *[The italics are mine.]*

This is a reference to section 53 of the *Assessment Equalization Act*. It requires the Commissioner to certify in each year to the Deputy Minister of Education the assessed value of all land. Subsection (3) of section 53 provides that the assessed values so certified shall be used in computing school grants and school cost apportionment. In making his certification under section 53 the Commissioner must rely on the Assessment Roll which, under section 38 of the *Assessment Equalization Act*, must include a statement of the value of all tax-exempt land. In order to apply the formula set out in section 184 of the *Public Schools Act* the value of all land must be known. It can become known only through the assessment roll certified by the Commissioner under section 53 of the *Assessment Equalization Act*. It is, therefore, clear that all lands, whether tax exempt or not, must be assessed and the value of all lands included on the Assessment Roll.

I am of the opinion then that where, as in the case at bar, a city owns land exempt from taxation it must nevertheless be assessed. I am also of the view that this involves no contradiction with the definition of "assessment" given in the *Assessment Equalization Act* as a valuation of real property for taxation purposes. The application of the formula set out in section 184 of the *Public Schools Act* will affect the grant received by the city and hence the taxation to be levied by it to make up its portion of the necessary costs, and the assessment of land exempt from taxation for the purposes of section 184 is, therefore, a taxation purpose.

I must answer the question posed in the stated case in the negative.

The Assessor should assess land not subject to taxation and the appellant is entitled to its costs.