The following version is for informational purposes only

INLAND NATURAL GAS COMPANY LIMITED,
GULF OIL CANADA LIMITED
and
BRITISH COLUMBIA TELEPHONE COMPANY

v.

ASSESSMENT AREAS OF PENTICTON, KAMLOOPS, KELOWNA, PRINCE GEORGE, TRAIL, BURNABY/NEW WESTMINSTER, VANCOUVER, CAPITAL AND COQUITLAM

BRITISH COLUMBIA COURT OF APPEAL (CA 780855)

Before MR. JUSTICE M. M. McFARLANE, MR. JUSTICE J. D. TAGGART, and MR. JUSTICE J. D. LAMBERT Vancouver, June 22, 1979

MR. LAKES: For clarification, although the style of cause refers to Inland Natural Gas, the original appeal before Mr. Justice Macdonald involved three appellants, Inland Natural Gas, British Columbia Telephone, and Gulf Canada, it was only Gulf Canada that appealed, and therefore it is Gulf Canada that is actually the appellant.

McFARLANE, J.A.: We are only concerned now with the Gulf Oil Canada appeal, is that right?

MR. LAKES: Yes, my lord.

(Following submissions by Mr. Lakes and Mr. Hutchison.)

McFARLANE, J.A.(Oral): Gulf Oil Canada Ltd. Appeals to this Court under section 67, subsection (6) of the *Assessment Act* of this Province from a judgment of Mr. Justice Macdonald, now our brother Macdonald, delivered on October 2, 1978, whereby he answered questions propounded by the Assessment Appeal Board under the statute. So far as this appellant is concerned, the Judge's decision was that the decision of the appeal board was upheld as not having been made in consequence of any errors of law.

I agree substantially with the reasoning of Mr. Justice Macdonald as set out in his reasons for judgment. There is one aspect of his judgment to which I think I ought to refer specifically by reason of one of the arguments which was addressed to us today by counsel for the appellant. I refer to what the trial judge said, which appears at page 89 of our appeal book, dealing with certain of the properties, where he said this:

> "These properties are not being used for industrial purposes. Therefore they can only be brought into Class 5 upon a determination that they, using the word of the definition, are 'held' for such purpose."

For reasons which will, I hope, appear in a moment, I am not satisfied that that is a correct analysis.

The argument, as I understood it, presented by Mr. Lakes to which that criticism is relevant, as I understood him, was this: he says that the classification number five, as defined by Orders in Council 3084 and 3417, consolidated, is, as he put it, *ultra vires* the power to classify delegated to the Lieutenant-Governor in Council by statute. I will come to the provision of the statute in a moment. The portion of the definition to which I refer is found in the first four lines:

> "Class 5 - Industrial (30 per cent) shall include land or improvements or both, used or held for the purpose of extracting, processing, manufacturing, transportation, or storage of any products and, without limiting the generality of the foregoing, includes"

There follow a number of more specifically described uses and purposes. The argument, as I understood it this morning, was that by including in that classification the words "held for" the Lieutenant-Governor in Council had exceeded the powers delegated to him under section 24, subsection (8) of the statute, which reads:

> "The Lieutenant-Governor in Council shall define the types or uses of land or improvements, or both, to be included in each class."

It is argued here that by classifying according to the purpose for which the land is held, that the Lieutenant-Governor in Council has provided a subjective test which is not authorized by the statute, and a comparison is made with the Order in Council dealing with class 2. I think the distinction is clear. I mention it in passing. Class 2 has been held by Mr. Justice Macdonald to be *ultra wires* because, as I understand it, it classifies land according to the owner of it, without any reference to its use or the purpose for which it is held.

My conclusion on this aspect of the matter is that the words "held for the purpose" in the order in council classification five definition, is a use of land or improvements within the meaning of section 24, subsection (8). In other words, I think the Lieutenant-Governor was authorized to define the use of land or improvements by reference to the purposes for which the land was held, and quite irrespective of who or what the owner might be.

The second of the arguments to which I think I should refer specifically made to us on behalf of the appellant is based upon the use of the conjunctive "and" in the order in council definition of class 5. I read the definition a moment ago, stopping at the words “without limiting the generality of the foregoing, includes." Sub-clause (b) following those words reads:

> "the extraction, transportation, refining, and storage of petroleum and natural gas;"

Counsel for the appellant has underlined, as he is entitled to do, the first word “and" in the subclause, and points out that the land of his client, some of which has been assessed under this classification, is not used for all four of those purposes, extraction, transportation, refining and storage. It seems to me, with respect to counsel, that the fallacy in that argument is found in the first three lines of the classification, which I repeat "shall include land or improvements or both, used or held for the purpose of extracting, processing, manufacturing, transportation, or storage of any products." There the disjunctive "or" is used, and those, in my opinion, are the governing words of the definition, for the definition itself proceeds by saying that all of the subsequent specific classifications do not limit the generality of those first three lines which I have read.

I am accordingly of the opinion that this appeal must be dismissed.

TAGGART, J.A. (Oral): I agree.

LAMBERT, J.A. (Oral): This appeal involves three separate pieces of property owned by Gulf Oil Canada Ltd. One of them is in the City of Victoria, which consists of a bulk plant used for storage. Another of them is in Burnaby and includes thirty-four acres of land zoned "agricultural reserve " The third is in Port Moody and consists of 361.7 acres of which 126.6 acres were intended to be used in the primary refining process, 125 acres were used simply as a buffer zone, and a remaining 110.1 acres were outside of the fenced acreage and adjacent to the Barnett Highway.

In so far as the property in Victoria and the other property in Burnaby/New Westminster that is used for storage, I would dismiss the appeal for the reasons given by my brother presiding. I

would add only that after considering the various uses of the word "and" and the various uses of the word "or" in Orders in Council 3084 and 3417, as consolidated, I cannot conclude that there has been any consistent use of “and", either conjunctively or disjunctively, and I therefore feel that it is appropriate that where it appears in class 5 (b) for the first time it should be given a disjunctive meaning.

I turn, then, to the part of the Burnaby property that consists of the thirty-four acres that is zoned agricultural, and with my consideration of that part of that property, I would include the 110.1 acres of the Port Moody property, which are not a buffer zone, and which are outside of the fenced acreage and adjacent to the Barnett Highway. The classification of those two areas of land as industrial depends upon them being considered to be "used or held" within the meaning of class 5 in the regulations, "for the purpose of extracting, processing, manufacturing, transportation or storage."

That raises the question of law of what is meant in the regulation by the words “used or held." The word "uses" also appears in the enabling Act in section 24, subsection (8), where the power to make regulations is expressed in these words:

> "The Lieutenant-Governor in Council shall define the types or uses of land or improvements, or both, to be included in each class."

In my opinion, the word "uses" where it appears in section 24, subsection (8), of the *Assessment Act*, and where it appears in class 5 of the regulations, should be given its ordinary meaning. That ordinary meaning is, in my opinion, a meaning limited to current use, and I therefore agree with the trial Judge when he says:

> "These properties are not being used for industrial purposes. Therefore they can only be brought into Class 5 upon a determination that they, using the word of the definition, are 'held' for such purpose."

Indeed, in the factum of the respondent, counsel says:

> “What the Board decided was that an industrial plant site may include surplus land not being used for industrial purposes but which is an integral part of an industrial complex and is therefore 'held' for industrial purposes."

In my opinion, those two parcels that I have described are not in use for industrial purposes. The question, therefore, is whether they are being held for such purposes, and I put aside any questions of fact relating to that issue and I direct myself only to the question of law of what is meant by the word "held."

The authority to make the regulation, including the word "held", is limited to a power to define the types or uses of land. In his reasons with respect to the issue that was raised on behalf of the utilities in the Court below, Mr. Justice Macdonald decided that the use of the word "type" does not extend to describing land by a description of the owner. With respect, I agree with that conclusion, though, of course, it is not before me. But it would follow from that conclusion, in my view, standing independently, that the word "type" means a description of land in terms that can be assessed by someone viewing the land, who is not aware of such matters as who owns the land, or what his intent or purpose for ultimate utilization of the land, may be. I believe that my reasoning is fortified as to an analysis of what is meant by “type" and what is meant by "use" both in the Act and the regulations, by section 12 of the *Interpretation Act*, which reads:

> "Where an enactment confers power to enact regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power."

That requirement of the *Interpretation Act* is not made subject to the context requiring otherwise, and, in my opinion, I am obliged to give the same meaning to the word "uses", where it appears in section 24, sub-section (8), of the Act and where it appears in class 5 of the regulations.

It is therefore my opinion that these two parcels are neither "used" nor "held" for the purposes described in the regulation.

In so far as the buffer zone is concerned, it is my opinion that it now has a current use that would bring it within the class "industrial" in class 5 of the regulations, and I consider that this interpretation of "use" is supported by the decision of the Privy Council in *Newcastle City Council* v. *Royal Newcastle Hospital* (1959) A.C. 248, and particularly Lord Denning at page 255.

I would allow the appeal in so far as it relates to the agricultural land in Burnaby, and in so far as it relates to the 110.1 acres in Port Moody. Otherwise, I would dismiss the appeal.

McFARLANE, J.A.: The appeal, then, is dismissed, our brother Lambert dissenting in part, as he explained it.