

The following version is for informational purposes only

**RIVTOW INDUSTRIES
RIVTOW STRAITS LTD.
RIVTOW MARINE LTD.
IMPERIAL MARINE INDUSTRIES LTD.
POINT GREY TOWING CO LTD.**

v.

THE ASSESSMENT COMMISSIONER OF BRITISH COLUMBIA

Supreme Court of British Columbia (A832280) Vancouver Registry

Before: MR. JUSTICE T.A. DOHM

Vancouver September 27, 1983

J.W. Elwick for the Appellants
J.E.D. Savage for the Respondent

Reasons for Judgment (Oral)

September 27, 1983

The issue in this appeal is whether or not the Appellant is an occupier under the *Assessment Act* or the *Taxation (Rural Area) Act*.

I think the words of the Honourable Mr. Justice Murphy in *Excelsior Paper Stock Limited v. Cartwright Lumber Company Limited* (1941) 1 W.W.R. 607 are important and determine the issue:

"Possession must be considered in every case with reference to peculiar circumstances. The character and value of the property, the suitable and natural mode of using it, the course of conduct the proprietor might reasonably be expected to follow with the due regard to his own interests."

I think that the statement is most applicable to the present circumstances.

When dealing with water lots, I am of the view that there are no differences for taxation purposes between land and water. Water lots are peculiar animals. I say, with respect, the case of *Her Majesty the Queen v. Newmont Mines Ltd.* (1982) 37 B.C.L.R. 1 and the reasoning of Mr. Justice Lambert is applicable. I think the Assessment Appeal Board followed that case, and did so correctly.

That case dealt with land per se and there is no difference between what the Court said there and what the Board has said in the present case dealing with water lots.

So far as the questions are concerned, I think to some extent, some of the questions are questions of fact. Treating question 1 and question 2 the same, I would answer those questions "No", I would answer question 3 "Yes" and questions 4 and 5 "No".

I have indicated my reasons for answering "No" to the first two questions when I referred to the *Newmont Mines Ltd.* case and its application to water lots.

With respect to questions 3 and 4, I really think these are questions of fact and I am not about to interfere with the decision of the Board in respect thereto. I note with respect to questions 3 and 4 that the Lessee may at any time apply for reduction in the size of his water lot if he is not using the same. It also seems to me almost impossible to provide on the issue of occupation for intermittency in the use of property. It has to be on an annual or biannual basis; it would otherwise be impossible to police.

In respect to question 5, I agree with Mr. Elwick that the term "passive use" used by the Board may cause some difficulty. I think it is inappropriate, and the Board need not concern itself with any such terms. The fact is, there were no other occupiers other than the Appellants, and it seems to me, keeping in mind that we are dealing here with water lots, that if a water lot is leased, it is presumed that part of the water lot would not be usable.

For these reasons then I would dismiss the appeal with costs to the Respondent.