The following version is for informational purposes only

CANADIAN PACIFIC AIR LINES, LIMITED

v.

ASSESSOR OF AREA 11 - RICHMOND-DELTA

Supreme Court of British Columbia (A852741) Vancouver Registry

Before: MR. JUSTICE J.E. SPENCER (In Chambers)

Vancouver, April 1, 1986

B. Hoeschen for the Appellant
J.E.D. Savage for the Respondent

Reasons for Judgment April 7, 1986

The appellant applies by way of stated case for a determination of two questions arising out of a decision of the Assessment Appeal Board made November 15, 1985. The appellant has constructed a jet engine testing facility at the Vancouver International Airport in Richmond, British Columbia. The facility is used to test jet engines, both its own and those of others, off the aircraft. The tests generate a great amount of noise, but to prevent that noise from escaping into the environment the appellant has constructed an expensive system of noise suppressors, a test cell. The value attributed to the building and equipment which is used for the control of noise is $4,906,110.00. The appellant claimed that value should be exempt from assessment pursuant to the provisions of s. 398(q) of the *Municipal Act* which reads as follows:

> "**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;"

The Board refused to grant the exemption, considering itself to be bound by the decision of my brother A. G. MacKinnon, J. in an unreported decision, *Assessor of Area #10 - Burnaby-New Westminster* v. *Chevron Canada Limited*, Vancouver Registry No. A840694, October 11, 1984. In that decision His Lordship quoted two definitions from the *Shorter Oxford English Dictionary*, 3rd ed., and from *Webster's New Collegiate Dictionary*, both defining the word "pollution". He found that on the plain and ordinary meaning of s. 398(q) noise abatement does not fall within its exemption.

Mr. Hoeschen urged me not to follow the *Chevron Canada Limited* case. He drew my attention to other dictionary definitions of the word "pollution" and to a number of learned articles and a United States case, *Harrison* v. *Indianna Auto Shredders Co*., Federal Reporter, 2nd Series, 1107; none of which, he said, were put before my brother MacKinnon, J. Whatever may be the merits of those definitions and authorities and despite the relatively recent recognition of excessive noise as a threat to the quality of life, I am persuaded by Mr. Savage's argument that I

ought not to depart from a considered judgment of another judge of this Court which deals so recently with precisely the matter I have before me. Occasionally it is permissible to depart from a previous judgment, but the circumstances when that may be done are clearly set out in the well-established case, *Re Hansard Spruce Mills Ltd.*, [1954] 13 W.W.R. (N.S.) 285. Wilson, J., as he then was, set out three circumstances under which a previous judgment may be departed from, at p. 286. It is the second of those that Mr. Hoeschen argued was covered by the fact that he gave me definitions and learned articles and the U.S. authority which were not put before MacKinnon, J. That second ground says that a judgment of another judge of this Court need not be followed if, "it is demonstrated that some binding authority in case law or some relevant statute was not considered." The relevant statute was considered in the previous decision. The new materials put before me do not fall under the category of a binding authority in case law. My brother MacKinnon, J. had to consider the point at issue on the basis of the materials put before him and reached a conclusion which thereupon became the law, at least for the time being, for this province. That law may be changed by statute or by a contrary decision of a court with the freedom to overrule it. Were I simply to disagree without being required to by statute or by some binding authority not considered by my learned brother. I would simply introduce confusion into the law. I therefore respectfully follow that previous decision and find that the Assessment Appeal Board did not err and that the two questions put to me for resolution should both be answered in the negative. It is unnecessary for me to distinguish between the two questions in the manner requested by Mr. Savage. The appellant is able to proceed to the Court of Appeal to obtain a different ruling on this question, if it sees fit.

The respondent is entitled to the costs of the application.