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ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER

v.

SCI CANADA LTD.

British Columbia Court of Appeal (CA025298) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE HUDDART

Vancouver, February 10, 1999

J.H. Shevchuk for the Appellant
G.S. Snarch for the Respondent

Reasons for Judgment (Oral)

February 10, 1999

HUDDART, J.A.: The Assessor seeks leave to have decided by a panel of this Court two questions of law. Firstly, did the learned Chambers judge err in the definition he ascribed to "cemetery" found in the *Cemetery and Funeral Services Act* R.S.B.C. 1996 ch. 45? Secondly, did the learned Chambers judge err in the meaning he ascribed to the words "incidental" and "ancillary" found in the *Cemetery and Funeral Services Act* R.S.B.C. 1996 ch. 45?

Because I have reached the view that these are questions of law, and I cannot say there is no merit in the appeal, I consider that leave should be granted.

The Respondent asks me to impose the conditions imposed by Madam Justice Proudfoot in *Hennessey v. the Assessor of Area 01*, 1996 B.C. Stated Cases 367. There, leave to appeal was granted on the condition that, if the Assessor succeeded he would not claim costs in the Court of Appeal; and if he failed, the property owner would be entitled to costs on a solicitor-client basis.

In that appeal, the Chambers judge found the appeal was of significance to the Assessor, but of little monetary value for the property owners. In this case, the appeal has considerable significance for both parties. While I have some concerns as to how much merit there is in the appeal, I do not think it is a situation where I should make that order.

It will, of course, be open to the Respondents, if they are successful on the appeal, to make an application for solicitor and client costs.