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ASSESSMENT COMMISSIONER

v.

MacMILLAN BLOEDEL LIMITED

Supreme Court of British Columbia (821376) Victoria Registry

Before: MR. JUSTICE W.J. TRAINOR

Victoria, July 26, 1982

J.K. Greenwood, for the Appellant
B.I. Cohen for the Respondent

Reasons for Judgment

July 26, 1982

This appeal by stated case under the *Assessment Act* concerns an interpretation of s. 398 (q) of the *Municipal Act*, R.S.B.C. 1979, c. 290 which reads:

"398. Unless otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:

. . .

(q) an improvement or land used exclusively to control or abate water, land or air pollution, including sewage treatment plants, effluent reservoirs and lagoons, deodorizing equipment, dust and particulate matter eliminators; and where the improvement or land is not exclusively but is primarily so used, the assessment commissioner may, in his discretion, determine the portion of the assessed value of the improvements or land attributable to that control or abatement and that portion is exempt;

. . ."

Two categories of use of land or improvements for pollution control purposes are created by that enactment.

The first category, that of exclusive use, may be found where the purpose and intent of installation of improvements was exclusively for the indicated pollution control purposes, even though the improvements, in use, may have certain "spin-off" benefits to the owner which are unrelated to pollution control or abatement.

Improvements in the second category, that of primary use for pollution control, are not used exclusively for pollution control, and therefore are not entitled to a 100 per cent exemption from taxation. In such cases the Board on an appeal is required to apportion the exemption where there is a finding of both primary and secondary uses.

Here, the Board failed to apply its mind directly to the question of whether the use was 'exclusive' or 'primary', taking into account the purpose and intent of installation of the equipment under consideration. That is an error in law and consequently this matter should be remitted to the Board for its further consideration.

Alternatively, if the Board intended by the wording which it used in its reasons to indicate a finding of primary use for pollution control, it failed to deal with the question of apportionment of the exemption.

There will be no costs awarded to either party.