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DISTRICT MUNICIPALITY OF TUMBLER RIDGE

v.

ASSESSOR OF AREA 27 – PEACE RIVER
QUINTETTE COAL LIMITED
TECK- BULLMOOSE COAL INC.

Supreme Court of British Columbia (A851790) Vancouver Registry

Before: MR. JUSTICE R.J. GIBBS (In Chambers)

Vancouver, January 13, 14 and 15, 1986

H.L. Henderson and G.E. McDannold for the Appellant, District Municipality of Tumbler Ridge
J.K. Greenwood for the Respondent, Assessor of Area 27 – Peace River
C.W. Sanderson and P.D. Felderg for the Respondent, Quintette Coal Limited
D.B. Pope and J.D. Shields for the Respondent, Teck-Bullmoose Coal Inc.

Reasons for Judgment January 22, 1986

This is an appeal, by way of stated case under section 74 (2) of the *Assessment Act*, R.S.B.C. 1979, Chap 21, from a decision of the Assessment Appeal Board (the "board") issued May 31, 1985 on an appeal from a Court of Revision which approved 1984 assessments made by the Assessor of Area 27 for the properties of Quintette Coal Limited ("Quintette") and Teck-Bullmoose Coal Inc. ("Teck") lying within the boundaries of the District Municipality of Tumbler Ridge ("the municipality"). The stated case, as filed, contained questions submitted by both the municipality and Teck. However, at the commencement of the argument, Teck abandoned its appeal, so the only opinions sought are in respect of the ten questions put forward at the request of the municipality.

Question No. 1

> Was the Board correct in law in dismissing the appellant's, District of Tumbler Ridge, request dated the 9th day of May, 1985, for a Stated Case under section 74 (1) of the *Assessment Act*, R.S.B.C. 1979, c. 21?

This is not an issue which arises from the decision of the board which is under appeal, but from an event which preceded the issue of the decision. In the stated case, under the heading "Procedural Facts", the board narrates what occurred: all of the evidence was in and final argument received by May 2, 1985; on May 10, 1985 the board received the request of the municipality to state a case under section 74 (1) of the *Assessment Act*; as it was then in the process of formulating its decision, the board denied the request and so notified the municipality by letter dated May 28, 1985. The decision under appeal was issued three days later, on May 31, 1985.

I have reached the conclusion that the court is not called upon to, and should not, give an opinion on this question. It is not called upon to give an opinion because it is not a question of law flowing from the decision under appeal. It should not give an opinion because the matter is now academic. I was advised that the question of law which the municipality sought to bring before the court is included in the matters now before the court for opinion under the stated case, so it will

be considered on its merits in any event. Furthermore, because of the sequence of events, if the board was in error it is not now within the power of the board to correct the error, so even a negative opinion would serve no practical purpose. Also in terms of practical purpose, there is nothing the board could do by way of remedial action on receipt of a negative answer to the question. Section 75 of the *Assessment Act* directs the board to cause the assessment roll to be amended to conform to the decision of the court, but no amendment would or could follow a negative answer.

For these reasons no opinion will be given in response to this question.

Question No. 2

> Was the Assessment Appeal Board correct in law in ordering that the issue of the valuation of the coal leases, coal licences, coal in and under the land and of the surface of the coal bearing lands of the respondents, Quintette Coal Limited and Teck-Bulloose Coal Inc., respectively, be severed from the appeals of the appellant, District of Tumbler Ridge, after the appellant had closed its case and after the appellant had presented its evidence on those valuation issues pursuant to the previous Order of the Assessment Appeal Board on December 18, 1984?

This question raises the issue which the municipality wished to have brought before the court by the request of May 9, 1985, referred to in question No. 1. In my opinion, even if the board had complied with the request, and stated a case, the municipality would not have succeeded on the appeal. It would not have succeeded because the complaint is about a matter of procedure over which the board has control; because the municipality has suffered no prejudice in the presentation of its case as a consequence of the severing order; and because whatever prejudice the municipality may have suffered by way of the expense of preparation and presentation can be compensated by the board, if it sees fit, in the exercise of its power to award costs under section 72 of the *Assessment Act*.

The complaint has its origin in a direction, or order, made by the board in December 1984, some three months before it began hearing the appeal from the court of revision.. It was evident to the board that it would be called upon to resolve two primary issues: are the Quintette and Teck coal licences, leases, and reserves exempt from municipal taxation, and therefore from assessment; and if the answer is that the properties are not exempt, what is the value to be given to them for assessment purposes? In December 1984 the board decided to hear the evidence on both issues in one hearing session and directed that "all parties will be prepared to commence and complete the appeal, in total, in April of 1985; the time, date and place will be set by the board in early March".

The municipality, the appellant before the board, put in its case, including valuation evidence, throughout the period April 9, 1985 to April 24, 1985. The following day there was some procedural skirmishing and then Quintette began to lead its evidence. However, on April 26, 1985, a Friday, before the valuation phase of its evidence, Quintette applied to the board for an order that the valuation issue be postponed to a later date to be heard only if the board decision, or whatever appeal decisions were made following it, held that the coal properties were not exempt from assessment and taxation. The board granted the application and ordered that each of the parties would have leave to lead further evidence at the valuation hearing, if the final decision on the issue held the coal properties not to be exempt.

I find nothing unusual in what the board did. The severing of issues is not uncommon in the courts or before other tribunals, particularly when there is a serious issue of liability which, if found against the complaining party, will render the hearing of further evidence or the issue of a decision on other matters unnecessary. It was not contended that the board could not, as a matter of control of its own procedures, do what it did. Rather, the argument proceeded upon the grounds of prejudice and procedural unfairness and denial of natural justice. I am not persuaded

by any of those grounds of argument, particularly as the board made it clear that there would be no impediment to any party in the tendering of relevant evidence at the valuation hearing, if it occurs.

This question could have been disposed of on the grounds that the decision challenged by it is not the decision which is the subject of the stated case and that accordingly the question is not properly before the court. However, because the municipality vigorously argued prejudice resulting from the procedural decision, I felt it more appropriate to address the issue on the basis of the result which would have obtained if the board had granted the request made on May 9, 1985 to state a case.

For these reasons the answer to this question is yes.

Question No. 3

> Was the Assessment Appeal board correct in law in declining the application/submission of the appellant, District of Tumbler Ridge, that the assessor should have similar access to all relevant company data in the possession of the respondent, Quintette Coal Limited, and should order the assessor to further investigate and report to the board pursuant to the provisions of the *Assessment Act*?

As was the case with the first question, the issue raised here does not flow from the decision which is the subject of the stated case. It arises from the refusal by the board, on December 18, 1984, to grant an application by the municipality for orders granting to the municipality access to, and the right to examine and inspect, the physical properties and premises, cost records, and third party sales contracts of Quintette and Teck (hereafter collectively referred to as "the coal companies"), and requiring the assessor to examine and inspect such of the books and records of the coal companies as the assessor thought necessary to determine actual value. Section 74 (2) of the *Assessment Act* requires that a request to state a case must be made within 21 days of receipt of the decision to be appealed. The 21 day period from December 18, 1984 expired on January 7, 1985, so the municipality is far beyond the time limit and, as a consequence, the question is not properly before the court.

Apart from the timing defect, it appears to me to be extremely doubtful that the board has the power under section 62 of the *Assessment Act*, which is the inspection power section, to authorize access by the municipality. The board's power under that section is limited to access or examination and inspection by "the board, or a person authorized by it to make any inquiry or report". Those words are broad enough to include the assessor, but for its own good reasons the board decided not to order the assessor to inspect the books and records, and as that is a procedural matter, it is not open to the court, in my opinion, to second guess the board and decide that it erred in refusing the application.

Because the issue does not flow from the decision challenged by the stated case, and because it is brought out of time, no opinion will be given on this question.

Question No. 4

> Was the Assessment Appeal Board correct in law in ruling that coal was a "mineral" under the *Municipal Act*, and that the coal bearing lands of the respondents, Quintette Coal Limited and Teck-Bullmoose Coal Inc., are exempt from assessment and taxation?

The essence of the stated case appeal is contained within this question. The municipality wants to assess and tax the coal which the coal companies have the right to extract and reduce to possession. If the coal is exempt from municipal taxation, the assessor is not obliged to assess it unless ordered by the commissioner to do so. If the coal is a mineral it is exempt from municipal taxation. Hence the question of whether coal is a mineral.

The discretion in the assessor to assess or not assess exempt land and improvements is found in section 26 (5) of the *Assessment Act*:

> **26.** (5) Notwithstanding this or any other Act, where land and improvements are exempt from taxation, unless ordered by the commissioner, the assessor need not, in respect of the exempt land and improvements,
>
> (a) assess the land and improvements; or
>
> (b) prepare an annual assessment roll.

The *Assessment Act*, as the name suggests, deals with the matter of assessing land and improvements for taxation purposes. The authority of a municipality to levy taxes on assessed land and improvements is contained in the *Municipal Act*, R.S.B.C. 1979, Chap. 290. Land is defined in section 1 of the *Municipal Act* as follows:

> . . . "land" does not include improvements, mines or minerals belonging to the Crown, or mines or minerals for which title in fee simple has been registered in the land title office;

It is common ground that until the coal is extracted and reduced to possession title remains in the Crown. Accordingly, if coal is a mineral it is not subject to municipal taxation in situ under the general power granted to a municipality, by the *Municipal Act*, to tax land and improvements.

Relying upon *Elwes* v. *Briggs Gas Company* (1866) 33 Ch. D 562, *The Dome Oil Company* v. *The Alberta Drilling Company* (1915) 52 S.C.R. 561, and *The Crow's Nest Pass Coal Company* v. *The Queen et al* (1961) S.C.R. 750, and upon definitions from *Ballantine's Law Dictionary, The Shorter Oxford English Dictionary,* and *Webster's Third New International Dictionary*, the board held that coal is a mineral within the meaning of the definition of land in the *Municipal Act*. In my opinion the board was correct in its analysis, in its reasoning, and in its conclusion.

The municipality conceded in argument that "indubitably, in certain contexts coal must be construed as a mineral" but contended that "coal whether it is generically a mineral or not, is expressly disqualified as such [from being classified as a mineral] by the provisions of the *Mineral Act* in force at the time of the assessment". The Act referred to is the *Mineral Act*, R.S.B.C. 1979, Chap. 259. Proceeding from its heavy, and mistaken, in my opinion, reliance upon the definition of mineral in the *Mineral Act* the municipality dismisses the case law and definitions followed by the board, saying: "mineral must be interpreted within the framework of all the statutes which provide the context for it use. That is the answer to the case law relied upon by the respondents and adopted by the board. The interpretations there are based upon different statutory and factual foundations".

It cannot, I think, be disputed that when a word is given a specific meaning in a statute that meaning must be used in the construction of the statute. But where there is not a specific meaning ascribed by the statute the task must be to determine the vernacular meaning of the word. The vernacular meaning was held to apply in *Elews* v. *Briggs*, in *Dome Oil* v. *Alberta Drilling*, and in *Crow's Nest Pass* v. *The Queen*, where there was no specific statutory meaning to be employed. That is the case here. There is no definition of "mines or minerals" in the *Municipal Act*, so the vernacular meaning must be given to the word "minerals". In my opinion the *Mineral Act* has no application. The definition there is confined by the opening words of the section to "In this Act". There is no canon of statute interpretation which countenances the application of a definition from one statute to circumstances arising under another statute unless the two are in *pari materia*. Because the *Municipal Act* and the *Mineral Act* relate to entirely different subject matters they are not in *pari materia*, and so the definition of mineral in the latter cannot be imported into and applied under the former. That is why, in my opinion, the municipality errs in relying so heavily upon the *Mineral Act*.

I note in passing that at page 761 of the *Crow's Nest* case, Mr. Justice Locke observed of definitions of the older *Mineral Acts* put forward by the appellant that "the interpretation clauses of each of these statutes are limited in their application to the construction of the Act in which the expressions appear".

Although coal has received different statutory treatment than other minerals in British Columbia since at least the turn of the century, there is nothing in the statutes or the case law to indicate that it has ever been regarded as not being a mineral. It has a like genesis in organic material, and a like structure in that it is not crystalline, as petroleum and natural gas and those substances were held to be included in the word mineral in 1961 in the *Crow's Nest* case. It was the *Crow's Nest* case which the board, correctly in my view, found to be the most cogent in reaching its conclusion that coal is a mineral within the meaning of the definition of land in the *Municipal Act*.

As none of the arguments put forward by the municipality persuade me that the board erred in law, the answer given to this question No. 4 is yes.

Question No. 5

> Was the Assessment Appeal Board correct in law in ruling that Quintette Coal Limited and Teck-Bullmoose Coal Inc. did not occupy or hold the coal bearing lands by any legal right or document, or in fact?

I find this question to be obscure and difficult to understand because of the uncertainty of what is meant by the expression "coal bearing lands". However, it is evident from the argument that what is intended to be referred to by the words "coal bearing lands" is the surface of the land overlying the coal which the coal companies have the right to explore for and extract. In this part of these reasons therefore, when I use the word "land" I will be referring to the surface only.

The rights of the coal companies are founded partly upon statute and partly upon instruments issued pursuant to statute. The right to explore for coal is granted by a licence which is subject to the provisions of section 12 of the *Coal Act*, R.S.B.C. 1979, Chap. 51. Quintette and Teck have coal licences for their respective" coal bearing lands". As the surface of the land is owned by the Crown, by reason of section 12 although the coal companies may enter upon and use the surface, they do not thereby acquire any right, title or interest in the surface:

> **12.** (1) Subject to subsection (3), a licensee, under this Act and his licence, has the exclusive right to explore for and develop coal on the location of his licence and has the exclusive right to mine and remove those quantities of coal he may reasonably require for testing.
>
> (2) A licensee is entitled to explore for and develop only that coal that is inside the boundaries, continued vertically downward, of his licence location.
>
> (3) Subject to subsection (4), no licensee, under his licence, shall acquire any right, title or interest in the surface area of the location of his licence.
>
> (4) Where the surface area of a licence location is owned by the Crown and is used or occupied only by the licensee, the licensee is entitled to enter, occupy and use, under this Act and his licence, the surface area to explore for and develop coal and, subject to the issue of a free use permit under the *Forest Act*, is entitled to use and remove timber situated on the location at the time he applies for the free use permit.

When the holder of a coal licence wishes to produce coal from some part of his licence location he must acquire a coal lease for the proposed production area. Coal leases are subject to surface use provisions which, given the difference between an exploration operation and a production

operation, are essentially the same as apply to a coal licence. The lease provisions concerning surface use are in section 22 of the *Coal Act*:

> **22.** (1) Subject to subsection (2), a lessee has the exclusive right, in accordance with this Act and his lease, to explore for, develop and produce coal on the location of his lease.
>
> (2) Subject to subsection (3), no lessee shall acquire, under his lease, any right, title or interest in the surface area of the location of his lease.
>
> (3) Where the surface area of a lease location is owned by the Crown and is used or occupied only by the lessee, the lessee is entitled to enter, occupy and use, under this Act and his lease, the surface area to produce coal and, for that purpose, is entitled to a licence under the *Forest Act* to cut timber situated on the location.

In order to acquire a proprietory interest in the surface the licensee or lessee of coal rights requires a "surface lease". Surface leases for Crown land are issued under the authority of section 35 of the *Land Act*, R.S.B.C. 1979, Chap. 214:

> **35.** The minister may issue a lease of Crown land subject to the terms and reservations he considers advisable, including an option to purchase the land.

Possession of a surface lease entitles the lessee, pursuant to section 60 of the *Land Act*, to take proceedings for recovery of possession of, or for trespass to, the interest conveyed by the lease:

> **60.** Except as otherwise provided in this Act, a person lawfully entitled to occupy Crown land by virtue of a certificate of purchase, lease, right of way, easement or licence of occupation may for that land take proceedings against any person for recovery of possession of or for trespass to the interest in the land in the same manner and to the same extent as if he were the registered owner of the land.

These provisions of the *Coal Act* and the *Land Act*, and the coal licences, coal leases, and surface leases, together constitute the coal companies' chain of title. The coal leases and surface leases cover a substantially lesser area than is covered by the coal licences.

Liability to assessment (and taxation) of the surface area, or a portion thereof, is provided in section 34 (1) of the *Assessment Act*:

> **34.** (I) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements on it, liable to assessment in accordance with this section.

The word "occupier" is defined in the relevant portions of section 1 of the *Assessment Act*, and in similar words in section 1 of the *Municipal Act*, as:

> "occupier" means
>
> (a) a person who, if a trespass has occurred, is entitled to maintain an action for trespass;
>
> (b) the person in possession of Crown land that is held under a homestead entry, pre-emption record, lease, licence, agreement for sale, accepted application to purchase, easement or other record from the Crown, or who simply occupies the land;

The board reviewed what I have referred to as the "chain of title", applied the principles of law from decided cases cited to it, and came to the conclusion that, with the exception of those areas

where actual mining operations were being carried on, the coal companies did not hold or occupy the surface of the "coal bearing lands". The areas of actual mining operations have been assessed and the values entered on the assessment roll. They are not in contention in this appeal. It follows from the board's conclusion that it found the balance of the surface of the "coal bearing lands" not to be assessable or taxable as against the coal companies under section 34 (1) of the *Assessment Act*.

The municipality challenges the board's conclusion on two grounds: firstly that, in law, the coal companies are occupiers as defined in section 1 of the *Assessment Act* and therefore "hold" the land; and secondly that even if they are not occupiers in law, they are occupiers in fact.

In support of the first ground the municipality put forward a line of reasoning which I find to be unsound. Put in its simplest terms, the argument is that as the coal licences and coal leases give exclusive rights to explore and exclusive rights to produce, the coal companies have an action in trespass against those who infringe upon that exclusivity, and having the right to sue in trespass makes them occupiers under the definition in section 1 of the *Assessment Act*. The proposition is unsound because it disregards the limitations in the licence and lease provisions of the *Coal Act*, and it is unsound because it disregards the case law.

Sections 12 (3) and 22 (2) of the *Coal Act* expressly deny to a licensee or lessee any right, title or interest in the surface as an incident of his licence or lease. The Supreme Court of Canada held in *Berkheiser* v. *Berkheiser and others* (1957) S.C.R. 387, that a right to explore for and develop, in that case, oil and gas, does not convey title in situ, and that title only passes to the holder of the right when the subject matter of the right is reduced to possession. The coal companies, therefore, until coal is actually produced, have no title to either land or subsurface substances. The only right they have is the right to explore for, or the right to produce, and to use and occupy the surface for that purpose: see sections 12 (4) and 22 (3) of the *Coal Act*. And in analogous circumstances under the *Mineral Act*, our Court of Appeal has held that those rights, incidental to ownership of licences or leases, do not render the surface of the land assessable and taxable except to the extent that it is actually reduced to possession and occupation: *R. in Right of British Columbia* v. *Newmont Mines* (1982) 37 B.C.L.R. 1.

Still on the first ground of challenge, but shrinking the target somewhat, the municipality argues, alternatively, that the coal companies "hold" the lands which they have under surface leases because they have the right to take proceedings for recovery of possession or trespass under section 60 of the *Land Act*, and that the right to sue for trespass makes them occupiers as defined in section 1 of the *Assessment Act*. In connection with this argument it must be noted that under section 35 of the *Land Act* the minister has the authority to impose upon leases he issues "the terms and reservations he considers advisable".

The terms and reservations in the surface leases issued to the coal companies are so extensive by way of authorizing use by others and denying to the lessee the right to carry on proceedings under section 60 of the *Land Act* if use by others interferes with coal company rights, that the coal companies, in my opinion, do not have the section 60 right to take proceedings for recovery of possession or trespass "in the same manner and to the same extent as if he were the registered owner of the land". The reality is that the coal companies only have exclusive use and occupation of, and a right to maintain an action for trespass in respect of, those areas of the surface leases where actual mining operations are being carried on. And, as pointed out above, those actual use and occupation mining operations areas are not in dispute in this appeal. The board's conclusions on this first ground of challenge, centering on the word "held" in section 34 of the *Assessment Act* are found at page 13 of its decision:

> (c) Neither the issuance of the coal licences and/or coal leases gives the holder of them any rights to the surface of the land pursuant to the terms of the *Coal Act* (except as expressly limited by that Act).

(d) The respondent coal companies do not legally hold rights to the surface of the land sufficient to entertain an action of trespass.

I agree with those conclusions. In my opinion the board was, to use the language of the question, "correct in law" in its findings.

The second ground of argument focusses on the word "occupied" in section 34 (1) of the *Assessment Act*, as a question of fact. The municipality contends that even if the coal companies do not hold the surface of the coal licence and coal lease areas as a matter of legal right, they are, in fact, the occupiers of those areas. Whether the coal companies possess and occupy those areas is a question of fact: *Newmont Mines* (supra). The court will not interfere with the board's findings of fact: *District of Tumbler Ridge* v. *Assessor of Area 27 et al* (1985) Vancouver Registry No. A851790; *British Columbia Forest Products* v. *Assessor of Area 6* (1983) Vancouver Registry No. A831462. Here the board heard and weighed the evidence and concluded that the only areas possessed and occupied by the coal companies were those where actual mining operations were being carried on. The court will not interfere with that finding of fact.

In the result, the "legal right" part of this question will be answered in the affirmative, and the "in fact" part will remain unanswered.

Question No. 6

Was the Assessment Appeal Board correct in law in ruling that the tailings pond was used exclusively for pollution control abatement and was entitled to a 100% exemption?

Question No. 7

Was the Assessment Appeal Board correct in law in ruling that the latex spray building was entitled to a 100% pollution abatement exemption?

A pollution control exemption in the *Municipal Act* underlies each of these questions. Section 398 (q) provides:

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.

As pointed out earlier in these reasons, the assessor is not required to assess exempt property. There was no dispute about whether the tailings pond and latex spray building were used for pollution control purposes. The dispute was whether those facilities were "used exclusively" and therefore entitled to 100% exemption, or whether, on the other hand, they were not exclusively but only "primarily so used" and so entitled only to a partial exemption.

The board reviewed and weighed the evidence, applied *Rayonier and MacMillan Bloedel* v. *Assessment Areas of Vancouver, etc.* (1979) Vancouver Registry No. A790412, and *Assessment Commissioner* v. *MacMillan Bloedel* (1982) Victoria Registry No. 831276, and said, at pages 21 and 22 of its reasons:

> After a review of the evidence presented regarding these claims for exemptions and taking into consideration the law on this subject the board makes the following findings of fact:
>
> 1. The board finds that the tailings pond is exclusively used for pollution control abatement and is entitled to a 100% exemption as confirmed by the Court of Revision.
>
> 2. The latex building is entitled to a 100% exemption in the amount of $532,000.

I can find no particular in which the board was in error. It considered the evidence, directed itself properly as to the law, and made its findings of fact. The court will not interfere with those findings. The answer to both questions is yes.

Question No. 8

> Was the Assessment Appeal Board correct in law in ruling that the actual values of the assessment of Quintette Coal Limited be confirmed on the following folios:
>
> 27-59-343-00384.000
> 27-59-343-50054.090
> 27-59-343-50054.075
> 27-59-343-00479.000
> 27-59-343-50054.065
> 27-59-343-50054.070
> 27-59-343-50054.080
> 27-59-343-50054.085

Question No. 9

> Was the Assessment Appeal Board correct in law in ruling that the allocation between machinery and equipment versus structures of the assessment of Quintette Coal Limited be confirmed on the following folios:
>
> 27-59-343-00384.000
> 27-59-343-50054.090
> 27-59-343-50054.075
> 27-59-343-00479.000
> 27-59-343-50054.065
> 27-59-343-50054.070
> 27 -59-343-50054.080
> 27 -59-343-50054.085

Neither of these questions will be answered. Question 8 is so broad that it amounts to asking "was the decision right"? So stated, it is not a question of law. See Esson, J. (as he then was) in *Cominco Ltd.* v. *Assessor of Area I8-Trail* (1982) Vancouver Registry No. C825183. Question 9, although slightly less broad in nature, exhibits the same want of precision. It asks the general question "was the allocation between machinery and equipment on the one hand and the structures on the other hand correct on the assessment roll"? Had the subject been specific items, as was the case in *Assessor of Area 10-Burnaby-New Westminster* v. *Chevron Canada Limited* (1984) Vancouver Registry No. A840694, the distinction between machinery or equipment and structures could have been addressed. But the court cannot review the entire assessment roll for non-real property entries for these enormous enterprises to determine whether there was error.

The assessor determined values and allocations. The board accepted his determinations as being reasonable. The municipality did not discharge the onus of showing that any entry was in error, either before the board or before the court.. The board's finding must stand.

On the ground that neither of these questions is within the expression "question of law" in section 74 (2) of the *Assessment Act*, neither will be answered.

Question No. 10

> Was the Assessment Appeal Board correct in law in ruling that the areas on which the respondents, Quintette Coal Limited and Teck-Bullmoose Coal Inc., carry out their mining operations are correctly valued and correctly entered on the assessment roll?

Valuation is a matter for the assessor. He was not shown to have been wrong in his valuations. Accordingly, the board quite properly confirmed the entries on the assessment roll. The municipality says the assessor did not have all of the information he should have had. But even if that is so, it falls far short of satisfying the onus of demonstrating error.

In any event, because the question is improperly worded it will not be answered. The court should not be asked to rule on whether the board was correct in finding that the valuations were correct. Properly worded, the question would have asked "did the board err in confirming the valuations and entries on the assessment roll"? If asked in that form the answer would have been no. As it is the question will remain unanswered.

Answers to the Questions

1. No answer
2. Yes
3. No answer
4. Yes
5. Yes to the first part- "legal right".
   No answer to the second part-"in fact".
6. Yes
7. Yes
8. No answer
9. No answer
10. No answer.

Costs

The respondents asked the court to award costs under section 74 (4) of the *Assessment Act*. Notwithstanding the submissions of the municipality, I am not aware that municipalities are customarily given any special treatment in the matter of costs. They are subject to the same rules and principles as other litigants. Following the usual rule that costs follow the event, the respondents will have their costs of this appeal.