

March 30

76

Appeal of Permit Requirements to the Supreme Court

0262150-P1-2401

The appeal was heard March 29, 1976 at 10:00 a.m. by the Honorable Mr. Justice Ruttan. After hearing both sides of the argument the judge made some comments and then his decision. There was no court reporter so only the decision will be available from Mr. Hutchison.

A couple of observations and comments of the Honorable Mr. Justice Ruttan were:


- a) He observed that since the notice of appeal was dated May 24, 1974, a considerable time was taken by the Branch to bring the case before the court.
- b) He observed that during that period of time between May 24, 1974 and to date no action was taken to pursue the matter towards a summary conviction, although he felt that this avenue was open to the Director for non-compliance with the Permit.
- c) He observed and was concerned that a member of the Board was at the first day of the appeal and not at the second day of appeal. For a majority on the first day 3 persons of the 5 would be required, as would 3 of the 4 persons constitute a majority on the second day of the hearing. For any other number of Board members, a missing member could have constituted a breach of natural justice.
- d) He observed that there was not a breach of natural justice by the Board and that the Director had jurisdiction under the Act (Pollution Control Act, 1967) to issue a Permit, and he upheld the Board rulings on the matter.

As it would appear that administration of the Permit comes under the Coast Region, I would recommend that a decision be made on either laying charges or taking the matter before Municipal Affairs, if necessary, to ensure a level "A" operation. After we have decided on a course of action, we should notify Campbell River that a site inspection will be made in about one month's time, and unless the site is being operated as a level "A" operation we will be forced to take a certain course of action. If necessary, the decided course of action should be pursued.

GEO/du

  
G.E. Oldham

F. Action recommended: - Legal ✓

Signed 

W. WHITE.

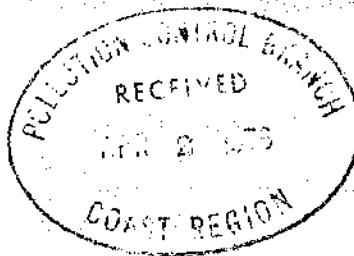
cc: Central Registry

GREASE & COMPANY  
Barristers and Solicitors

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ALLAN R. WATSON  
JACK ANGUS  
C. M. HUGGART  
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JOHN C. COWAN, O.C.  
R. N. SAMSON  
J. D. PATTERSON  
PETER W. KLASSEN  
R. T. TAYLOR

PLEASE REPLY  
ATTENTION OF  
FILE NO.

R.B. Hutchison  
47700



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DEPT. OF LANDS, FORESTS  
AND WATER RESOURCES  
WATER RES.

1976

PE 109 NIN

POLLUTION CONTROL BRANCH

March 31st, 1976

Mr. William Venables, Director  
Pollution Control Branch  
Parliament Buildings  
Victoria, B.C.

Dear Sir:

Re: District of Campbell River  
Pollution Control Board Appeal

This letter will serve to confirm our telephone conversation when I told you that the above Appeal by Campbell River was heard by Mr. Justice Ruttan in Victoria on Monday, March 29th, 1976. At the end of the hearing Mr. Justice Ruttan dismissed the Village of Campbell River's Appeal.

Unfortunately because/as we did not feel a Court Reporter was necessary in an Appeal on legal arguments there was no Court Reporter available to write down the Judge's Reasons for Judgment.

The most interesting part of Mr. Justice Ruttan's Judgment for future use was his disposition of the argument made by the Village of Campbell River that the director must first find a polluted condition exists before he can call upon the parties involved to take out a permit. Mr. Justice Ruttan agreed with the Crown's contention that there is no requirement. Section 9 and Section 10(d) make it clear that the director has the power and in fact the duty to make plans to prevent pollution before it develops. Therefore the director has the jurisdiction to require the permit. A lot of other rambling arguments were made. Perhaps the one with most substance was the fact that the board had dwindled from 5 to 4 prior to making its decision. I was able to file a subsequent Affidavit that Mr. Caine the absent member did not participate in the decision and Judge

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SEARCHED	INDEXED
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APR 2 1976	
VICTORIA	

F. Action recommended: - Legal ✓

Signed   
W. WHITE.

RBH: 47700  
March 31st, 1976  
Page 2 . . .

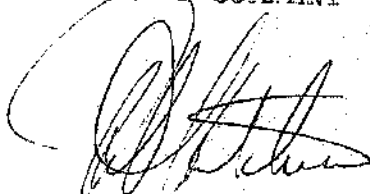
Ruttan ruled that since in both instances a majority of 3 members would have been required to decide the matter (that is whether 4 or 5 had been sitting on the board), this was not a breach of the rules against natural justice.

I would think it best in future for the board wherever possible not to juggle its composition once it had embarked upon a hearing.

I will forward my account to the Attorney General's office when a formal Order has been drawn and entered.

Yours truly,

CREASE & COMPANY



R.E. Hutchison  
Rsh:gr

cc Mr. D.A. Doyle  
✓ cc Mr. A.R. Hayman  
cc Mr. J.E. Cow-Jones

F. Action recommended: - Legal ✓

Signed

W. WHITE.

cc: Central Registry

A.A.Hayman

Chief - Regional Division

Regional Manager - Coast

May 27

76

Campbell River Refuse Site - History

0262100-PR-2401

This Permit was issued on November 29, 1973 to the District of Campbell River for the discharge of 50 cu yds/day of municipal refuse. Requirement is for "A" level operation, which calls for daily covering. The site is about four miles from the town in a bowl shaped depression in a gravel pit. There is standing water in the bottom of the depression and this rises and falls with the level of McIvor Lake, which is about 3/4 of a mile away.

The history of the application and Permit is as follows:

The site was registered (17-9-44) on December 20, 1970 and the applicant was pre-ordered to apply for a Permit on Feb. 22, 1973.

- Nov. 29, 1973: Permit issued for "A" level operation.
- Dec. 13, 1973: Municipality appealed terms of Permit.
- Apr. 29 and May 17, 1974: Appeal heard by Board, and appeal disallowed, although it was considered that fencing requirements might be relaxed.
- June 17, 1974: Municipality appealed to Supreme Court under Action No. 645.
- Dec. 9, 1974: Letter from Pollution Control Branch Counsel, Mr. R.A. Edwards, to the municipality asking what steps had been taken to proceed with the appeal, and also advising them that under the terms of the Pollution Control Act "no appeal shall act as a stay of execution".

After July 9, 1974 the site was inspected a number of times by Pollution Control Branch personnel, and it was observed that garbage was being burned, and no regular covering was taking place. In addition, fill was not placed in the bottom of the depression, as required by the Permit.

On the following dates the District of Campbell River were advised in writing that the operation of the refuse site was out of compliance with the terms of Permit PR-2401, and that an appeal was not a stay of execution.

April 28, 1975 (reply attached)  
July 14, 1975  
August 20, 1975  
Oct. 1, 1975 (meeting - T. Oldham & Mr. Anderson)  
Nov. 27, 1975 " " "  
April 13, 1976

- March 29, 1976: Appeal heard by Mr. Justice Ruttan in B.C. Supreme Court Appeal dismissed and the Order of the Pollution Control Board confirmed.

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F. Action recommended: legal.

Signed: W. WHITE  
W. WHITE  
TECH. I

cc: Central Registry

Justice Ruttan commented that it appeared a considerable time had been taken in bringing the matter before the Court, and also questioned why legal action for non-compliance had not been taken against the municipality.

On April 22, 1976 a meeting was held in the offices of the District of Campbell River between J.W.Thomas and H.Faust of the P.C.B., and Mr. Anderson and Mr. Mawdsley of the District of Campbell River. When we requested the meeting, we were advised that the Public Works Committee would attend, however they were not present. The dismissal of the appeal was discussed, and Mr. Anderson said that the municipality would comply with the Order of the court, but very reluctantly, and that a "study" would have to be carried out in order to determine how to meet the terms of the Permit.

The municipality, in addition to their letter of May 2, 1975 have advised us a number of times that they do not want to operate the refuse site as required by the Permit because it will cost them more money, and they can not see that the present method of operation is doing any harm.

The Comox-Strathcona Regional District have also advised the Coast Region office a number of times that they are not interested in operating any refuse sites in their area at the "A" level as long as nothing is being done about the Campbell River refuse operation.

No legal action for non-compliance was initiated against the Municipality of Campbell River because we don't usually, as a matter of policy, take legal action while an appeal is pending, and also because the Regional offices have been advised a number of times that it is not Branch policy to take legal action against municipalities, Regional Districts or other Government Agencies.

*J.W. Thomas*

J.W.Thomas

JWT:vh  
Attach.

*Letter & photos*

F. Action recommended: Legal.

Signed: *W. White*  
W. WHITE  
TECH. I

cc: Central Registry