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MERRILL & RING CANADIAN PROPERTIES

v.

**ASSESSOR OF AREAS 1 - SAANICH/CAPITAL, 6 – COURTENAY & 8 - NORTH
SHORE/SQUAMISH VALLEY**

British Columbia Court of Appeal (CA012034) Vancouver Registry

Before

the HONOURABLE CHIEF JUSTICE McEACHERN,
the HONOURABLE MR. JUSTICE TOY,
the HONOURABLE MR. JUSTICE GOLDIE

Vancouver, June 4, 1992

P. Feldberg for the Appellant
G. McDonald for the Respondents

Reasons for Judgment (Oral)

June 4, 1992

McEACHERN: Counsel have struggled productively to resolve this problem and they are agreed that we should dismiss the appeal as abandoned and remit the matter to the Assessment Appeal Board. We do so without any instruction to the Board as we think we ought not to tie their hands in doing whatever they think should be done in the circumstances. If they err then, of course, that matter can be corrected by the procedure established under the various statutes.

With regard to the cross-appeal I am content to allow the cross-appeal by consent on the limited ground that the findings of fact binding upon all levels of this jurisprudential and quasi jurisprudential proceeding made the question wholly hypothetical. For that reason the allowance of this cross-appeal is not intended to have any precedential value except perhaps as to whether or not the question was indeed hypothetical. I appreciate, of course, that I cannot, as is sometimes the case in the United States, declare that the judgment has no precedential value, but I would wish all who read these reasons for judgment to know that what I am attempting to convey is simply that as the question was hypothetical because of findings of fact, that it ought not to stand in its present form particularly as the main appeal is being remitted to the Board in any event.

I would therefore dismiss the appeal as abandoned and allow the cross-appeal for the reasons I have mentioned.