SC 551 AA09 v Alsco Canada Corporation and PAAB

Link to the Property Assessment Appeal Board Decision

ASSESSOR OF AREA 09 – VANCOUVER SEA TO SKY REGION
v.
ALSCO CANADA CORPORATION and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S122581) Vancouver Registry

Before the HONOURABLE MR. JUSTICE COHEN
Date and Place of Hearing: February 6 & April 8, 2013, Vancouver, B.C.

M. Watson for the Appellant
J. Fraser for the Respondent

Classification of commercial properties

This appeal involved the classification of a commercial laundry in Vancouver. The Appellant argued that laundering and repairing uniforms and linens, rented by the appellant to its customers, constituted "processing of products" in accordance with Class 5 – light industry. The Assessor argued that repair and laundry operations did not process products because the essential nature of the product did not change due to the cleaning and repairing, and because the activity did not make the goods more marketable.

The Property Assessment Appeal Board concluded that Class 5 was applicable to the property. Although agreeing with the Assessor that small scale laundry operations do not qualify for Class 5, the PAAB held that industrial scale of the subject property attracted Class 5. The Assessor filed an appeal to the Court asking 3 questions as follows:

1. *Did the Property Assessment Appeal Board (the "Board") misinterpret and misapply section 5 of the Prescribed Classes of Property Regulation B.C. Reg. 438/81 (the "Regulation") and thereby err in law when it found that the Appellant was "processing" products as that term is considered under the Regulation?*
2. *Did the Board err in law when it found that the definition of "processing" under the Regulation is guided by the size of the operation?*
3. *Did the Board err in law in finding that the Appellant's laundry operation qualified as "processing" under the Regulation despite the fact that there was no change to the essential nature of the product?*

***HELD:** Appeal Dismissed.*

The BC Supreme Court held that the standard of review was reasonableness, and answered each question in the negative.

Reasons for Judgment June 12, 2013

[1] This is a stated case appeal from the February 7, 2012 decision of the Property Assessment Appeal Board of British Columbia [the "Board"] in a case stated by the Board under s. 65 of the *Assessment Act*,

R.S.B.C. 1996, c. 20 [the "*Act*"] at the request of the applicant, the Assessor of Area #09 – Vancouver Sea to Sky Region [the "Assessor"]. The Assessor seeks the determination of the court on certain questions of law that arise out of the following facts:

1. The appeal before the Board was from the decision of the 2011 Property Assessment Review Panel with respect to the assessment of the Respondent's properties at 16 West 3rd Avenue and 5 West 4th Avenue in Vancouver. The properties had been classified by the Assessor as Class 6 - Business/Other on the 2011 roll. The issue before the Board was whether parts of the properties should be classified as Class 6 - Light Industry.

2. The Respondent, Alsco Canada Corporation (Appellant before the Board), is a company in the business of renting garments and linens to various commercial entities and is the owner of the properties that are the subject of this appeal. The larger West 4th Avenue property houses a laundry and related operations (receiving, sorting, washing, drying, ironing, repairing, and shipping of the garments and linens) while the smaller 3rd Avenue property is in part leased to another company and in part used by the Appellant for storage of new inventory and chemicals.

3. The West 4th Avenue property covers an area of 48,326 square feet. The two-storey building on the property has 77,148 square feet of floor space. The building is divided into various spaces and rooms, the largest of which are a washing and drying area, a dirty garment sorting area, a new product storage area, administrative offices, a lunch room, a staging area and a sorting area. There is a large open loading area outside the building. In the agreed statement of facts, the parties have listed and described the various areas as (a) through (t). The parties agreed that the areas listed as (f) vacant fur vault; (g) vacant old administrative office; and (j) outside sales office are properly Class 6.

4. The agreed statement of facts describes the use of the West 4th Avenue property in some detail:

    27. Alsco provides laundry services to its clients whereby clients enter into a contract with Alsco for the provision of uniform and/or linens. The client rents the uniforms and linens from Alsco and Alsco then picks up the dirty laundry and exchanges it for clean laundry. ...

    28. Under the terms of the contract, Alsco is responsible for cleaning and maintaining the uniforms and linens except that the client is responsible for all damage outside of normal wear and tear.

    29. Dirty laundry arrives via trucks from clients. They are loaded in hoist and moved into the building. Client bags of dirty laundry are emptied. The laundry is then counted and sorted. They are separated by linens, uniforms as well as colours. Once counted and sorted it is placed in large bags and moved to the washing machines and the sorted dirty laundry is dumped in the washer by overhead hoists. The clean laundry is then taken to the dryer. From there they are separated into two categories linens and uniforms and garments.

Linens: they are taken to be put through the ironing machines and folded. After ironing and folding it is packed and stacked to be sent to shipping. Linen towels and rags are packaged by weight put on a conveyer belt to shipping area. Linen sent on conveyer belt to be sorted by delivery truck and sent for shipping. They are then placed in containers from packaging, ready for shipping based on delivery route.

Uniforms and Garments: they are taken from dryer and moved to ironing machine upstairs. Uniforms are placed on hangers and put through the ironing machine. They are then taken through the ironing machine on racks to the conveyer belt to be shipped. They are then placed on racks from the ceiling or containers from packaging, ready for shipping based on delivery route.

5. About 90 people are employed at the property and 14 trucks full of laundry arrive and depart each day.

6. The West 3rd Avenue property covers an area of 18,117 square feet. The one-storey building has 9,600 square feet of floor space. The property is used primarily for storage of new inventory. 3,200 square feet have been leased out to another occupier. The parties agreed that the 3,200 square foot area leased out to the other occupier is properly Class 6.

7. A portion (about 10%) of that part of the West 3rd Avenue property used by the Respondent is used for chemical storage, and the remainder is used for storage of new linens and garments. As old linens and garments are worn out, lost, or destroyed, new inventory is taken from the West 3rd Avenue property to replace them.

[2] The relevant legislation is found in the *Prescribed Classes of Property Regulation*, B.C. Reg.438/81 [the "*Regulation*"]. Sections 5 and 6 describe Class 5 and Class 6, as follows:

Class 5 - light industry

5. Class 5 property must include only land or improvements, or both,

(a) used as a gathering pipeline,

(b) used or held for the purpose of extracting, processing, manufacturing or transporting of products, or

(c) used for the storage of products as ancillary to or in conjunction with the extracting, processing, manufacturing or transporting of products referred to in paragraph (b),

but does not include those lands or improvements, or both,

(d) included in class 2 or 4,

(e) used or held for the purposes of, or for purposes ancillary to, the business of transportation by railway,

(f) used principally as an outlet for the sale of a finished product to a purchaser for purposes of his or her own consumption or use and not for resale in either the form in which it was purchased or any other form, and

(g) used for extracting, processing, manufacturing or storage of food, non-alcoholic beverages or water.

Class 6 - business and other

6. Class 6 property shall include all land and improvements not included in Classes 1 to 5 and 7 to 9.

[3] The Board's findings are, as follows:

8. The Board found the ordinary meaning of "processing" is the application of a system or scheme involving a number of steps to an item or product. The Board found the ordinary meaning of "processing" does not require a significant change to the item or product. The Board found the laundry operations of the Respondent do constitute "processing" (in the ordinary sense).

9. The Board found that while the garments and linens in question are subject to a process, they do not undergo a significant change in their essential nature as a result of the process. Although they are made clean, they are not otherwise altered, at least not significantly (if alterations, repairs, or other changes are made, they do not significantly change the items: a shirt remains a shirt and a towel remains a towel).

10. The Board found that "processing" as used in section 5 of the *Prescribed Classes of Property Regulation* means that laundry operations on a retail scale or in a home would not qualify as "processing" for the purpose of the *Regulation*. The Board found "processing" in the context of laundry operations, for the purposes of the *Regulation*, requires something akin to the industrial scale on which the Respondent's operations are carried out.

11. With respect to the West 3rd Avenue property, the Board found the 6,400 square foot area used by the Respondent for the storage of new product and chemicals should be classified as Class 5.

[4] The questions of law to be determined by the court are, as follows:

1. Did the Property Assessment Appeal Board (the "Board") misinterpret and misapply section 5 of the *Prescribed Classes of Property Regulation* B.C. Reg. 438/81 (the "Regulation") and thereby err in law when it found that the Appellant was "processing" products as that term is considered under the *Regulation*?

2. Did the Board err in law when it found that the definition of "processing" under the *Regulation* is guided by the size of the operation?

3. Did the Board err in law in finding that the Appellant's laundry operation qualified as "processing" under the *Regulation* despite the fact that there was no change to the essential nature of the product?

[5] Counsel for the Assessor's argument falls under two headings: Standard of Review and Substantive Issues.

1. Standard of Review

[6] In *Weyerhauser Company Ltd. v. Assessor of Area No. 04 – Nanaimo/Cowichan*, 2010 BCCA 46 [*Weyerhauser*], the B.C. Court of Appeal considered the appropriate standard of review for a decision of the Property Assessment Board that largely turned on an interpretation of the *Regulation*. Justice Garson, writing on behalf of the court, applied the criteria set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick,* 2008 SCC 9 [*Dunsmuir*], and held that in the course of interpreting the *Regulation*, the Board is not determining questions of law that are of general importance to the legal system as a whole, but instead is interpreting a regulation promulgated under the Board's own constating statute. Justice Garson considered the Board's interpretation of the *Regulation* to be sufficiently fact specific to attract deference and the reasonableness standard of review. The decision of the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta's Teachers' Association*, 2011 SCC 61 [*Alberta's Teachers' Association*], affirmed the principles underlying Garson J.A.'s analysis in *Weyerhauser.*

[7] The Assessor acknowledges that jurisprudence exists concerning the Board's interpretation of the *Act* and *Regulation* suggesting that the standard of review is reasonableness. However, the Assessor submits that the present case is distinguishable because the issues at stake concern the Board's application (or misapplication) of a question of general and constitutional law, the scope of which goes beyond the Board's mandate to simply apply the *Act* and *Regulation*.

[8] The Assessor says that the *ratio decidendi* in the Board's decision is founded on its exposition and application of the "golden rule" of statutory interpretation – a question of general law not directly related to the application of the *Act*. According to the Assessor, the Board purported to use the golden rule in determining the meaning of the word "processing" under s. 5 of the *Regulation*.

[9] The Assessor submits that the Board should have used the "modern rule" of statutory interpretation, as the Supreme Court of Canada described in *Stubart Investments Ltd. v. Canada*, [1984] 1 S.C.R. 536 [*Stubart*], and applied in relation to taxation statutes in *Canada Trustco Mortgage Company v. Canada*, 2005 SCC 54 [*Canada Trustco Mortgage*]. The Assessor argues that the Board's misapplication of the golden rule raises a question of general and constitutional law that has implications beyond the specific facts of this case and that pre-existing jurisprudence has not determined the standard of review in such circumstances in a satisfactory manner. The Assessor says that the Board cannot exceed its jurisdiction by interpreting legislation in a way that is completely disconnected from the will of parliament as expressed in the legislation as a whole.

[10] The Assessor also points to the recent case of *British Columbia (Assessor of Area 11 - Richmond/Delta) v. CCS Corporation,* 2012 BCSC 1864 [*CCS*], where the court appears to have applied

the correctness standard in reversing a decision of the Board interpreting s. 5 of the *Regulation.* The Assessor admits, however, that the court in *CCS* did not expressly adopt one standard of review over another, nor did it undertake the analysis set out in *Dunsmuir*.

[11] In light of the Assessor's contention that the decision in *Weyerhauser* is distinguishable from the issue in the present case, as well as the lack of explicit reasoning in *CCS*, the Assessor submits that the Court must apply the *Dunsmuir* analysis to determine the standard of review.

[12] The Assessor makes a number of arguments in support of a correctness standard. First, the Assessor notes that the *Act* contains an appeal provision which requires that appeals be taken on questions of law alone, a factor that by itself favours a correctness standard of review.

Second, the Assessor submits that the purpose of the Board is to hear appeals regarding the valuation and classification of property under the *Act,* to hear appeals regarding certain prescribed rates from the Assessment Authority and to hear certain other complaints. The purpose of the Board is not to develop new or modified principles of statutory interpretation which alter the constitutional balance between the legislature and the courts, a factor that weighs against deference.

[13] In *Dunsmuir* at para. 60, the Supreme Court of Canada stated that a correctness standard applies to questions of general law that are both of central importance to the legal system as a whole and outside the tribunal's specialized area of expertise.

[14] Third, the Assessor acknowledges that the Board has expertise in classifying property, and the questions of law in this case are related to classification of the subject property. However, an administrative tribunal is almost invariably asked to determine questions related to its area of expertise. If, as part of such determination, the tribunal incorrectly applies a general legal principle of central importance to the legal system, upon which its decision turns, the court should not give deference to the tribunal. This, argues the Assessor, is the situation in the case at bar with respect to the Board's application of the "golden rule". The elucidation and application of such principle, which engages the relationship between courts, tribunals and the legislature, is fundamental to the appropriate constitutional division of powers in Canada and the Board's jurisdiction.

[15] The respondent disagrees with the position of the Assessor, arguing that the decision of the Board should be subject to a reasonableness standard of review.

[16] In *Alberta Teachers' Association*, the Supreme Court of Canada emphasized that unless the situation is exceptional, the interpretation by a tribunal of its home statute or of statutes closely connected to its function should be presumed to be a question of statutory interpretation subject to deference.

[17] The respondent says that the categories of exception where the correctness standard will apply are few. The majority of the Court in *Alberta Teachers' Association* lists the categories, at para. 43, as follows:

(a) A constitutional question;

(b) A question of law that is of central importance to the legal system as a whole and that is outside the adjudicator's expertise; or

(c) A question regarding the jurisdictional lines between competing specialized tribunals.

[18] The respondent submits that none of these issues arise here:

(a) there is no true constitutional question in the sense that the validity of legislation is at issue. The Board's role in the interpretation of s. 5 of the *Regulation* does not amount to a constitutional question;

(b) the true question of law (whether the Board erred in finding that the respondent's laundering activities are "processing" for the purpose of property tax classification), may be of interest to other taxpayers with similar property, but is not one of central importance to the legal system as a whole;

(c) in any event, as the court observes in *CCS,* the general legal community does not look to the Board as an authority on interpretation principles. The outcome of the particular interpretation issues in this appeal will have no bearing on the general legal community;

(d) the interpretation of s. 5 of the *Regulation*, by whatever means, is within the Board's expertise. The court specifically recognizes this in *Weyerhaeuser*; and

(e) the appeal does not raise any question regarding division of jurisdiction between competing specialized tribunals.

[19] In light of this, the respondent argues that the reasonableness standard in *Weyerhaeuser* remains the appropriate standard in any review of the Board's interpretation of the *Regulation*, including in the case at bar.

[20] Moreover, the respondent submits that despite the Assessor's suggestion that the court applied the correctness standard in *CCS,* there is no discussion by the court in *CCS* of the standard of review. Thus, that case has no bearing on the outcome of this appeal.

[21] I agree with the respondent's submissions. In particular, I find that the Board's interpretation of s. 5 of the *Regulation* does not amount to a constitutional question, and as a result, there is no basis to distinguish this case from the reasoning of the Court of Appeal in *Weyerhaeuser*. In interpreting s. 5 of the *Regulation*, the Board was interpreting legislation promulgated under its own constating statute, not considering questions of law that are of general importance to the legal system as a whole. The Assessor's contention that the Board misapplied the rules of statutory interpretation may be relevant in addressing the reasonableness of the decision, but it is not relevant in determining the appropriate standard of review.

[22] As *Weyerhaeuser* has already determined the standard of review in cases such as this, there is no need to re-apply the *Dunsmuir* analysis: *Dunsmuir* at para. 57. The decision of the Board will therefore be reviewed on a reasonableness standard.

2. "Processing" Jurisprudence

[23] The meaning of the word "processing" has been judicially considered in the context of various tax statutes.

[24] In the seminal decision of *Federal Farms Ltd. v. Canada (Minister of National Revenue)* (1966), 66 DTC 5068 (Exch. Ct.) [*Federal Farms*], the Exchequer Court of Canada held that the taxpayer's operation, which involved the washing, brushing, spraying, drying, sizing, culling and grading of vegetables in preparation for market, qualified as "processing" within the meaning of s. 40A of the *Income Tax Act*, R.S.C. 1952. The essence of the court's reasoning is as follows (5072):

> The evidence of the appellant as to its operations convinces me that those operations were a process or series of processes to prepare the product for the retail market. There is no doubt that quite apart from the grading of the vegetables, a clean and attractive appearance is an important factor in marketing vegetables and especially so in the present day methods of retail marketing. Although the product sold remains a vegetable, nevertheless, it is not a vegetable as it came from the ground but rather one that has been cleaned, with improved keeping qualities and thereby rendered more attractive and convenient to the consumer.
>
> The potatoes and carrots were, therefore, "processed" by the appellant within the ordinary and common meaning of the word "process" which I have concluded must be applicable in the present instance and within the meaning of the dictionary definitions of that word which are quoted above and which I have accepted as being the ordinary and common meaning of the word.

[25] In reaching the above conclusion, the court specifically rejected the notion, at 5071, that processing connotes a material change in the texture and structure of the product.

[26] The Supreme Court of Canada upheld the decision in oral reasons ((1967) 67 DTC 5311 (S.C.C.)), stating:

> ABBOTT, J. (for the Court) said: It will not be necessary to hear you, Mr. Goodman. We are all in agreement that the conclusion reached by the learned trial judge as to the interpretation to be given to s. 40A of the Income Tax Act is the correct one. The appeal is therefore dismissed with costs.

[27] *Federal Farms* remains the only tax case interpreting the word "processing" to be considered by the Supreme Court of Canada.

[28] Following *Federal Farms*, the Federal Court of Appeal interpreted the word "processing" under the *Income Tax* Act in two cases of note.

[29] In *Nova Scotia Sand and Gravel Limited v. Her Majesty the Queen* (1980), 80 DTC 6298 (F.C.A.) [*Nova Scotia Sand and Gravel*], the Federal Court of Appeal held that the washing, screening and sorting of excavated pit run sand and gravel for the purpose of producing specialized sand and gravel products amounted to "processing" under s. 125.1(3) of the *Income Tax Act* and subsection 1104(9) of the *Income Tax Regulations*.

[30] In *Tenneco Canada Inc. v. Canada* (1991), 91 DTC 5207 (F.C.A.) [*Tenneco*], the Federal Court of Appeal considered whether the replacement of exhaust systems constituted processing under s. 125.1(3) of the *Income Tax Act*. Citing the decision in *Federal Farms* as authority, the court articulated a two-step test, at 5209, to determine whether a taxpayer processes goods:

1. whether there is a change in the form, appearance or other characteristics of the goods subject to the operation; and
2. whether the product becomes more marketable.

[31] The court held that installing mufflers did not meet the criteria for the processing test. First, there was no real change in the form, appearance or characteristics of the pipes. Minor alterations and adjustments to enable the parts to fit and function within the system were not sufficient. Second, the company's efforts did not increase the marketability of the goods because the agreement to buy the parts and have them installed was made prior to the actual installation.

[32] In *Assessor of Area 12 - Coquitlam v. Gadson Holdings Ltd.* (1998), PAAB Decision October 4, 1998, the Board found that a tire recapping operation was not processing or manufacturing pursuant to the *Regulation*. The business was a tire repair shop. Customers would bring their worn tires to the taxpayer's shop where the treads would be removed from the tire casing and replaced. The Assessor in that case argued that the recapping operation was processing or manufacturing for the purposes of the *Regulation*. The Board stated:

> … it is difficult, if not impossible, to differentiate between what happens in recapping a used tire casing (as occurs at the premises of the Respondent) from what happens in a shoemaker's shop where he takes worn out shoes and puts new heels and soles on them

> and returns them to the owner refurbished. In the case of the recapping operation the tire casing is repaired and returned to the owner.

[33] In *CCS*, the taxpayer's operation involved securing and stabilizing hazardous waste for shipping to landfills. The court agreed with the Assessor's argument in that case that "[i]f something is not marketable… it is not a product" (at para. 8). The court went on to state, at para. 19, that "a marketable end-product is necessary for a substance to undergo processing as contemplated by Class 5."

[34] In *Nettoyeur Shefford Inc. v. Canada (Minister of National Revenue)* (1991), 94 DTC 1926 (T.C.C.) [*Nettoyeur*], the Tax Court of Canada found, on facts similar to the case at bar, that the taxpayer's uniform rental and laundry operations did not constitute processing. Following a review of dictionary definitions, the court concluded that a change in appearance of a good was not sufficient to constitute processing. In the view of the court, processing requires a change in the form, structure or properties of the goods.

[35] In *Cintas Canada Ltd. v. Canada* (1999), 99 DTC 926 (T.C.C.) [*Cintas*], another case involving a uniform rental and laundering operation, the Tax Court of Canada declined to follow *Nettoyeur* and instead held that the appellant's laundry operation qualified as processing. The court noted that the definition of "processing" articulated in *Nettoyeur* could not be reconciled with *Federal Farms*, which rejected the notion that processing requires a material change to the texture or structure of the product.

[36] The most recent Canadian appellate authority to consider cleaning as "processing" is the 1994 decision of the Manitoba Court of Appeal in *Notre Dame Seed Plant Ltd. v. Provincial Municipal Assessor (Man),* 2004 MBCA 161 [*Notre Dame*]. In that case, the court determined that Notre Dame's cleaning of grain to separate out grain suitable for seed from grain not suitable for seed, as well as from dirt and other extraneous materials, constituted "processing". In reaching its conclusion, the court applied *Federal Farms*, observing, at paras. 16-19:

> In my opinion, the Board placed too narrow an interpretation on the word "processing" or its French-language equivalent. The word "processing" or the French word "transformation" can contemplate not only a change in form or substance to another form or substance, but also a change in a product's appearance, quality or some other characteristic from what it was before the processing or the "transformation" took place. In the case of seed cleaning, the processing or "transformation" is to change the "dirty seed" into "clean seed."
>
> This interpretation is consistent with the decision of Cattanach J. in *Federal Farms Ltd. v. Minister of National Revenue*, [1966] Ex. C.R. 410. The issue in the *Federal Farms* case was whether the company was entitled to a deduction under *the Income Tax Act* as a "manufacturing and processing corporation." These terms were not defined in the *Income Tax Act*. The company was in the business of preparing fresh vegetables for market and selling them. The evidence was that in addition to the packaging of carrots and potatoes, the company's operation included such steps as washing, brushing, spraying, sizing, culling and grading the vegetables. The company argued that its activities constituted

"processing," while the Minister of National Revenue argued that the activities amounted to mere packaging.

Cattanach J. rejected the technical meaning of the word "processing" suggested by the Minister of National Revenue and concluded that the word "processing" should be given its ordinary meaning. On this basis, Cattanach J. concluded that the company's operations constituted the processing of agricultural products even though there was no change in form or substance to another form or substance (at p. 416):

> The evidence of the appellant as to its operations convinces me that those operations were a process or series of processes to prepare the product for the retail market. There is no doubt that quite apart from the grading of the vegetables, a clean and attractive appearance is an important factor in marketing vegetables and especially so in the present day methods of retail marketing. Although the product sold remains a vegetable, nevertheless, it is not a vegetable as it came from the ground but rather one that has been cleaned, with improved keeping qualities and thereby rendered more attractive and convenient to the consumer.

The decision of Cattanach J. was subsequently affirmed in an unreported judgment of the Supreme Court of Canada ([1967] S.C.R. vi).

> To state the matter briefly, it is my view that Notre Dame Seed is not producing seed and that it is processing seed, and on both counts, its activities take it outside the definition of "farming." Consequently, the property cannot be classified as "farm property." I would allow the appeal, but under the circumstances, without costs.

3. Substantive Issues

[37] The Assessor's submissions can be broken down into four issues. The Assessor argues that the Board erred in law by:

(a) misinterpreting "processing" in s. 5 of the *Regulation* by misapplying the "golden rule";

(b) finding that the definition of "processing" under the *Regulation* is guided by the size of the operation;

(c) finding that the respondent's laundry operation qualified as "processing" under the Classification despite the fact that there was no change to the essential nature of the product; and

(d) finding that the respondent's laundry operation increased the marketability of the goods.

[38] I will consider each issue in turn.

a. Misinterpreting "processing" in s. 5 of the *Regulation* by misapplying the "golden rule"

[39] The assessor argues that the Board did not apply the correct approach to statutory interpretation in interpreting s. 5 of the *Regulation*. Specifically, the assessor says that the Board incorrectly applied the "golden rule" of statutory interpretation when it should have applied the "modern principle", and this mistake produced flawed reasoning which amounts to an error of law.

[40] The Supreme Court of Canada set out the correct approach to statutory interpretation in *Stubart*. The majority of the Court held, at 578, that the "modern principle" is to be used, quoting from Professor Driedger's *Construction of Statutes*, 2nd ed. (1983) at 87:

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

[41] In *Canada Trustco Mortgage*, the Supreme Court of Canada applied the modern principle in the context of tax legislation.

[42] The golden rule of interpretation (also known as the "consequential analysis" or "rule against absurdity") recognizes that the legislature does not intend its legislation to have absurd consequences. It requires that, wherever possible, an interpretation that leads to absurd consequences should be rejected in favour of one that avoids absurdity: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexus, 2008) at 299-301.

[43] The Assessor says the Board purported to use the golden rule in several instances to form the basis of its decision. First, the Board stated, at para. 45, that the word "processing" must be interpreted in light of the other words employed in s. 5 of the *Regulation*. It seemed "obvious", according to the Board, that word processing was not meant to be captured within the definition due in part to the presence of the words "of products". Although word processing likely occurred at the premises, word processing was not applied to the products. The Board held that the ordinary meaning of "processing" must therefore be modified in accordance with the golden rule.

[44] Second, the Assessor says the Board applied the golden rule again, at para. 46, when it stated that "the ordinary meaning of 'processing' must be used, unless to do so would result in some absurdity, repugnancy, or inconsistency." The Board then went on to hold that "processing" must be read in relation to "extracting" and "manufacturing" in order to avoid ambiguity.

[45] The Assessor points out that ambiguity cannot be equated with absurdity, repugnancy or inconsistency. In the Assessor's view, the Board stated that the ordinary meaning of "processing" must be applied unless certain limited circumstances are present, then it proceeded to modify the ordinary meaning of the word for reasons not falling within those circumstances. The Assessor says the Board's reasons are irrational, unintelligible and internally inconsistent.

[46] As stated above, the modern principle involves discerning the ordinary meaning of words in the context in which they appear. I accept that the Board, despite referring to the golden rule, in fact applied the modern principle to its interpretation of s. 5 of the *Regulation*.

[47] The portion of the Board's analysis impugned by the Assessor in the arguments outlined above is set out at paras. 45-46 of the decision:

> It seems to me that some guidance as to the meaning of the word "processing" must be taken from the other words in the list found in s. 5 ("extracting, processing, manufacturing or transporting"). Those other words set the context for the interpretation of the word "processing." It seems obvious that certain types of processing, such as computer processing or word processing, are not what is meant. The use of the words "of products" at the end of the list also somewhat sets the context, since although computer processing or word processing are almost certainly done on at least the West 4th Avenue property, they are not applied to the "products." In that limited sense, the ordinary meaning of "processing" must be modified in accordance with the "golden rule" of interpretation referred to in Federal Farms. I agree that "processing" as used in s. 5 must be given a connotation that relates it to "extracting" and "manufacturing," the other words in the relevant set.
>
> The ordinary meaning of "processing" must be used, unless to do so would result in some absurdity, repugnancy, or inconsistency. Here, "processing" must have some relation to "extracting" and "manufacturing," otherwise there would be some ambiguity as to what type of processing is being referred to.

[48] As the above paragraphs reflect, the Board's analysis involved discerning the ordinary meaning of "processing" in the immediate context in which that word appears in s. 5 of the *Regulation*. That context includes, among other things, the list of words like "manufacturing" and "extracting", as well as the words "of products". This approach is entirely consistent with the modern principle. In my view, the Board's reasoning does not suffer from the flaws as alleged by the Assessor.

[49] I also agree that nothing turns on the Board having said it was applying the golden rule, when in fact the Board applied the modern principle. Imprecision in the use of nomenclature is not an error of law. In *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550, Iacobucci J., writing for the majority, characterized the approach he was taking as the "plain meaning" approach. In concurring reasons, L'Heureux-Dube J. pointed out that although Iacobucci J. imprecisely described the methodology he was applying (in that he applied the modern contextual approach), this in no way undermined the validity of his approach or the outcome.

[50] As a result, I find that this ground of appeal is without merit.

b. Finding that the definition of "processing" under the *Regulation* is guided by the size of the operation

[51] In interpreting s. 5 of the *Regulation*, the Board held that the word "processing", when read in conjunction with its neighbouring words "extracting" and "manufacturing", suggested operations on an industrial scale (para. 47).

[52] The Assessor challenges the Board's reference to industrial scale, arguing that the scale of an operation is not a relevant consideration justified by the legislation. The Assessor says that "manufacturing" and "extracting" do not necessarily denote a large scale operation, and the distinction between large and small scale operations merely creates uncertainty, a result which is contrary to the Board's mandate to ensure that assessments are consistent.

[53] In my view, there is nothing untoward in the Board's approach. The Board considered the neighbouring words "manufacturing" and "extracting" to bring a sense of industrial scale to bear on the word "processing" and place reasonable limits on the scope of the term. The Board was attentive to the need for certainty in adopting this approach, specifically stating that a scale requirement would help to avoid ambiguity.

[54] Moreover, as the respondent points out, the scale requirement for "processing" is consistent with the industrial connotation of s. 5 as a whole, the heading of which is "Light Industry". The Board is entitled in a contextual interpretation of a statutory provision, such as s. 5 of the *Regulation*, to look at headings.

[55] Accordingly, I find that there is no basis for this ground of appeal.

c. Finding that the respondent's laundry operation qualified as "processing" under the Classification despite the fact that there was no change to the essential nature of the product

[56] According to the Assessor's interpretation of the case law, "processing" requires a change in the form, structure or properties of the goods. As the laundry operation undertaken by the respondent merely cleans uniforms and linens, that test is not satisfied in the present case. In effect, the Assessor is arguing for the adoption of the processing test as articulated in *Nettoyeur*, which employs a higher standard than the test applied in *Federal Farms*, *Tenneco*, *Cintas* and *Notre Dame*. As noted in the earlier survey of the case law, the latter cases require only that there be a change in the form, appearance or other characteristics of the goods.

[57] The Assessor submits that *Cintas* in particular is wrongly decided because it ignores the requirement that the goods must undergo an essential or "material change". In *Tenneco*, the Federal Court of Appeal stated, at 5209, that "[p]rocessing occurs when raw or natural materials are transformed

into salable items." The Assessor argues that transformation implies a change in the form, structure or properties of goods and that such an interpretation is consistent with the ruling in *Federal Farms*.

[58] In *Federal Farms*, the vegetables started out as raw materials. They were grown from seed and extracted from the ground. The vegetables were then washed, dried and sprayed with chlorine to inhibit bacterial growth and improve preservation. In this way, submitted the Assessor, the "properties" of the raw material were "transformed" to make the raw material more saleable.

[59] The Assessor acknowledges that the court in *Federal Farms* rejected the argument that "processing" requires a material change to the "texture and structure" of the product. However, the Assessor says that goods have properties other than "texture" and "structure". In this sense, *Federal Farms* is consistent with the requirement that processing involves some change to an item's "properties". There may have been no change to the "texture" or "structure" of the vegetables in *Federal Farms*, says the Assessor, but the vegetables were still "transformed" into saleable items, as the court in *Tenneco* put it.

[60] The Assessor notes that the vegetables in *Federal Farms* were raw materials before they were transformed into something saleable, but the same cannot be said for the uniforms and linens in the present case. The uniforms and linens are finished consumer items that need to be cleaned to continue to be used. The respondent is not in the business of taking raw fabric and making uniforms and linens. Rather, it is in the business of cleaning fully manufactured and soiled uniforms and linens.

[61] The Assessor argues that this distinction was central to the result in two American cases involving laundry operations, *Palace Laundry, Inc. dba Linens of the Week v. Chesterfield County* (2008), 666 S.E. (2d) 371 [*Palace Laundry*], and *Mechanics Laundry and Supply Inc. v. Indiana Department of State Revenue* (1995), 650 N.E. (2d) 1223 (Ind. T.C.) [*Mechanics Laundry*]. The courts in those cases held that the operations could not be considered processing because they merely returned the items to their original form, causing them to have the same character or composition as when they were first acquired by the consumer.

[62] Finally, the Assessor points to the decision in *Assessor of Area 08 - North Shore/Squamish Valley v. International Paper Industries Ltd.* (1995), 7 B.C.L.R. (3d) 138 at para. 8 (C.A.) [*International Paper*], where the Assessor argues that the Court of Appeal held that "processing" requires that "the essential nature of the thing being processed is altered." The Assessor says the respondent does not alter the essential nature of the items it launders; it merely provides a service to maintain such items in usable form.

[63] he respondent argues that the Assessor is attempting to improperly redefine “transformation” as a “change of form, structure or properties”, an interpretation of the processing test that is plainly inconsistent with the authorities. The respondent says the appropriate test is the one formulated in *Federal Farms* and applied consistently in *Tenneco, Cintas* and *Notre Dame*, requiring merely a change in the appearance, quality or some other characteristic. An essential change is not required. A change in appearance brought about through cleaning is sufficient.

[64] I agree with the respondent. The court in *Cintas* considered the decision in *Nettoyeur* and found it to be incompatible with *Federal Farms*, which rejected the notion that processing requires a material change to the texture or structure of the product. *Nettoyeur* applied too stringent of a test, one which was unsupported by the case law, and the Assessor’s argument suffers from the same flaw. As the respondent points out, the decisions in *Federal Farms*, *Tenneco*, *Cintas* and *Notre Dame* establish a clear line of authorities. In my view, *Nettoyeur* is not consistent with the prevailing jurisprudence and should not be followed.

[65] To the extent that the reasoning of the American courts in *Palace Laundry* and *Mechanic’s Laundry* cited by the Assessor is inconsistent with *Federal Farms* and subsequent Canadian appellate authority, I similarly decline to apply those cases.

[66] I also note the selective manner in which the Assessor relies on the analysis in *Tenneco*. The Assessor places considerable emphasis on the statement by the court that processing involves a transformation of raw materials to something more saleable, arguing that transformation implies a change in the form, structure or properties of goods. However, the court in *Tenneco* also stated, quite explicitly, that a change in form, appearance or other characteristics is sufficient to constitute processing. The Assessor therefore proposes an interpretation of *Tenneco* that is at odds with the decision itself.

[67] Moreover, I do not agree with the Assessor’s contention that an interpretation of “processing” that requires a change in “properties” is consistent with *Federal Farms*. The court expressly rejected a definition of processing that requires a material change to the “texture” or “structure” of goods. I take that to mean that a fundamental change to the nature of the goods is not necessary. However, the Assessor’s interpretation would effectively produce such a requirement.

[68] In regards to the Assessor’s reliance on *International Paper*, that case did not address whether laundering garments and linens qualifies as “processing”, but instead considered whether a tax exemption should apply to a waste recycling depot. More importantly, there is no mention or analysis of *Federal Farms* or the subsequent appellate authorities bearing on the issues in this case.

[69] Accordingly, I reject this ground of appeal.

d. Finding that the respondent's laundry operation increased the marketability of the goods

[70] The second aspect of the processing test requires that the processing render the product more marketable. The Assessor argues that the uniforms and linens are not made more marketable by the respondent's laundering operation because once the respondent's clients have entered into the lease, all marketing of the uniforms and linens comes to an end. As the respondent has not done any "processing" of the uniforms and linens up to this point, the respondent is not improving the marketability of the goods.

[71] Similarly, the Assessor argues that the uniforms and linens leased by the respondent are not "products" as that term is used in s. 5. The Assessor says that once a "product" reaches its ultimate consumer, it can no longer be considered a "product" for the purposes of the legislation because it is no longer undergoing some operation to change it in some way or to make it more marketable. The Assessor says the ultimate goal of marketing is complete when the consumer is consuming the item. The Assessor says that once the respondent leases the clean linens and uniforms to its clients, its clients immediately begin consuming the items, and the laundering is merely incidental to such consumption. As a result, the respondent is not actually processing a "product".

[72] The Assessor notes that in *Federal Farms,* the court ruled that the taxpayer's operations constituted "processing" because the operations "were a series of processes to prepare the product for the retail market." The Assessor stresses as significant that the cleaning, sorting and washing of vegetables in *Federal Farms* took place prior to the interest in the goods being transferred to the consumer.

[73] In *Tenneco,* the court found that the exhaust installation operation did not meet the marketability requirement for processing because "the agreement to buy the parts and have them installed as a functioning system is made prior to the installation operation" (5209). To put it another way, says the Assessor, the marketing of the exhaust system ends when the car owner agrees to buy the parts for installation. Any work after that is not "processing" of a "product". The taxpayer would be simply installing an item that the consumer already purchased.

[74] The Assessor submits that the *ratio* of *Tenneco* is that "processing occurs when raw or natural materials are transformed into salable items." The Assessor says this implies that the item being processed falls within the marketing spectrum awaiting consumption.

[75] Finally, the Assessor notes that in *CCS* the court overturned the Board's decision on the ground that the hazardous waste being treated by the taxpayer was not a "marketable end-product" because it went to a landfill rather than to a consumer or to be readied for a further step in the marketing process.

[76] The respondent argues that the position taken by the Assessor that leased products cannot be made more marketable through cleaning has already been addressed in the case law. The respondent says that the court in *Cintas* specifically rejected the argument that the "service element" implicit in the leasing of garments (as opposed to selling them and cleaning them later) somehow disqualified the operations from being considered "processing".

[77] In *Cintas*, the Crown argued that the service element of the business disqualified it from the definition of "processing" for the purpose of income tax deductions. The Tax Court of Canada disagreed, noting that the income tax legislation specifically contemplates the processing of goods for lease (para. 8). The ruling in *Cintas* was therefore based on a particular statutory scheme.

[78] Unlike the legislation considered in *Cintas*, s. 5 of the *Regulation* makes no reference to leasing. However, s. 5 of the *Regulation* also makes no reference to sales. The language of the *Regulation* is therefore neutral and can reasonably accommodate both forms of agreement. In my view, it should not matter in the context of a lease whether the processing occurs before the agreement is reached or after for the duration of the lease.

[79] The primary consideration for the marketability requirement should be whether the customer is more likely to purchase the product as a result of the processing. As the Assessor notes, the court in *Federal Farms* held that a process involving the washing, brushing, spraying, drying, culling and sizing of vegetables improved the marketability of the goods by rendering them "more attractive and convenient to the consumer" (5072). In the context of the respondent's operations, customers are enticed to enter into a lease not simply to obtain uniforms, but also because the uniforms are subject to a cleaning process on a regular basis. Uniforms that are not regularly cleaned would be both less attractive and convenient to the respondent's customers, making the lease less likely to be purchased and therefore less marketable.

[80] Similarly, I do not agree with the Assessor that the finding in *Federal Farms*, at 5072, that the taxpayer's operations "were a series of processes to prepare the product for the retail market" is in any way fatal to the respondent's position. As long as the respondent's clients are subject to the lease, the leased goods remain on the retail market (or, in the words of the Assessor, the goods continue to reside on the "marketing spectrum"). It is for the same reason that the uniforms and linens remain "products" even after the respondent's clients enter into the lease.

[81] With respect to the decision in *CCS,* the facts in that case are fundamentally different than those in the case at bar. The handling of waste soils, which were destined for a landfill and not destined to a consumer, could not be said to be "made more marketable". They were not going to be sold or leased to anybody, so there was no "market" to consider.

[82] Moreover, as stated earlier, the reasons in *CCS* do not make any reference to the relevant case law, including *Federal Farms, Cintas* and *Notre Dame*. Absent an analysis of such cases, the *CCS* decision provides no useful guidance in this case.

[83] As a result, I dismiss this ground of appeal.

Conclusion

[84] find that the Board properly derived the ordinary meaning of “processing” in the relevant context. It considered and applied the relevant jurisprudence. Its interpretation as applied to the specific facts of this case plausibly reflects the legislative intent of including an operation such as that of the respondent, when carried out on an industrial scale, in an industrial property class. The Board did not stray from the principles of interpretation or the jurisprudence on the merits in a manner that would warrant intervention by the court as to the outcome.

[85] In the result, I find that the answer to the three questions of law posed in the stated case is “no”.