BRITISH COLUMBIA FOREST PRODUCTS LIMITED
and
CROWN ZELLERBACH CANADA LIMITED

v.

ASSESSMENT AREAS OF CARIBOO, NORTHWEST, COWICHAN VALLEY, NANAIMO, COURTENAY AND PORT ALBERNI

British Columbia Court of Appeal

Before MR. JUSTICE M.M. McFARLANE, MR. JUSTICE A.B. ROBERTSON, MR. JUSTICE J.D. TAGGART

Vancouver, December 16, 1977

L.M. Candido and B.J. Wallace for the Appellants
P.W. Klassen and K. Edmison for the Respondents

Reasons for Judgment of Mr. Justice Robertson

Per curiam

Assessments for the year 1976 of certain forest lands, timber lands and tree-farm lands (all as defined in s. 2 of the *Taxation Act*, R.S.B.C. 1960, c. 376 as amended) owned by the two appellant companies were taken by the companies to the Assessment Appeal Board ("the Board"). The Board (under s. 67 (2) of the *Assessment Act*) stated a case for the opinion of the Supreme Court of British Columbia upon these two questions:

> 1. In preparing the 1976 assessment of the timber lands and forest lands was the assessor entitled in law to use volumes of merchantable timber estimated by cruises compiled subsequent to the completion of the 1974 assessment roll?
>
> 2. In preparing the 1976 assessment of Tree Farm No. 8 was the assessor entitled in law to assess the property in the manner set out in paragraph 19 and Schedule 2 hereof?

The judge who heard the case answered question 1 in the affirmative and question 2 in the negative. Against the answer to question 1 the companies have appealed, and against the answer to question 2 the assessors have cross-appealed.

On 2nd July 1974 the relevant legislation read as follows:

The Assessment Act, S.B.C. 1974, c. 6

> 24. (1) Land and improvements shall be assessed at their actual value.

(2) In determining the actual value for the purposes of subsection (1), the assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably 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 the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values.

(3) Without limiting the application of subsection (1) and (2), where an 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.

(4) Notwithstanding the provisions of this section, where the assessor receives, on or before the first day of November, from the owner and occupier of land and improvements, a notice in the form prescribed by the commissioner that he owns and occupies the land and improvements as his principal place of residence and has done so since the first day of January 1959, the actual value of the residential land shall, for the purpose of the assessment roll for the succeeding year, be determined under subsection (1), but taking into consideration only the existing residential use of the land, without giving any consideration to the fact that the residential land may have a higher actual value for alternative uses.

(5) Notwithstanding the provisions of this or any other Act, where land and improvements are exempt from taxation, the assessor need not, in respect of those exempt lands and improvements,

(a) assess the land and improvements; or

(b) prepare an annual assessment roll.

27. Land classified as forest land,. timber land and tree-farm land under the provisions of the *Taxation Act* shall be assessed in accordance with that Act.

74. (1) The *Assessment Equalization Act* is repealed.

(2) Where any Act. regulation, Order in Council, by-law, or other document refers

(a) to the *Assessment Equalization Act*, the reference shall be deemed to be to this Act; . . .

The Taxation Act. R.S.B.C. 1960, c. 372 as amended

31. The assessed value of land and improvements as defined in this Act shall be determined under the *Assessment Equalization Act,* R.S. 1948, c. 332, s. 30; 1950, c. 72. s. 4; 1961, c. 61. s. 3.

35. (1) Every person who holds a timber lease or timber licence from the Crown shall, on demand, supply the Surveyor of Taxes with a return on the lease or licence on or before the twenty-first day of August of each year; the period of the return shall be for the twelve months ending on the thirty-first day of July in that year.

(2) The demand for the return is sufficient if mailed to the last-known address of the licensee or lessee.

(3) The return shall show in detail the legal or other well-defined description of each lease or licence. the acreage thereof, accompanied by a plan showing the uniform subdivision of each lease or licence into forty-acre areas, each twenty chains square, and shall show thereon the exact acreage, locality, and description of each forty-acre area or portion thereof from which the timber has been cut and removed, together with a statement of the volume by species of the timber cut and removed during the period of the return, and where partial or selective cutting and removal has been carried out, the return shall include an estimate of the timber by species remaining on each forty-acre area that has been partially or selectively logged.

(4) (a) Every person required to supply a return under this section shall, with the return, submit, without notice or demand, the most recent cruise of the area of the lease or licence.

(b) A cruise submitted under this section shall include

(i) an estimate of the volumes and grades and other quantities of timber on the area, by species and, where applicable, in accordance with the standard log-grading rules in force at the time of the cruise;

(ii) a description of the topography of the area;

(iii) full information with regard to the accessibility of the timber on the area; and

(iv) any other information pertinent to logging conditions of the area.

(c) The cruise shall be accompanied by documentary authentication of the basis and reliability thereof, including

(i) a forest-cover map on which the cruise sample plots or tallies are accurately located; or,

(ii) in the case of a standard timber cruise by forty-acre areas, a plan of the area cruised divided into forty-acre areas showing the estimate of the volumes and grades of timber, by-species, for each forty-acre area.

(d) Where a cruise is not submitted under this subsection, or where, in the opinion of the Minister, the cruise submitted is not satisfactory or is not properly authenticated, the Minister may direct that the area of the lease or licence be cruised, and may direct that the lessee or licensee pay the cost of that cruise.

(5) In the case of forest land from which the timber is being cut and removed, the return shall be accompanied by a certificate of the Collector showing that all taxes have been paid upon that forest land, up to and including the year in which the return is made.

(6) Upon receipt of the returns, the Assessor shall assess each lease or licence, as the case may be, in its entirety under the classification of forest land, and shall allow as a deduction in respect of the assessed value an amount equal to the value of the timber

which has been cut and removed therefrom. The lease or licence shall continue to be assessed until such time as it is cancelled by the Minister of Lands and Forests or otherwise expires. 1953 (2nd Sess.), c. 35, s. 7 (*altered*); 1961, c. 59, s. 35, and c. 61, s. 5.

37. (1) Every owner and every occupier of timber land shall, on or before the twenty-first day of September in each year, submit to the Surveyor of Taxes a return for the twelve months ending on the thirty-first day of August of that year.

(2) A return under subsection (1) shall contain

(a) a detailed legal or other well-defined description of each parcel of the timber land, including the acreage thereof;

(b) a plan showing the uniform subdivision of each parcel of the timber land into forty-acre areas each twenty chains square; and

(c) a statement of the acreage, locality, and description of each forty-acre area or portion thereof from which timber has been cut and removed;

(d) a statement of the volume of each species of timber cut and removed from each forty-acre area or portion thereof during that twelve months; and,

(e) where partial or selective cutting and removal of timber have been carried out, an estimate of the volume of each species of timber remaining on each forty-acre area partially or selectively logged.

(3) (a) Every person required to supply a return under this section shall, with the return, submit, without notice or demand, the most recent cruise of each parcel of the timber land.

(b) A cruise submitted under this section shall include

(i) an estimate of the volumes and grades and other quantities of timber on the parcel, by species and, where applicable, in accordance with the standard log-grading rules in force at the time of the cruise;

(ii) a description of the topography of the parcel;

(iii) full information with regard to the accessibility of the timber on the parcel; and

(iv) any other information pertinent to logging conditions of the parcel.

(c) The cruise shall be accompanied by documentary authentication of the basis and reliability thereof, including

(i) a forest-cover map on which the cruise sample plots or tallies are accurately located; or,

(ii) in the case of a standard timber cruise by forty-acre areas, a plan of the parcel cruised divided into forty-acre areas showing the estimate of the volumes and grades of timber, by species, for each forty-acre area.

(d) Where a cruise is not submitted under this subsection, or where, in the opinion of the Minister, the cruise submitted is not satisfactory or is not properly authenticated, the Minister may direct that the parcel be cruised, and may direct that the owner or occupier pay the cost of that cruise.

(4) The owner or occupier shall furnish to the Assessor along with the return a certificate of the Minister of Lands and Forests, to be obtained from him by the owner or occupier on application, showing that the regulations under the *Forest Act* concerning the prevention of fire and the scaling and marking of timber cut from the timber land have been complied with, and that payment has been made to the Department of Lands and Forests of all charges authorized or imposed for the current year in that behalf, and that all royalties, taxes, and charges imposed under Parts VII and XI of the *Forest Act* in respect of that land or the timber cut thereon have been duly paid by the owner or occupier to the Department of Lands and Forests, and shall also furnish to the Assessor such other certificates in respect of the timber land as are required by or under this Act.

(5) In the case of timber land from which the timber is being cut and removed, the return shall be accompanied by a certificate of the Collector showing that all taxes have been paid upon that timber land up to and including the year in which the return is made.

(6) Upon receipt of the return the Assessor shall assess each lot, block, or section, as the case may be, in its entirety under the classification of timber land, and shall allow as a deduction in respect of the assessed value an amount equal to the value of the timber which has been cut or removed therefrom. The lot, block, or section shall continue to be so assessed until such time as all the timber has been cut and removed therefrom, but where a plan and description of the land from which the timber has been cut or which has been burned over have been registered in conformity with the *Land Registry Act*, the area comprised in the plan and description shall thereupon be assessed separately from the timbered area as wild land until it is made fit for settlement and use for agricultural, pastoral, or commercial purposes. R.S. 1948, c. 332, s. 33; 1953 (2nd Sess.), c. 35, s. 9; 1961, c. 61, s. 6.

39. Notwithstanding the provisions of section 31, the assessed value of tree-farm land, exclusive of any improvements thereon, shall be ascertained only by giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees. 1951, c. 81, s. 9; 1961, c. 61, s. 7.

The *Assessment Amendment Act, 1974* (c. 105) was assented to on 26th November 1974, and its two sections read in part:

1. Section 24 of the *Assessment Act*, being chapter 6 of the Statutes of British Columbia, 1974, is amended by adding, after subsection (5), the following as subsections (6), (7), (8), (9), (10), and (11):

(6) Notwithstanding subsection (1) or anything to the contrary in this Act,

(a) except as provided in paragraphs (b), (c), and (d) and sections 25 and 27, land and improvements shall be assessed at the same value and on the same basis at which the land and improvements were assessed for the calendar year 1974;

(b) where a change in the value of land and improvements occurs by reason of

(i) a change in the physical characteristics of the land or improvements, or both; or

(ii) new construction or new development thereto, thereon, or therein; or

(iii) a change in the zoning or reclassification of land and improvements that is not included in the assessment roll for the calendar year 1974, the land and improvements shall be assessed at the same value and on the same basis as if those changes in value had occurred and had been taken into account in the preparation of the assessment roll for the calendar year 1974;

(c) subject to paragraph (b), improvements used for industrial purposes shall be assessed at the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974; and

(d) the percentage utilization of a pipe-line shall continue to be determined under the *Taxation Act*, *Municipal Act*, or *Vancouver Charter*, as the case may be.

. . .

(10) Notwithstanding subsection (1) or anything to the contrary in this Act, for the purposes of subsection (6), the assessed values of tree-farm land under section 27 shall be determined at the same value level and unit pricing periods used in the preparation of the assessment roll for the calendar year 1974.

. . .

2. Section 27 is amended by striking out the words "forest land, timber land, and".

The facts set out in the Stated Case are in part as follows:

2. The lands in question are of three different classifications as defined under the provisions of the *Taxation Act* (being chapter 376 of the Revised Statutes of British Columbia 1974 and amendments thereto).

The three classifications are:

(1) Timber Land;
(2) Forest Land;
(3) Tree-Farm Land.

5. The assessor changed the amounts of the assessments of the subject properties of the appellants for the year 1976 from those included in the 1974 assessment rolls.

6. The market value of merchantable timber on the subject timber lands and forest lands was determined by applying the zonal average stumpages by species to the volume of merchantable timber found to be on the said lands.

7. The volume of merchantable timber on the subject properties was determined by the assessor from annual returns filed by the appellants pursuant to sections 35 and 37 of the *Taxation Act*, chapter 376, Revised Statutes of British Columbia, 1960 wherein *inter alia* the appellant was required to show the volume of merchantable timber on the properties. The volumes of merchantable timber disclosed in the Annual Returns are based on the most recent cruises available to the taxpayer less any reduction in volume resulting from harvesting or natural disasters. Pursuant to sections 35 and 37, when a new cruise is made of the timber on the property the taxpayer must file the report from such cruise with the annual return.

9. A cruise is a method of estimating the quantity of merchantable timber on a tract of land. It involves various physical measurements and determination of the species of timber in sample plots on that tract of land, which sample plots are established as being representative in volume and species of the entire tract of land. The volume of each species measured in the samples is then extended to provide an estimate of the volume of each species of the entire tract and the results are compiled into a cruise report.

10. In each of the subject timber land and forest land properties cruises which were made prior to the dates for filing the returns for 1974 as set out in paragraph 8 were the source of the volume of merchantable timber for the purpose of determining the assessment of the subject properties for the year 1974. The dates of such cruises were

Timber Land, Block 1320 – 1959
Forest Land, Block 1301 – 1959
Forest Land, Timber Licence 1305P – 1916
Forest Land, Timber Licence 11563 – 1971

11. For each of the subject timber land and forest land properties new cruises were completed subsequent to the completion of the 1974 assessment roll and the result of such cruises was reported by the taxpayer pursuant to sections 35 and 37 of the *Taxation Act*.

12. In preparing the assessment of the subject properties for the year 1976, the assessor used the volume of timber submitted by the taxpayer in the annual returns filed for the year 1976. These returns showed volumes of timber on the subject properties as indicated by the cruises referred to in paragraph 11 hereof. In general the volume of timber indicated by the most recent cruises was substantially higher than that indicated by the annual returns filed in 1973 for the 1974 assessment year.

13. The difference in volume of merchantable timber on the subject properties as disclosed by the new cruises resulted primarily from the owner using different standards of merchantability and accessibility for the purpose of the most recent cruises. The different standards of merchantability were used due to a change in market conditions since the last cruise. The change in market conditions enabled a better utilization of the timber growing on the subject properties. The different standards of accessibility were used due to improved logging techniques and methods which also enabled a better utilization of the timber growing on the subject properties.

14. The increased volume indicated by the new cruises probably did not result from a new increase in the actual volume of wood growing on the property. While there is growth of individual trees, in mature stands of timber such as these there is also decay and the growth may be offset by the increase of decay in older trees. In addition, old trees fall. In balance, the result is more or less static. The volume of timber remains fairly constant from decade to decade.

17. The assessor assessed Tree-Farm No. 8 in accordance with section 39 of the *Taxation Act*. The assessed value of tree-farm land was determined on an income approach, by the timber-land appraiser calculating the present value of the anticipated revenue from present and future annual or periodic harvests from the trees growing and to be grown on the subject tree-farm lands.

Tree-farm No. 8 is held by Crown Zellerbach Canada Limited. It consists of 136 parcels of land owned by the appellant in the Nanaimo, Courtenay and Cowichan Assessment Areas. All these parcels have been certified by the Minister of Lands, Forest and Water Resources pursuant to section 38 of the *Taxation Act* as lands which are within the definition of tree-farm land as set out in section 2 of that Act. The appellant has complied with the provisions of section 38 of the *Taxation Act*. In determining the value of the tree-farm land in accordance with section 39 of the *Taxation Act* the assessor in this case used the zonal average stumpages by species for determining the present value of the anticipated revenue from present and future annual or periodic harvests from trees growing and to be grown on the subject tree-farm lands. The present and future annual or periodic harvests were ascertained by the timber land appraiser from predictions of yield shown by the owner in his application for a tree-farm as such predictions were amended from time to time.

18. In determining the 1974 assessment of Tree-Farm No. 8, the assessor calculated the present value of the anticipated revenue in the manner set out in Schedule 1. The periods used were based upon the anticipated annual revenue attainable from merchantable timber to be harvested on a sustained yield basis at the end of 36 years (period 1), at the end of 51 years (period 2), and at the end of 61 years (period 3), and from old growth timber for a three year period at the end of 12 years (period 4). To arrive at a total assessed value for the tree-farm land of $212,939.00 the volumes were based on predicted yield supplied by the appellant owner, as requested.

19. In preparing the 1976 assessment, the assessor used the same zonal average stumpages by species used in preparing the assessments for the year ended December 31, 1974 but used a different schedule of annual or periodic harvest which schedule was provided after September 30, 1974. This different schedule of periodic harvest was supplied by the appellant at the timber-land appraiser's request. Schedule 2 sets out the manner in which the anticipated annual revenue within four future ten year periods and from the sustainable yield commencing thereafter is estimated. The assessor also relied upon new yield prediction estimates which had been furnished to him in 1975 and which had not been prepared and therefore were not available to him when he made the 1974 assessment.

23. The board further finds as a fact that the cruises upon which the assessors relied in preparing the assessments for the year 1974 were accurate cruises, which used accepted standards in estimating the volume of merchantable timber.

24. With respect to the parcels of timber land and forest land herein, the Board further finds as a fact that the assessors relied upon cruise information submitted to them in 1974 in making the assessment for 1976 and that such cruise information was not available to the appellants and

therefore was not available to the assessors prior to December 31, 1973 and accordingly, such cruise information was not used in preparing the assessments for the assessment year 1974 by any of the assessors.

25. With respect to the timber land and forest land the Board further finds as a fact that the cruises, and the recompilation submitted in 1974 by the appellants indicated that there was a larger volume of merchantable timber on the properties under appeal than had been previously indicated but that this increased quantity was due to the reasons set out in paragraph 13 hereof.

26. With respect to the tree-farm land, the Board finds as a fact that the estimate of periodic sustainable yield submitted in 1974 by the appellants indicated that there was a higher present value of the anticipated revenue from the present and future annual or periodic harvests from the trees growing and to be grown on Tree Farm No. 8 than had been previously indicated; and that this higher present value resulted from the reasons set out in paragraph 19 hereof.

I shall deal first with the appeal against the answer to question 1 and then with the cross-appeal against the answer to question 2.

QUESTION 1

Section 24 of the *Assessment Act* was amended on 26th November 1974 by the addition of subsections (6) to (11). (I take it that the elliptical expression in ss. (6) (a) "shall be assessed at the same value and on the same basis at which" is intended to be read as though it were "shall be assessed at the same value and on the same basis as those at which".) The effect was to freeze assessments of land for subsequent years at the figures for 1974, subject to certain exceptions. In his assessment of the companies' timber lands and forest lands for 1976 the assessor arrived at figures greater than those for 1974. He supports this variation by invoking paragraph (b) of subsection (6), and particularly clause (ii) thereof, saying that "a change in the value of land . . . [had occurred] by reason of . . . new development thereto, thereon, or therein."

The new development is said to be what is stated in paragraph 11 of the Stated Case, and the appeal turns upon the question whether that is a new development within the meaning of clause (ii).

The conclusion of the judge below on the question is expressed in this paragraph in his reasons:

> There is no need to turn to the dictionaries. People with a modest knowledge of the etymology of English words appreciate that a development may be an abstract thing. I do not accept Mr. Candido's submission that the word development in the context of ss. (6) (b) (ii) must mean something physical. I agree with Mr. Klassen that it need not have physical manifestations. The cruises in question were developments. Employing new concepts of marketability and accessibility they brought out, demonstrated, higher potentiality for the lands. They showed that some timber. which had been left out of account earlier, could now be cut with profit. They resulted in the ascertainment of a higher volume of merchantable timber than measured in earlier cruises and, therefore, a change in the value of the land. The assessors proceeded correctly. The answer to the first question is "yes".

With great respect, I must disagree with the learned judge. I think that he has fallen into error in giving no effect to the words "thereto, thereon or therein" and also in reading "new development" as though it were "a new development".

As stated in paragraph 9 of the Stated Case, a cruise is a method of estimating the quantity of merchantable timber on a tract of land. As an estimate it is only an expression of opinion. The making of a cruise report and filing it with the assessor may be said to be a new development for the purpose of ascertaining the actual value of the land, but it cannot be said to be new development to, on, or in the land. No one going on the land after as well as before the filing of the report would be able to see on the later occasion that the land had been newly developed.

Further, I think that "development" takes some colour from its neighbour "construction", which must be something physical.

For these reasons, upon the hearing the appeal was allowed and question I was answered in the negative.

QUESTION 2

In the past, many problems of interpretation have arisen under the statutes relating to the assessment of land, but the obviously hurried preparation of the bill that became the *Assessment Amendment Act, 1974* has created an unusually puzzling problem.

As appears from paragraph 19 of the stated case, in preparing the 1976 assessment of Tree-farm No. 8, the assessor used the same zonal average stumpages by species as he had used in preparing the assessments for the year ended December 31st 1974 - and thus he complied with the requirement to use "the same value level" - but used a different schedule of annual or periodic harvests, which schedule had been provided after September 30th, 1974. The assessor also relied upon new yield production estimates which had been furnished to him in 1975 and which had not been prepared and therefore were not available to him when he made the 1974 assessments. With respect to this the question is

> 2. In preparing the 1976 assessment of Tree-farm No. 8 was the assessor entitled in law to assess the property in the manner set out in paragraph 19 and Schedule 2 hereof?

(I have not reproduced either Schedule 1 or Schedule 2 and 1 shall not refer to them specifically because I think that the details in them are merely incidental to the main question.)

The provisions that are relevant to the problem appear to be sections 31, 38, and 39 of the *Taxation Act* and sections 24, 27, and 74 of the *Assessment Act*. By reference to some of these sections I shall outline what the position appears to have been immediately before the *Assessment Act* came into force on 2nd June 1974.

(a) Section 31 of the *Taxation Act* read:

> 31. The assessed value of land and improvements as defined in this Act shall be determined under the *Assessment Equalization Act,* R.S. 1948, c. 332, s. 30; 1950, c. 72. s. 4: 1961. c. 61. s. 3.

(b) Section 38 (1) of the *Taxation Act* provided that any owner of land might make application to have his land classified as tree-farm land and that the application might be approved by the assessor upon receipt of a certificate from the Minister of Lands and Forests to the effect that such lands fulfilled the definition of tree-farm land as set out in s. 2 of the Act, and that the plan submitted with the application was designed to ensure that the lands would be maintained in a

state of continuous productivity. The application must have set out in detail, *inter alia*, "the estimated annual or periodic sustained yield" and "a plan of operation to show. . . the proposed over-all annual or periodic rate of cut". Subsection (2) provided that the owner of tree-farm land should make an annual return to the assessor showing in detail certain things.

(c) Section 39 of the *Taxation Act* read:

> 39. Notwithstanding the provisions of section 31, the assessed value of tree-farm land. exclusive of any improvements thereon, shall be ascertained only by giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees. 1951, c. 81. s. 9: 1961. c. 61. s. 7.

The effect of this section was a limiting one. Instead of taking into consideration all the factors which ordinarily enter into the assessment of land in accordance with the *Assessment Equalization Act*, consideration was to be given only to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees.

I turn now to the situation immediately after the *Assessment Act* came into force. Section 24, comprising five subsections, laid down how land and improvements should be assessed generally, but s. 27 said that land classified as forest land, timber land and tree-farm land under the provisions of the *Taxation Act* should be assessed in accordance with that Act. Section 74 (1) repealed the *Assessment Equalization Act*. Section 74 (2) said that where any Act referred to the *Assessment Equalization Act*, the reference should be deemed to be to the *Assessment Act*; the effect of this was to make s. 31 of the *Taxation Act* read as though it were "the assessed value of land and improvements as defined in this Act shall be determined under this Act."

The net effect of the legislation up to this point was to govern the assessment of tree-farm land by the *Taxation Act* and particularly its s. 39.

Only a few months later the *Assessment Act* was amended by the *Assessment Amendment Act*, 1974. The change effected by s. 2 to s. 31 of the principal Act is of no significance here, but that effected by s. 1 is the cause of most of the difficulty.

My first comment is on the words in subsection 6 (a) of section 24 "except as provided in paragraphs (b), (c), and (d) and sections 25 and 27". Of those provisions, only s. 27 is relevant here. In *The Area Assessor of the Coquitlam Assessment Area* v. *Weldwood of Canada Limited* in this Court on 12th September 1977, in an oral judgment with which Farris, C.J.B.C. and Maclean, J.A. agreed, I had occasion to say this about s. 24 (6):

> Now what does paragraph (c) mean? Looking at paragraph (a) the principal purpose of the subsection is to freeze the assessments at their 1974 figures. Paragraph (a) however must be read with the other paragraphs but it and those other paragraphs are not mutually exclusive and (b) and (c) do not completely supplant (a). (b) deals with certain kinds of causes of change in value but it is not exhaustive, there are certain types of change which .are not valued; and it seems to me that what (c) was designed to do was to take care of one of those causes of change which have not been valued, namely the case where improvements in existence in 1974 were used for some purpose other than an industrial purpose but which later have been converted to being used for an industrial purpose. An example would be a large warehouse which was used for storing furniture by

> a retail merchant; that warehouse is acquired by somebody else who begins to use it for industrial purposes without making any change in its construction; he might for example bring in fork lifts and various types of machinery which is not affixed to the freehold so that there will be no new construction or new development of the building, but it would from that time be used for industrial purposes. That, it seems to me, is what the Legislature was directing its mind to by paragraph (c).

Applying that reasoning to the case before us, I think that s. 24 (6) is not wholly inapplicable to the assessment of tree-farm land; to the extent that the provisions of s. 24 (6) are not in conflict with the *Taxation Act*, they apply.

The correctness of this conclusion appears from s. 24 (10). If s. 24 (6) has no application to the assessment of tree-farm land, the words "for the purpose of subsection (6)" make no sense at all.

Section 24 (10) particularizes how s. 24 (6), freezing (subject to para. (b)) assessments at and on the 1974 values and bases, is to be applied to the assessment of tree-farm land. Section 39 of the *Taxation Act* has laid down how the assessed value of tree-farm land is to be ascertained, and so the words in s. 24 (10) of the *Assessment Act* "same value level and unit pricing periods used in the preparation of the assessment roll for the calendar year 1974" must relate to calculations or methods used in "giving consideration to the present use of the land and to the present value of the anticipated revenue from present and future annual or periodic harvests of the forest trees".

The phrase "unit pricing periods" does not appear elsewhere in the relevant statutes and so meaning can be given to it only by inference. In s. 38 of the *Taxation Act* there are references to periods: see s. 38 (1) (c) and (e). This is followed immediately by s. 39, with its reference to "present and future annual or periodic harvests" . I infer from these references that the "periods" indicated in the phrase are the periods, annual or longer, of the harvests spoken of.

What I have said focuses on "periods". What of "pricing"? It must refer to the process of ascertaining "the present value of the anticipated revenue. . .", as required by s. 39 of the *Taxation Act*.

This leaves "unit" to be explained. With considerable hesitation I have come to the conclusion that it must refer to the specific unit of tree-farm land that is to be assessed, here No. 8. Without it "pricing periods used in the preparation of the assessment roll" might be thought to refer to the periods relating to all the tree-farm land shown on the roll.

(Incidentally, extracts from a consolidated copy of the *Assessment Act* with which we were provided by counsel shows the phrase as "unit-pricing periods". The hyphen is net in chapter 105 as it appears in the volume of Acts of the Legislature passed during the sittings in which c. 105 was passed. In view of the *Evidence Act*, R.S.B.C. 1960, c. 134, s. 28 (4) as amended by S.B.C 1975, s. 6 (a), I disregard the hyphen.)

Paragraphs 17 and 18 set out how the assessed value of Tree-farm No. 8 was ascertained for the 1974 taxation year. It appears to me that the periods therein described as

> at the end of 36 years (period 1), at the end of 51 years (period 2), and at the end of 61 years (period 3), and from old growth timber for a three year period at the end of 12 years (period 4).

are periods within the meaning of the phrase "unit pricing periods".

As stated in paragraph 19 of the stated case, in preparing the 1976 assessment the assessor used a different schedule of annual or periodic harvest, specifically four future ten year periods and an estimated period of sustained yield commencing thereafter, based upon new yield production estimates furnished after the 1974 assessment was made. Thus the assessor used for 1976 unit pricing periods that were different from those used for 1974.

This variation in periods was in breach of the requirement of s. 24 (10) that the assessed values (for 1976) of tree-farm land should be determined "at the same. . . unit-pricing periods used in the preparation of the assessment roll for the calendar year 1974."

In the result, question 2 should have been answered in the negative, as it was by the learned judge. Like him, if I am wrong in my conclusion, I find the legislation ambiguous and give the benefit of the doubt to the taxpayer.

Accordingly I would dismiss the cross-appeal.