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**ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER**

**v.**

**SCOTT PAPER LIMITED**

Supreme Court of British Columbia (A932813) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE HUDDART (in chambers)

Vancouver, March 23, 1994

J.D. Houston for the Appellant  
R. Ellison for the Respondent

**Reasons for Judgment (Oral)**

March 23, 1994

THE COURT: The Assessor asks for an opinion of this court on a Stated Case arising from the 1991 Assessment of the facilities of Scott Paper Limited in New Westminster. During the appeal the Assessor abandoned question number two. In my view the Board reached the correct result although its succinct reasons are difficult to follow probably because of an omission.

In 1982 Scott Paper built a concrete retaining wall around a fuel oil tank to prevent the spillage of oil into the environment, including the Fraser River some 300 feet away. The Assessor granted a full exemption for that containment area in 1983 and thereafter until 1991 when it removed the exemption in full. On appeal, the Assessment Appeal Board ruled that the containment area was 100 per cent exempt from taxation as being, "used for the abatement of pollution under section 398(1)(q.1)."

The Board could also have said that the containment area was designed in 1982 and exclusively used since for the purpose of abating pollution by controlling waste substances. Such a conclusion is necessarily implicit in the Board's reasons. I think the Board should have said so, to make clear that it had taken into account the amendment to sub-section 398(1)(q.1) of the *Municipal Act* after the reasons in *Cominco Ltd. v. Assessor of Area 21 - Nelson-Trail*, (1987) B.C. Stated Cases No. 246.

The section considered in *Cominco* did not include the words "adapted" or "designed." It seems obvious that those words were added to ensure that the intention of the legislature in permitting the exemptions from taxation was advanced by the section. That intention is to provide an incentive for the installation of anti-pollution improvements. It is not to permit a taxpayer to gain an exemption for some improvement made and used for a different purpose for many years because the present use is partially or entirely to prevent pollution. But that is not the present case.

It may be that Scott Paper built the containment area taking account of concerns under the *Fire Code*, anticipated waste management regulations, and the *Fisheries Act*. It may be that it built the containing wall in 1982 because the *Fire Code* demanded the structure. Nevertheless, the building of a structure to prevent the spillage of oil which becomes useless upon the spillage, is clearly designed to abate pollution of the environment. It is irrelevant what governmental requirements encourage the land owner to make the improvement. Thus, while the wording of the

reasons might have been unfortunate, I can find in them no error of law or facts such as to support an affirmative answer to any question. So, I answer the questions this way:

1. Did the Assessment Appeal Board err in law in its interpretation of section 398(1)(q.1) of the *Municipal Act*? No.
2. Did the Assessment Appeal Board err in law in its interpretation of the meaning of "primary" in considering the exemption in question? No.
3. Was the decision of the Assessment Appeal Board that the berm should be exempted from taxation a decision made without evidence or upon a view of the facts that could not reasonably be entertained? No.

There will be no costs to either party.