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**ASSESSMENT COMMISSIONER**

**v.**

**CANADIAN PACIFIC LIMITED AND CANADIAN NATIONAL RAILWAY COMPANY**

British Columbia Court of Appeal(V00952) Victoria Registry

Before MR. JUSTICE WALLACE (in chambers)

Vancouver, January 3, 1990

G. E. McDannold for the appellant  
T.J. Potter and F. H. Herbert for the respondents

**Reasons for Judgment**

May 30, 1990

Canadian Pacific Limited and Canadian National Railway Company apply for a direction that the appeal herein by the appellant Assessment Commissioner of British Columbia is limited to those issues arising under question six of the stated case filed in the Supreme Court in this matter, and in particular that the judicial interpretation of s. 27 (1.1) of the Assessment Act, R.S.B.C. 1979, c. 21, is not one of the subject matters of the appeal.

The matter came before me in April, 1989 on an application for leave to appeal. At that time counsel submitted that Chief Justice McLachlin, as she then was, misinterpreted s. 27 of the Assessment Act, R.S.B.C 1979, c. 21, and failed to recognize that the Assessor was required by s. 26 (3) to determine the actual value of the railway right of way by reference to the rates prescribed by the Commissioner from time to time.

Question 6 itself is in this form:

Did the Assessment Appeal Board err in law by applying s. 27 (1.1) of the Assessment Act on the basis of no evidence or in the alternative upon a view of the facts that could not be reasonably entertained?

In granting leave to appeal it was my view that the construction of s. 27 (1), respecting the issues raised by question six, constituted a proper consideration upon which to determine whether or not leave should be granted. The extent, on the hearing of the appeal, to which the construction or interpretation of s. 27 (1) is relevant is a matter for the consideration of the panel hearing the appeal. However, insofar as determining at this stage what matters should be included in the material before the Appeal Court, I am of the view that references to the construction and interpretation of s. 27 (1.1) are proper matters to raise before the panel. Of course, I am not making any observation or comment with respect to what the panel will consider appropriate to hear on an appeal from question six.

Costs will follow the event.