

The following version is for informational purposes only

**CASSIAR MINING CORP.
(formerly Cassiar Resources Ltd./Binco Mining Ltd.)**

v.

ASSESSOR OF AREA 27 - PEACE RIVER

British Columbia Court of Appeal (CA007902) Vancouver Registry

Before: THE HONOURABLE MR. JUSTICE WALLACE, MR. JUSTICE HINKSON and MR. JUSTICE ESSON

Vancouver, March 23, 1989

D. Robinson for the Appellant
John E.D. Savage for the Respondent

Reasons for Judgment of Mr. Justice Wallace

March 23, 1989

This is an appeal from the decision of Bouck, J. on an appeal by way of stated case from the decision of the Assessment Appeal Board of British Columbia.

The appellant, Cassiar Mining Corp. (Cassiar), is a mining company which operates an asbestos mine in the Peace River Assessment Area of British Columbia. The appeal is in respect of the assessed value for property taxation of the buildings, machinery and equipment associated with the appellant's asbestos mine.

The assessed values of the buildings, machinery and equipment were determined as of July 1st, 1984, based on the "remaining life of the ore body". This method of assessment reflects the fact that, as the ore body is depleted, the improvements - whose only use is to exploit the resource - diminish in value.

The biennial assessment system is set forth in the *Assessment Act*, R.S.B.C. 1979, c. 21. Commencing on September 30th, 1984, and in every even-numbered year thereafter, the assessor completes a new assessment roll which, subject to revisions, is the assessment roll for the purpose of taxation during the two following calendar years.

On September 30th, 1985, and in each odd-numbered year thereafter, the assessor is required to complete a revised assessment roll in those cases where the conditions set forth in s. 2. (1.2) are present. This revised assessment roll applies only for the purpose of taxation during the following calendar year. The pertinent parts of s. 2. of the *Assessment Act* are as follows:

"2. (1.1) The assessor shall, not later than September 30, 1985, and September 30 in each odd numbered year after that, complete a revised assessment roll containing revisions to the assessment roll for the purpose of taxation during the following calendar year.

(1.2) Subsection (1.1) applies only to cases where . . .

(b) the actual value . . . is not the same as the actual value entered in the assessment roll by reason of

(iv) . . . new development to, on or in the land or improvements or both, or

(v) a change in . . . the following:

(A) physical characteristics.

(1.5) Notwithstanding anything in this section, depreciation occurring since the completion of the assessment roll shall not be a basis for the making of any entry on a revised assessment roll."

From the period July 1st, 1984 to July 1st, 1985, Cassiar removed and mined some 1,167,188 tons of ore, or approximately 17 percent of its ore reserves.

The assessor did not complete a revised assessment roll by September of 1985. Cassiar appealed to the 1986 Court of Revision seeking a revised assessment value as of July 1st, 1985 on the basis that the removal of ore was a "new development to, on or in the land, or improvements or both" or, alternatively a change "in physical characteristics", as contemplated by the *Assessment Act* sub. paras. (1.2) (b) (iv) and (v) respectively. The Court of Revision dismissed the appeal.

Cassiar then appealed the decision to the Assessment Appeal Board. The Assessment Appeal Board held that removal of the ore was not a change in physical characteristics, a new development, or a basis upon which a different actual value may be determined. And further, if by the extraction of asbestos there was a change in actual value, the assessor was precluded from issuing a revised assessment roll on that basis because of the exception for depreciation set forth in s. 2. (1.5) of the *Assessment Act*.

Cassiar appealed the Board's decision by way of stated case to the Supreme Court posing the following four questions for the court's consideration.

1. Did the Assessment Appeal Board err in law in finding that the physical change in the property resulting from the extraction of asbestos ore, was not a change in 'physical characteristics' within the meaning of those words in subparagraph 2. (1.2) (b) (v) (A) of the *Assessment Act*, R.S.B.C. 1979, C. 21 (as amended) (the "Act")?
2. Did the Assessment Appeal Board err in law in finding that the extraction of asbestos ore since the preparation of the assessment roll was not a 'new development' within the meaning of those words in paragraph 2. (1.2) (b) (iv) of the Act?
3. Was the finding of the Assessment Appeal Board, that the extraction of asbestos ore was not 'a basis . . . by which a different actual value may appropriately be determined', contrary to all of the evidence and therefore an error in law?
4. Did the Assessment Appeal Board err in law in finding that any change in value resulting from the extraction of asbestos ore was a change it was precluded from considering because of the exception for depreciation in sub-section 2. (1.5) of the Act?

The Chambers judge concluded that the extraction of ore from the mine was not a change of "physical characteristics", nor a "new development", as both of those provisions necessitated

"unexpected" or "unanticipated" changes. He further concluded that a removal of ore resulted in only a "notional" rather than an actual loss of value and he dismissed Cassiar's appeal.

Notwithstanding the above findings, the Chambers judge found that the Assessment Appeal Board had erred in law in finding that the extraction of the ore from the mine constituted "depreciation". He found it was more accurately described as "depletion". Accordingly, he found that the Assessment Appeal Board was not precluded from considering any change in value resulting from the extraction of asbestos ore by reason of s. 2. (1.5) of the *Assessment Act*.

Cassiar appeals the finding of the Chambers judge and the assessor cross-appeals the findings with respect to depreciation.

The following issues are raised by this appeal and cross-appeal:

1. Does ore extraction constitute "new construction or new development to, on or in the land or improvements or both"; or a change in "physical characteristics" so as to require the assessor to complete a revised assessment roll for the purpose of taxation during 1986;
2. Does s. 2. (1.2 (b)) require a change in "actual value" by reason of one of the enumerated items rather than a mere "notional" change arising through the use of a particular appraisal method; and
3. Does any change in value resulting from ore extraction constitute "depletion" of the ore body and not "depreciation" within the meaning of s. 2. (1.5).

Does the extraction of ore in the circumstances of this assessment constitute a "new development" to the land or improvements, or a change in the "physical characteristics" of the property within the meaning of those terms used in the Assessment Act?

The Chambers judge considered that the assessment roll of July 1st, 1984 "contemplated that a reduction would occur in value of the improvements and machinery in the subsequent roll of July 1st, 1986, because of the gradual depletion of the ore body"; and he concluded from this that s. 2. of the *Assessment Act* dealing with revised rolls in the odd-numbered years was concerned with "events which could not be expected or anticipated" as of July 1st, 1984. Since the removal of the ore was not an unexpected new development on or in the land, or an unanticipated change in the physical characteristics of the land or improvements, it did not entitle Cassiar to a revised roll as of July 1st, 1985.

I differ from the view expressed by the Chambers judge as to the Legislature's intention with respect to revised assessments in the odd-numbered years for the following reasons.

Firstly: it would appear that the biennial assessment basis was invoked simply to reduce the administrative costs associated with the assessment of properties. Instead of implementing this costly procedure every year, it was confined to every second year.

Secondly: I do not agree that an assessment as of July 1st, 1984 is based on what is contemplated to occur to the value of the properties between that date and the assessment of July 1st, 1986. Rather it is my opinion that the assessment roll and the various assessments made in it are intended to reflect the value of the respective properties and improvements for taxation purposes for the year in which the assessment roll is completed - in this instance the year 1984.

Thirdly: I do not agree that the revised assessment roll in the odd-numbered years is restricted to dealing with only those new developments or changes in physical characteristics that could not be expected or anticipated at the time the original assessment roll was completed. The *Assessment Act* does not give any indication of such a restrictive role for the revised amendments. Moreover, there is no reason why the Legislature would not intend that the two year assessment apply to those properties where there was little change in actual value (other than depreciation) over the two year period, and yet still contemplate that reassessment should take place when the value of the property decreases or increases during the first assessment year. The revised assessment in the odd-numbered years enables the Crown to receive, and requires the taxpayer to pay, those taxes which reflect the current value of the property at the time of the reassessment.

Fourthly: since the assessment of the value of the lands and improvements associated with a mine is simply an appraisal on a notional basis of value, as distinct from an actual change in value, the Chambers judge expressed the view that the intent of s. 2. is to allow for a revised assessment roll only where the events set out ins. 2. (1.2) "actually happen", and not when they "notionally happen". As previously noted, the technique for assessing the value of the land and improvements of the mine adopted by the assessor as appropriate is based on the premise that as the ore body is depleted the value of the improvements is diminished. If this principle is valid for the biennial assessment on the even-numbered years it is equally valid for revised assessments in the odd-numbered years. I see nothing in s. 2. (1.2) that would indicate an intention to require a different assessment technique for revised assessments to that which is appropriate for the original assessment.

In my opinion, the legislation is designed to require a revised assessment in the odd-numbered years where the actual value of the land and improvements has changed from that entered in the assessment roll by reasons of a "new development" to the land or improvements, or a change in their "physical characteristics". The assessment formula equates a change in the ore body with the value of the improvements. The depletion of the ore body reduced the actual value of the improvements because, under the assessment formula, their value turned upon the remaining life of the ore body. The substantial depletion of an ore body certainly results in a change in its physical characteristics. This was an operating mine with an ore body of certain characteristics which include, inter alia, the volume of asbestos, its location, the ease of mining, quality of ore, accessibility, etc. To remove 17 percent of that ore is to change the physical characteristics of the ore body and, applying the assessment formula, changes the actual value of the improvements.

I am of the opinion, moreover, that the extraction of 17 percent of the ore body is a "new development" since the original assessment of July 1984. "New" in the sense that it reflected a condition that was "not previously existing" at the time of the original assessment (Oxford Dictionary, 5th Ed. p. 811). To confine the meaning of "new" in this Act to that which was "unexpected" or "unanticipated" would be to exclude any development which was carefully planned over a number of years, but not implemented at the time of the 1984 assessment. The other sections of sub-para. 2. (1.2) (b) indicate this was not the purpose of the legislation. Moreover, the legislation does not require any such strained interpretation to obtain the object of the legislation - that a taxpayer should each year pay tax based on the actual value of the land and improvements for that year in, accordance with the assessment formula, where the change in value is attributable to one or more of the causes listed in s. 2. (1.2) (b), and such change is not attributable to depreciation.

DEPRECIATION:

Counsel for the assessor asserted that any change in actual value attributable to the removal of ore constituted "depreciation" of the improvements. He submitted that since mining has reduced the life of the mine and the rate of the depletion of the ore body is directly related to the diminution in the actual value of the improvements, this diminution of actual value comes clearly

within the definition of depreciation - "a fall in value"; "reduction in worth"; the "deterioration or the loss or lessening in value arising from age, use, and improvements, due to better methods" (Black's Law Dictionary, 4th Ed. p. 428). Counsel submitted that depreciation is frequently computed utilizing the economic life of the asset and that it is common practice to have a percentage estimate which reflects the average effect of all components of accrued depreciation - physical, functional and economic - and that the mining of the ore body reduced its economic life and hence is properly characterized as depreciation. (The Appraisal of Real Estate, 6th Ed. American Institute of Real Estate Appraisers, p. 245).

Counsel for Cassiar takes the position that depreciation under s. 2. (1.5) refers to physical wear and tear of the article being assessed, which is at a much different rate than the depletion rate of the mine. He asserts that although, in determining the "actual value" of the improvements on the "life of the mine" formula of assessment, one must have reference to the economic life of the ore body, one looks to other factors to determine the depreciation rate of such improvements.

In my view, while it is common practice to equate depreciation with a diminution in the economic life of the asset being valued, we were not provided with an authority which equates that term as applied to mine buildings with the extent to which the mine itself has been depleted by reason of the removal of the ore. It hardly seems appropriate to equate depreciation of one object with what is in effect the extraction, processing and consumption of another unrelated product. Depreciation, in the sense in which it usually is used, relates to a diminution in value of a particular article not intentionally brought about by consuming a portion of the article itself, let alone the consumption of a portion of an unrelated article. Depreciation of a particular article may result from obsolescence, wear and tear or other causes over which the owner of the asset has little or no control. To remove and sell a portion of one's crop or herd, would hardly be referred to in normal usage as the depreciation of the crop or herd - let alone the depreciation of one's barn or other farm building, although it may result in a reduction in the economic value of such assets.

It is to be noted that the dictionary definition of depreciation refers to "a fall in value or a lessening in value arising from age, use, better methods, etc.". This presupposes that the asset still exists. In a mine a portion of the asset has been extracted and sold and is no longer owned by the taxpayer. The balance of the ore has not depreciated in value, there is just less of it. It is only because this particular formula has been used to fix the value of the improvements that the question of their depreciation as a consequence of the extractions of ore is raised at all. In my view, there has been no depreciation of the ore body. Its reduced value - which is the basis for the formula for the reduction in value of the improvements - is not related to depreciation of any kind. Hence, the mine improvements have not sustained depreciation as a consequence of the partial depletion of the ore reserves. What depreciation they have in fact sustained is not before the court.

The Assessment Appeal Board in their decision made the following statement:

"The Board is satisfied that the value reductions made to replacement cost new under the 'remaining life of the ore body method' represent depreciation of the earning capability of the assets from all causes on the basis of their remaining economic life."

"The Board is satisfied that the concept of depreciation as being the total accumulated reduction in value resulting from the reduced income generating capacity of assets is that which gives rise to the measurement of remaining economic life by both the "remaining life of the ore body" method and that which provides a percentage reduction dependent of the age of the asset; and that this is the concept which may be applied to the term as used in s. 2. (1.5)."

The assessor has taken the "replacement cost new" of the improvements and deducted therefrom a percentage based on the volume of the ore body extracted and has equated the difference to be "depreciation" purportedly because it represents the "earning capability of the improvements" on the assumption that they have no "economic life" apart from the mine, and that it reflects the "reduced income generating capacity" of the assets which in turn measures their remaining "economic life".

In fact, the mine improvements had the ability to generate just as much income in the year 1985 as they did in the year 1984. Their "income generating capacity" will only diminish when the mine shuts down, at which time it will become non-existent.

Accordingly, s. 2. (1.5) does not apply to preclude the assessor from making a revised assessment as required by s. 2. (1.1).

I would allow the appeal and answer the questions submitted for the court's consideration in the following manner:

1. Did the Assessment Appeal Board err in law in finding that the physical change in the property resulting from the extraction of asbestos ore, was not a change in 'physical characteristics' within the meaning of those words in subparagraph 2. (1.2) (b) (v) (A) of the *Assessment Act*, R.S.B.C. 1979, C. 21 (as amended) (the "Act")?

Answer: Yes.

2. Did the Assessment Appeal Board err in law in finding that the extraction of asbestos ore since the preparation of the assessment roll was not a 'new development' within the meaning of those words in paragraph 2. (1.2) (b) (iv) of the Act?

Answer: Yes.

3. Was the finding of the Assessment Appeal Board, that the extraction of asbestos ore was not 'a basis . . . by which a different actual value may appropriately be determined', contrary to all of the evidence and therefore an error in law?

Answer: Yes.

4. Did the Assessment Appeal Board err in law in finding that any change in value resulting from the extraction of asbestos ore was change it was precluded from considering because of the exception for depreciation in sub-section 2. (1.5) of the Act?

Answer: Yes.

In the result, the appeal is allowed.

I AGREE: The Honourable Mr. Justice Hinkson.

Reasons for Judgment of Mr. Justice Esson

March 23, 1989

Cassiar, the tax payer, appeals from a decision of Mr. Justice Bouck on a stated case. Cassiar's land and improvements were assessed for the period beginning July 1, 1984. The amount of the assessment was finally settled by the 1985 Assessment Appeal Board. The question is whether Cassiar has established grounds requiring the assessor to revise the roll for the purpose of taxation during the year commencing July 1, 1985.

The parties have agreed that there is no basis for revising the assessment roll for land. The issue therefore is only as to improvements. As to those, Cassiar contends that the mining which took place after completion of the assessment roll has reduced their "actual value" on the basis that the removal of ore was a "new development to, on or in improvements" within the meaning of s. 2. (1.2) (b) (iv); and was also a change in physical characteristics under s. 2. (1.2) (b) (v) (A). The relevant parts of the statute are quoted in the reasons of Mr. Justice Wallace.

The connection between the ore body and the assessment of the improvements appears from these paragraphs in the Agreed Statement of Facts:

8. The mine, improvements, machinery and equipment were valued before the 1985 Assessment Appeal Board based on the "remaining life of the ore body" method. That method requires a reduction in value of a single purpose industrial property such as a mine based on the remaining life of the mine as measured by the remaining life of the ore body. Thus, if a mine with improvements and machinery is built to process ore from an ore body which ore body has a ten-year life, the improvements and machinery would be valued in the second to last year of operation at 2/10ths of its replacement cost, plus salvage value, and in the last year of operation, at 1/10th of its replacement cost, plus salvage value.
9. Based on this method, the parties agreed to the values before the 1985 Assessment Appeal Board as appropriate for July 1, 1984.
10. The substantive issue in this appeal is whether the removal of the additional ore required the Assessor to issue a revised Assessment Roll.
11. Based on the reduced ore body, the remaining life of the ore body method of valuation would reduce the improvement and machinery and equipment values for the July 1, 1984 valuation date . . .
12. There is no change in the physical condition of the buildings and machinery and equipment from September 30, 1984 to September 30, 1985, except wear and tear.

The Assessment Appeal Board, confirming the Court of Revision upheld the position of the assessor that no basis has been established for a revised assessment roll in 1985. It gave lengthy reasons for that decision. The questions of law stated for the opinion of the court were:

1. Did the Assessment Appeal Board err in law in finding that the physical change in the property resulting from the extraction of asbestos ore, was *not* a change in "physical characteristics" within the meaning of those words in subparagraph 2. (1.2) (b) (v) (A) of the *Assessment Act*, R.S.B.C. 1979, c. 21 (as amended) (the 'Act')?
2. Did the Assessment Appeal Board err in law in finding that the extraction of asbestos ore since the preparation of the assessment roll was *not* a "new development" within the meaning of those words in paragraph 2. (1.2) (b) (iv) of the Act?
3. Was the finding of the Assessment Appeal Board, that the extraction of asbestos ore was not "a basis . . . by which a different actual value may appropriately be determined", contrary to all of the evidence and therefore an error in law?
4. Did the Assessment Appeal Board err in law in finding that any change in value resulting from the extraction of asbestos ore was a change it was precluded from considering because of the exception for depreciation in subsection 2. (1.5) of the Act?

(emphasis as in stated case)

The chambers judge found that the Assessment Appeal Board had not erred in law in its first three findings but that it had erred in law in respect of the fourth question. Because the answer to the first three questions results in the assessor's position being upheld, the finding of error in respect of the fourth question was academic in relation to the issue whether the roll must be opened. Cassiar appeals the decision of the chambers judge, contending that he came to the wrong conclusion in respect of the first three questions. The assessor cross-appeals in respect of the fourth question.

The conclusion of the chambers judge that the Board did not err in respect of the first two questions was based on his view that the statutory reference to "new development" and "change in physical characteristics" applies only to developments or changes which were "unexpected" or "unanticipated" at the date of the completion of the assessment roll in 1984. That was substantially the same reasoning as that applied by the Board. I question whether the language of the section should be narrowed in that way but need not reach a final conclusion on that point because I think, for a different reason, the answers were correct. That is that there was neither a new development nor a change in physical characteristics in the improvements. The depletion of the ore body could properly be regarded as a "new development" in respect of the ore body and as a change in the physical characteristics of the ore body. But it was not the ore body which was being assessed. The only change in the physical characteristics of the improvements was, as appears from paragraph 12 of the Agreed Statement, wear and tear, which clearly falls within "depreciation" in s. 2. (1.5).

Since there was no new development and no change in physical characteristics of the property being assessed, it follows that there was no change in its value for assessment purposes.

For that reason, I conclude that the Board did not err in law in respect of the first three questions. That conclusion renders the fourth question academic but, as it was answered in one way by the Board and in the opposite way by the chambers judge, I will explain why I agree with the Board's view of the matter. Its view in essence was that the nature of the "remaining life of the ore body method" is that it is a means of measuring the depreciation in the value of the mine, improvements, machinery and equipment. Any change in value brought about by the application of that method would therefore be, in the language of s. 2. (1.5) "depreciation occurring since the completion of the assessment roll" and cannot therefore be a basis for revising the roll.

I would dismiss the appeal of Cassiar, allow the appeal of the assessor and would hold that each of the four questions put forward in the stated case should be answered "No".