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## BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

v.

## THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

Supreme Court of British Columbia (No. 16750/72)

Before: MR. JUSTICE K. MEREDITH

Vancouver, April 29, 1974

R. Strilive for the Appellant  
B. Emerson for the Respondent

### Reasons for Judgment

In 1972 the Assessor appointed in the Defendant District Municipality pursuant to the *Municipal Act*, in preparing the real-property assessment roll, set down and assessed as parcels of land certain rights-of-way held by the Plaintiff (hereinafter called "Hydro"). Notice of "current real property tax levies" subsequently issued to Hydro in the name of the Municipal Collector purporting to levy against Hydro school taxes. The rights-of-way are held for the purposes of electrical power transmission lines. Apparently prior to 1972 the rights-of-way themselves had not been entered on the municipal rolls for assessment or taxation.

Hydro says that the entry of the rights-of-way as land on the rolls was improper because under the *British Columbia Hydro and Power Authority Act*, 1964, (hereinafter called the "*Hydro Act*") Hydro is subject for school purposes only to assessment and taxation on land and improvements and that rights-of-way are not land within the meaning of the relevant section. That section is Section 54(2):

"54 (2) Except as provided by Order of the Lieutenant-Governor in Council, land and improvements of the Authority as defined by the *Public Schools Act* shall be included for the computation of Provincial grants to school districts and the assessed value of land and seventy-five per centum of the assessed value of improvements of the Authority as defined in the *Public Schools Act*, shall be assessed and taxed in each year."

My attention was drawn as well to section 53(1):

"53 (1) Notwithstanding any specific provision in any Act to the contrary, except as otherwise provided by or under this Act, the Authority is not bound by any statute or statutory provision of the Province."

Counsel for Hydro referred to several rules of statutory interpretation to support the proposition that the word "land" in Section 54(2) of the *Hydro Act* did not include rights-of-way. The point was fully confirmed in argument but as it is conceded by the Defendant I need not review the submission.

Mr. Emerson suggested the possibility that though Hydro is exempt from tax on the rights-of-way nevertheless as "assessment" is to be distinguished from "taxation" the assessor may have been correct or thought he was correct nevertheless in making the assessments under the *Municipal Act* as he did. It is conceded however that rights-of-way are not assessable as land under the *Municipal Act* any more than they are under the *Hydro Act*. Section 335 (1) and (2) might bring on to the assessment and taxation rolls rights-of-way over Crown lands where these are not held on behalf of the Crown. But by section 4(1) of the *Hydro Act*, Hydro is constituted an agency of Her Majesty the Queen and its powers may be exercised only as an agent of Her Majesty. It seems to me that Hydro holds those rights-of-way that it has over Crown lands, as an agent for the Crown and therefore the rights-of-way are not subject to assessment in any event. So none of the rights-of-way held by Hydro are either assessable or taxable.

The Plaintiffs purposes will be served I think if I make these declarations:

- (1) That the electrical power transmission line rights-of-way of the Plaintiff over lands situated within the boundaries of the Defendant are not assessable and taxable under the provisions of the *Hydro Act* or the *Municipal Act* or otherwise.
- (2) That the school taxes purported to have been levied as set forth in the schedule annexed to the Statement of Claim are not in law leviable and that no school taxes are payable by the Plaintiff to the Defendant in connection with the land particularized in the schedule.

Costs will follow the event.