ASSESSMENT COMMISSIONER

v.

WOODWARDS STORES LIMITED,
DAON DEVELOPMENT CORPORATION,
THE SOUTHLAND CORPORATION,
McDONALD'S RESTAURANTS OF CANADA LIMITED,
BRITISH COLUMBIA TELEPHONE COMPANY, and
CANADIAN PACIFIC AIRLINES

Supreme Court of B.C. (A820211, A814007, A820552, A820516, A820390, A820553)
Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Vancouver, March 22, 23 and 24, 1982

J.E.D. Savage for the Appellant
Miss. J. Ryan for the Respondents: Daon Development Corporation and McDonald's Restaurants of Canada Ltd.
B.W. Hoeschen for the Respondent, Canadian Pacific Airlines
B.J. Wallace for the respondents, Woodwards Stores Limited and The Southland Corporation
J.R. Lakes for the Respondent, British Columbia Telephone Company

Reasons for Judgment May 28, 1982

These consolidated appeals by way of six cases stated from the Assessment Appeal Board raise a series of questions concerning particular items of equipment located on commercial premises and said to have been so "placed" there as to constitute "improvements" assessable for local taxation purposes under the *Assessment Act*, R.S.B.C. 1979. chapter 21.

These questions arise under the second definition of "improvements" contained in section 1 of that Act, the definition applicable for other than general purposes. that is to say principally for the purposes of school and hospital taxation. This definition, so far as relevant for the present purpose. renders assessable as "improvements" all those things which. although as between landlord and tenant not necessarily forming part of the freehold, nevertheless fall within the description:

> all buildings, fixtures, machinery, structures and similar things erected or placed in, on, under or affixed to . . a building.

The items in question, which include such things as computers, walk-in coolers, kitchen equipment and food showcases. have been brought onto the premises concerned by the respondents for use in their businesses.

I understand it to be accepted, at least for the purposes of answering the questions with which I am asked to deal first, that the items concerned constitute "machinery", "structures" or "similar

things" within the meaning of the above phrase. but are not "fixtures". It must, I think, also be assumed for the present purpose that they have not been "affixed". Only thus could principal question be posed: Did the board err in finding that none of the items concerned had been "placed", with the result that none is an "improvement" under the *Assessment Act* definition.

The Assessment Commissioner contends that the questions are entirely outside the jurisdiction of the Board, while the taxpayers argue that they not only fall within the jurisdiction of the Board but are in each case questions of fact, or mixed law and fact, which *only* the Board has jurisdiction to answer. The Commissioner argues in the alternative that the Board erred in law in concluding that the items concerned had not been "placed".

(a) The Issue of Jurisdiction

On the first branch of his argument, counsel for the Assessment Commissioner says that questions of assessability, as opposed to quantum, fall outside the jurisdiction conferred by the Act on the Board; this position has not previously been advanced, his case having been argued before the Board on the assumption that the Board had that jurisdiction.

The decision of the Supreme Court of Canada in *Toronto* v. *Olympia Edward Recreation Club* [1955] 3 D.L.R. 641, supports the proposition that a province cannot vest in its own appointees authority to decide questions of law falling properly within the jurisdiction of the superior courts and that the question whether or not a particular thing is assessable for taxation purposes is such a question. The decision is cited also for the proposition that a party to an assessment appeal proceeding may pursue an appeal through provincially-appointed assessment appeal tribunals to the federally appointed courts and may at that stage call on the federally-appointed court-the tribunal which does have jurisdiction in the matter-not only to quash the previous proceedings, but also to decline to decide the question itself, apparently on the ground that the issue comes before it by way of appeal from the provincial tribunal and not by way of its own process.

Counsel for the Assessment Commissioner does not in this case rely on the constitutional point made in the *Olympia Edward Recreation Club* decision. He does not argue that the province lacks constitutional authority to vest in the Board the power to decide questions of assessability, but rather that the *Assessment Act*, by its terms, refrains from conferring that authority. Counsel seems to say, however, that this Court is prevented by law laid down in the *Olympia Edward* case from deciding the question in issue.

In support of this position counsel for the Commissioner cites cases such as the decision of this Court in *Re Assessment Equalization Act and Western Forest Industries Ltd.* (1965) 54 W.W.R. 764, in which Munroe, J., applied a restrictive interpretation to very similar powers granted to the Board by the former *Assessment Equalization Act*, R.S.B.C. 1960, chapter 18. The learned judge applied this restrictive interpretation in recognition of the constitutional restriction laid down in cases such as the *Olympia Edward Recreation Club* decision, saying (at page 767) that to interpret the Board's powers in the normal way "would necessarily entail a finding that the sections of the Acts in question which define the powers of the Assessment Appeal Board are *ultra vires* of the provincial legislature ".

In the present case, as I have said, the Assessment Commissioner takes the position that the Province, had it wished, *could* have given in the Board authority to decide questions of assessability. I can only interpret this as a denial of the correctness of the *Olympia Edward Recreation Club* decision, although counsel did not say that.

It is not, I think, necessary to decide whether it is the law that a party may raise the question of jurisdiction for the first time on appeal to this Court, and at the same time object to this court exercising that jurisdiction which it has, and which the provincial tribunals lack. It is enough to say that it seems to me that such an argument cannot prevail on an appeal by case stated under the *Assessment Act*. A case stated is a limited form of review which can be taken only in relation to

"a question of law arising in the appeal" (that is to say the appeal before the Board). While those words of section 74 (1) specifically refer to cases stated by the Board of its own motion, subsection (5) suggests that all cases stated, including those stated at the instance of a party, are subject to the same restriction. It is not, I think, open to a party to require the Board to state a case on an issue not raised before it.

But I do not, in any event, accept that the Commissioner can argue that provisions of the *Assessment Act* defining the powers of the Board should be strictly construed while at the same time declining to take the only ground on which that construction is justified in the cases cited in support, that is to say the constitutional limitation on provincial authority.

Section 69 of the Act says that the Board may decide a wide range of matters, including whether improvements have been valued too high or low, whether improvements have been properly classified, whether exemptions have been properly allowed or disallowed and whether improvements have been wrongfully entered on, or omitted from, the assessment roll. On any normal construction of these powers it could not possibly be said that the Board is denied authority to decide whether or not a particular thing is an improvement for the purposes of the Act. It seems to me impossible to deny the authority of the Board to decide questions of assessability while rejecting the constitutional position which is the sole justification for doing so.

I am for these reasons unable to accept the Commissioner's argument that the decisions of the Board under appeal should be quashed for want of jurisdiction in the Board to decide questions of assessability.

(b) The Definition of "Improvements"

The relevant definition contained in section I of the Act, as I have mentioned, defines "improvements" for other than general purposes so as to include "all buildings, fixtures. machinery. structures and similar things erected or placed in, on, under or affixed to . . . a building".

The definition is a curious one in that it places the expression "fixtures" beside "machinery" and "structures" in such a way as to suggest that the "machinery" and "structures" referred to would be something other than "fixtures". The expression "fixture" has meaning only as a conclusion of law; it may encompass machinery, structures or any other physical item, if it be either so affixed or so placed as, for the purpose in question, to be regarded in law as part of the real estate. The conclusion that a thing is a "fixture" does not flow from its intrinsic characteristics, but from its association with the real property in relation to which it is so described.

To give logical meaning in the present context to the words of the statute, that portion of the definition of "improvements" relevant to these proceedings might better be read as comprising "all items so associated with a building as to be in law part of it, and also machinery, structures and similar things erected or placed in or affixed to it".

The reference to "structures" in this context makes the definition doubly perplexing. The definition of a structure in the present context was laid down by Denning, L.J., in *Cardiff Rating Authority* v. *Baldwins Iron and Steel Co. Ltd.* [1949] 1 K.B. 385 (C.A.) (at page 396):

> A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation.

I think that is the proper definition for the present purpose, although it is a matter not wholly free from contention. If I am right, it is difficult to imagine many things properly described as "structures" which would not also be "fixtures" within the rules laid down by Meredith, C.J., in *Stack* v. *T. Eaton Co. et al* (1902) 4 O.L.R. 335 (Ont. Div. Ct.) (at page 338):

I take it to be settled law:

(1) That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land. unless the circumstances arc such as shew that they were intended to be part of the land.

(2) That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue chattels.

(3) That the circumstances necessary to be shewn to alter the *prima facie* character of the articles are circumstances which shew the degree of annexation and object of such annexation. which are patent to all to see.

(4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

Yet the definition of "improvements" in the Act seems to contemplate the existence of "structures" which are not necessarily "fixtures", and effect must, of course, be given to the word in that context.

Since "machinery", "structures" and "similar things" may constitute improvements to real property for assessment purposes even though their association with the real property is insufficient to make them "fixtures" , the question repeatedly asked in the cases is: what lesser degree of placement will suffice to render things" improvements" for this purpose? In answering that question in the present case I must, of course, have in mind the rule which requires that ambiguities in taxing statutes be resolved in favour of the taxpayer. It must also be remembered that in these proceedings the assessment authority bears the onus of establishing that the Board erred in law in holding the items not to have been "placed".

(c) The Authorities

In view of the difficulties which have repeatedly been encountered over the years in defining the degree of placement necessary for this purpose, a review of the authorities is unavoidable.

In the leading case of *Northern Broadcasting* v. *Mountjoy* [1950] S.C.R. 502, the Supreme Court of Canada considered whether a transformer installed in a concrete vault and a transmitter which was connected to the transformer by wires, had been "placed" within the meaning of the Ontario assessment statute. Kellock. J., made the following observations (at 510-511):

With respect to "placed", I do not think it is used in the Statute as equivalent merely to "brought upon" so as to take in mere personal property which is intended to be shifted about at will. It involves the idea of setting a thing in a particular position with some idea of permanency.

In the context of the Statute, I think the Legislature must be taken to have had in mind the including of things which, although not acquiring the character of fixtures at common law, nevertheless acquire "locality" which things which are intended to be moved about, do not.

I therefore conclude that it is sufficient in the present case to bring the two articles here in question within the meaning of "land" in the Statute, that they are heavy articles placed each in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises.

In *City of London* v. *John Labatt Ltd.* [1953] O.R. 800 (Ont. H.C.) tuns and tanks used for beer making had been assessed. Following the *Northern Broadcasting* decision, Spence, J, found that to meet the test in the statute" . . . it is sufficient if the particular piece of property has been set in a particular position 'with some idea of permanency'". He concluded on the facts before him (at page 802):

> The weight of the various tanks is enormous. according to the evidence given by the production manager of the defendant company. varying from 2,750 pounds to 15,000 pounds empty. In many cases containers are so large that they extend through from one floor of the building to another. None of the containers could be removed from the building without dismantling either the building or the containers, and apart from any connection of the various containers by pipelines or hoses, they are certainly settled in the building with the idea of permanence and are, therefore, within the word "placed" appearing in the definition.

In *Greenmelk* v. *Twp. of Chatham* [1955] O.W.N 757 (Ont. H.C.) Wells, J., having considered the decision in *Northern Broadcasting,* found that tanks "of great weight and considerable size, being 30 feet in diameter and 24 feet high and made of sheet steel", were "placed" within the meaning of the Act. He found the fact that the tanks were an integral part of the processing carried on at the plant also to be of significance.

In *Re Orr's Assessment* (1955) 16 W.W.R. 25 (B.C.S.C.), Wilson, J., found that a cobbler's finishing machine, stitcher and a soler were not assessable according to the criteria established in *Northern Broadcasting* because such machines "belong to the class of things intended to be moved about at will", and therefore not been "placed" for this purpose.

In *Toronto* v. *Eglinton Bowling Co.* [1957] O.R. 621 (Ont. C.A.), on the other hand, Laidlaw, J.A. found certain bowling alleys to be assessable. The alleys Were kept in place by their own weight and could be moved only if they were cut into pieces and rejoined at their new location. It was the intention of all interested parties to maintain the bowling alleys in the particular place and position where they were installed. so long as they were used for the purpose of bowling. While it was possible to move the structure, there was no actual intention to do so. And in *Richmond* v. *Ashton* [1962] O.R. 49 (Ont. H.C.) Gale, J., following *Northern Broadcasting* and *Eglinton Bowling*, held washers and dryers in a laundromat to be assessable. These washers were bolted to a concrete slab which had been poured for the purpose of installing the machines, and were connected to sewer. water, and electrical systems. The dryers were of commercial size. the space above them was enclosed to the ceiling, and they could only be used in the location in which connections and venting were available. The learned judge concluded that it was never intended that either be moved during their period of usefulness. and he held the fact of their anticipated life being less than the term of the lease to be of no consequence in resolving the issue.

In *Re Trans Mountain Oil Pipe Line Company* (1966) 56 W.W.R. 705 (B.C.C.A.) our Court of Appeal had to consider whether certain tanks were assessable. Lord, J.A., said (at pages 711-712):

> There can be no doubt from the size of these tanks. varying from 10,000 to 150,000 lbs. capacity, and from the use they are put to and from the fact that they have to be cut to pieces to be removed, that they have been placed or erected in their positions with "some idea of permanency," and "with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises:" *Nor. Broadcasting Co.* v. *Improvement Dist. of Mountjoy* [1950] S.C.R. 502, affirming [1949] O.R. 695, per Kellock, J., at p. 511. Nor can there be any doubt, in my opinion, from the facts as related in the stated case, that all the tanks form part of an integrated oil transportation system. They meet the test indicated by Kellock, J. and, accordingly, are structures, and they are "affixed" to the oil pipe line within the meaning of the definition of "improvements" in sec. 2 of the *Municipal Act*, R.S.B.C., 1960, ch. 255. Sec also *Assessment Commnr. for*

> *Metro. Toronto* v. *Eglinton Bowling Co.* [1957] O.R. 621, an appeal under the Ontario *Assessment Act*, R.S.O. 1950, ch. 24 (re-enacted 1956, ch. 3) where it was held that bowling alleys on leased premises came within the meaning of "structures * * * placed upon * * * land" within the meaning of that Act: and see *Hobday* v. *Nicol* [1944] 113 L.J.K.B. 264, [1944] 1 All E.R. 302; and *Richmond* v. *Ashton* [1962] O.R, 49.

Branca, J.A. quoted at length from *Northern Broadcasting* and *Re Orr* and also concluded that the tanks were assessable (pages 717-718):

> It would be seen that "placed" was not intended to embrace personal property which was brought upon the land and which was intended to be shifted at will, but it did involve the idea of setting a thing in place for use with some idea of permanency.
>
> In the instant case all the tanks under consideration are huge and heavy and were erected and rest upon the land, upon the same site for many years, and were used for the purpose for which they were intended and are completely immobile as tanks and are not movable at all unless cut to pieces and destroyed as tanks for the purposes of removal.

In *Re Island of Bob-Lo Co.* and *Twp. of MaIden* [1969] 2 O.R. 535 (Ont. C.A.) Kelly, J.A., considered the status of amusement park rides which the taxpayer claimed were "mobile units" and therefore not assessable. There was not enough evidence before the Court of Appeal to allow it to decide the matter, and the case was referred back to the trial judge. Kelly, J.A., emphasized (at pages 538-9) certain "matters to which the Court trying the issue should direct its attention" but recognized that "as the evidence develops there may be others." Considerations on which emphasis is placed by the Court of Appeal include whether the object of bringing the rides upon the land was for the purpose of increasing the value of the land or merely for the convenient and effective use of the ride as a chattel, the extent to which the identity of the ride as a unit must be destroyed to enable it to be moved, and whether the unit had been placed directly on the land or on a trailer, that is to say whether the intention, as so evidenced, was to give it a permanent "locality" rather than to move it from place to place.

Re *Bank of B.C.* [1976] 6 W.W.R. 356 (B.C.S.C.) is a decision of this court in which Hinkson, J., (as he then was) considered the status of safety deposit boxes in bank vaults. These could be moved to provide for changes in quantity and type of demand. While "nests" containing a few large boxes might be moved from branch to branch, nests containing many small boxes were unlikely to be moved out of the vault once they had been put into service, but they might be moved from place to place within the vault. Relying on the decision in *Northern Broadcasting* and *Re Orr*, the learned judge concluded that the safety deposit boxes belonged to a class of things intended to be moved about at will, and which had not been set in a permanent position, and held that they had therefore not been "placed".

Lyons v. *Meaford* (1979) 6 M.P.L.R. 245 (Ont. C.A.), from (1977) 2 M.P.L.R. 121, is an important decision in the present context because the Board has placed considerable emphasis on the Divisional Court decision in this case in arriving at the conclusions now under appeal.

Walk-in coolers and freezers, referred to as "boxes", had been erected on the retail premises in question and were connected to the building by drains and heavy duty wiring. The original appeal from the assessment system to the ordinary courts was heard in the County Court of Grey where the items concerned were found to be assessable. From that decision an appeal was taken to a three-judge divisional court of the Ontario Supreme Court which reversed the decision of the County Court judge, and found the items not to be assessable. The Ontario Court of Appeal reversed that decision and restored the judgment of the County Court.

His Honour Judge D.G.E. Thompson had described the problem in these terms (at pages 246-247):

From a reading of all the authorities. I conclude that in determining whether or not boxes of the type with which I am now concerned are subject to assessment, the test to be applied is-were the articles placed upon the property with the intention that their original location should have some degree of permanency?

> In applying this test to the facts of this case. one should consider the following:
>
> (a) That the boxes in question have remained in their present location since at least they were taken over by the present owner.
>
> (b) That the boxes do have attachments such as drainage and electricity outlets which. although removable, are an indication of some degree of permanency.
>
> (c) That though they may be shifted to another location. this is only rarely done and then to a location which it is hoped will itself be permanent; and
>
> (d) That one can reasonably infer that the owner would place the boxes in such a location that hopefully they would not require to be moved again.
>
> Notwithstanding the dissimilarities between this case and those of the cases referred to, I have concluded, after considering the evidence and the relevant law on the subject, that the boxes in question do satisfy the requirement referred to in the test and thus they are subject to assessment as falling within the definition of land.

This decision was unanimously reversed by the Divisional Court in a judgment given by Steele, J. who said (at pages 126-127):

> It is my respectful opinion that the trial Judge adopted an improper test and that the proper test as set out in *Nor. Broadcasting* v. *Mountjoy*, supra. at p. 729. and followed in subsequent cases, is as follows:
>
> ". . . that they are heavy articles placed each in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises".
>
> Applying this test to the boxes in question, it is my opinion that they do not fall within the type of article contemplated. They are not very heavy, they can be taken apart and carried in sections and re-assembled: in fact, they are designed for this very purpose. While there may have been a hope that the boxes would not be moved about from time to time, they were specifically designed to be movable or altered in shape or size without damage to themselves or the property. I am sure that there is as much hope that heavy meat counters or centre aisle shelving or, for that matter, stoves or refrigerators in private homes, none of which are assessed. It is clear from the evidence that the owners while not wishing to move the boxes had every intention that they could and might move them.
>
> These boxes are not like the articles considered in the other cases referred to, where either the buildings were specifically built or reinforced for the articles, or were such articles that it would be unreasonable to consider moving them while they had a useful purpose on the premises.

The Ontario Court of Appeal disapproved this statement of relevant principles. Brooke, J.A., giving judgment of the Court. said (at page 248):

> It is the assembled structure that is in issue. Simplicity of assembly or erection, and weight of the units which when assembled or erected make the structure, and the weight of the whole structure are no more than relevant facts when one considers the structure

> and the test in *Nor. Broadcasting Co*. v. *Mountjoy*, supra. With the greatest deference it is our respectful opinion that Mr. Justice Steele has converted what was an issue of fact in the case before Mr. Justice Kellock into an element of the test, and this is error.

In *Hudson's Bay Company* v. *Assessor* (1979) 12 B.C.L.R. 59 (B.C.S.C.) it was held, following *Northern Broadcasting*, *Re Orr*, and *Trans Mountain Oil Pipe Line Co.*, that certain retail store cash registers had not been "placed" within the meaning of the Act. There were many computer outlets on the premises into which the registers could be plugged, and the evidence indicated they were moved from floor to floor and store to store.

In *Assessment Commissioner* v. *Woodward Stores* (1981) 28 B.C.L.R. 22 (B.C.S.C.), Andrews, J., considered whether cash registers, computers, Xerox machines, bench grinders and other items were assessable. The learned judge referred to *Northern Broadcasting* v. *Mountioy, Re Trans Mountain Pipe Line Co.* and *Re Bank of B.C.* and said (at page 29):

> I mention the above decisions because, although they do not in my opinion alter or further the analysis set out in *Mountjoy,* they illustrate the principle consistently employed by the courts in determining whether or not a given thing has been "placed" on property within the meaning of the *Assessment Act*. To reiterate, the principle is that "placed"' involves some idea of permanency; it does not encompass items that are intended to be shifted about at will. From the above it follows that whether or not a particular item affects the quality of the freehold or improvements thereon is irrelevant to the issue of whether an item is "placed"' within the meaning of the statute.

The learned judge referred the matter back to the Board for reconsideration in accordance with these principles.

(d) The Relevant Principles

I conclude from these authorities that the key factor in determining whether machines or structures have been so "placed" as to render them assessable as "improvements", although not in law "fixtures", is simply whether they have been given 'some permanency of position'.

It is not necessary to show that the items in question are intended to "enhance the freehold"; if that were the purpose of their placement, they must, I think, be "fixtures" for the present purpose. Although the word "improvements" is used in the statute, that gives no real assistance in arriving at the appropriate test, for it can, of course, generally be said of any useful chattel put in a building that it will tend to "improve" the building. Care must also be taken not to draw an analogy with furniture in deciding where the line is to be drawn between assessable and nonassessable chattels in a building. "Machinery", "structures", and "similar things" are the only non-fixtures assessable under the relevant definition; the reason why furniture is not assessed is that it is simply not assessable in any circumstances under our definition. Items such as bookcases and cabinets, while not fixtures, might very well be said in some circumstances to have been placed with the degree of permanence necessary to render them "improvements", had "furniture" been mentioned along with "machinery" and "structures", as something capable of being assessed as an "improvement" under our Act.

How then can it be decided whether a particular structure or machine has the necessary degree of permanence of placement to constitute it a non-fixture "improvement"?

I return to the definition of "structure" to which I have already referred (at page 7). A structure, for the present purpose, is to be taken as a thing of "substantial size" which is "intended to remain permanently on a permanent foundation". It seems to me quite plain, therefore, that any item of equipment properly found to be a structure, if not necessarily a "fixture" , must certainly be taken to have been "placed" with the permanence necessary to render it an "improvement" for the purpose of the present statute.

In relation to machinery, substantial size, or substantial weight, may well be evidence from which the necessary degree of permanency of placement is to be inferred. Other possible indicia of the required degree of placement include the existence of a prepared special site or resting place, service connections of a rigid character such as plumbing, difficulty of disassembly and relocation, and incorporation in a process which can only be carried on in a particular location. None of these characteristics is essential to establishment of the required degree of placement. But one or more of them may, in a particular case, be evidence from which the necessary permanence of position can be inferred, and there may be others. In every case the question to be asked is, not whether the item concerned is in fact intended to be moved by the particular owner, but whether by reason of its character, function and placement, as determined from all the evidence, the item concerned falls into the class of things which, once put in position can normally be expected to remain in that position, rather than falling into the class of things which can generally be expected to be moved around from time to time in the normal course of business.

I am by no means certain that the appropriate test has been described or applied by the Board in the cases under appeal.

(e) Conclusion

The parties have placed before the Court a series of six cases stated with appendices, material totalling in all some 300 pages, without any written analysis of the reasons, facts, law, issues or authorities.

The present day workload of the Court is such that a judge cannot reasonably be expected to master such a volume of undigested material within a limited time during the sitting months without preliminary written assistance of that sort from counsel. Certainly that is impossible in the present circumstances. If the parties cannot agree on the effect of my decision so far as each case stated is concerned, and if the Lieutenant Governor in Council does not further extend the statutory time-limit for disposition of these matters, it may be that the appeals will become dismissed by effluction of time. Should the time-limit be appropriately extended, I will endeavour to complete the analysis necessary in order to deal with the detail of the individual cases stated, and also hear argument on the remaining questions and answer them, between now and the end of the coming vacation.

I would add that the practice of bringing on complex questions of law in Chambers in this way ought to be discouraged. It may accomplish no more than to make necessary a further hearing in the Court of Appeal, whose rules require that the parties furnish the necessary assistance.

Reasons for Judgment, No. 2 July 20, 1982

Counsel for B.C. Telephone Company, one of the respondents in these consolidated appeals by case stated, seeks clarification of references in my reasons for decision to the type of evidence appropriate to the determination of whether an item in issue has been so "placed" as to fall within the *Assessment Act* definition of "improvements", and asks in particular whether certain statements in this connection contained in my reasons are intended, as counsel says, to "change the test" set out in cases such as *Northern Broadcasting* v. *Mountjoy* [1950] S.C.R. 502 and *Assessment Commissioner* v. *Woodward Stores* (1981) 28 B.C.L.R. 22 (B.C.S.C.).

While "bolstering" of reasons for judgment has in the past attracted some animadversion, I think I should answer counsel's request, in the cause of preventing avoidable misunderstanding.

I have said that the "idea, or intention, of permanency" which the authorities have declared to be necessary in order to render a chattel so "placed" as to constitute it an "improvement" under the statute is to be imputed from objective evidence, apparent to the observer, of the nature, function

and manner of placement of the chattel itself, and not from subjective evidence of actual intention of a particular installer, owner or user.

Like the intention required under the rule in *Stack* v. *T. Eaton Co. et al* (see page 8 of May 28, 1982 reasons for judgment) to establish that a chattel has acquired the status of a fixture, intention for the purpose of constituting a chattel an "improvement" under the *Assessment Act* "is material only so far as it can be presumed from the degree and object" of its placement. The relevant circumstances, in each case, are those "patent to all to see". The intention of a particular taxpayer to leave a machine in place will not render it assessable as an improvement if that intention would not be presumed from objective evidence of its nature. function and placement. Nor will intention of a particular taxpayer to move a machine from time to time render it nonassessable if a consideration of the objective evidence would suggest the contrary.

While this distinction may not have been clearly drawn in the cases considered, I conclude that it ought to be implied.

In the absence of compelling words, I do not think it can be inferred that the same machine placed and used in the same way in the same premises could be assessable or non-assessable according to subjective intention of a particular taxpayer. That seems quite inconsistent with the principles of equity (sometimes called "equitability"), uniformity, and even-handedness which the law seeks to apply in tax assessment matters. It would, in any event, seem quite unreasonable, from a practical point of view, that the system should be applied on the basis of a subjective test.

I should, however, say that evidence of a taxpayer's actual plans could, perhaps, in some cases be helpful in deciding the character, function and purpose of placement of a chattel, especially where it had not long been in place, so that actual objective evidence of these matters was lacking. But the usefulness of such evidence must be very limited. It cannot contradict the inference which would be gained from observation of the chattel being installed and in use.

In answer to counsel's specific inquiry, I do not believe anything which I have said in this context would in any respect "change the test" which has been established by the authorities.