B.C. COAST VEGETABLE CO-OP ASSOCIATION,
CLOVERDALE LETTUCE & VEGETABLE CO-OPERATIVE,
B.C. FRUIT PACKERS CO-OPERATIVE,
NARAMATA CO-OP GROWERS EXCHANGE,
MONASHEE CO-OP GROWERS ASSOCIATION,
OKANAGAN SIMILKAMEEN CO-OP GROWERS,
SIMILKAMEEN CO-OP ASSOCIATION,
VERNON FRUIT UNION

v.

ASSESSORS OF AREAS: 11-RICHMOND-DELTA,
14-SURREY-WHITE ROCK,
17-PENTICTON,
19-KELOWNA,
20-VERNON-REVELSTOKE

Supreme Court of British Columbia (A892336) Vancouver Registry

Before MR. JUSTICE MEREDITH

Vancouver, November 3, 1989

J. R. Lakes for the appellants
G. E. McDannold for the respondents

Reasons for Judgment November 24, 1989

This is an appeal by way of stated case from a decision of the Assessment Appeal Board. The decision was made by virtue of s. 75 of the *Assessment Act*. That section reads:

"75. After receipt of the decision of the Supreme Court or the Court of Appeal on an appeal or a stated case, the board shall, if the opinion is at variance with the conclusion at which it had itself arrived, direct the Assessor to make the necessary amendment to the Assessment Roll in accordance with the decision."

The Board had received a decision of the Court of Appeal (at variance with the decisions of the Court of Revision, the Assessment Appeal Board itself, and the Supreme Court). The decision was that "the regulation made on September 24, 1986, does not apply to the Assessment Roll prepared in 1986 for the purpose of taxation for 1987."

I need not discuss the significance of that decision except to say that packing facilities, although owned by the appellants as collectives, would qualify to be classified as farm under the Regulations made by the Assessment Commissioner approved by Order-in-Council. The packing house facilities would thus be taxed at a very considerably reduced rate than would otherwise have been the case.

After receiving the decision of the Court of Appeal, the Assessment Appeal Board convened a hearing and received the submissions of counsel both for the appellants and for the respondents as to the consequent amendments to be made to the Assessment Roll.

The purpose of the hearing was expressed by the Board as follows:

"The purpose of the hearing of May 12, 1989, is to establish the correct classification and values to be placed upon the folios in question for the 1987 Assessment Roll."

The Board went on then to order that certain values be placed upon certain lands and improvements. The order reads in part:

"Upon the Assessors recommending amended classifications and values to be placed upon the following folios, and upon Mr. Lakes, on behalf of the various Appellants, being in agreement, the Board orders the Assessors to place the classifications and values upon the following folios for the 1987 Assessment Rolls, viz: . . ."

The appellants argue in effect that the *Assessment Act* does not authorize a separate Assessment Roll for the year 1987. Rather they say that there is one Roll and one Roll only governing the years 1987 and 1988. Thus the amendment ordered should and must be to that single Roll. As there was no revision of that Roll made for the year 1988 by the Assessor the decision of the Court of Appeal must effectively bring about an amendment of the Roll governing both years. I agree.

That there is one Roll, and one Roll only, for the two years in question, is decreed by s. 2. (1) of the *Assessment Act*, as follows:

"2. (1) The Assessor shall, not later than September 30, 1984 and September 30 in each even numbered year after that, complete a new Assessment Roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the Assessment Roll a notice of assessment, and in each case the Roll so completed shall, subject to this Act, be the Assessment Roll for the purpose of taxation during the 2 following calendar years."

It is true that if there is a change in classification as there was in this case, the Assessor is required to complete a revised Assessment Roll. If he had done so the appellants could have appealed the revision provided there were grounds for doing so. But no revision was ever made, nor could it have been given that the decision of the Court of Appeal was much later than the time limited for the Assessor to make the necessary revisions to the Roll as it would apply to the year 1988. But even if revisions were made, the Roll would remain a single Roll for the years 1987 and 1988.

In the result, I conclude that the reasons of the Assessment Appeal Board are based upon the misconception that separate Rolls exist for the years 1987 and 1988.

The Board held that it was without jurisdiction to correct the values for 1988 because no appeal had been launched by the appellants against the 1988 Roll. For instance, this passage appears from the reasons of the Board having to do with jurisdiction:

"The only way the Board could consider correcting values or classifications regarding that assessment year (1988), would be if a complaint had been filed against the 1988 Revised Roll and dealt with by the Court of Revision and then appealed to the Board, by the appellant taxpayers.

As no appeal was launched from the Court of Revision, regarding the 1988 revised Roll, and as the Assessment Commissioner took no action by September 30, 1988 to affect the classification of the Rolls in question, and no directions were received from the Supreme Court, (the only

direction received from the Court of Appeal dealt with the 1987 Roll value), the Board is without jurisdiction to consider the 1988 revised Assessment Roll, insofar as these properties are concerned."

With all respect, once the single Roll for the two years is ordered to be corrected, the single Roll will be so corrected and no revised Roll then exists.

The same misconception is the foundation for the conclusion of the Board that one rule can apply to what the Board called a 1987 Roll and another to what the Board called a 1988 Roll, assuming that the Board has jurisdiction. For instance this passage appears:

"While Section 5.1 of B.C. Regulation 298/85 may not have applied for the 1987 Assessment Roll regarding the legal title of the land on which the production takes place and the title to the land where the packing takes place (according to the Court of Appeal), it certainly is applicable for the 1988 Revised Assessment Roll."

As I have said, the Rolls are not separate and there was no revision in 1988, of the 1987/88 Roll.

Thus, the farm classification, the subject of the decision in the Court of Appeal, applies to both 1987 and 1988. The Board had jurisdiction to come to this conclusion. Thus, all four of the questions posed on the stated case will be answered in the affirmative.

The appellants are entitled to their costs. Section 74 (4) of the *Assessment Act* leaves costs to the discretion of the Court. Normally in these matters, the costs awarded are as if the amount involved cannot be determined, that is to say, double the amount taxable under the basic tariff. The appellants submit that they should be entitled to very much more than the normal costs for the special reasons first that they have had to persevere in coming back to Court so many times on much the same matter, and because the matter is important to a class of persons or general or public interest. I agree. For those reasons, costs will be taxed as if the amount involved were $50,000.