

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Teck Metals Ltd. v. Assessor of Area #21 –  
Nelson/Trail*,  
2026 BCSC 781

Date: 20260430  
Docket: S246152  
Registry: Vancouver

In the Matter of a Stated Case Under the *Assessment Act*,  
R.S.B.C. 1996, Chapter 20, Section 65

Between:

**Teck Metals Ltd.**

Applicant

And

**Assessor of Area #21 – Nelson/Trail  
and Property Assessment Appeal Board**

Respondents

Before: The Honourable Justice Fowler

On appeal from: A decision of the Property Assessment Appeal Board of British  
Columbia, dated June 25, 2024 (*Teck Cominco Metals Ltd. v. Area 21*,  
2024 PAABBC 20221370).

## Reasons for Judgment

Counsel for the Applicant:

J. Fraser  
J. Mayfield

Counsel for the Respondent, Assessor of  
Area #21 – Nelson/Trail:

T.M. Summers

Property Assessment Appeal Board:

No appearance

Place and Dates of Hearing:

Vancouver, B.C.  
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Place and Date of Judgment:

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**INTRODUCTION**

[1] This is a stated case appeal from a decision of the Property Assessment Appeal Board (the “Board”) under s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 [Act].

[2] The Applicant, Teck Metals Ltd. (“Teck”)<sup>1</sup> appeals the Board’s decision denying exclusion for property taxation purposes of 17 tanks (the “Tanks” or “Vessels”) located at Teck’s smelter in Trail, British Columbia (the “Smelter”).

**BACKGROUND**

[3] The Smelter produces zinc through electrolysis. Electricity is passed from a lead anode through a zinc electrolyte solution within an electrolytic cell causing pure zinc to deposit or plate onto an aluminum cathode. When electrolysis is completed the aluminum cathode is temporarily removed from the cell and the pure zinc extracted off the cathode.

[4] The electrolysis process takes place in the Electrolytic and Melting Plant (“EMP”).

[5] The zinc electrolyte solution is produced at the Smelter in four different plants, each operating as part of what is referred to as the Zinc Circuit. The Vessels are in three of these plants, known as the Sulphide Leaching Plant (the “SLP”), the Oxide Leaching Plant (the “OLP”) and the Zinc Pressure Leaching Plant (the “ZLP”).

[6] The plants in the Zinc Circuit operate in combination and sequentially to produce zinc electrolyte solution of a purity suitable for electrolysis.

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<sup>1</sup> Teck’s name appears incorrectly as “Teck Cominco Metals Ltd.” in the Board’s Decision and in the Notice of Stated Case. This has since been corrected by this Court’s October 2, 2024, order amending the stated case style of cause to reflect Teck’s correct name “Teck Metals Ltd”.

### Statutory Context

[7] Sections 3 and 18.1 of the *Act*, considered in combination, require the annual assessment of the value of all land and improvements, unless exempted from assessment, in British Columbia.

[8] Section 1(1) of the *Act* defines “improvements” broadly to mean:

[...] any building, fixture, structure or similar thing constructed or placed on or in land, or water over land, or on or in another improvement, but does not include any of the following things unless that thing is a building or is deemed to be included in this definition by subsection (2):

- (a) production machinery;
- (b) anything intended to be moved as a complete unit in its day to day use;
- (c) furniture and equipment that is not affixed for any purpose other than its own stability and that is easily moved by hand;

[9] Subsection 1(2) of the *Act* deems a long list of things to be improvements unless otherwise excluded by a regulation under ss. 22(1)(a)<sup>2</sup> or 74(2)(d) of the *Act*.

[10] Specifically relevant to this stated case is ss. 1(2)(l) of the *Act* that deems “any vessels, such as tanks, bins, hoppers and silos, with a prescribed capacity and any structure that is connected to those vessels” to be improvements and subject to assessment.

[11] Section 74 of the *Act* grants broad powers to the Lieutenant Governor in Council to make regulations. Specifically, s. 74(2)(d) permits the making of regulations “excluding from the definition of improvement any category or type of thing included in that definition by s. 1(2)” of the *Act*.

[12] In addition, s. 74(2)(b) of the *Act* authorises the making of regulations “prescribing capacity for the purposes of s. 1(2)(l) of the *Act*. Pursuant to s. 1.3 of the *Assessment Act Regulation*, B.C. Reg. 433/98 (the “*Regulation*”) the prescribed capacity of a tank, falling within the broader definition of vessel, deemed to be an

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<sup>2</sup> The regulation power under s. 22(1)(a) deals with railway property and is not relevant to this stated case.

improvement by s. 1(2)(l) of the *Act*, is 5,000 gallons. The parties agree that all the Vessels have a capacity greater than 5,000 gallons and, therefore, fall within the definition of vessel and are deemed to be improvements unless otherwise excluded by regulation.

[13] Section 1.2(1)(v)(i) of the *Regulation* excludes from the definition of improvement in s. 1(2)(l) of the *Act*, the following vessels:

- (i) cyclones, **dust and particulate collectors or separators**, power and recovery boilers, furnaces used in industrial processes, rotary dryers, rotary kilns, rotary mixers, compressor tanks, evaporators, heat exchangers, electrolytic cells, **electrolytic tanks**, stripping or scrubbing vessels or expansion tanks;

[Emphasis added.]

[14] Therefore, expressed simply, the issue on this stated case is whether the Vessels, deemed to be improvements and subject to assessment by s.1(2)(l) of the *Act*, are otherwise excluded by regulation from the definition of improvements, and therefore, assessment, because they are either “dust and particulate collectors or separators” or “electrolytic tanks”.

### **Summary of Parties’ Positions Before the Board**

[15] Teck argued before the Board that the proper interpretation of “electrolytic tanks” and “dust and particulate collectors or separators” in s. 1.2(1)(v)(i) of the *Regulation* is as follows:

“Electrolytic tanks” include vessels that are used in producing electrolyte in the Zinc Circuit, not merely tanks in which electrolysis occurs, which are already separately exempted as electrolytic cells.

“Dust and particulate collectors or separators” include vessels that collect or separate particulate found in liquids and in air. Within the *Regulation*, particulate must have a broader meaning than dust, which is airborne particulate, otherwise the Legislature would have simply limited the exception to dust.

[16] Teck further argued that the Board was bound by the decision of the Court of Appeal in *Assessor of Area #6, Courtenay v. Quinsam Coal Corp.*, 2002 BCCA 68 [*Quinsam*], which held that the Major Industrial Properties Manual (MIPs Manual),

which was adopted as a regulation pursuant to s. 20(5) of the *Act* to establish rates, formulas, rules or principles for the calculation of the costs of replacing an existing industrial improvement, could not be relied on to define terms in the *Act*.

[17] The Assessor argued that “electrolytic tanks” was confined to the tank portion of the electrolytic cell in which electrolysis occurs.

[18] In respect of “dust and particulate collectors or separators”, the Assessor argued that this was intended to be limited to vessels that remove airborne particulate from gas or air, but not particles from a liquid stream.

[19] The Assessor also argued that the MIPs Manual could be relied upon by the Board to assist in the interpretation of the *Regulation*.

## **STATED CASE**

### **Court’s Jurisdiction on a Stated Case**

[20] The court’s jurisdiction to hear and determine a stated case arises from s. 65 of the *Act*, which states:

#### **Appeal of board decision on question of law**

65 (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a treaty first nation, the government, the Nisga'a Nation or the assessment authority, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

(2) Within 21 days after receiving the decision referred to in subsection (1), the person must deliver to the board a written request to refer the decision to the Supreme Court, and include in the request the question of law to be referred.

(3) On receipt of the request under subsection (2), the board must promptly provide written notice of the request to

(a) the parties to the appeal from which the reference is requested and any intervenors, and

(b) the chief executive officer of the assessment authority.

(4) Within 21 days after receiving the request under subsection (2), the board must file the stated case with the court registry, including the decision on appeal, a statement of the facts and all evidence material to the stated case.

(5) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).

(6) Subject to subsection (7), the court must hear and determine the stated case and within 2 months give its decision.

(7) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.

(8) The costs of, and incidental to, a stated case under this section are at the discretion of the court.

[...]

[21] An error of law for the purposes of s. 65 of the *Act* includes:

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 general 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.
5. Where the method of assessment adopted by the Board is wrong in principle.

*Home Depot Holdings Inc. v. British Columbia (Assessor of Area #10 – North Fraser Region)*, 2016 BCCA 511 at para. 10, citing *Gemex Developments Corp. v. Coquitlam Assessor, Area No. 12* (1998), 62 B.C.L.R. (3d) 354 (C.A.), 1998 CanLII 6466 (B.C.C.A.).

[22] The Court cannot consider a question that has not been stated or alter the questions stated: *Broadway Properties Ltd. v. Vancouver (Assessor of Area #09)*, 2007 BCCA 298 at para. 8.

[23] In considering the stated questions, the Court is restricted to the facts set out in the stated case and the decision and may not substitute its own factual findings or weigh and consider the sufficiency of the evidence: *Kuhn v. Assessor of Area #14 – Surrey/White Rock*, 2016 BCSC 448 at para. 16; *Virani v. British Columbia (Assessor of Area #11 – Richmond/Delta)*, 2013 BCSC 214 at para. 11.

### Stated Case Facts

[24] In *TELUS Communications Inc. v. British Columbia (Assessor of Areas #08/09 - Vancouver Sea to Sky Region)*, 2024 BCSC 2210, at paras. 19–22, Justice Hughes stated:

[19] The purpose of the statement of facts in the stated case is to ensure that there is sufficient factual material necessary to raise and argue a point of law: *Allard v. Assessor of Area #10 – North Fraser Region*, 2010 BCCA 437 at para. 114, citing *Petro Canada Inc. v. British Columbia (Assessor of Area #12 - Coquitlam)*, 1991 CanLII 934 (B.C.S.C.) [*Petro Canada*].

[20] All facts must be found in the stated case, and the Court may not substitute findings of its own: *Allard* at para. 112. The Court cannot go beyond the facts stated by the Board in the stated case in order to interpret those facts or make independent findings or inferences of fact, but can refer to the evidence with respect to uncontroverted facts: *Allard* at para. 117.

[21] The evidence filed in support of the stated case can, however, assist the Court in determining whether there was any evidence at all that was logically probative of the conclusions reached by the Board: *Allard* at para. 114, citing *Petro Canada* at para. 5. The Court may also refer to the evidence to “flesh out” or amplify the statement of facts in the stated case with respect to uncontroversial facts: *Allard* at para. 116.

[25] The facts set out in the stated case are as follows:

1. The appeals concern properties in Trail operated as a smelter. In part, the smelter produces zinc. The Applicant (appellant before the Board) brought the appeals in respect of tanks involved in zinc production.
2. The processes at the Teck Smelter result in a wide range of saleable products. The vessels at issue in this hearing generally relate to the production of zinc.
3. Zinc enters the "Zinc Circuit" in three ways:
  - zinc concentrate from off-site mines into "Roasters",
  - zinc concentrate from off-site mines into the Zinc Pressure Leaching Plant ("ZLP"), and
  - zinc contained in smelter fume (from the Lead Plant) is processed in the Oxide Leach Plant ("OLP").
4. The main route begins in the Roasters, with received inputs from the ZLP and OLP. There are three main steps in the production of zinc at the Teck smelter:
  - roasting,
  - leaching and purification, and
  - electrolysis.

5. Roasting (occurring in the Roasters) is a process to turn the raw ore into a form called calcine that can be more easily dissolved by acid. Calcine is an oxide form of the element. Calcine contains other oxide-form elements such as cadmium, lead, iron, copper, silica, calcium and magnesium. The calcine is mechanically ground to powder.
6. Both leaching and purification occur in the Sulphide Leach Plant ("SLP"). Among other outputs, this process results in pure zinc electrolyte.
7. Leaching is a process where the powdered calcine from the Roasters (as well as solutions from the ZLP and OLP) is dissolved in an acidic electrolyte (sulphuric acid).
8. The electrolyte is purified. Processes cause various impurities to precipitate from the solution. Iron, lead and other solids are removed as the slurry moves through various tanks including the SLP Acid Thickeners. The underflow is removed from the circuit. The overflow contains the zinc-rich acid, which continues through the SLP. This is pumped through tanks to further purify the solution. The SLP Neutral Thickeners remove impurities creating the neutral thickener overflow (NTO). This ends the leaching section.
9. The impure NTO moves to the purification section. The zinc solution is treated in cold stage and hot stage purification. It then is treated and cooled and moved through the SLP Electrolyte Clarifiers.
10. Electrolysis, more specifically, electrowinning, is the process by which the zinc is separated from the pure zinc electrolyte through the application of electricity, which causes zinc to plate onto large aluminum cathodes. This process occurs in the Electrolytic and Melting Plant ("EMP") within electrolytic cells in the "Cell House".
11. Each Electrolytic Cell is an Ancor Tecmin Supertank Production Cell ("ATSPC") on top of a concrete foundation and a set of overhead lead anodes and aluminum cathodes. The anodes and cathodes are lowered and lifted from the ATSPC. The zinc may then be removed from the cathode and melted into a product for sale. Leftover acid from this process is then recirculated back to the SLP as return acid where it goes through the leaching process again (the "Zinc Circuit").
12. The ZLP uses pressure leaching to separate sulphur from the zinc concentrate to make a zinc sulphate solution, which is then pumped to the SLP.
13. The OLP recovers zinc by treating fume from the lead operations at the Smelter. The recovered "Fume Leach", while rich in zinc oxide, also contains soluble fluoride and chloride compounds, which can damage the electrolytic cells. The fluoride and chloride compounds are first removed in the Fume Leach Plant. The resulting slurry is filtered, and the fume leach cake is sent to the OLP. At the OLP, the fume leach cake is mixed with return acid to create a zinc-rich solution. Undissolved solids such as lead are separated through various OLP thickeners and filters and sent back to the smelter. Indium and germanium are removed. The OLP results in an impure zinc sulphate solution, which is then sent the SLP for further treatment. The OLP is involved in both zinc production/recovery and pollution abatement.

14. The Ground Water Treatment Plant (GWTP) handles contaminated groundwater.
15. The following vessels are at issue:
  - #2 Acid Thickener -SLP
  - #3 Acid Thickener -SLP
  - #1 Acid Thickener -SLP
  - #4 Acid Thickener -SLP
  - #1 Neutral Thickener -SLP
  - #2 Neutral Thickener -SLP
  - #1 Electrolytic Clarifier -SLP
  - #2 Electrolytic Clarifier -SLP
  - #1 Acid Thickener T1 -OLP (currently used as an electrolyte storage buffer tank)
  - #2 Neutral Thickener -OLP
  - #3 Thickener -OLP
  - #4 Thickener -OLP
  - #5 Neutral Thickener -OLP
  - #6 Neutral Thickener-OLP (decommissioned)
  - NTO Storage Tank -OLP
  - Thickener -ZLP
  - Reactor Clarifier -GWTP
16. All tanks at issue are larger than 5,000 gallons.
17. The ZLP contains the ZLP Thickener. That thickener processes slurry streams from the ZLP sumps. This vessel does not contain an electrolyte. The Reactor Clarifier also does not contain electrolyte.
18. The NTO Storage Tank does not function as a thickener or clarifier, but does contain electrolyte.
19. "Dust and particulate collector and separators" are not terms ordinarily used by industry professionals to refer to any specific equipment they have encountered and are not terms of art. Industry professionals would use the more specific terms in their communication such as "thickener", "clarifier" or "baghouse".
20. The witnesses have general understandings as to how they would apply these specific words to the types of vessels and equipment they see in their work.
21. The vessels are commonly referred to as "thickeners" or "clarifiers".
22. Thickeners and clarifiers remove solids from liquids through settling solids to the bottom of the vessel, raking them to the centre, and exiting the thickened zinc electrolyte containing the particulates as underflow and the

clarified zinc electrolyte as overflow. The only difference between the two vessels is the intended purpose. Thickeners are tanks used to remove solution to make a thick slurry to a desired density. Clarifiers are used to produce a clear solution to a desired density.

23. "Clarifier" and "thickener" are terms used in the MIPS Manual.
24. Dust is a type of particulate that only occurs in gas.
25. Dust is found only in air.
26. Particulate can be separated from any fluid stream be that gas or liquid.
27. "Electrolytic tank" is not a term of art.
28. Tanks containing the zinc electrolyte solution outside the EMP would not ordinarily be referred to as "electrolytic tanks".
29. At every stage in the zinc circuit, and in every tank except the ZLP Thickener and GWTP Reactor Clarifier, zinc electrolyte of varying purity is present.
30. Impure electrolyte could be subject to an electrolytic process; however, at these earlier stages, the process would damage equipment and result in an impure product.
31. The Board found the seventeen vessels at issue in the SLP, OLP, GWTP and ZLP are assessable improvements under the Act.
32. The parties jointly recommended to the Board (the "Recommendation") and the Board found that two acid plant converter tanks were excluded from the definition of "improvements" in section 1 of the Assessment Act as "converters" under section 1.2(v)(vi) of BC Reg. 433/98.

### **The Board's Decision**

[26] The Board determined that none of the Vessels was excluded from the definition of improvements by being either "electrolytic tanks" or "dust and particulate collectors or separators".

[27] Professional mechanical and civil engineer experts who testified at the Board hearing (the "Witnesses") agreed that "dust and particulate collectors or separators" is not a term of art used in industry, but rather more specific terms such as "thickener", "clarifier" or "baghouse" are used.

[28] The Board found that the Witnesses agreed that in industry some of the Vessels were commonly referred to as "thickeners" or "clarifiers", terms used in the

MIPs Manual and used by assessors to calculate the value of industrial improvements.

[29] The Board applied principles of statutory interpretation, including presumptions against absurdity and of coherence, to conclude that “dust and particulate collectors or separators” does not include vessels described by the Witnesses as thickeners or clarifiers, because it would be “absurd” for the MIPs Manual to include them for costing, only for the same type of vessel to be excluded from assessment by the *Regulation*.

[30] The Board accepted that the phrase “dust and particulate collector or separator” could be read disjunctively to mean a vessel removing dust or particulate, or both. However, the Board found that the intent of the Executive was for the word ‘particulate’ to be informed by the meaning of the word ‘dust’. As dust is only found in air, the Board confined the meaning of ‘particulate’ to particles in air rather than in liquid. The Board concluded that since the Vessels separate particles from liquid they were not “dust and particulate collectors or separators” and were not, therefore, excluded from the definition of improvements by the *Regulation*.

[31] The Witnesses agreed that “electrolytic tanks” is also not a term of art within industry. The Board concluded that there was “broad consensus” as to the meaning of electrolytic cell and that tanks containing electrolyte solution would not ordinarily be referred to as electrolytic tanks. In addition, the Board found that the Witnesses agreed that the word “electrolytic” can refer to both electrolysis and to electrolyte.

[32] Teck urged the Board to conclude that “electrolytic tanks” refers to a group of vessels where electrolyte of increasing purity is produced prior to its entry into the electrolytic cell for electrolysis and the production of pure zinc.

[33] The Assessor argued that “electrolytic tanks” simply refers to the portion of the electrolytic cell that remains when the anode and cathode has been temporarily removed.

[34] The Board agreed and concluded that “electrolytic tanks” was to be interpreted restrictively to mean the tank portion of the electrolytic cell that remains once the anode and cathode has been temporarily removed.

[35] Having ascribed a very narrow definition to “electrolytic tanks”, the Board concluded that none of the Vessels were excluded improvements under the *Regulation*.

### Questions on Stated Case

[36] The questions set out in the stated case for determination by this Court are:

1.) Did the Board err in law by misinterpreting or misapplying sections 1.2 and 1.3 of the *Assessment Act Regulation*, B.C. Reg. 433/98 (the “Regulation”) in determining that none of the vessels at issue in the appeal before the Board (the “Vessels”) are excluded from the definition of assessable improvements under section 1 of the *Assessment Act*, R.S.B.C. 1996, c. 20, either as “electrolytic tanks” or as “dust and particulate collectors or separators” under section 1.2(1)(v)(i) of the *Regulation* (“Electrolytic Tanks” and “Dust and Particulate Collectors or Separators”)?

2.) In particular, did the Board err in law in determining:

a. with respect to Electrolytic Tanks that:

i. an Electrolytic Tank is the tank portion of an Electrolytic Cell that remains once the anodes and cathodes have been removed from the Electrolytic Cell;

ii. the function performed by a particular Vessel informs the interpretation of Electrolytic Tanks, or

iii. the Major Industrial Properties Manual (the “MIPS Manual”) informs the interpretation of Electrolytic Tanks; or

b. with respect to Dust and Particulate Collectors or Separators that:

i. “particulate” in Dust and Particulate Collectors or Separators includes only airborne particulate and not also liquid stream borne particulate; or

ii. the MIPS Manual informs the interpretation of Dust and Particulate Collectors or Separators?

### Standard of Review

[37] The parties agree that the standard of review of the Board’s decision is correctness. I agree and I adopt the summary of the applicable legal principles of Justice Hughes in *Telus*:

[33] It is uncontested that the standard of review on questions of law brought by stated case under s. 65 of the *Assessment Act* is correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33: *Yatar* at para. 48; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 37 [*Vavilov*]; *Beach v. Assessor of Area #01 – Capital*, 2021 BCSC 1770 at para. 22. The correctness standard as it applies in this context is described in *Beach*:

[22] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada held that “where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision” (at para. 37). Thus, where the court is considering questions of law, it must apply the standard of correctness (at para. 37, citing *Housen v. Nikolaisen*, 2002 SCC 33, at para. 8).

[23] The court’s decision in *Vavilov* did not modify the common understanding of correctness review, which was stated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 50, as follows:

50 ... When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[34] Thus, when applying the correctness standard, I am not required to show deference to the Board’s reasoning process; rather, I am to undertake my own analysis of the question, namely whether the Board’s decision that TELUS’ failure to file the complaints was not due to circumstances beyond its control is correct: *Vavilov* at para. 37, citing *Housen* at para. 8.

### Principles of Statutory Interpretation

[38] In *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, the Court reiterated its endorsement of Elmer Driedger’s “definitive formulation” of the modern approach to statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[39] In *La Presse inc. v. Quebec*, 2023 SCC 22 the Court recognized that despite the apparent simplicity of Driedger’s formulation, confusion in practice prevails. The Court restated two principles that they considered to be at the heart of this confusion:

[23] First, the plain meaning of the text is not in itself determinative and must be tested against the other indicators of legislative meaning — context, purpose, and relevant legal norms (*R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31). The apparent clarity of the words taken separately does not suffice because they “may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation” (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10).

[24] Second, a provision is only “ambiguous” in the sense contemplated in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, if its words can reasonably be interpreted in more than one way after due consideration of the context in which they appear and of the purpose of the provision (paras. 29-30). This is to say that there is a “real” ambiguity — one that calls for the use of external interpretive aids like the principle of strict construction of penal laws or the presumption of conformity with the *Canadian Charter of Rights and Freedoms* — only if differing readings of the same provision cannot be decisively resolved through the contextual and purposive approach set out by Driedger (*ibid.*).

[40] To determine the meaning of the text of a statute, a court must read the provision considering the broader statutory scheme: *R. v. McColman*, 2023 SCC 8 at para. 35.

[41] The need to conduct a full contextual analysis was recently affirmed by the British Columbia Court of Appeal in *Chisholm v. Valamount Forest Products Ltd.*, 2025 BCCA 48 at para. 16, quoting from *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101:

[40] As the Supreme Court of Canada has stated on a number of occasions, the grammatical and ordinary sense of a provision is not, on its own, determinative. A statutory interpretation analysis is incomplete without consideration of context and purpose, no matter how plain the meaning might appear when the provision is viewed in isolation: *ATCO Gas &*

*Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para. 48; *R. v. Alex*, 2017 SCC 37 at para. 31. As explained by the Court in *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para. 10:

Words that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to statutory interpretation...

[41] Thus, it is necessary in every case for the court to undertake the contextual and purposive approach mandated by the modern rule, and thereafter determine whether there is ambiguity in the wording of a statute. There is a genuine ambiguity only where the words of a provision are capable of more than one meaning when read in light of the entire context of a provision, which includes the statutory purpose: *Bell ExpressVu* at paras. 29–30.

### Legislative Context

[42] The parties agree that in very broad terms the objective of the assessment process in the *Act* is to provide a uniform, stable and equitable base for property taxation purposes, and a timely assessment process to meet the planning needs of local governments that are dependent on the property tax revenue: *Allard v. Assessor of Area # 10 – North Fraser Region*, 2010 BCCA 437 at para. 48.

[43] However, the parties disagree about whether, when trying to achieve uniformity and stability in the assessment process, it is possible to discern a coherent purpose or reason for the exclusion of some improvements from assessment.

[44] I note that in *Peace River Coal v. Area 27*, 2018 PAABBC 20170356, upheld in *Peace River Coal Inc. v. British Columbia (Assessor of Area No. 27 – Peace River)*, 2018 BCSC 1854, the Board held as follows:

[9] The scheme and object of the *Assessment Act* is to provide a system for determining the tax base on which municipal taxes are levied. Under the *Assessment Act* both land and improvements are valued for assessment purposes. For major industry properties, including coal mines, improvement values are determined on the basis of a prescribed costing and depreciation regime, set out in the costing manual. Haul roads are addressed in the costing manual.

[10] The purpose of the *Regulation* is to provide greater specificity to the general provisions contained in the *Assessment Act*. Section 1 of the *Regulation* sets out specific exclusions to the general deemed inclusions

contained in subsection 1(2) of the *Assessment Act*. Both parties agree that there is no unifying commonality to be found in the type of items excluded by section 1 of the *Regulation* and so we find no specific purpose or scheme may be discerned by comparing those exclusions.

[Underlining added.]

[45] Despite this conclusion, albeit considering different exclusions, Teck maintains that in looking at the legislative scheme as a whole it is apparent that the Executive intended to exclude from the assessment process structures or things that are actively used for the production or manufacture of products in major industrial plants.

[46] Teck submits this is apparent from:

1. The definition of “improvements” in s. 1(1) of the *Act* specifically excludes “production machinery”. I note that “production machinery” is defined in the *Act* as any engine, motor or machine used to manufacture, process, repair or convey a product.

While the definition of “improvements” in the *Act* excludes “production machinery”, this definition is subject to the deemed inclusions contained in s. 1(2) of the *Act*, all of which are then collectively further subject to the exclusions contained in the *Regulation*.

In other words, a definition of improvements that firstly excludes some things, then includes other things, and then finally excludes other things is not coherently consistent with an overall intent to exclude from assessment things that are used to produce or manufacture products.

2. As noted in the statutory context section of these reasons, the deemed inclusions in s. 1(2) are extensive. However, the overall ‘theme’ of these deemed inclusions is that they are things that either enable the operation of a building or structure, for example air conditioning, elevators, and water systems, or are those integral parts of the building that support machinery, for example foundations, conveyor structures or supports for machinery or

equipment, and pipes, power and telecommunication structures, rather than being closely connected to production or manufacture of products.

3. The specific exclusions in s. 1.2 of the *Regulation*, particularly major industrial vessels in s. 1.2(1)(v) and piping in s. 1.2(1)(r), are things directly involved in production or manufacture of products.

[47] In addition, Teck submits that the Board and the court have in the past interpreted sections of the *Regulation* as intending to capture vessels and piping that play an active role in production or manufacture of products.

[48] For example, in *Fletcher Challenge Canada Limited v. Assessors of Area #04 – Nanaimo/Cowichan and Area #06 – Courtenay*, October 16, 1996 [*Fletcher Challenge*] the majority of the Board concluded that the predecessor to the current *Regulation*:

[...] appears to exclude from assessment vessels that are in the nature of production machinery, that is, vessels that do something essential or integral to the production process beyond storage, but includes as assessable, vessels whose function is simply storage.

[Underlining in original.]

[49] Although ultimately reversing the conclusion in *Fletcher Challenge* that certain vessels in that case were excluded improvements, on the basis that the Board had misconstrued the facts, the Board in *Norske Skog Canada Limited v. Assessor of Area #04 – Nanaimo/Cowichan*, 2002 PAABBC 20017170 reiterated that the vessels excluded by regulation from being improvements are things “where actual processing takes place within the vessel... vessels that do something, beyond storage” (at para. 21) [underlining in original].

[50] The Assessor takes the position that neither the *Act*, *Regulation*, nor court and Board decisions support what they describe as the “Process Vessel” argument. The Assessor submits that Teck’s argument misconceives the structure of the legislative scheme: The Legislature deliberately separated the functional, activity-based inquiry required by the production machinery exclusion in s. 1(1) of the *Act*

from the categories and item-by-item listing of excluded things in s. 1.2(1) of the *Regulation*.

[51] The Assessor submits that the *Regulation* was specifically enacted to “promote administrative efficiency and certainty by prescribing a closed and objectively identifiable list of items that are not taxable, precisely so that assessors would not need to engage in fact-intensive judgments about whether a given vessel “does something” or is sufficiently integral to production.” The Assessor submits that “reintroducing [a] functional test under the guise of interpretation defeats that purpose [administrative efficiency], replacing a predictable regulatory scheme with the same ambiguity and inconsistency that the *Assessment Regulation* was designed to remove.”

[52] The obvious problem with the Assessor’s argument is that the *Regulation* has clearly not prescribed a closed and objectively identifiable list of items. This stated case has been brought precisely because the two types of vessels at issue, “dust and particulate collectors and separators” and “electrolytic tanks” are not recognized and objectively identifiable within industry. The facts on this stated case specifically include that:

"Dust and particulate collector and separators" are not terms ordinarily used by industry professionals to refer to any specific equipment they have encountered and are not terms of art.

"Electrolytic tank" is not a term of art.

[53] If, as suggested by the Board, the scheme was intended to be so integrated, objectively prescriptive and harmonious, it makes little sense that the terminology used in the *Regulation* differs from terminology used in industry, or in the MIPs Manual.

[54] I am satisfied that the Executive made a deliberate choice to describe types of vessels purposively, rather than using their industrial name, precisely to ensure

that what was being captured by the exclusions was what the improvement was doing, rather than by what it may or may not be called in industry.

[55] In fact, the Assessors alternative submission agrees with this conclusion. While acknowledging that it is not an inflexible rule, the Assessor submits that most excluded vessels in s. 1.2(1)(v) of the *Regulation* are described in terms of the process that occurs within them, and further submits that there is a “clear legislative tendency or preference to use process-based descriptors that align with common industrial usage ... a practical, common-sense approach to interpretation, informed by the ordinary understanding of these processes within industry.”

[56] Ultimately, the Assessor acknowledges, soundly in my view, that the overarching characteristic of most of the excluded vessels in s. 1.2(1)(v) of the *Regulation*<sup>3</sup>, is that they do something integral to the production process. There must be, therefore, a functional assessment of the operating characteristics of the vessel in a production process to determine whether it is an excluded vessel under s.1.2(1)(v) of the *Regulation*.

[57] In other contexts, for example whether an improvement is an industrial improvement pursuant to s. 20 of the *Act*, by being “part of a plant” designed and built for the purpose of one or more enumerated industrial processes, the analysis looks at a number of factors to assess whether there is “a sufficient degree of physical, functional and operational integration between the improvement and the plant” – in other words a functional assessment:

- a) Whether the services provided by the improvement to the plant are provided exclusively to the plant. An improvement that does not exclusively provide services to the plant is less likely to qualify as an “industrial improvement”;

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<sup>3</sup> The only outlier to this description is section 1.2(1)(v)(vii) – spas, hottubs and swimming pools that are free standing and any associated machinery and controls.

- b) The physical proximity of the improvement to the plant, although close physical proximity is not always required;
- c) The degree to which the services provided by the improvement directly serve, or are steps in, the enumerated purposes for which the plant was designed and built. Where an improvement provides services that are directly related to the enumerated purposes, the improvement is more likely to qualify as an “industrial improvement”; and
- d) The degree to which the services provided by the improvement are necessary to, or a fundamental requirement for, the operation of the plant. Where the services provided are necessary or fundamental, the improvement is more likely to qualify as an industrial improvement.

[58] I am satisfied that while it is not possible to discern any uniting commonality to all the exclusions set out in s. 1.2(1) of the *Regulation*, the excluded vessels in s. 1.2(1)(v)(ii) – (vi) share the common characteristic that they are actively used for the production or manufacture of products in specified major industrial plants. Subsection 1.2(1)(v)(i) is not limited to any specific industry, but I am satisfied that they are all types of vessels that are otherwise united by the same overall common characteristic of being used in production or manufacture of products, rather than something more passive, like storage.

[59] I am also satisfied that any determination by an assessor that a vessel is being actively used for production or manufacture, rather than storage, would not require a particularly onerous factual inquiry.

### **MIPs Manual**

[60] An important part of the Board’s decision, and question two on the stated case, is the use that should be made of the MIPs Manual in the interpretation of the meaning of the Vessels.

[61] Relying upon the Board decision in *Buckeye Canada Co. v. Assessor Area #11 – Richmond/Delta*, 2013 PAABBC 20130009, the Assessor submits that the legislature intended a “cohesive and integrated assessment framework” in which the *Regulation* and the MIPs Manual operate “in tandem”, to form “complementary parts of a single harmonized scheme designed to ensure predictability and uniformity in the assessment of major industrial properties, rather than leave such determinations to functional or discretionary interpretation.”

[62] The Assessor submits that the close relationship between the *Regulation* and the MIPs Manual must inform the interpretation of the exclusion regulation because principles of statutory interpretation presume a “harmony, coherence, and consistency between statutes dealing with the same subject matter”: *Bell ExpressVu* at para. 27.

[63] In their submissions the Assessor tracks the legislative history of the MIPs Manual and the *Regulation*: The first MIPs Manual was approved by order in council on September 23, 1988, and includes costing for “thickeners” and “clarifiers”. The first exclusion regulation was adopted by order in council in March 1991. It uses the same terms at issue in this stated case, “dust and particulate collectors or separators” and “electrolytic tanks”; it does not use “thickeners” or “clarifiers”.

[64] As I understand their position, the Assessor submits that because the Executive was clearly aware of all the applicable terms in the MIPs Manual when it enacted the exclusions in the *Regulation*, I should interpret the terms at issue in this appeal by reference to the terms in the MIPs manual to preserve the harmony of the overall legislative scheme. In other words, it makes no sense to have a MIPs Manual method for calculating the cost of an improvement, for example a “thickener” or “clarifier”, that would then be an excluded vessel under the *Regulation* as a “dust and particulate collector or separator”. Therefore, to preserve harmony in the legislative scheme, a “dust and particulate collector or separator” must be something different than a “thickener and clarifier”.

[65] Teck submits that the position of the Assessor is fundamentally unsound because the costing of an improvement occurs only after the improvement is determined to be assessable. The fact that an improvement can be costed does not dictate that the improvement must be assessable, or that if assessable at one time, the executive would then be precluded from deciding to exclude the improvement from assessment by regulation at a later time.

[66] To be clear, Teck argues the MIPs Manual is created by the Assessor<sup>4</sup>, and it is then adopted as a regulation by order in council. Exclusions are created by the Executive for a myriad of reasons, including the encouragement of investment in a particular major industry. Because the Assessor decides to “cost” a class of things, does not mean that the Executive is then precluded from excluding some or all those things from assessment. The MIPs Manual is subordinate to the exclusions established by the *Regulation* so the manual cannot then be used as an interpretative aid.

[67] Teck suggest that their position is supported by *Quinsam* where the Court recognized that s.20(5) of the *Act* provides statutory authority to create manuals by order in council for the purposes of “establishing rates, formulas, rules or principles for the calculation of cost,” but does not grant to the Executive the power to define terms in the legislation.

[68] Teck says that the Board was in error in distinguishing *Quinsam* when it concluded that *Quinsam* precludes relying on a manual to interpret a provision in the *Act*, but it does not preclude relying on a manual to interpret a regulation.

[69] The Assessor responds that the Boards interpretation of *Quinsam* was correct: You cannot rely on a manual to interpret or define terms in the legislation, but you can rely on a manual to define or interpret a regulation because both the

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<sup>4</sup> Teck submits that the MIPs Manual is developed by the Assessor. S.20(5) of the *Act* grants the power to create manuals to the assessment authority which is distinct from the Assessor.

MIPs Manual and Regulation are the product of the exercise of executive powers delegated by the legislature in the *Act*.

[70] Ultimately, I am not convinced that interpretation of the meaning of the specific terms in this stated case, “dust and particulate collectors or separators” and “electrolytic tanks”, is assisted much by reference to the MIPs Manual in any event.

[71] The development of the MIPs Manual is an entirely different process and for an entirely different purpose than the Executive’s decision to exclude some improvements from assessment. As Teck submits, the decision to assess an improvement, or more specifically the decision to exclude an improvement from assessment, is not conditional upon, or intertwined with, the process of costing. While an assessed improvement must be costed, an improvement that can be costed, because it is in the MIPs Manual, may not need to be assessed if it is otherwise excluded by regulation.

[72] To be clear, the principles of statutory interpretation invoked by the Board, the presumptions against absurdity and in favour of coherence, do not assist the process of statutory interpretation. It is neither absurd nor incoherent that the Executive decided to exclude some improvements from assessment despite the MIPs Manual providing costing information for some or all those improvements.

[73] As discussed above, I am satisfied that the Executive has deliberately chosen to describe the excluded vessels in s. 1.2(1)(v) based on their process rather than a name commonly used in industry. This purposive or functional approach is consistent with why the Executive might exclude some improvements from assessment, for example to encourage investment in production or manufacture in a particular major industry.

## ANALYSIS

**Question 1. Did the Board err in law by misinterpreting or misapplying ss. 1.2 and 1.3 of the *Regulation* in determining that none of the Vessels at issue in the appeal before the Board are excluded from the definition of assessable improvements under s. 1 of the *Act*, either as "electrolytic tanks" or as "dust and particulate collectors or separators" under s. 1.2(1)(v)(i) of the *Regulation* ("Electrolytic Tanks" and "Dust and Particulate Collectors or Separators")?**

[74] I am satisfied that the Board erred in law in concluding that none of the Vessels are excluded from assessable improvements pursuant to s. 1.2(1)(v)(i) of the *Regulation*.

### ***Meaning of Dust and Particulate Collectors of Separators***

[75] It is important to note that the facts on the stated case include these definitions of the words dust and particulate:

1. Dust is a type of particulate that only occurs in gas.
2. Dust is found only in air.
3. Particulate can be separated from any fluid stream be that gas or liquid.

[76] With respect to the meaning of "dust and particulate collectors or separators" the Board previously held that the word "and" in "dust **and** particulate" was to be read disjunctively, or more accurately, joint and severally. In other words, the type of vessel need remove dust or particulate, or both, but does not have to remove both, to be excluded.

[77] I agree with this conclusion. It is well accepted that the word "and" can be interpreted as joint or as joint and several, depending on the context. Where the term is seen as joint and several, "all the possibilities may be, but need not be, included": Ruth Sullivan, *Statutory Interpretation* (Concord, Ontario: Irwin Law, 1997) quoted in *R. v. Yadegari*, 2011 ONCA 287 at para. 62.

[78] After accepting that “and” was to be interpreted as including joint and several, the Board held that the intended meaning of the word “particulate” must be informed by the presence of the word “dust”. The Board does not explain this conclusion other than to state “considering the full contextual reading, as required by the modern approach, particulate must be understood in relation to the presence of the word dust ... this leans in favour of determining that the particulate referred to in this provision must be separated from air and not from a liquid stream.”

[79] In my view it is illogical to first conclude that particulate and dust are to be interpreted disjunctively, in other words to find that dust and particulate are distinct things, and then immediately go on to conclude that dust and particulate are essentially the same thing, particles present in air.

[80] The Board has taken a very narrow meaning of the phrase “dust and particulate” to limit this type of vessel to something that collects or separates dust and particulate from air; essentially a vessel which purifies or cleans air. I can find no justification from my review of the legislative context for such a narrow interpretation.

[81] A cursory review of the sections under the heading in the *Regulation*, “Categories and types of things excluded from definition of “improvements” in Act”, discloses an exhaustive list of exclusions both across all and within specific major industries. A narrow interpretation of “dust and particulate collectors and separators” is inconsistent with the self-evident breadth of the exclusions set out in the *Regulation*.

[82] Considering the process focussed approach for the exclusions in s.1.2(1)(v), which I have outlined above, I am satisfied that the phrase “dust and particulate collectors and separators” was intended to capture vessels that separate and collect dust and particulate from air or a liquid. I can find nothing in the legislative context as I have analysed it, that suggests that the meaning of particulate should be confined, as found by the Board, to airborne particles.

[83] It is also illogical to limit the meaning of particulate in the context of a vessel described as a “dust and particulate collector and separator” to airborne particles, when the word vessel is itself more usually associated with liquids. For example, the *Concise Oxford English Dictionary* (11th ed.) defines vessel as: 1. A ship or large boat; 2. A hollow container, especially one used to hold liquid; 3. A duct or canal holding or conveying blood or other fluid.

[84] I accept that the Vessels at the Smelter are commonly referred to as “thickeners” or “clarifiers” and those terms are used in the MIPs Manual. However, as I have concluded above, the fact that the assessment authority chose to create costing for specific named vessels, for example clarifiers and thickeners, does not mean that the Executive is then precluded from excluding from assessment similar types of vessels based on different and broader terminology.

[85] Based on the facts set out in the stated case, clarifiers and thickeners are the names used in industry to describe the Vessels where particulate is separated and collected from liquid during the process of creating a zinc electrolyte solution of increasing purity. Based on a functional analysis, clarifiers and thickeners are also “dust and particulate collectors or separators”.

[86] The Vessels used to produce zinc electrolyte, commonly referred to in industry as thickeners and clarifiers, meet the definition of “dust and particulate collectors or separators.” Therefore, I am satisfied that the Board erred in law in their interpretation of the meaning of "dust and particulate collectors or separators" under s. 1.2(1)(v)(i) of the *Regulation*.

### ***Meaning of Electrolytic Tank***

[87] As set out in the facts, electrolytic tanks is also not a term of art. Tanks containing the zinc electrolyte solution outside the EMP would not ordinarily be referred to as "electrolytic tanks".

[88] The Board found that the experts agreed that the word “electrolytic” can refer to either the process of electrolysis or the electrolyte solution that is subjected to

electrolysis. This conclusion is consistent with the dictionary definition of electrolytic: relating to electrolysis or an electrolyte, or produced by or used in electrolysis: *Merriam-Webster Dictionary* (online).

[89] The Board concluded that the meaning of “electrolytic tanks” in s.1.2(1)(v)(i) was limited to the portion of the electrolytic cell when the anode and cathode have been removed.

[90] I note that electrolytic cells are specifically identified as excluded vessels in s.1.2(1)(v)(i) of the *Regulation*.

[91] In the facts, the electrolytic cell at the Smelter is described as follows:

Each Electrolytic Cell is an Ancor Tecmin Supertank Production Cell ("ATSPC") on top of a concrete foundation and a set of overhead lead anodes and aluminum cathodes. The anodes and cathodes are lowered and lifted from the ATSPCs. The zinc may then be removed from the cathode and melted into a product for sale. Leftover acid from this process is then recirculated back to the SLP as return acid where it goes through the leaching process again (the "Zinc Circuit").

[92] What I understand from this description of the electrolytic cell is that the removal of the anode and cathode from the cell is a normal part of the ATSPC's operating procedure.

[93] The electrolytic cell cannot function without a tank or vessel to hold electrolyte solution during the electrolysis process, and the cell cannot produce pure zinc by electrolysis without the cathode and anode being removed at a stage in the production process. The removal of the cathode and anode does not change the essential character of the electrolytic cell; it continues to be an electrolytic cell when the anode and cathode are removed.

[94] The Assessor's argument for why both the electrolytic tank portion of the cell and the electrolytic cell itself are separately identified in the *Regulation* as excluded was to “make it clear that the tank portion was excluded, whether or not it formed part of a cell where the anode or cathode was removable.” The Board appears to

have accepted this argument, holding that the exclusion of electrolytic cell alone would be ambiguous when the cathode or anode were absent.

[95] With respect, I do not find this conclusion to be correct in law. Applying an element of common sense, the functional characteristics or description of a thing does not change when the thing has been changed, altered or disassembled during its normal operation, or even when it is undergoing maintenance. The removal of the anode or cathode from the cell as part of the normal operation of the cell when producing zinc, does not alter the fact that what remains is still an electrolytic cell.

[96] I am satisfied that the only reasonable interpretation of electrolytic tanks is that it is intended to mean something more than an electrolytic cell or a component of the electrolytic cell. I find that the Board erred in law in concluding that “electrolytic tanks” is limited to the tank portion of an electrolytic cell when the anode and cathode have been temporarily removed.

[97] I arrive at this conclusion because I am satisfied that the overall scheme of the *Regulation* is to exclude an expansive list of major industrial improvements from assessment, based, as I have previously discussed, on a functional and purposive assessment of the active role of an item in production and manufacture. The Board’s very narrow interpretation of “electrolytic tanks” is inconsistent with the intent of the Executive to exclude an expansive list of items from assessment as improvements.

[98] Consistent with the ordinary meaning of electrolytic, and consistent with the legislative context outlined above, I am satisfied that “electrolytic tanks” includes vessels where electrolyte solution is manufactured or produced, rather than simply stored.

[99] Most of the Vessels at issue in this case are part of a continuous circuit designed to produce zinc electrolyte solution of increasing purity until it is suitable for electrolysis in the ATSPC, or electrolytic cell. The Vessels in the zinc circuit are essential parts of the manufacturing process. They do not store zinc electrolyte; they manufacture or produce it.

**Question 2. In particular, did the Board err in law in determining:**

**a. with respect to Electrolytic Tanks that:**

**i. an Electrolytic Tank is the tank portion of an Electrolytic Cell that remains once the anodes and cathodes have been removed from the Electrolytic Cell;**

**ii. the function performed by a particular Vessel informs the interpretation of Electrolytic Tanks, or**

**iii. the Major Industrial Properties Manual (the "MIPS Manual") informs the interpretation of Electrolytic Tanks; or**

[100] The answers to the questions in Question 2, arise from the analysis already set out in response to Question 1.

[101] With respect to question 2(a)(i), I am satisfied that the Board erred in law in determining that electrolytic tank is limited to the tank portion of an electrolytic cell when the anodes and cathodes have been removed.

[102] With respect to question 2(a)(ii), this question does not properly arise from the Board's decision because I am not satisfied that the Board did in fact conclude that the function performed by a vessel informs the interpretation of electrolytic tank. However, had the Board relied on the function of a vessel in their analysis, this would not have been an error of law.

[103] I also observe that relying on the function performed by a vessel is consistent with Teck's submissions, and my conclusions outlined above, that the Legislature and Executive intended to exclude vessels or things that are actively used for the production or manufacture of products in major industrial plants.

[104] Regarding question 2(a)(iii), as I have explained above, I am not convinced that interpretation of the meaning of the specific terms in this stated case, "dust and particulate collectors or separators" and "electrolytic tanks", would be assisted much by reference to the MIPS Manual, because the development of the MIPS Manual is the result of an entirely different process and for an entirely different purpose than the Executive's decision to exclude some improvements from assessment.

[105] That said, I do not conclude that it would be an error of law to be informed by the MIPs Manual in interpreting the *Regulation*, provided that ‘informed’ is restricted to meaning assist. It would be an error of law for the Board to be bound by the language or terminology used in the MIPs Manual in interpreting the *Regulation*.

**b. with respect to Dust and Particulate Collectors or Separators that:**

**i. "particulate" in Dust and Particulate Collectors or Separators includes only airborne particulate and not also liquid stream borne particulate; or**

**ii. the MIPS Manual informs the interpretation of Dust and Particulate Collectors or Separators?**

[106] With respect to question 2(b)(i), I am satisfied that the Board erred in law in determining that particulate in “dust and particulate collectors or separators” is restricted to only airborne particulate.

[107] As I have stated for question 2(b)(ii), I am not satisfied that it would be an error of law to seek assistance from the MIPs Manual in the interpretation of the *Regulation*. However, as I have explained in these reasons, I have not found the MIPs Manual to be of much assistance in my interpretation of the meaning of “dust and particulate collectors or separators” and “electrolytic tanks”.

## **CONCLUSION**

[108] As stated by Hughes J. in *Telus*:

[56] In an appropriate case, the court must also determine the effect of its answers on a stated case and correct the decision of the Board: *Southam Inc. v. Assessor of Area #14-Surrey/White Rock*, 2003 BCSC 676 at para. 54, citing *British Columbia (Assessor of Area No. 10 - Burnaby/New Westminster) v. Sears Canada Inc.*, 1995 CanLII 2179 (B.C.C.A.) [*Sears Canada*]. As the Court noted in *Sears Canada*:

[26] It is clear the opinion of the Supreme Court, if it differs from that of the Board, is to prevail. In this circumstance, if this is to have substantive meaning the opinion of the court must, so far as circumstances permit, correct the decision of the Board.

[109] Teck urges me to exercise the power to correct the decision of the Board and order that the Vessels are excluded improvements and not subject to assessment.

[110] I agree that remitting the matter to the Board would serve no useful purpose, other than to create even more delay. I understand that this matter was heard before the Board in December 2022 and February 2023, and that the Board’s decision was not released until June 25, 2024. In addition, there has been a further delay of 14 months for Teck to obtain dates to have this stated case heard.

[111] Considering all the circumstances, I am satisfied that it is not in the interests of the parties to remit the matter back to the Board and that I should give effect to my answers to the questions and correct the Board’s decision.

[112] The effect of the answers to the questions is that I am satisfied that the Vessels are excluded from the definition of assessable improvements under s.1 of the *Act*, because they are either Electrolytic Tanks or Dust and Particulate Collectors or Separators, or both, pursuant to s.1.2(1)(v)(i) of the *Regulation*.

**COSTS**

[113] Under s. 65(8) of the *Assessment Act*, an order for costs associated with a stated case are at the discretion of the Court.

[114] Accordingly, pursuant to R. 14-1(9), costs must be ordered to the successful party in a stated case unless the Court otherwise orders: *British Columbia v. Musqueam Block F Land Ltd.*, 2023 BCSC 592 at paras. 15–16 [*Musqueam*], citing *Musqueam Indian Band Board of Review v. Musqueam Indian Band*, 2013 BCSC 2214 at para. 9.

[115] Teck was the successful party and is therefore presumptively entitled to its costs.

“The Honourable Justice Fowler”