SC 530 James T. Allard & Allard Contractors Ltd v AA10 & PAAB

Link to Property Assessment Appeal Board Decision

Quick Link to Stated Case #530 (BCCA)

JAMES T. ALLARD and
ALLARD CONTRACTORS LTD.

v.

ASSESSOR OF AREA 10 – NORTH FRASER REGION and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S091372) Vancouver Registry

Before the HONOURABLE MR. JUSTICE WONG
Date and Place of Hearing: June 4, 2009, Vancouver, B.C.

M.J. Booker for the Appellants
V.L. Jackson for the Respondent, Property Assessment Appeal Board
D.J. Houston for the Respondent, Assessor of Area 10 – North Fraser Region

Breaching the Principles of Natural Justice – Cross-Examination

This is a Stated Case appeal on three questions arising out of a property assessment valuation which was confirmed by the Property Assessment Appeal Board ("the Board"). The three questions asked were as follows:

1. *Did the Board err in law in breaching the principles of natural justice by accepting the evidence of the appraiser for the Assessor absent any opportunity by the Appellants to cross-examine the appraiser?*
2. *Did the Board err in law in breaching the principles of natural justice by failing to order that the appeal proceed by way of oral hearing where the Appellants provided notice that they wished an oral hearing in order to cross-examine the appraiser?*
3. *Did the Board err in law in relying on the appraiser's evidence, in the absence of any contrary evidence, when the Appellants were not permitted to cross-examine the appraiser?*

HELD: *Appeal Dismissed.*

This Court found that the Appellant was given an opportunity to respond to the Assessor's valuation, and he did so, stating his case, his complaints and his comparables. It does not always follow that because there is no cross-examination, the Appellant is not afforded an equally effective method of answering the case made out against him. In principles of natural justice, a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice, if that opportunity is given, meets the requirements of natural justice. This Court answered all three questions "no".

Reasons for Judgment (Oral) June 4, 2009

[1] THE COURT: This is a Stated Case appeal on three questions arising out of a property assessment valuation which basically confirmed the initial Assessor's value. The questions of law posed are:

1. Did the Board err in law in breaching the principles of natural justice by accepting the evidence of the appraiser for the Assessor absent any opportunity by the Appellants to cross-examine the appraiser?

2. Did the Board err in law in breaching the principles of natural justice by failing to order that the appeal proceed by way of oral hearing where the Appellants provided notice that they wished an oral hearing in order to cross-examine the appraiser?

3. Did the Board err in law in relying on the appraiser's evidence, in the absence of any contrary evidence, when the Appellants were not permitted to cross-examine the appraiser?

[2] In the material there appears to be a number of e-mails that Mr. Allard, the Appellant, wanted an oral hearing. However, when there was an appeal management conference before the chair, Ms. Vickers, she sent out a memorandum with instructions, found in Schedule H in the material, which records the results of the conference attended by Mr. Allard, Gurpreet Basra, Aubrey Grace, who was the Assessor, and Ms. Vickers herself. Under the heading "Current Status", it indicated "scheduled for written submissions". She goes on to relate the discussion:

> The parties have been unable to resolve the appeal. Mr. Allard maintains the value is too high and does not reflect its proximity to a high-traffic, dangerous intersection; the increase over the previous year is excessive and cannot be justified by market movement; deferred maintenance in the home has not been adequately recognized; and large size of the lot has been overvalued. He maintains the comparables relied on by Mr. Grace are not comparable in that they are less impacted by traffic and have views of Mt. Baker. Mr. Grace submits the traffic has been considered, market movement supports the increase over the previous year, and the size adjustment can be supported by sales of large undevelopable lots. He suggested some evidence from an expert with respect to any deferred maintenance issues, i.e., plumbing and electrical, may assist with a consideration of whether an adjustment should be made for these factors.

She goes on:

> Mr, Allard wants an oral hearing so that he may cross-examine Mr. Grace. I am not satisfied that an oral hearing is necessary for the Appellant to be able to put forward market evidence or test and challenge the market evidence put forward by the Assessor. The issues in this appeal are not unique or complex. There are no issues with respect to the Appellant's ability to communicate in writing. Mr. Allard is at liberty to request an oral hearing in his submissions, and I will leave it to the discretion of the board member or panel to render a decision as to whether he or she thinks an oral hearing or a telephone conference is required to properly consider the evidence.

And she also states:

> Board Orders
>
> The property assessment appeal board orders the following:
>
> Written Submissions
>
> 1. The board will hear this appeal by way of written submissions.

[3] In item 2 she set out some timelines and what is required in the content of the written submissions, which will include the following:

> (a) Reasons why the assessment is either not at market value or is at market value;
>
> (b) Market evidence such as sales of comparable properties to support their value;

(c) Any other evidence in argument to support the parties' positions on other issues in this appeal;

(d) All documents that the parties want to rely on in support of their submissions, including letters, maps, photographs, reports or letters from experts.

And she sets the timeline as to when all of that has to be done for the benefit of the panel member.

[4] There is material of a further e-mail between Mr. Allard and Ms. Vickers, and apparently on another occasion Ms. Vickers reminded Mr. Allard of what was contained in the minutes of her directions, including that if he wanted an oral hearing he is to specifically request that from the board member assigned to hear the appeal. Apparently there was no follow up of that, and Mr. Allard then received notice from the registrar that a particular member had been assigned and written submissions had been forwarded to the panel member and a written decision will be issued shortly after that.

[5] In compliance with the directions given by Ms. Vickers, both the Assessor and Mr. Allard provide written submissions, and Mr. Allard was given an opportunity to provide a response, from which he also placed in sales comparables. It is quite clear that the legislation and the rules permitted by the legislation allows the Appeal Board to set its procedure and to regulate its own process, provided it meets the generally accepted principles of natural justice.

[6] With respect to the first two questions, clearly Mr. Allard was given an opportunity to respond to Mr. Grace, the Assessor's valuation, and he did.

[7] The complaint of not being permitted to have cross-examination of Mr. Grace simply flows from the fact that Mr. Allard did not renew his request for consideration by the panel member, but even when he provided his written submissions, he did not renew his request as he did before Ms. Vickers. He was given the opportunity to state his case and his complaints and his comparables, and it does not always follow that because there was no cross-examination he was not afforded an equally effective method of answering the case made out against him; in other words, what in essence, in principles of natural justice, a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. If that opportunity is given, basically that meets the requirements of natural justice.

[8] Accordingly, on questions 1 and 2, I would answer it by saying the answer is no to both questions. With respect to question 3 - Did the Board err in law in relying on the appraiser's evidence, in the absence of any contrary evidence, when the Appellants were not permitted to cross-examine the appraiser? I think it follows where I have said that in the record it appears he was given ample opportunity to state his case. Accordingly, I would have to answer question 3 as also no. Basically in some ways the complaint there is really going to sufficiency of the evidence; that was for the Board to decide, and when Mr. Allard was given the opportunity to respond and to put in his reply, in my view that was adequate. Accordingly, the answers for all three questions are no and the appeal is dismissed.

[9] MR. HOUSTON: Costs, My Lord.

[10] MS. JACKSON: You can indicate, My Lord, the Board seeks no costs.

[11] MR. HOUSTON: But the Assessor would be seeking costs, My Lord.

[12] THE COURT: Ms. Booker.

[13] MS. BOOKER: In these circumstances, My Lord, I would say that despite your finding, there were circumstances in this particular appeal procedurally that were legitimate in taking this appeal forward, and I would ask that no costs be ordered against the Appellant.

[14] THE COURT: Costs will follow the result.

The Honourable Mr. Justice Wong

SC 530Cont Allard, James T and Allard Contractors Ltd v AA10 and PAAB

JAMES T. ALLARD and ALLARD CONTRACTORS LTD
v.
ASSESSOR OF AREA 10 – NORTH FRASER REGION and
PROPERTY ASSESSMENT APPEAL BOARD

BRITISH COLUMBIA COURT OF APPEAL (CA037255) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE ROWLES, the HONOURABLE MADAM JUSTICE SAUNDERS, and the HONOURABLE MADAM JUSTICE GARSON
Date and Place of Hearing: March 17, 2010, Vancouver, B.C.

C.F. Willms for the Appellant
D. Houston for the Respondent, Assessor of Area 10 – North Fraser Region
V.L. Jackson for the Respondent, Property Assessment Appeal Board

Principles of Natural Justice – Written Hearing – Oral Hearing

The Appellant appealed the BCSC decision to this Court on two grounds 1) Did the decision of the Property Assessment Appeal Board ("the Board") to hold a written hearing, violate section 55 of the Assessment Act*?, and 2) Did the Board's decision to hold a written hearing constitute a denial of natural justice?*
HELD: *Appeal Dismissed.*
This Court found that to require all Board hearings to be conducted by two modes (written and oral) would be at odds with the Board's discretion to control its process. Accommodating the volume of appeals and remaining within the time constraints in the property assessment process requires efficiency in the appeal process. The words of section 55(1) of the Assessment Act *which enable the Board to "hold any combination of written electronic and oral hearings" is intended to give the Board the power to tailor its process to meet the requirements of this legislation, to efficiently and expeditiously resolve appeals.*
The Appellant had been invited to renew his request to the Board for an oral hearing before the empanelled Board member, but did not do so. This Court found that the duty of procedural fairness was not breached by the procedures the Board adopted in determining the appeal. This Court agreed with the Board's authority to determine its own processes and dismissed the appeal.

Reasons for Judgment October 7, 2010

Written Reasons by:
The Honourable Madam Justice Rowles

Concurred in by:
The Honourable Madam Justice Garson (para. 103)
The Honourable Madam Justice Saunders (para. 125)

Reasons for Judgment of the Honourable Madam Justice Rowles:

I. Overview

[1] The issue this appeal raises is whether, under the *Assessment Act,* R.S.B.C. 1996, c. 20 [*Act*], the duty of procedural fairness requires the Property Assessment Appeal Board (“Board”) to hold an oral hearing when facts relevant to the determination of the actual value of a single-family residential property are in dispute.

[2] The order under appeal was made in the Supreme Court on an appeal from the Board brought by way of Stated Case. Leave to appeal to this Court was granted on the following grounds:

1. The decision of the Property Assessment Appeal Board to hold a written hearing violated section 55 of the *Assessment Act,* R.S.B.C. 1996, c. 20, and,

2. The decision of the Property Assessment Appeal Board to hold a written hearing constituted a denial of natural justice.

[3] The first ground of appeal turns on a question of statutory interpretation. The phrase in contention, "any combination of written, electronic and oral hearings", is found in s. 55 of the *Act,* which provides:

> 55 (1) In a proceeding, the board may hold any combination of written, electronic and oral hearings.
>
> (2) The chair of the board must give notice of a hearing under subsection (1) to all parties and intervenors.

[4] The Appellants ("Allard") argue that s. 55(1) authorizes the Board to hold a written hearing but only if held in combination with another form of hearing, either electronic or oral. Allard contends that the word "combination", in its ordinary usage, denotes an aggregation rather than a single element and that if the Legislature had intended to permit the Board to hold only a written hearing, the statute would have said so explicitly. Allard also argues that had a single written procedure been intended, the word "combination" in s. 55(1) would be superfluous. Further support for the interpretation that a written hearing alone could not have been intended is said by Allard to be found in s. 67 of the *Act,* which provides that "[e]xcept for an order that may be made in relation to a prehearing conference, a hearing under this Act must be open to the public." Allard submits that only if a hearing is oral or conducted *via* some form of electronic means, in addition to written submissions, can it comply with the requirement in s. 67 that a hearing be "open to the public".

[5] I am unable to agree with the interpretation Allard seeks to place on s. 55(1). Briefly put, I am of the view that the purpose or intention behind s. 55(1) of the *Act* is to permit the Board to select not just one mode but a combination of modes of hearing that best provides for an efficient and expeditious process for determining the various kinds of issues that come before it on assessment appeals. It is also my view that the Board has the power, in controlling its own process, to direct a written hearing only, provided that the requirements of procedural fairness are met.

[6] The Respondent Board submits that if s. 55(1) of the *Act* permits the Board to hold a written hearing only, then the second ground must also fail. The Board argues that if this Court concludes that the legislative intention behind s. 55(1) is to permit the Board to choose to hold a written hearing only, that determination would supersede any common law duty of fairness that might otherwise be advanced. In support of its argument, the Board referred us to *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch),* 2001 SCC 52, [2001] 2 S.C.R. 781, in which McLachlin C.J. said that "[i]t is not open to a court to apply a common law rule in the face of clear statutory direction" (at para 22).

[7] In my view, *Ocean Port* does not support the proposition the Board asserts in relation to the interpretation of s. 55(1) of the *Act.* What was said in *Ocean Port* must be read in light of the specific statutory provision under consideration in that case. The issue in *Ocean Port* was whether members of the Liquor Appeal Board, who were appointed to "serve at the pleasure of the Lieutenant Governor in Council" under British Columbia's liquor control and licensing legislation, were sufficiently independent to render decisions on and impose penalties for violations under the legislation. In reversing this Court's decision that they were not sufficiently independent, the Supreme Court made reference to the statute's unequivocal expression of the legislature's intention that Board members should serve at pleasure as well as the fundamental distinction between the courts and administrative tribunals: i.e., the courts are constitutionally required to possess objective guarantees of both individual and institutional independence, whereas administrative tribunals lack the constitutional distinction from the executive. As stated by McLachlin C.J. at para. 24:

> Administrative tribunals ... are, in fact, created precisely for the purpose of implementing government policy. Implementation of that policy may require them to make quasi-judicial decisions. They thus may be seen as spanning the constitutional divide between the executive and judicial branches of government. However, given their primary policy-making function, it is properly the role and responsibility of Parliament and the legislatures to determine the composition and structure required by a tribunal to discharge the responsibilities bestowed upon it. While tribunals may sometimes attract *Charter* requirements of independence, as a general rule they do not. Thus, the degree of independence required of a particular tribunal is a matter of discerning the intention of Parliament or the legislature and, absent constitutional constraints, this choice must be respected.

[8] The statutory provision at issue in this case is modest in its reach. Section 55(1) of the *Act* goes no further than to give the Board the power to "hold any combination of written, electronic and oral hearings". Neither s. 55(1) nor any other provision applicable to the Board can be taken to give the Board, explicitly or by necessary implication, the power to hold written hearings without regard for the duty of procedural fairness it owes to those whose interests may be affected by the decisions it makes on appeals.

[9] The duty of procedural fairness the Board owes to a party to an appeal flows from *Cardinal v. Kent Institution,* [1985] 2 S.C.R. 643 at 653, 24 D.L.R. (4th) 44, in which Le Dain J. confirmed the Supreme Court's recognition of the duty of procedural fairness where three elements are present:

> This Court has affirmed that there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual. [Citations omitted.]

[10] The three elements referred to in *Cardinal* are present in this case: the Board is a public authority that makes administrative decisions, not of a legislative nature, which affect the interests of property owners whose property is being assessed pursuant to the *Act.*

[11] It is the content of the duty of procedural fairness that is in issue in this case, not the existence of the duty.

[12] The issue before the Board was primarily one of fact: i.e., whether the assessment roll reflected the actual value of Allard's property and improvements ("Property") and whether the Property was assessed equitably in relation to other similar properties in the area. Allard contends that the Board, by determining that it would hear the appeal by way of written submissions, failed in its duty by limiting his participatory rights, in particular, his right to cross-examination, in a hearing in which the facts were in dispute.

[13] The second ground of appeal raises a preliminary issue about what facts the chambers judge could properly take into account in answering the three questions posed on the Stated Case, all of which were directed to Allard's complaints of procedural unfairness. The facts specifically stated by the Board were limited to the following: "Mr. Allard requested an in person hearing. The Board determined it would hear the appeal by way of written submissions." However, the chambers judge made an additional finding, based on drawing inferences from the record appended as Schedules to the Stated Case. The additional finding was that Mr. Allard was given an opportunity to make a further request for an oral hearing, but failed to renew his request.

[14] Allard's position is that the chambers judge could only take into account those facts which were specifically set out by the Board in the Stated Case and could not make additional findings drawn from the record attached as Schedules to the Stated Case. The record included communications about pre-appeal procedures in which the parties participated, including an Appeal Management Conference in which certain directions were given by the Chair of the Board about the conduct of the appeal.

[15] Allard submits that when the judge's decision rests on a material fact not stated by the Board, the decision cannot stand. To support his submissions, Allard referred to *Tumbler Ridge (District) v. British Columbia (Assessor of Area No. 27 - Peace River),* [1986] B.C.W.L.D. 002 (WL Can), [1985] B.C.J. No. 810 (S.C.), in which Finch J., as he then was, considered an application by the Appellant for an order

remitting a Stated Case to the Board for amendment prior to the appeal being heard. The Appellant in that case submitted that the Board's statement of material facts was inadequate and incomplete and would not permit the court to reach the correct answers to the questions of law which had been posed. The Appellant argued that the Board's findings and conclusions set out in the Stated Case exceeded the findings made in the Board's decision and were, in effect, an apology or argument in favour of those findings. In summarizing the principles on the preparation, form and use of a Stated Case in a case of that kind, Finch J. said, at para. 4:

> ... I summarize what I apprehend to be the applicable principles. The questions should be questions of law only. The questions should be framed by, and are the sole responsibility of the Appellant. Statements of fact are within the exclusive province of the Board. On appeal, the Court must accept the findings of fact made by the Board, and not substitute its own. The Board should not express opinions, or put forward arguments. The Court may not look beyond the Stated Case to make inferences of fact, nor find new facts, nor weigh and consider the sufficiency of the evidence. The Court may refer to the Board's reasons. The Court may also refer to the transcript of the evidence, but only for the purpose of interpreting or explaining the Stated Case.

[16] *Tumbler Ridge* was decided shortly after *Caldwell v. Stuart,* [1984] 2 S.C.R. 603, 15 D.L.R. (4th) 1, in which the Supreme Court of Canada considered a preliminary question about whether the court to which an appeal by way of Stated Case is brought is confined in its consideration to the case as stated. The Stated Case in *Caldwell* had come before the Supreme Court of British Columbia on appeal from the Board of Inquiry constituted under the *Human Rights Code,* R.S.B.C. 1979, c. 186. McIntyre J. summarized the Supreme Court's conclusion on the preliminary question at 614-15:

> To summarize, I would say that all facts must be found in the Stated Case and the appellate court may not substitute findings of its own. Reasons for decision are always open for the consideration of the appellate court. To a limited extent the appellate court may refer to the transcript of evidence to determine, where the matter is in issue, whether there is any evidence, as distinct from a sufficiency of evidence, to support a finding of fact by the trial judge or for any other purpose permitted or directed in the statute authorizing the appeal.

[17] In my opinion, neither *Caldwell* nor *Tumbler Ridge* is dispositive of the preliminary issue in this case. The Board has the statutory power to make rules for pre-appeal conferences, or appeal management conferences, as they are also called, and, as well, rules that impose consequences for non-compliance with pre-hearing directions. In this case, the material attached to the Stated Case provides a record of the directions given on an appeal management conference and it was those directions to which the chambers judge referred in his reasons.

[18] The Board may, under its rules, give pre-appeal directions for the conduct of an appeal in much the same way the trial courts give directions in pre-trial conferences. In view of the nature of the legal questions posed in the Stated Case, it was necessary for the Board to attach to the Stated Case the record of the communications and pre-appeal directions given by a Board member. On the appeal, the chambers judge needed to know what pre-appeal directions had been given in order to understand the basis upon which the Board and the parties expected the appeal process to go forward. In the circumstances, for the chambers judge to have made reference to the record for that limited purpose appears to me to be unobjectionable.

[19] However, Allard also argues that the judge's finding that Mr. Allard had not renewed his request for an oral hearing amounted to a finding of waiver. That is not how I read the judge's reasons, but if that argument were valid, I would agree that the judge went beyond the permissible boundaries referred to in *Caldwell* and *Tumbler Ridge.*

[20] The second ground of appeal is that the decision of the Board to hold a written hearing constitutes a denial of natural justice. In *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817, 174 D.L.R (4th) 193, the Supreme Court considered the participatory rights of the Appellant in relation to a deportation decision. In her reasons, L'Heureux-Dubé J. makes plain that the concept of

procedural fairness is variable and that its content is to be decided in the context of each case (at para. 21). That point is re-iterated in *Dunsmuir v. New Brunswick,* 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 79.

[21] Taking into account the factors suggested for consideration in *Baker,* I am not persuaded that the second ground of appeal can succeed.

[22] In the result I would dismiss the appeal. My reasons for reaching that conclusion follow.

II. Background

[23] Allard is the owner of three single-family residential lots in Coquitlam, British Columbia, on which a single-family residence is located. Dissatisfied with the decision of the Property Assessment Review Panel ("Review Panel") with respect to the 2008 assessment of the Property, Allard appealed to the Board under s. 50(2) of the *Act* on the ground set out in s. 32(1)(c), i.e., "land or improvements, or both land and improvements, are not assessed at actual value".

[24] Allard requested an oral hearing in order to cross-examine the appraiser who had prepared a report for the Assessor and to present evidence himself, but in an Appeal Management Conference conducted by telephone on 11 August 2008, Ms. Cheryl Vickers, the Chair of the Board, slated the appeal for hearing by written submissions.

[25] Written submissions were provided to the Board by both Allard and the Assessor. The Board's decision is silent on the question of Allard's request for an oral hearing but it refers to, among other things, various submissions made by both Allard and the Assessor directed to various aspects of the appraiser's opinion as to the value of the Property. The Board's decision affirmed the Review Panel's assessment.

[26] Allard appealed the Board's decision by way of Stated Case under s. 65 of the *Act,* which provides, in part:

> 65 (1) Subject to subsection (2), a person affected by a decision of the board on appeal ... 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.
>
> ...
>
> (4) ... 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.
>
> ...

[27] In the Stated Case, the Board stated the issue before it at para. 3:

> 3. The issue before the Board was whether the value on the roll reflected the actual value of the Property appraised in accordance with section 19(8) of the *Assessment Act,* and whether the Property was assessed equitably in relation to other similar properties in the area.

[28] Under the *Act,* properties must be valued at their "actual value", which is defined in s. 19 of the *Act* as the market value of the fee simple interest in lands and improvements, but there are some exceptions. Section 19(8) of the *Act* provides that if the owner and occupier owned and occupied the eligible residential property as his or her principal place of residence during the entire 10 year period prior to the preceding assessment date, the actual value of the eligible residential property, for the purpose of the assessment roll for the calendar year following that date must be determined taking into consideration only the actual use of the land and improvements that comprise the eligible residential property and not taking into consideration any other use to which the land or improvements could be put.

[29] The Assessor did not dispute that Allard's Property fell within s. 19(8), but from the Board's reasons, it appears that there were some submissions made about the Property being overvalued as a single family residential property because of the combined lot size.

[30] Paragraph 4 of the Stated Case, which sets out what Allard submits are the salient facts, also includes a chronologically ordered table which refers to Schedules A through M. The Schedules contain the material upon which the chambers judge made his additional finding. Paragraph 4 reads:

> Mr. Allard requested an in person hearing. The Board determined it would hear the appeal by way of written submissions. Attached to this Stated Case as Schedules A through M are copies of the correspondence between the Board and the parties comprising the record before the Board as set out below:

Schedule	Description	Date
A	Notice of Appeal Management Conference	May 22, 2008
B	Appeal Management Conference Record of Results	June 4, 2008
C	Email from James (Jim) Allard	July 11, 2008
D	Email from Preet Basra (BC Assessment)	July 16, 2008
E	Email from Jim Allard	July 16, 2008
F	Emails between Board, Jim Allard and BC Assessment	July 17, 18, 21, 2008
G	Notice of Appeal Management Conference	July 29, 2008
H	Appeal Management Conference Record of Results	August 11, 2008
I	Emails between Board, Jim Allard and BC Assessment	October 2, 2008
J	Letter from Board	October 3, 2008
K	Emails from Jim Allard and Board	November 3, 2008
L	Letter from Board	November 20, 2008
M	Email from Allard Contractors Ltd.	December 30, 2008

[31] Schedule E to the Stated Case is an e-mail from Mr. Allard dated 16 July 2008 to Ms. Vickers, stating: "We would welcome an [Appeal Management Conference] and expect a full Hearing to allow a full cross examination of [the appraiser's] comparables."

[32] Schedule F contains an e-mail of 21 July 2008 from Mr. Allard to Ms. Vickers and others asking "[w]here and at what time will the hearing take place?"

[33] Schedule H is a letter recording the results of the Appeal Management Conference held on 11 August 2008, prepared by Ms. Vickers, and sent to the attention of James Allard and the Assessor. The letter reads, in part:

> **Current status:** Scheduled for written submissions
>
> **Property Description:** single family residential subject to section 19(8)
>
> **Discussion:** The parties have been unable to resolve the appeal. Mr. Allard maintains the value is too high, it does not reflect its proximity to a high traffic dangerous intersection, the increase over the previous year is excessive arid cannot be justified by market movement, deferred maintenance in the home has not been adequately recognized, and large size of the lot has been overvalued. He maintains the comparables relied on by Mr. Grace [the appraiser] are not comparable in that they are less impacted by traffic and have views of Mt Baker. Mr. Grace submits the traffic has been

considered, market movement supports the increase over the previous year, and the size adjustment can be supported by sales of large undevelopable lots. He suggested some evidence from an expert with respect to any deferred maintenance issues (ie plumbing and electrical) may assist with a consideration of whether an adjustment should be made for these factors.

Mr. Allard wants an oral hearing so that he may cross-examine Mr. Grace. I am not satisfied that an oral hearing is necessary for the Appellant to be able to put forward market evidence or test and challenge the market evidence put forward by the Assessor. The issues in this appeal are not unique or complex; there are no issues with respect to the Appellant's ability to communicate in writing. Mr. Allard is at liberty to request an oral hearing in his submissions and I will leave it to the discretion of the Board Member panelled to render a decision as to whether he or she thinks an oral hearing or a telephone conference is required to properly consider the evidence.

Board orders: The Property Assessment Appeal Board orders the following:

Written Submissions:

1. The Board will hear this appeal by way of written submissions.

2. The parties shall produce to the Board **and** to the other party their written submissions including any written argument and supporting documents **by Tuesday, October 7, 2008**. The Board requires two copies of the written submissions and any documents.

[Emphasis in original.]

The written submissions must include:

a) reasons why the assessment is either not at market value or is at market value;

b) market evidence, such as sales of comparable properties, to support their value;

c) Any other evidence and argument to support the parties' positions on other issues in this appeal.

d) **ALL** documents that the parties want to rely on in support of their submission, including letters, maps, photographs, reports or letters from experts.

If case authorities (previous Board or Court decisions) are relied on, include copies of those cases.

...

[34] Schedule I is an e-mail exchange regarding an extension of time to provide written submissions. Schedule J is a letter from Ms. Vickers to the parties showing the amendment of the Board's order of 11 August 2008 to reflect the extension granted to 31 October 2008.

[35] Schedule K consists of the following e-mail exchange between Mr. Allard and Ms. Vickers on 3 November 2008:

[Allard to Vickers]

Further to the extension of the written submissions to Oct. 31/08, could you please advise the new deadline for parties to produce written responses to the other party's submissions? (It was originally Oct. 21/08)

Also, what date will we have to appear at the Board office to finalize this appeal?

[Reply e-mail - Vickers to Allard]

Resending letter of October 3, 2008 granting the extension. Reply date is November 14, 2008.

There is no date for appearance at the Board. That will be at the discretion of the board member panelled. Resending my letter of August 11, 2008 in that regard.

[Emphasis added.]

[36] Schedule L is a letter from the Registrar, dated 20 November 2008, advising the parties as follows:

Bruce Maitland is the Board Member who has been panelled to decide this appeal. The written submissions have been forwarded to Mr. Maitland for consideration. A written decision will be issued as soon as possible.

[37] The Board's written decision, dated 9 January 2009, may be found at 2008 PAABBC 20082076.

[38] Allard and the Assessor filed written submissions. An appraisal report on the value of the Property was before the Board. In arriving at its decision, the Board relied on the expert opinion evidence. In doing so, the Board referred to the report as the "only evidence" before it, as set out in Paragraph 5 of the Stated Case:

5. The Board accepted the Assessor's "highest and best use" valuation for the Property of $1,005,000. The Board found the Assessor had properly valued the Property under section 19(8) of the *Assessment Act.* The Board found Mr. Grace's appraisal report, estimating the value of the Property as of July 1, 2007 at $710,000, was the only evidence before it for determining the actual value of the Property under section 19(8). The board found the actual value of the property under section 19(8) of the *Assessment Act* as of July 1, 2007 was $710,000.

[39] A further Board finding on the evidence appears at para. 6 of the Stated Case:

The Board found the evidence before it did not support a finding that the Property was assessed inequitably in relation to other similar properties in the City of Coquitlam.

[40] Paragraph 7 of the Stated Case sets out the Board's confirmation of the Review Panel's assessment:

The Board confirmed the decision of the Property Assessment Review Panel as follows:

Roll No. 10-43-05-07117-001:

Land:	Class 1 Residential	$532,000
Improvements:	Class 1 Residential	$159,000
Total Assessed Value:		$691,000

[41] The questions of law to be determined on the Stated Case were stated as follows:

1. Did the Board err in law in breaching the principles of natural justice by accepting the evidence of the appraiser for the Assessor absent any opportunity by the Appellants to cross-examine the appraiser?

2. Did the Board err in law in breaching the principles of natural justice by failing to order that the appeal proceed by way of oral hearing where the Appellants provided notice that they wished an oral hearing in order to cross-examine the appraiser?

3. Did the Board err in law in relying on the appraiser's evidence "in the absence of any contrary evidence" when the Appellants were not permitted to cross-examine the appraiser?

[42] The chambers judge answered “no” to each of the questions set out in the Stated Case: 2009 BCSC 792, [2009] B.C.J. No. 1185. The judge’s reasons for answering the first two questions in the negative were as follows:

> [5] In compliance with the directions given by Ms. Vickers [Board Chair and member who conducted the Pre-hearing Conference], both the Assessor and Mr. Allard provide written submissions, and Mr. Allard was given an opportunity to provide a response, from which he also placed in sales comparables. It is quite clear that the legislation and the rules permitted by the legislation allows the appeal board to set its procedure and to regulate its own process, provided it meets the generally accepted principles of natural justice.
>
> [6] With respect to the first two questions, clearly Mr. Allard was given an opportunity to respond to Mr. Grace, the Assessor’s valuation, and he did.
>
> [7] The complaint of not being permitted to have cross-examination of Mr. Grace simply flows from the fact that Mr. Allard did not renew his request for consideration by the panel member, but even when he provided his written submissions, he did not renew his request as he did before Ms. Vickers. He was given the opportunity to state his case and his complaints and his comparables, and it does not always follow that because there was no cross-examination he was not afforded an equally effective method of answering the case made out against him; in other words, what in essence, in principles of natural justice, [was] a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. If that opportunity is given, basically that meets the requirements of natural justice.

[43] The judge’s reasons for answering the third question in the negative were as follows:

> [8] ... With respect to question 3 - Did the Board err in law in relying on the appraiser’s evidence in the absence of any contrary evidence, when the Appellant’s were not permitted to cross-examine the appraiser? I think it follows where I have said that in the record it appears he was given ample opportunity to state his case. Accordingly, I would have to answer question 3 as also no. Basically in some ways the complaint there is really going to sufficiency of the evidence; that was for the Board to decide, and when Mr. Allard was given the opportunity to respond and to put in his reply, in my view that was adequate. ...

[44] The Appellants applied for leave to appeal the order of the chambers judge under s. 65(9) of the *Act,* which provides that an appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal, with leave. The grounds upon which leave was granted are set out in the second paragraph of these reasons.

III. The relevant statutory provisions

[45] The statutory provisions governing the assessment of property for real property tax purposes are found in both the *Act* and the *Assessment Authority Act,* R.S.B.C. 1996, c. 21 [*Authority Act*]*.* The *Authority Act* was first enacted in 1974, at least in part, in order to end the perceived inequities and inefficiencies in the assessment of properties in different regions of the province: *British Columbia Real Property Assessment Manual,* loose-leaf (Vancouver: Continuing Legal Education Society of British Columbia, 2010) at pp. 2-2 - 2-3. The *Authority Act* creates a province-wide assessment authority which is independent of the taxing function. As stated in s. 9, the purpose of the British Columbia Assessment Authority (“assessment authority”) “is to establish and maintain assessments that are uniform in the whole of British Columbia in accordance with the *Assessment Act*”*.* Under s. 10, the powers and duties of the assessment authority include:

> (a) to develop and administer a complete system of property assessment;
>
> (a.1) to give directions respecting the preparation and completion of assessment rolls;

(b) to divide British Columbia into the number of assessment areas it considers advisable;

(c) to develop and maintain programs for the education, training and technical or professional development of assessors, appraisers and other persons qualified in property assessment matters;

(d) to prescribe and maintain standards of education, training and technical or professional competence for assessors, appraisers and other persons employed or engaged in property assessment, and to require compliance with these standards;

...

(f) to ensure that the general public is adequately informed respecting procedures relating to property assessment in British Columbia;

...

[46] Under s. 13(1) of the *Authority Act,* the board of directors of the assessment authority may "appoint assessors, appraisers, officers and other employees of the authority that are necessary to carry on the business and operations of the authority" and may define their duties arid set their remuneration. The definition section in the *Act* (s. 1) defines "appraiser" as "a property valuator appointed under the *Assessment Authority Act*" and "assessment" as "a valuation and classification of property".

[47] All properties are assigned, by type or use, to classes prescribed by the Lieutenant Governor in Council. Most properties must be valued at their actual value, which is defined by s. 19 of the *Act* as the market value of the fee simple interest in lands and improvements, although there are exceptions.

[48] The overall object or goal of the assessment process established by the *Authority Act* and the *Act* is to provide a uniform, stable and equitable base for property taxation purposes. The legislation also requires a timely assessment process in order to meet the planning needs of local governments dependent on property tax revenue.

[49] To ensure uniformity and equity, property assessments are open to review by the Review Panels and the Board, as provided in the *Act.*

[50] Two major amendments to the *Act* have been made since 1996: the first in 1998 in the form of the *Assessment Amendment Act, 1998,* S.B.C. 1998, c. 22 [*Amending Act*]*,* and the second, in 2004, made at the same time as the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 [*ATA*]*,* was enacted.

[51] The major changes to the statute brought about by the *Amending Act* were aimed at facilitating the timely resolution of disputes under the *Act* as well as appeals before Review Panels and the Board. Although the section was later repealed when the *ATA* came into effect, the *Amending Act* gave the Board wide powers to make orders in the conduct of appeals including, by s. 54(2), the power to make orders "requiring the parties to the appeal to file written submissions with the board in respect of all or any part of the proceeding."

[52] The mischief to which the 1998 amendments were directed was referred to by the Minister of Municipal Affairs when the bill that became the *Amending Act* was given first reading:

> **Hon. J. Kwan:** Hon. Speaker, I'm pleased to present the *Assessment Amendment Act, 1998*. This bill will make the appeal process more accessible and will cut red tape, which will ensure that assessment disputes are resolved in a timely manner and will help reduce the current backlog of appeals. Bill 21 will shift the focus of the assessment appeals system from adversarial hearings to facilitated processes aimed at resolution of disputes and determination of actual values. This will reduce the cost to taxpayers and promote speedier resolution of appeals. This legislation will allow

> greater openness and transparency, while protecting personal and sensitive information related to assessments, as recommended by the privacy commissioner. Bill 21 will modernize our assessment appeal system, reduce the backlog of appeals and provide better value for taxpayers.
>
> [British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard),* 36th Leg, 3rd sess, Vol. 9, No 23 (20 May 1998) at 7916; emphasis added.]

[53] As a result of the *Amending Act,* much of the *Act* as it stood in the 1996 revised statutes was repealed and replaced.

[54] Part 3 of the *Act,* as amended, sets out the relevant date for determination of the value, for assessment roll purposes, of all land and improvements in British Columbia. All land and improvements are subject to assessment under the *Act* unless specifically exempted (s. 18.1). Section 19 details, among other things, the requirements for valuation of property and improvements for assessment purposes. Determinations made under Part 3 are not limited to questions that turn on evidence of actual value of property and improvements but may turn on questions of what class or under what definition property falls, and may be matters of law or mixed fact and law.

[55] Part 4 of the *Act* provides for Review Panels. Section 32(1) sets out the grounds on which an entry in an assessment roll may be challenged. Those who may make a complaint to a Review Panel regarding an assessment include the Minister of Finance, a local government, and a taxing treaty First Nation. The grounds set out in s. 32(1) include:

> ...
>
> (b) there is an error or omission respecting land or improvements, or both land and improvements, in the assessment roll;
>
> (c) land or improvements, or both land and improvements, are not assessed at actual value;
>
> (d) land or improvements, or both land and improvements, have been improperly classified;
>
> (e) an exemption has been improperly allowed or disallowed.

[56] Part 6 of the *Act* provides for appeals to the Board from a Review Panel. The relevant portion of s. 50 provides for an appeal to the Board if a person is dissatisfied with a Review Panel decision. The appeal must be based on a ground in s. 32(1).

[57] An appeal to the Board is conducted as a hearing *de novo.*

[58] Under s. 64 of the *Act,* the Board may, at any stage of a proceeding before it, on its own initiative or at the request of one or more of the persons affected by the appeal, refer a question of law in the proceeding to the Supreme Court in the form of a Stated Case. Section 65 provides for appeals from the Board's decision by way of Stated Case on a question of law to the Supreme Court. Under s. 65(9), an appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal with leave.

[59] In 2004, British Columbia passed the *ATA,* which made consequential amendments to a number of statutes including the *Act.* Among others, s. 54 of the *Amending Act* was repealed and various provisions in the *ATA* were made applicable to the Board. The sections of the *ATA* that apply to the Board are set out in s. 43(3) of the *Act,* as follows:

> (3) Sections 1 to 11, 13 to 16, 17(2), 18 to 20, 28, 29, 31(1)(a), (b) and (e), (2) and (3), 32, 33, 34(3) and (4), 35, 37 to 40, 44, 46.3, 48, 49, 50(2) to (4), 51, 53 to 56, 60(a) and (b) and 61 of the *Administrative Tribunals Act* apply to the property assessment appeal board.

[60] Under s. 11(1) of the *ATA,* the Board has the power to control its own processes and to "make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it." Section 11(2), while not limiting the power given in s. 11(1), provides a list of matters on which the tribunal has the power to make rules, as follows:

(a) respecting the holding of pre-hearing conferences, including confidential pre-hearing conferences, and requiring the parties and any interveners to attend a pre-hearing conference;

(b) respecting dispute resolution processes;

(c) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit;

(d) respecting the exchange of records and documents by parties;

(e) respecting the filing of written submissions by parties;

(f) respecting the filing of admissions by parties;

(g) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue an application and specifying the time within which and the manner in which the party must respond to the notice;

(h) respecting service and filing of notices, documents and orders, including substituted service;

(i) requiring a party to provide an address for service or delivery of notices, documents and orders;

(j) providing that a party's address of record is to be treated as an address for service;

(k) respecting procedures for preliminary or interim matters;

(l) respecting amendments to an application or responses to it;

(m) respecting the addition of parties to an application;

(n) respecting adjournments;

(o) respecting the extension or abridgement of time limits provided for in the rules;

(p) respecting the transcribing or tape recording of its proceedings and the process and fees for reproduction of a tape recording if requested by a party;

(q) establishing the forms it considers advisable;

(r) respecting the joining of applications;

(s) respecting exclusion of witnesses from proceedings;

(t) respecting the effect of a party's non-compliance with the tribunal's rules;

(u) respecting access to and restriction of access to tribunal documents by any person;

(v) respecting witness fees and expenses;

(w) respecting applications to set aside any summons served by a party.

[61] Section 11(3) of the *ATA* provides that "[i]n an application, the tribunal may waive or modify one or more of its rules in exceptional circumstances" and s. 11(4) provides that "[t]he tribunal must make accessible to the public any rules of practice and procedure made under this section."

[62] A number of applicable provisions in the *ATA* give the Board the power to accommodate an adversarial process as well as provide for procedures to encourage resolution short of an appeal hearing. As to the former, for example, s. 32 of the *ATA* provides that "[a] party to an application may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction." Section 33 provides that the tribunal may allow interveners. Section 34 provides for summons to be issued for the attendance of persons or the production of documents.

[63] Section 37 of the *ATA* gives the Board wide powers to deal with applications involving the same or similar questions:

> 37 (1) If 2 or more applications before the tribunal involve the same or similar questions, the tribunal may
>
> (a) combine the applications or any part of them,
>
> (b) hear the applications at the same time,
>
> (c) hear the applications one immediately after the other, or
>
> (d) stay one or more of the applications until after the determination of another one of them.
>
> (2) The tribunal may make additional orders respecting the procedure to be followed with respect to applications under this section.

[64] Section 38 of the *ATA* contains the following provision for the calling and examination of witnesses on an oral or electronic hearing:

> 38 (1) Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.
>
> (2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.
>
> (3) The tribunal may question any witness who gives oral evidence in an oral or electronic hearing.

[65] The 2005 Property Assessment Appeal Board Rules, in effect when the Board heard the appeal from the Review Panel in this case, were prepared under the power given by the *Act* and by s. 11 of the *ATA.* The 2005 Rules have recently been replaced but the hearings rule remains unchanged. Rule 18 provides in part:

> 18. (1) <u>The board may direct that a hearing be conducted</u>
>
> (a) <u>by way of an in person hearing</u>;
>
> (b) <u>by way of telephone conference</u>;
>
> (c) <u>by way of written materials and submissions delivered to the board, including any reports received pursuant to an investigation conducted by the board</u>;

(d) any combination of (a), (b) or (c):

(e) by any other means the board deems appropriate.

(2) The board has discretion to determine the location for a hearing with consideration to the convenience and cost to the parties, any witnesses, and the board, and the need, if any, to view the property.

(3) A party may be self represented or be represented by counsel or an agent.

(4) The panel hearing an appeal has discretion in the manner in which the hearing will be conducted and, without limitation, may

(a) determine the order of proceeding;

(b) administer oaths and affirmations;

(c) add parties and impose terms and conditions limiting the participation of those parties at the hearing;

(d) allow the participation of interveners and impose terms and conditions limiting the participation of interveners;

(e) make determinations on the admissibility of evidence;

(f) require the production of evidence;

(g) require the attendance of witnesses;

(h) proceed in a party's absence or in the absence of any submissions from a party where the party has had notice of the proceeding;

(i) ask questions to clarify issues or facts;

(j) ask questions of a witness in the nature of direct examination or cross-examination;

(k) place time limitations on any part of the hearing including presentation of evidence, the examination or cross-examination of witnesses, or presentation of opening or closing submissions;

(l) require parties to present written submissions;

...

[Emphasis added.]

IV. Ground One: Did the decision of the Board to hold a written hearing violate s. 55 of the *Act?*

[66] The first ground of appeal turns on a question of statutory interpretation. The principle of statutory interpretation adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27 at para. 21, 154 D.L.R. (4th) 193, and reiterated in a number of subsequent cases including *Bell Express Vu Limited Partnership v. Rex,* 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26, is taken from Elmer Driedger, *The Construction of Statutes,* 2d ed. (Toronto: Butterworths, 1983) at 87:

> ... 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.

[67] As *Rizzo Shoes* instructs, the interpretation of the phrase in contention in the first ground of appeal must be considered in the context in which it is found and read in harmony with the scheme and object of the legislation and the intention of the legislature.

[68] The phrase in contention in s. 55(1), "any combination of written, electronic and oral hearings", must be considered not only within the context of the section itself but also within the legislative scheme for the assessment of property. When the phrase is read in harmony with the purpose and scheme of the legislation, it appears to me that the intent of s. 55(1) of the *Act* is to provide the Board with the power to choose the mode or modes of hearing that best suit the efficient and expeditious determination of the particular issue or issues before it. The time constraints inherent in the legislative scheme for property assessment each year make it imperative that disputes over the value of property and improvements be resolved expeditiously. For the Board to have the flexibility to have one kind of hearing or "any combination of written, electronic and oral hearings" accords with both its statutory mandate and the wide powers it has been given to make rules to control its procedures.

[69] To require all Board hearings to be conducted by two modes, as Allard contends that the wording of s. 55(1) dictates, would be at odds with the Board's discretion to control its process in the manner that best fulfils the objectives of the *Act* and the *Authority Act.* For example, valuing some industrial properties may well throw up unusual issues of fact or mixed fact and law and using more than one mode of hearing may well speed the resolution of discrete issues within the appeal. Accommodating the volume of appeals and adhering to the time constraints in the property assessment process requires efficiency in the appeal process. In my opinion, the contentious phrase in s. 55(1) is intended to give the Board the power to tailor its process to meet the requirements of the legislation.

[70] It is also my view that Allard's argument concerning s. 67 of the *Act* is not determinative of the intent of the phrase in issue in s. 55(1). Section 67 provides that "[e]xcept for an order that may be made in relation to a prehearing conference, a hearing under the Act must be open to the public". Requiring a hearing to be open to the public must be distinguished from having participatory rights on an appeal.

[71] What s. 67 ensures is transparency in the process of assessment appeals and in that respect is no different from the open court principle referred to in *Vancouver Sun (Re),* 2004 SCC 43, [2004] 2 S.C.R. 332 at paras. 23-28. See also *Vancouver (City) v. British Columbia (Assessment Appeal Board, Assessor of Area No. 09 - Vancouver)* (1996), 20 B.C.L.R. (3d) 79, 135 D.L.R. (4th) 48 at para. 51. Section 51 of the *ATA,* which applies to the Board by reason of s. 43(3) of the *Act,* provides that the Board "must make its final decision in writing and give reasons for the decision." Among other things, that provision also ensures transparency as well as uniformity in decisions.

[72] Section 67 of the *Act* and s. 51 of the *ATA* enable public scrutiny and accountability in the Board's determination of property assessments. Requiring the Board to have a transparent process furthers the purpose stated in s. 9 of the *Authority Act* to establish and maintain assessments that are uniform in the whole of British Columbia in accordance with the *Act.* Requiring a hearing to be open to the public also accords with s. 10(f) of the *Authority Act* which is aimed at ensuring that the general public is adequately informed respecting procedures relating to property assessment in British Columbia. Requiring the Board to give written reasons accords with s. 50(4) of the *ATA,* which requires Board decisions to be available to the public.

[73] Section 55(1) of the *Act* concerns the procedure that may be followed by the Board in relation to a "hearing". The *Act* gives the Board, through s. 11 of the *ATA,* the power to make rules which include, under ss. 11(e), "respecting the filing of written submissions by parties", and the Board has created such a Rule.

[74] Finally I note that the fact that the Board has the power to direct a written hearing only does not answer the question of whether the Board's determination to do so in a particular case comports with the requirements of procedural fairness. That is a separate issue which I will consider under the second ground of appeal.

V. Ground two: Did the Property Assessment Appeal Board's decision to hold a written hearing constitute a denial of natural justice?

[75] Under this ground, I will first consider Allard's additional arguments in support of his position that the chambers judge erred in making a finding of fact beyond those set out in the Stated Case. It is Allard's submission that the judge's finding is not supportable on the evidence found in the record attached to the Stated Case and further, that Allard could not be found to have waived his right to procedural fairness without clear evidence to support such a finding.

[76] On the first point, Allard takes issue with the inference the chambers judge drew from the record attached to the Stated Case that he had not pursued his request for an oral hearing. In that regard, Allard points out that on 3 November 2008, he sent an e-mail to Ms. Vickers inquiring about the date for the hearing. Allard submits that his inquiry shows that, regardless of whether written argument was to be submitted to the Board, he expected there would be a date set for a "hearing" at which the parties would appear. Allard bolsters this submission by reference to his previous requests for an oral hearing, as evidenced in the record attached to the Stated Case. However, in her same-day response to Mr. Allard's inquiry about the date, Ms. Vickers said: "There is no date for appearance at the Board. That will be at the discretion of the board member panelled" and re-sent her letter of 11 August 2008 confirming the results of the Appeal Management Conference.

[77] The Chair's rationalization for scheduling the appeal to be heard by written submissions and her direction about a further request for an oral hearing is set out in her letter of 11 August 2008 which, for ease of reference, I will repeat:

> **Discussion:** The parties have been unable to resolve the appeal. Mr. Allard maintains the value is too high, it does not reflect its proximity to a high traffic dangerous intersection, the increase over the previous year is excessive and cannot be justified by market movement, deferred maintenance in the home has not been adequately recognized, and large size of the lot has been overvalued. He maintains the comparables relied on by Mr. Grace [the appraiser] are not comparable in that they are less impacted by traffic and have views of Mt Baker. Mr. Grace submits the traffic has been considered, market movement supports the increase over the previous year, and the size adjustment can be supported by sales of large undevelopable lots. He suggested some evidence from an expert with respect to any deferred maintenance issues (ie plumbing and electrical) may assist with a consideration of whether an adjustment should be made for these factors.
>
> Mr. Allard wants an oral hearing so that he may cross-examine Mr. Grace. I am not satisfied that an oral hearing is necessary for the Appellant to be able to put forward market evidence or test and challenge the market evidence put forward by the Assessor. The issues in this appeal are not unique or complex; there are no issues with respect to the Appellant's ability to communicate in writing. Mr. Allard is at liberty to request an oral hearing in his submissions and I will leave it to the discretion of the Board Member panelled to render a decision as to whether he or she thinks an oral hearing or a telephone conference is required to properly consider the evidence.

[78] I agree with Allard's submission that the use of the word "Board" in the sentence in para. 4 of the Stated Case, "The Board determined it would hear the appeal by way of written submissions", cannot be a reference to the Board member who conducted the Appeal Management Conference; instead it must be a reference to the Board constituted to hear the appeal. I also agree that a Board member who conducts an appeal management conference is not performing the same function as the Board constituted to hear the appeal. Nevertheless, reference to the record of the 11 August Appeal Management Conference shows that consideration of whether the Board constituted to hear the appeal had to consider whether an oral hearing was required must have been triggered either by a request from Allard in his written submissions or by a conclusion on the part of the Board, based on what was contained in the written submissions, that an oral hearing or a telephone conference was required to properly consider the evidence.

[79] There is no suggestion that Mr. Allard, in his written submissions to the Board on his appeal, requested an oral hearing. The decision of the Board, found at 2008 PAABBC 20082076, is replete with references to the written submissions of both Allard and the Assessor on the points Allard identified in the Appeal Management Conference of 11 August as being contentious, both generally and in relation to the appraiser's report. When Allard did not repeat his request for an oral hearing in his written submissions, and when the Board addressed the points raised by Allard, it is not surprising that the Board's reasons are silent on the question of whether, in addition to the written submissions, an oral hearing was necessary.

[80] As to waiver, the facts in the Stated Case as set out by the Board did not include any facts on which waiver of procedural fairness rights could be based. As noted earlier, I agree with Allard that the chambers judge could not add facts to the Stated Case to support a finding that Allard had waived his participatory rights without running afoul of what was said in *Caldwell* and *Tumbler Ridge.* However, even if the chambers judge intended to apply waiver, which from reading the whole of his reasons I doubt, the question that lies at the heart of this appeal remains open for consideration. The question is whether the Board's decision to hold a written hearing only constituted a denial of procedural fairness when there was a dispute on the facts necessary to determine the actual value of the Property. It is to that question to which I now turn.

[81] The factors to which the courts look in determining questions of procedural fairness are set out in the reasons of L'Heureux-Dubé J. in *Baker.* The factors relevant to the determination of the content of the duty of procedural fairness are conveniently summarized in the headnote to the S.C.R.'s report as follows (at 819):

> The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive.

[82] In *Congrégation des témoins de Jéhovah de St-Jérome-Lafontaine v. Lafontaine (Village),* 2004 SCC 48, [2004] 2 S.C.R. 650, 241 D.L.R. (4th) 83, McLachlin C.J. summarized the five factors in similar terms.

[83] As an introduction to the factors to be considered, L'Heureux-Dubé J. observed in *Baker*:

> [21] The existence of a duty of fairness, however, does not determine what requirements will be applicable in a given set of circumstances. ...
>
> [22] Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[84] The nature and objectives of the statutory scheme for the assessment of property for tax purposes, the provisions governing the grounds upon which an assessment may be challenged, and the powers the

Board has in determining its process have been set out earlier in these reasons and need not be repeated here. The Board is given wide powers to control its own process, as evidenced by s. 11 of the *ATA* and a number of provisions in the *Act.* The Rules the Board has issued carry into effect the powers it has been given.

[85] The nature of the decision the Board was required to make in this case is identified by the issue the Board stated at para. 3 of the Stated Case, i.e., "whether the value of the roll reflected the actual value of the Property appraised in accordance with s. 19(8) of the *Assessment Act,* and whether the Property was assessed equitably in relation to other similar properties in the area."

[86] Allard argues that when an appeal to the Board is advanced on the ground that land and improvements have not been assessed at actual value, an applicant before the Board will have been denied procedural fairness if the Board does not permit an oral hearing that permits cross-examination on evidence central to the questions in issue.

[87] The essence of Allard's complaint is that the Board's determination to hear the appeal by way of written submissions foreclosed any opportunity for him to cross-examine the appraiser in order to challenge the expert's assumptions and comparables, to present his own evidence, and to have the evidence from cross-examination and any evidence he presented considered by the Board as the decision-maker on his appeal.

[88] In Allard's submission, when the factors elucidated in *Baker* are applied, it is apparent that a high degree of procedural fairness was required in the circumstances of this case. In particular, Allard points to the nature of the decision being made, including: the factual disputes raised by Allard and the need to cross-examine the Assessor's expert; the decision's significance to Allard, both in respect of present and future assessments; and Allard's legitimate expectation, reinforced by the Board's own Information Sheets, that an oral hearing would be held.

[89] Allard's argument, as it appears in his factum, may be summarized as follows. The Board purported to resolve the disputed issues of fact as if the Assessor's expert evidence were uncontested. The reasons of the Board are replete with findings of fact on controversial issues, all of which are premised on uncritical acceptance of the opinion provided by the Assessor's expert. The Board's conclusion was possible only because Allard was prevented from giving evidence under oath and cross-examining Mr. Grace. The denial of an opportunity to cross-examine was, in these circumstances, a breach of the rules of natural justice. Cross-examination permits a party to elicit testimony favourable to the cross-examiner's case as well as to expose the limitations in the witness's evidence in chief. In particular, cross-examination provides the opportunity to reveal the limitations of an expert's opinion such as incorrect assumptions or irrelevant comparables. Cross-examination is a recognized tool for eliciting the weaknesses in an expert's opinion. It is fair that expert witnesses should be thoroughly cross-examined on all matters touching the weight of the evidence they offer. In our system, that is the accepted method of getting at the truth.

[90] Allard acknowledges that there is no absolute entitlement to cross-examination (*Innisfil Township v. Vespra Township,* [1981] 2 S.C.R. 145 at 166-167, 123 D.L.R. (3d) 530), but submits that it is generally regarded as the most effective means to challenge and test evidence. As to the significance of the right to cross-examine in an administrative proceeding, Allard referred the Court to what was said in the decision of the Alberta Court of Appeal in *Re County of Strathcona No. 20 et al. v. Maclab Enterprises Ltd.* (1971), 20 D.L.R. (3d) 200 at 203-4, [1971] 3 W.W.R. 461 (C.A.):

> One of the functions of cross-examination is "to correct or controvert any relevant statement". Its purpose can be much wider. One such use is to establish or assist in establishing, by cross-examining, the party's own case.
>
> A person appearing before *quasi*-judicial bodies is entitled to be heard and to present his case, and when this is not permitted there is a denial of natural justice. In the process of presenting his own case he is entitled to weaken and destroy the case that is made against him. In trials in Court this is

> often effectively done by cross-examination. A party is often able to advance his own case from the mouths of his opponent's witnesses. It does not follow that the refusal of or the placing of limitations upon the right of cross-examination will always require that the Court quash an order made in proceedings in which these restrictions are enforced. If he is afforded an equally effective method of answering the case made against him, in other words is given "a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice" (to quote the words used above) the requirements of natural justice will be met. The importance of cross-examination will vary with the nature of the case being heard. ...

[91] Allard acknowledges that in the *Strathcona* case, the Court of Appeal added that "failure to apply to be permitted to cross-examine may deprive that party of a right to complain if it is not given to him" (at 204-5) but asserts that in this case, Allard had requested an in-person hearing specifically so that he could cross-examine the Assessor's expert and thereby advance his own case.

[92] Allard also referred to two of the Board's Information Sheets not only to emphasize the significance of being able to cross-examine witnesses but also to support his assertion that he had a legitimate expectation that an oral hearing would be held.

[93] The Board has issued Information Sheets as guidance for its appeal process and procedures. Although the Information Sheets do not have the force of the Rules, they appear to articulate principles to which the Board expects to adhere in the appeal process. Information Sheet 6, dated January 2006 and entitled "Hearings by Written Submissions" reads, in part, as follows:

> If an appeal is not settled through appeal management discussions between the parties, the Board can hold hearings in-person, by telephone conference or by written submissions. The written submission method is a practical alternative, if there is no disagreement about the facts, no issue of credibility, and the arguments can be made in writing.
>
> [Emphasis added.]

[94] Information Sheet 8, also dated January 2006, entitled "Evidence in a Hearing", reads, in part as follows:

> Evidence is the material that is submitted to a decision-maker to establish the factual basis for the decision. Generally, it provides the "proof" of the issues in dispute.
>
> Evidence may be provided by the oral testimony of witnesses, by documents, by photographs or by physical objects.
>
> The Board may accept any evidence that is relevant to an issue in the appeal and may make rulings on the admissibility of evidence. It is not bound by the technical and legal rules of evidence and may accept evidence that would not necessarily be accepted in court - as long as the evidence is relevant.
>
> The Board has no evidence in an appeal, except the appeal letter and the evidence the parties provide to the Board. Any evidence the parties submitted to the Property Assessment Review Panel is not forwarded to the Board. The appeal before the Board is an entirely new proceeding and provides the parties with a fresh opportunity to present evidence in support of their case.
>
> ...
>
> In an assessment appeal, where the issue is the determination of value, the Board needs evidence on the value of the property. If the property itself has not been sold, the best evidence of its value can be determined from sales of similar properties. If you are appealing the assessment of a single family residential property, please refer to the Board's guide **How to prepare for a Single Family Residential Assessment Appeal.**

> When a party relies upon appraisal reports or opinion letters, it is always better to have the author of the report or letter present to explain any adjustments and answer questions. Evidence that cannot be tested by cross-examination will generally be less persuasive. ...
>
> [Underlining added. Bold emphasis in original.]

[95] The Board's Guide, "How to prepare for a Single Family Residential Assessment Appeal" ("Guide"), referred to in Information Sheet 8, provides considerable insight into the Board's accustomed way of determining appeals in which the actual value of single-family residential property is in issue as opposed to other kinds of assessment appeals in which facts are in dispute. The Guide, which is available on the Board's website, is designed to provide step-by-step instructions on how to gather information relevant to determining the actual value of property as of the assessment date. For example, on how to find comparable sales data, the Guide refers to, among other things, the BC Assessment website and sales and listings recorded on Multiple Listing Services. The Guide also explains the way in which disputes over the actual value of single family residential property may be resolved short of an appeal and, if not resolved, how an appeal to the Board may proceed. The Guide also states that the majority of appeals of assessments of single-family residential properties proceed by way of written submissions.

[96] Prior to 2004, when the *ATA* came into effect, appeals of assessments of single-family residential properties, according to the Guide available at that time, were generally determined in oral hearings, with written hearings available on request. The Guide has obviously been amended with changes in the Board's pre-appeal procedures which enable a Board member to identify, in advance of an argument, the factual and legal issues and the nature of the arguments in relation to them.

[97] The Guide available in 2008, together with its supporting material, tends to undermine Allard's submission of legitimate expectation and, more importantly, indicates why, in appeals of assessments of single family residential properties in particular, written submissions may suffice for appeal purposes. The factual issues tend to fall into readily discernable patterns and information to test expert opinions as to actual value is readily accessible to all parties.

[98] It is apparent from the facts in the Stated Case and the reasons given by the Board that to determine the issue of the actual value of the Property, it was necessary for the Board to consider evidence as well as submissions. Under s. 40 of the *ATA,* the Board, on the admissibility of evidence, is not restricted by the rules of evidence applied in court proceedings. In this case, the evidence took the form of an appraisal report submitted by the Assessor but, as the Board's reasons demonstrate, the submissions made by Allard, based on the information he had about other properties and sales, were taken into account by the Board in deciding whether there was reason to question the underpinnings of the appraiser's opinion.

[99] The letter from Ms. Vickers dated 11 August 2008, confirming the results of the Appeal Management Conference of the same date, set out the various bases upon which Allard intended to challenge the opinion contained in the appraiser's report. From the Board's reasons, it is apparent that what Allard had said he wished to challenge was, in fact, considered on his appeal.

[100] In the circumstances of this case, it appears to me that the fifth factor elucidated in *Baker* at para. 27 must be given considerable weight:

> 27 Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, *[Judicial Review of Administrative Action in Canada,* looseleaf (Toronto: Canvasback, 1998)], at pp. 7-66 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *IWA v. Consolidated-Bathurst Packaging Ltd.,* [1990] 1 S.C.R. 282, *per* Gonthier J.

[101] In my opinion, the duty of procedural fairness the Board owed Allard was not breached by the procedures the Board adopted in determining his appeal. Accordingly, there is no reason to interfere with the order the chambers judge made in answering in the negative each of the three questions posed on the Stated Case.

[102] I would dismiss the appeal.

"The Honourable Madam Justice Rowles"

Reasons for Judgment of the Honourable Madam Justice Garson:

[103] I have had the privilege of reading in draft the reasons for judgment of my colleague Madam Justice Rowles. I agree with her proposed disposition of this appeal. I also agree with her conclusion that the Board's decision to hold a written hearing does not violate s. 55 of the *Act,* for the reasons she gives at paras. 66 - 74. However, with respect to the second issue on appeal - whether the Property Assessment Appeal Board's decision to hold a written hearing constitutes a denial of natural justice - I reach the same conclusion as my colleague, but I prefer to rest my opinion on narrower grounds. For the reasons I explain below, I agree with the chambers judge. Mr. Allard did not pursue his request for an oral hearing and consequently it cannot be said he was denied a fair process.

[104] Resolution of the second ground of appeal turns in large part on the objection raised by the Appellant that the chambers judge did, but ought not to have based his decision on an interpretation of the evidence contained in the appendices to the narrative statement of facts, particularly where that evidence appeared to contradict the Stated Case.

[105] The relevant fact in the narrative part of the Board's Stated Case is that Mr. Allard requested an oral hearing.

[106] The chambers judge found at para. 7:

> The complaint of not being permitted to have cross-examination of Mr. Grace simply flows from the fact that Mr. Allard did not renew his request for consideration by the panel member, but even when he provided his written submissions, he did not renew his request as he did before Ms. Vickers. He was given the opportunity to state his case and his complaints and his comparables, and it does not always follow that because there was no cross-examination he was not afforded an equally effective method of answering the case made out against him; in other words, what in essence, in [sic] principles of natural justice, a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. If that opportunity is given, basically that meets the requirements of natural justice.

[107] The Appellant argued on this appeal that it is not open to this Court or the Court below to have regard to the correspondence attached as schedules to the Stated Case to refute the facts in the Stated Case.

[108] The Board argues that the chambers judge was free to consider the evidence and correctly concluded that Mr. Allard could have renewed his request (as he was invited to do by Ms. Vickers), once he was notified of the appointment of the Board. In failing to do so, the Board alleges he must be taken to have waived any right to an in-person hearing. Thus the Board contends that Mr. Allard's right to procedural fairness was not breached.

[109] *Supreme Court Rules,* R. 33A(5)(a) requires a Stated Case to set out the relevant facts and evidence:

> (5) In addition to including the information required by subrule (4), a notice of stated case must set out the following:

(a) a statement of the relevant facts and evidence;

[110] In addition, subsection (3) requires all material required by the authorizing enactment also to be filed:

(3) To initiate a stated case, the original tribunal must file in a registry

(a) a notice of stated case in Form 25A, and

(b) any material that, under the authorizing enactment, is required to initiate a stated case.

[111] Section 64(2) of the *Assessment Act,* R.S.B.C. 1996 c. 20 sets out the nature of the evidence that should be provided in a Stated Case:

(2) The stated case must be in writing and filed with the court registry, and must include a statement of the facts and all evidence material to the stated case.

[112] At paras. 15-16 of her judgment, Madam Justice Rowles discusses *Caldwell v. St. Thomas Aquinas High School,* [1984] 2 S.C.R. 603, 156 D.L.R. (4th) 1 and *Tumbler Ridge (District) v. British Columbia (Assessor of Area No.* 27 - *Peace River),* [1985] B.C.J. No. 810 (S.C.). While it is unnecessary for me to duplicate her discussion of those cases here, I find it helpful to summarise the legal principles dictating what use a court may make of other evidence when presented with a Stated Case:

1. All facts must be found in the Stated Case and the court may not substitute findings of its own. *(Caldwell at* 614-615.)

2. Reasons for a decision are always open to appellate review. *(ibid.)*

3. The court may not look beyond the Stated Case to make inferences of fact, nor find new facts, nor weigh and consider the sufficiency of the evidence. *(Tumbler Ridge at para. 4.)*

4. The court may refer to the transcript of evidence, but only for the purposes of interpreting or explaining the Stated Case. *(ibid.)*

[113] In *Tumbler Ridge,* Mr. Justice Finch concluded that the Board's stated facts were sufficient even though they made specific references to the transcript. He also noted that in arguing the appeal, counsel would not be limited to the references to the transcript provided by the Board (para. 6). Thus, the purpose of the evidence is to flesh out the Stated Case. However, a court cannot interpret or weigh conflicting evidence in order to assess the veracity of the Stated Case.

[114] The principles discussed in *Caldwell* and *Tumbler Ridge* were, in my view, correctly applied in the context of a Property Assessment Appeal Board appeal, to the British Columbia Supreme Court, by Madam Justice Sinclair Prowse in *Petro Canada Inc. v. British Columbia (Assessor of Area #12 - Coquitlam),* [1991] B.C.J. No. 1081 (S.C.). In *Petro Canada,* the Appellant applied to have the Stated Case remitted back to the Board for amendment prior to the hearing of the appeal. Sinclair Prowse J. found that the purpose of the statements of fact in the stated case was to ensure that there is sufficient factual material necessary to raise and argue a point of law. Further:

Although the Board is not required to set out all its findings of fact in the Stated Case, it is required to set out all the facts that are relevant to the questions of law posed in the appeal. ...

Although a certified copy of the evidence must be filed with the Stated Case, this does not dispose of the duty on the Board to set out its findings of fact in the Stated Case. Rather, the transcript of the evidence can only assist the Court in determining whether there was any evidence at all that was logically probative of the conclusions reached by the Board ... As the Court is limited to a question of law, the transcript is of no assistance to the Court in ascertaining the Board's findings of fact.

> Any ambiguities in its findings of fact or conclusions may, and in fact should, be clarified by the Board in the Stated Case. ...
>
> A review of the provisions of the *Assessment Act* and the cases presented in this application disclose that the function of the Stated Case format is to provide the Board with a mechanism through which it can set out, clearly and comprehensively, the findings of fact and the conclusions relevant to the questions posed in the appeal.

[115] The Stated Case must be clear so that the court is not put in the position of having to speculate on the findings of fact or on the conclusions drawn. In *Petro Canada,* Sinclair Prowse J. remitted the case back to the Board for amendment because the Board failed to clearly state its findings of fact in the Stated Case. (See also *Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Ltd. at al.,* [1963] B.C.J. No. 138 at paras. 19 - 21, 39 D.L.R. (2d) 381 (B.C.C.A.), affirmed by the S.C.C. [1963] S.C.J. No. 102.)

[116] *Petro Canada* is consistent with *Tumbler Ridge* insofar as both require the court to refrain from using the evidence to clarify ambiguous facts or to make findings of fact of its own. However, courts can refer to the evidence to 'flesh out' or amplify the statement of facts in the Stated Case with respect to uncontroversial facts. Mr. Justice Finch's reference to counsel using the evidence in argument supports this conclusion: it may be necessary, in arguing a point of law, for counsel to refer to facts as described in the evidence, and so long as counsel does not ask the court to interpret and make inferences from the evidence or make an independent finding of fact, this may be appropriate. This reading of the case law is also consistent with the Supreme Court of Canada's reasons in *Caldwell.*

[117] In conclusion, an appellate 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. However, the Board can refer to the evidence with respect to uncontroverted facts.

[118] In the current appeal, the facts that Mr. Allard requested an oral hearing and, that the Chair of the Board, Ms. Vickers, determined that the appeal would proceed by way of written submissions were set out in para. 4 of the Stated Case. The Board attached to the Stated Case Schedules A-M in accordance with Rule 33A(3) of the *Supreme Court Rules* and s. 64(2) of the *Assessment Act.*

[119] In her memorandum explaining the result of the Appeal Management Conference (Schedule H), Ms. Vickers set out her reasons for denying Mr. Allard's initial request for an oral hearing - specifically, that the issues under appeal were not unique or complex. Ms. Vickers also invited Mr. Allard to renew his request for an oral hearing before the empanelled Board member. Ms. Vickers' memorandum is reviewable both as reasons for a decision and as evidence necessary to interpret and explain the facts in the Stated Case. The uncontroverted fact that Mr. Allard never renewed his request for an oral hearing, even though he was reminded of his right to do so by Ms. Vickers in a subsequent email (Schedule K), also assists the court in interpreting and explaining the facts set out in the Stated Case.

[120] The chambers judge referred to this evidence in his consideration of whether the Board breached Mr. Allard's rights to procedural fairness by failing to provide him with an oral hearing. He also noted that the appeal proceeded by written submission, and Mr. Allard participated in those proceedings (at paras. 4-5).

[121] In my opinion the chambers judge did not err in referring to the evidence for the purpose of interpreting and explaining the Stated Case with uncontroverted facts. He did not interpret the facts beyond what was uncontroverted. The Stated Case itself provides that "Mr. Allard requested an in person hearing". It does not elaborate on this statement nor does it explain why that request was denied. However, the chambers judge was entitled to consider the fact that the Chair of the Board provided reasons denying Mr. Allard's initial request for an oral hearing, the fact that these reasons suggested that Mr. Allard could renew his request to the empanelled Board member, and the fact that Mr. Allard never

renewed his request. None of these facts contradict the Stated Case, but rather they merely 'flesh out' the details and the precise step-by-step development of the facts presented therein.

[122] Therefore, since the chambers judge did not make any independent findings of fact, but merely relied on uncontroverted facts contained within the transcript of evidence, he did not violate the principles articulated in *Caldwell, Petro Canada,* and *Tumbler Ridge.*

[123] In my view, the chambers judge was also entitled to conclude, from the factual record, that Mr. Allard was given an opportunity to respond to the Assessor's valuation (para. 6) and that "[t]he complaint of not being permitted to have cross-examination of [the Assessor] simply flows from the fact that Mr. Allard did not renew his request for consideration by the panel member" (para. 7).

[124] Having found that the chambers judge did not err in his consideration of the transcript evidence for the purpose of 'fleshing out' the Stated Case, it is my view that he was also correct in his conclusion that, in the circumstances, the Board did not deny Mr. Allard the fair process to which he was entitled. I would dismiss the appeal on this basis.

"The Honourable Madam Justice Garson"

Reasons for Judgment of the Honourable Madam Justice Saunders:

[125] I have had the opportunity to read the reasons for judgment of both Madam Justice Rowles and Madam Justice Garson. I agree with the reasoning of both colleagues and I, too, agree the appeal should be dismissed.

"The Honourable Madam Justice Saunders"