The following version is for informational purposes only

CROWN PACKAGING LTD.

v.

ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER

Supreme Court of British Columbia (A972797) Vancouver Registry

Before the HONOURABLE MR. JUSTICE HENDERSON

Vancouver, January 28, 1998

M.A. Lakhani for the Appellant
G.E. McDannold for the Respondent

Reasons for Judgment (Oral) January 28, 1998

THE COURT: This is an appeal under s. 63(3) of the *Assessment Act* from a decision of the Assessment Appeal Board, together with a cross-appeal by the Assessor. Each of these appeals is limited by the terms of the statute to a question of law alone. I may set aside the decision of the Board if, but only if, I find that it has erred on a question of law alone.

The appeals are concerned with the refusal to grant an exemption to a certain piece of land and the improvements on it owned by the Appellant, Crown Packaging Ltd., which exemption is available under s. 398(1)(q.1) of the *Municipal Act*. The cross-appeal is concerned with the granting of a partial exemption with respect to a portion of the land in question under the same exemption provision.

That provision of the *Municipal Act* reads as follows:

Land and improvements adapted or designed and exclusively used for the purpose of abating pollution by controlling waste substances, but not including improvements used for the purpose of converting or treating waste substances with a view to producing from them any commercial or useful product, provided that where land or improvements exempted under this paragraph are not exclusively used to abate pollution in the manner referred to in this paragraph, but are primarily so used, the assessment commissioner may, in his discretion, determine the portion of the assessed value of land or improvements attributable to that abatement and that portion is exempt.

As for a question of law alone, an exhaustive definition of that phrase for the purposes of an assessment appeal to this court is found in *Assessor of Area 26 - Prince George* v. *Cal Investments Ltd.*, Vancouver Registry No. A923378, a decision of Madam Justice Ryan, who was then of this court, on January 19, 1993. There, Madam Justice Ryan said, at page 1969:

For the purposes of the *Act*, a question of law has been defined as follows:

1) a misinterpretation or misapplication by the Board of a section of the *Act*;

2) a misapplication by the Board of an applicable principle of law;

3) where the Board acts without any evidence;

4) where the Board acts on a view of the facts which could not reasonably be entertained; and

5) where the method of assessment adopted by the Board is wrong in principle.

It will be noted that this court has no jurisdiction to review in any general sense a finding of fact by the Board. However, it is correct to say, as the Appellant has urged, that where there is no reasonable basis on the evidence for the Board coming to a conclusion - in other words, where the Board's view of the facts could not reasonably be entertained - then the appeal is to be allowed.

The material facts are found in the Stated Case, which is the process mandated by the statute for the hearing of an appeal of this sort.

In the Stated Case, the Board has noted that the property in question is a site of some fifty acres, located on the north arm of the Fraser River in Burnaby. Much of the land and improvements are classified as either Class 4, major industry or Class 5, light industry. The principal buildings and improvements on the property consist of executive offices, a staff parking area, a building known as the Western News Print Building, a paper mill, including offices on two floors of that particular mill building, and a supply/storage area. There is also another storage building, a steam plant, a water plant, a sewage treatment plant and a primary clarifier.

The land in question also includes an unimproved area of some ten and one-half acres referred to as the landfill. That is the subject of the cross-appeal.

All of this property is owned, and most of it is operated, by the Appellant Crown Packaging Ltd. Crown Packaging Ltd. is a company incorporated in the province of British Columbia and has several divisions. Its business is the processing of "post-consumer materials" to convert them into paper.

The property is used by the paper recovery division and the recycled paper mill division of the Appellant Crown. The paper recovery division coordinates the recovery of these post-consumer materials under what is described as the "Blue Box Program". These materials are purchased by Crown from municipalities, large industries and consumer and retail stores. The paper recovery division has its own recycling collection facilities at various locations around the Lower Mainland. These locations have already received pollution abatement exemptions.

The materials are transported to these recycling collection facilities, stored there for a period of time, and then transported to the property with which this appeal is concerned. The paper recovery division directs the distribution of the post-consumer materials, while the recycled paper mill division purchases these products, processes them at the mill and converts them into industrial grade and packaging grade paper.

The mill was designed for making pulp and paper and has been used for that purpose since 1957. Its raw material is, as I have indicated in some detail, recycled products. This differentiates it from many other mills in the province. The processing at the mill consists of pulping, screening, and the forming of a stock which then goes through a press and becomes paper. The paper is stored on large reels which are stored in the mill warehouse.

The Stated Case also includes a detailed description of the purposes of the various buildings on the land which I will not repeat here.

The mill process generates a fibre loss rate of about 10 percent. That is to say, for every 100 tons of post-consumer materials or waste brought to the mill, about 10 tons is not used. The sorting, storing and screening processes result in its rejection. This rejected material is in some cases placed in the landfill and in other cases is trucked to another location as waste. The paper is sold by Crown for a profit.

On those facts, the Board found that Crown's intention, for the purpose of assessing its entitlement to an exemption under the *Act*, was manufacturing, not the abatement of pollution. Its decision resulting in that finding begins at page 13 of the Board's reasons. The Board began by referring to a previous decision of this court in *Balaclava Holdings Ltd.* v. *Assessor of Area 12* which applied a definition of the word "manufacturing" found in an earlier decision of the Supreme Court of Canada. That definition is as follows:

"Manufacture" is the production of articles for use from raw or prepared material by giving to these materials new forms, qualities and properties or combinations, whether by hand or machinery.

The Board went on to say that the case before it was similar to the *Balaclava* case. It found that the product produced by Crown is a manufactured product. The Board noted that the raw material used by Crown comes from various municipalities and from the Blue Box Program as well as from some private companies producing waste.

The Board noted that the waste materials are baled by Crown and picked up for delivery to the paper plant. Reception at the gate is, in the Board's opinion, the commencement of the eventual paper making process. The Board went on to say this:

The Board agrees with the Assessor's argument that the process which occurs in the subject property is similar to that which occurs in any pulp mill in B.C. In this case, the raw material, being a secondary fibre, is put through a series of processes to manufacture the stock for the pulp, which is in turn manufactured into paper products. The Board agrees that the end product of this process is a new product with a different form, quality and property from the post-consumer paper product initially purchased and/or shipped to the subject property. The fact is also that the mill was designed and used for making pulp and paper from recycled products since 1957. Long before the recycling program came about, there were little or no environmental pressures or inducements to do so. There have been little or no design changes to the land and improvements since that time.

After making those findings, the Board referred to the *IPA* case, which is *Assessor of Area 08 - North Shore* v. *International Paper Industries*; and the *Scott Paper* case, which is cited in its decision as *Assessor of Area 10* v. *Scott Paper Limited*. The Board noted that the decision in *IPA* restricts the exemption under the legislation to property at which the actual process of conversion of the paper, including the sorting and collecting, is done off-site. This, in the present case, would be Crown's other locations for which it already receives pollution abatement exemptions.

The decision goes on to say:

The Board rejects Crown's argument that the site under appeal merely converts or treats the waste paper. Clearly, based on the definition of manufacture applied by the Board in *Balaclava*, the process undertaken at the subject property is in the nature of manufacture rather than conversion.

This analysis led to the Board's conclusion. At page 16, it said:

The storage spaces located on site are for mill inventory or the storage of raw material. They are holding areas which ensure the supply of the raw materials for the mill. Virtually all of the paper is used in the mill process. Once the paper is manufactured, it is stored in the warehouse until it is sold. Mr. Strom acknowledged that the storage areas were integral to the site operations. Consequently, the Board finds that the storage areas are a necessary and integral part of the manufacturing process. The Board is not persuaded that these parts of the property are improperly classified.

While the Board did not expressly say so, it has found, by necessary implication, that the land and improvements under discussion here are not adapted or designed and exclusively used for the purpose of abating pollution by controlling waste substances. In my view, that is a view of the facts which could reasonably be entertained by the Board.

The purpose for which this land and these improvements were adapted and designed and used can be understood in several different senses. On a very general level, the purpose of the land and improvements was to earn income for the shareholders of Crown, a profit making enterprise. More specifically, the purpose is to make a commercial product, paper, by using certain types of waste as raw materials. That is the process of manufacturing, as the Board has concluded. A third way of stating the purpose of this land and these improvements is that it was to recycle waste material, which causes an abatement of pollution.

The Board identified the second of these as the true purpose of relevance to a claim for an assessment exemption under the legislation. In doing so, the Board considered the facts and the relevant prior decisions of the Board, of this court, and of appellate courts. The Board's finding that the true purpose is manufacturing, not pollution abatement, is one it could reasonably reach on the basis of the facts and cases before it.

The Board did not accept the argument by Crown that the mill operation as a whole had a dual purpose, manufacturing paper and abating pollution. It was urged that the mill was primarily used to abate pollution and, consequently, should receive a partial exemption. I find that the Board was entitled to reject the dual purpose argument advanced by Crown. The Board's view of the facts led to its conclusion that the mill had only one purpose relevant to assessment exemptions -- manufacturing. On these facts, that view can be reasonably entertained. The abatement of pollution occurs at an earlier stage of Crown's operations, when the waste is picked up from consumers.

Aside from the landfill, the Board refused to consider the independent components of the mill operation in isolation for the purpose of granting exemptions to those portions. The Board has not erred in principle in refusing to examine the component parts of the mill in this way. A building by building examination of the purpose of each component part would have amounted to an artificial exercise which is not required by the statute. The Board, in my view, was correct to resist the invitation to do that.

Accordingly, my answer to the first eight questions in the Stated Case is "No."

I turn now to the cross-appeal.

As I have said, there was one instance in which the Board did examine an individual component of the land in question. That resulted in its decision that the landfill was entitled to an exemption.

The Assessor argues that this was an error in law. He says the landfill is part of the process of the mill operation at the site. It is not a stand-alone landfill, but an integral part of the overall manufacturing process. The Assessor says that in *Newmont Mines Limited* v. *The Queen*, Stated Case number 151 of the Board, which was subsequently reviewed by the Court of Appeal, it was

determined that a landfill is not qualified for a pollution abatement exemption when it is the very land itself that is being polluted. The court held that, because a landfill is the very thing being polluted, it cannot be said the landfill is used for control or abatement of pollution. *Newmont Mines* was denied its application for a pollution abatement exemption.

In response to that argument and in support of the Board's decision, Crown points to some of the evidence that was before the Board. The Board was told that the mill process generates a fibre loss rate of approximately 10 percent. For every 100 tons of post-consumer materials brought to the mill, about 10 tons is found to be not usable as a result of the sorting, storing and screening processes. This is waste, but it is waste that is rejected by the mill operation. It is not used as raw material. This rejected raw material is, in some cases, placed in the landfill. For every 100 units of recovered paper and other material that is delivered to the mill site, only 90 end up being sold to a customer by Crown. Approximately 10 units go to the internal landfill. Mr. Strom, Crown's witness, was asked:

Could you describe the kind of waste material that comprises the 10 percent that is not used from recovery?

Answer: It's nuts, bolts, staples, plastic, and I say this not facetiously, many times things like engine blocks, people will try and slip in there, you know. You can think of anything that you might throw in your garbage can at home or somebody might throw in your garbage can for you could end up in our mill site as waste. I was walking around there yesterday and there were soup cans, garbage.

He said, "the waste that is part of our process is main generated waste, things that people have added to the waste paper stream."

On that evidence, the Board found that the landfill is an area adapted and exclusively used for the purpose of abating pollution by controlling waste substances, "in that," said the Board:

. . . it intercepts unusable contaminants from the waste stream which would normally enter municipal landfills.

The Board went on to distinguish the *Newmont Mines* case by pointing out that in the instant case, unlike the *Newmont Mines* case, the substances dumped onto the landfill are not generated on the subject property. The Board said as a consequence that:

To some extent the landfill controls or abates pollution, and that ... is a rationale for the exemption from taxation.

It is the interception of contaminants from other locations which, in the Board's view, distinguishes this landfill from the one in the *Newmont Mines* case.

On this issue, also, I find the Board made no error in law or in principle. The Board came to a conclusion on the evidence before it which is not unreasonable. Its decision on the landfill question is also affirmed. The last three questions in the Stated Case are also answered in the negative.

Costs, gentlemen?

(SUBMISSIONS BY COUNSEL)

THE COURT: There will be no order as to costs.