QUINTETTE COAL LTD.

v.

ASSESSMENT APPEAL BOARD
GORDON D. FRAMPTON
FRED M. CUNNINGHAM
KEITH T. ROUTLEY
and
ASSESSOR OF AREA 27 – PEACE RIVER

Supreme Court of British Columbia (A832390) Vancouver Registry

Before: MR. JUSTICE L.S.G. FINCH

Vancouver, February 3 and 6, 1984

B.J. Wallace for the Appellant
D.W. Roberts for the Respondents; Assessment Appeal Board, G.D. Frampton, F.M. Cunningham and K.T. Routley
P.W. Klassen for the Respondent, Assessor of Area 27 – Peace River

Reasons for Judgment April 3, 1984

I

The petitioner seeks judicial review of a decision made by the respondent Assessment Appeal Board ("the Board") confirming the amount of an assessment on an access road which the petitioner constructed and owns. The assessment was made by the respondent Kennedy, the Area Assessor of Area No. 27. The petitioner says the Board's decision is based on legal error in that the Board refused the petitioner an adjournment of the Board's hearing and refused the petitioner leave to examine for discovery an officer of the Assessment Authority of British Columbia. The Board's decision confirming the assessment is also attacked because there was a private conversation between the Chairman of the Board (the respondent Frampton) and the respondent Assessor during the course of the appeal procedure. This is claimed to constitute a breach of the rules of natural justice.

II

The facts are not in dispute. The petitioner mines coal in the Municipality of Tumbler Ridge. It constructed an access road from its main plant to one of its coal pits. The road was assessed for property tax by an appraiser, one J.W. Anderson, an employee of the Assessment Authority of British Columbia. The appraiser based his assessment on the road's construction costs. He relied upon those costs reported to him by the petitioner. Of that sum he allocated $3,758,600 to the land, $5,559,200 to the improvements, and $1,851,215 to maintenance. (The total costs reported are said to be $11,118,405 which is less than the total of the three figures allocated by the appraiser) The assessment included only those sums allocated to land and improvements.

There is a "guide" for use by appraisers in determining the actual value of roads. It is called a "Schedule of Rates". The schedule is a collection of cost factors usually incurred in road construction, with various adjustments. The schedule is published and distributed by the Assessment Authority of British Columbia. It is used throughout the province in the appraisal and assessment of industrial and logging roads. It had been used to assess a road outside of, but near to, the Municipality of Tumbler Ridge. The Assessor did not use the schedule in assessing the petitioner's road. Nor did he use it in assessing the only other road within the municipality which recently had been added to the tax roll.

The petitioner appealed the assessment of the Assessor to the Court of Revision. It instructed the appraiser to use the Schedule of Rates in valuing the road. The appraiser revised the assessment by applying the schedule to the value of the improvements only. This reduced the assessment for the improvements to $461,050. The appraiser did not apply the schedule to the value of the land. Its assessment remained at $3,758,600. The petitioner appealed the assessment of the land to the respondent Board. The respondent Assessor cross appealed the assessment for the improvements.

Before the hearing in the Board, the petitioner wrote to it requesting an order that the Commissioner of the Assessment Authority, and the respondent Assessor, be examined for discovery with respect to the schedule of rates and its application to the assessment in question. The petitioner also requested an adjournment of the Board's hearing pending completion of the examinations for discovery. There was no response to this letter prior to the commencement of the hearing.

At the commencement of the Board's hearing on June 28th, 1983 the petitioner again requested the discovery and the adjournment. The hearing was adjourned to July 19th so that the petitioner could prepare and submit a list of written questions to the Assessment Authority and the respondent Assessor. The list was delivered on July 14th. Counsel for the petitioner renewed his request for an adjournment on July 15th and again on July 17th.

On either July 17th or 18th the respondent Chairman had a telephone conversation with the respondent Assessor in which the adjournment and matters relating to it were discussed. One matter discussed was one of the written questions submitted by the petitioner, and its answer.

On July 19th the hearing resumed. The Assessment Authority had delivered its response to the written list of questions, but the answers were thought by counsel for the petitioner to be inadequate and incomplete. As part of the respondent Assessor's case, both he and the appraiser, Mr. Anderson, gave evidence. In cross-examination they were unable to answer more fully the questions which had been previously delivered in writing.

At the conclusion of their evidence, the petitioner again sought an adjournment of the hearing and an examination for discovery of an officer of the Assessment Authority. The Board refused both requests.

The Board's ruling in refusing an adjournment, and in refusing an examination for discovery, was expressed in the following words:

> The Board finds that only two (2) roads in the municipality have been assessed, and both on the basis of the Cost Approach, which are in evidence before the Board. A Schedule of Rates that may be used in other areas of the province and upon assessments not under appeal have, in the opinion of the Board, no relevance in establishing actual value or determining equity.
>
> The Board is estopped by section 69 (1) (e) [of the *Assessment Act*] from extending beyond the Municipality of Tumbler Ridge in consideration of what is a fair and just relationship.

> The Board has before it evidence of the original cost of the appealed improvements and market value of the lands. The Board, in its opinion has, subject to the direct evidence of the Respondent's witness(s), sufficient information on which it is satisfied that actual value can be determined.
>
> The motion for Examination for Discovery pursuant to Rule No. 9 of the Rules of Practice and Procedure of the Assessment Appeal Board is, therefore, denied for the foregoing reasons in addition to the conclusion of the Board that "complicated issues of fact" are not involved.

Counsel for the Board argued that the actual words used by the non-lawyer Chairman of the Board should not be criticized too closely, and that the language should be viewed with some latitude. I agree that is a sound approach, particularly where the reasons were given orally, at the conclusion of a day of evidence and argument.

III

Counsel for the petitioner says the question of relevance of evidence is a question of law. There were two issues considered by the Board in its ruling on the relevance of the schedule of rates. The first was the question of the road's "actual value". The second was the question of whether the assessment bore a fair and just relationship to other similar roads in the municipality - i.e. "equity". Counsel for the petitioner says that in holding the schedule not relevant to either issue the Board erred in law.

Counsel for the Board says the ruling on relevance is legally correct as to the issue of "equity". On the issue of "actual value", counsel says the Board's ruling should be read as meaning that the use and application of the Schedule of Rates elsewhere in the province, even if relevant in the strictly legal sense, was of no particular significance or importance. In other words, the evidence would have been of such little weight that a cross-examination on the subject by way of discovery was not warranted in the circumstances requiring, as it would have, a further adjournment of the hearing.

The first question is whether the Board made a legal error in refusing an adjournment so that this area of evidence could be explored by counsel for the petitioner. In other words, was the petitioner denied a fair hearing by being refused the opportunity to seek out and develop evidence relevant to the matters in issue. To answer this question one must first know what the issues before the Board were. The primary issue to be dealt with on an assessment of this sort is the determination of actual value of the land and improvements. That is the duty with which the Assessor is charged under s. 26 (1) of the *Assessment Act*, R.S.B.C. 1979, c. 21. It is also an issue for the Assessment Appeal Board by virtue of s. 69 (1) (a). Actual value, of course, means market value. It is not capable of an absolute mathematical calculation. There is no scientific precision in finding its measure. An assessment of actual value is by its nature an estimate of what the Assessor or appraiser reasonably believes the property would bring in an arm's length sale. Appraisers make use, in different circumstances, of a variety of factual material. Where there is an active market for similar properties, the appraiser may look to actual sales of properties which he considers comparable, making adjustments for differences in quality, time, location, etc. That is sometimes called the market value or sales approach.

Or the appraiser may, as was done here, use the cost approach. He bases his estimate of market value on what it would cost to reproduce a property of like kind and quality. The cost figures used may be actual ones, either paid by the property owner himself or by other owners who have constructed similar facilities. There is no doubt that the costs incurred by other owners may serve as a guide to the valuation of property. If one's neighbour built a house at a cost of $50 per square foot, one might reasonably suppose that he could construct a similar house at the same rate. That is why the petitioner in this case contends that the Schedule of Rates is relevant to valuation of his property, even though his own cost figures were available. A buyer might think

that a price based on actual costs of a single property was too high, and would want to know, in the absence of any sales information, what other owners had paid to construct like facilities. There is no doubt that the Schedule of Rates was relevant to the issue of actual value. It has been held that to base an assessment on actual values of comparable land is not an error of law. See *British Columbia Assessment Authority et al.* v. *Simpson-Sears Ltd.* (unreported, January 22nd, 1981, Vancouver Registry No.: 800608, B.C.C.A.).

But in this case the petitioner had the schedule. What it wanted to do was examine an officer of the Assessment Authority to find out how that schedule was employed by other Assessors in the province. The written questions as submitted by the petitioner are an outline only of what information was to be sought. In determining the usefulness, applicability and reliability of this schedule one could imagine many questions arising from that outline. In all likelihood, not all of the information to be elicited from such questions would be relevant to the issue of actual value before the Board. But one could not properly say in advance that the whole of such an inquiry would be irrelevant.

So, in my opinion, the Board has stated the matter too broadly in ruling inquiries surrounding the Schedule of Rates to be of "no relevance". Without knowing what information might be turned up on such an inquiry, I do not see how the Board could determine, as counsel suggested, that the inquiry would be of no particular significance. If that was the intent of the Board's ruling, it was a ruling as to weight. But the Board was not deciding whether it should rely on the evidence which might be developed on an examination for discovery, or whether that evidence was more or less persuasive than the evidence of the owner's actual costs. It did not know what that other evidence was or would be. At best, it's ruling can be viewed as a decision that, in general, evidence of the kind sought to be inquired into by the petitioner would be viewed by the Board as less compelling than the evidence already before it.

To this point, I have considered only the possible relevance of the evidence sought to be developed by the petitioner to the issue of actual value. The other issue before the Board on this hearing ("equity") was whether the assessed value of the petitioner's property bore a ". . . fair and just relationship to the value at which similar land and improvements are assessed in the municipality. . . in which it is situated" (s. 69 (1) (e) of the *Assessment Act*). The evidence before the Board was that the only other property similar to the petitioner's road had been assessed in the same manner, namely, by reliance on actual costs reported by the owner. The Schedule of Rates had not been used elsewhere in the municipality. There could therefore be no complaint that the petitioner's property had been valued in a manner different from other similar properties. The fairness of the two property's assessed values was to be judged solely by comparing the costs of the one with the costs of the other. The Schedule of Rates, or its application elsewhere in the province, could not have assisted in that exercise. So the Board was correct, in my view, in ruling irrelevant the evidence the plaintiff sought to inquire into, so far as the issue of equity is concerned.

As I have said, however, that evidence was relevant and may have had some weight on the issue of actual value.

Did the Board commit a legal error in refusing the petitioner an adjournment for an examination for discovery on this subject? The Assessment Appeal Board has rules governing its practice and procedure. Rule 9 provides:

> Where a Board considers that an appeal involves complicated issues of fact, the Board may order examinations for discovery of parties, discovery and inspection of documents and pre-hearing examinations of witnesses, including expert witnesses.

Under this rule the Board has two tasks. First, it must decide whether an appeal involves complicated issues of fact. Secondly, if there is a complicated issue of fact, the Board has a discretion whether to permit discovery of some sort in the circumstances. The Board answered

the first question in the negative. Did it err in law in so doing? One cannot tell from the Board's reasons what it was that led it to that conclusion. However, looking at the facts stated in the petition, and all of the other material before me, including the transcript of the evidence, I cannot say that the Board was wrong in that conclusion. The two basic issues before the Board were "actual value" of the road and the "fair and just relation" of the subject assessment to others in the Municipality. The first issue, by its nature, would fall to be decided largely on opinion evidence. The opinions, to be useful, would have to be based on facts. And there might be many facts necessary to support the opinion. Evidence concerning the facts might also conflict. But that would not necessarily make the issues of fact complicated. In the argument before me it was not demonstrated that there were complicated issues of fact. Where that issue has been addressed by a Board which has a wide and specialized experience in such matters, I would be very reluctant to overrule its decision unless it was clearly shown to be in error. It is the Board's consideration of whether there are complicated issues of fact that give rise to its discretion to order discovery. I would not go so far as to say that the Board could never err in law in deciding that issue. But it would, I think, have to be a very plain case before the Court would interfere.

Since I am not satisfied that the Board was wrong in holding that complicated issues of fact were not involved, I do not need to consider the further question of whether, had there been complicated issues of fact, the Board so failed to exercise its discretion in a judicial manner as to constitute an error of law. That question does not arise.

I have therefore reached the conclusion that, although the Board was wrong in saying that the subject of the petitioner's proposed discovery was irrelevant to the issue of "actual value", the Board was justified in refusing the petitioner discovery and in refusing the petitioner an adjournment for that purpose. The petitioner says, in the result, it was denied a fair hearing because it was deprived the opportunity of discovering and adducing other relevant evidence. But it is not the law that all relevant evidence must be admitted in a quasi-judicial proceeding. The tribunal has the right and the duty to control its own process. It must act reasonably in doing so but, subject to that limitation, should be able to discharge its statutory, responsibilities without fear of being second-guessed on procedural points.'

I am far from satisfied that the Board's refusal of discovery was unreasonable in the circumstances. It was entitled to find that there were no complicated issues of fact. That was sufficient to justify the refusal of discovery. The adjournment was not sought by the petitioner for any other purpose. It was not contended before the Board, nor before me, that the petitioner wished to use the time provided by an adjournment to develop the evidence sought in any other way. While the refusal may have prevented the petitioner from pursuing inquiries that could have led the petitioner to relevant evidence, it cannot be said that it was denied a fair hearing as a result. I conclude that there was no error of law in refusing the petitioner and examination for discovery, or in refusing an adjournment.

IV

The petitioner says there was a breach of the rules of natural justice when, on the day before the hearing resumed on July 19th, there was a telephone conversation between the respondent Chairman and the respondent Assessor concerning, amongst other things, the use of the Schedule of Rates for road assessments in the Tumbler Ridge area. Counsel says that such a conversation in the absence of the petitioner must inevitably lead the petitioner to question the impartiality of the Chairman and hence of the Board, and that such apprehension of partiality is sufficient to vitiate a fair hearing.

That there was a telephone conversation between the respondent Chairman and the respondent Assessor is not disputed. Nor is the fact that the conversation dealt with at least one of the questions for which the plaintiff sought information by way of examination for discovery. But I have concluded that in the circumstances which prevailed there was neither real nor apparent

prejudice to the petitioner. To understand why this is so it is necessary to set out in more detail what occurred.

The petitioner's counsel delivered the written list of questions to counsel for the respondent Assessor on Thursday, July 14th, 1983. On July 15th counsel for the petitioner telephoned the Chairman and requested an adjournment of the continued hearing date, then set for July 19th, so that the respondent Assessor would have adequate time to answer the written questions. The respondent Chairman then telephoned counsel for the respondent Assessor, who was in Victoria. Counsel advised the Chairman that the Assessor had the questions, but he did not know if they could be answered in time. He also advised the Chairman that he, counsel, would be unavailable for further discussions over the weekend.

The Chairman then telephoned the respondent Assessor and asked whether the questions could be answered in time for the resumption of the hearing on July 19th. The respondent Assessor said that he would be ready, and that an adjournment would not be necessary.

On Sunday, July 17th, counsel for the petitioner again telephoned the respondent Chairman and once again requested an adjournment. The Chairman then, on either the 18th or 19th, again asked the respondent Assessor by telephone whether answers had been obtained to the written questions submitted by the petitioner. The Assessor advised that he had answered them to the extent that they could be answered.

When the hearing resumed on July 19th the requests for discovery and a further adjournment were raised at the outset. The Board refused the petitioner's requests on the ground that the written questions had been answered to the best of the respondent Assessor's ability. The hearing then continued with the evidence of the appraiser Anderson, and of the respondent Assessor Kennedy. During the cross-examination of the appraiser Anderson it became evident that the Chairman had communicated directly with the Assessor. When Kennedy came to be cross-examined the following exchange took place:

> Q. Mr. Kennedy, I asked Mr. Anderson earlier whether he had spoken to the Chairman with respect to this appeal in the last few days and he answered, "no" and the Chairman indicated that he had, in fact, spoken to you. Do you recall that conversation.
>
> A. I do.
>
> Q. Can you tell me please what the Chairman said to you in that conversation.
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> A. He said that the hearing would be held at 10 o'clock today. He asked if I had the questions. I believe my answer was "yes". I had received them at 5 o'clock on Friday. He asked if I had the answers and I said, "yes, to the ones that I was capable of answering".
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> Q. Was that the full extent of your conversation with the Chairman?
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> A. As I recall it.
>
> Q. He said nothing further to you and you said nothing further to him?
>
> A. No, I don't recall anything further.
>
> Q. Did he discuss the relevance of any of the questions with you.
>
> A. Relevance as, I believe I answered a Question as to "did I -was there any logging roads-any industrial roads in the Tumbler Ridge area assessment schedule". And my answer to that was "no". I had the answer to that Question. That was relevant to the . . .

Q. Was there anything else?

A. Not as I recall.

Q. Were there any other-anything else-was there anything else said in that conversation?

A. I do not recall exactly what may or may not have been said.

Q. When did this conversation take place?

A. I believe it was Monday.

Q. Yesterday.

A. Yes.

Q. And it was on the telephone.

A. Yes.

The underlined answer, as transcribed, is somewhat garbled. Whether .that is exactly the way the witness answered the question, or whether the answer became confused in transcription, there is no doubt in my mind that the witness was referring to written question No. 7 and its answer. They are as follows:

Q. What folios within the rural municipality of Tumbler Ridge have been assessed with the aid of the scheduled rates?

A. Nil.

The answer given orally by the witness at the hearing was the same as that given by the written answer. Mr. Kennedy had no recollection of anything further having been said in the telephone conversation between him and the Chairman.

The telephone information given by the respondent Assessor to the Chairman went, first of all, to the issue of whether the questions could be answered in time to avoid a further adjournment on the resumed hearing date. Since the request for the adjournment was initiated by counsel for the petitioner, I do not see how the petitioner can complain about the Chairman's following up on that request. That would be unreasonable and unfair. Secondly, the information conveyed went to the relevance of the Schedule of Rates. It would be a natural inquiry for the Chairman to make, because if the Schedule had been used elsewhere in the Municipality of Tumbler Ridge, that would have important ramifications on the question of the subject assessment's "fair and just relation" to other assessments within the municipality. If the answer to Question 7 had been affirmative, that no doubt would have been an important consideration for the Board in deciding to grant an adjournment, since fairness would have required that the petitioner have an opportunity to pursue all proper inquiries arising from that fact.

But that was not the case. The answer to Question 7 was, in my view, a perfectly proper matter for the Board to take into account in refusing the adjournment. All that happened is that that answer was made known to the Chairman one or two days prior to the hearing's resumption. And it was made known at that earlier time because a decision on whether an adjournment should be granted might well have been affected by the answer to be given.

Moreover, the communication by telephone between the Chairman and the Assessor occurred before the hearing was completed. It was known to counsel for the petitioner when he cross-

examined witnesses on July 19th. His client had an opportunity to find out not only what was said, but to answer those statements if that was required.

This is quite a different case from *Kane* v. *Board of Governors of the University of B.C.*, [1980] IS.C.R. 1105; (1980), 110 D.L.R. (3d) 311; [1980] 3 W.W.R. 125; 18 B.C.L.R. 124 (S.C.C.), and the other authorities relied upon by the petitioner. There was here no private interview of witnesses, no hearing of evidence *ex parte*, and no fresh or prejudicial evidence conveyed in secret. The petitioner had the same information conveyed to it in writing, and had an opportunity to cross-examine the assessor on the telephone conversation. What was said in the written answers, and in the telephone conversation, was not said in order to support the case against the petitioner. It was said because the petitioner sought the information to bolster its case and because the Chairman, before acquiescing in the petitioner's request for an adjournment, wanted to know whether such a line of inquiry could prove fruitful to the petitioner.

Before me it was not contended by the petitioner that there had been actual prejudice. I do not accept the suggestion that the telephone exchange referred to was such as would cause a reasonable person to apprehend prejudice. A reasonable view of what took place is that the Chairman, at the instigation of counsel for the petitioner, made inquiries to see whether the task of answering the written questions in general would require an adjournment, and whether the answer to question No. 7 in particular would, in fairness to the petitioner, require an adjournment. Both of those inquiries were answered in the negative, and that information was conveyed to the petitioner.

Natural justice has been said to be "fair play in action": see *Ridge* v. *Baldwin et al.*, [1962] 1 All E.R. 834 (C.A.) per Harman, L.J. at p. 850, cited with approval by Dickson J. in *Kane* v. *U.B.C.*, *supra*, p. 1113. Here the petitioner set the inquiry by the Chairman in motion with its request for an adjournment. The Chairman responded by seeking information from the respondent Assessor necessary to decide that question. He alone could provide the necessary information. The subject matter of the inquiry was essentially procedural. It would be most unfair in these circumstances if the petitioner could now complain that the maxim *audi alteram partem* had been offended. It too had telephone conversations with the Chairman to which the respondent Assessor was not privy. How can it be fair for it to have done so, to prompt the Chairman into a similar one-sided inquiry with the respondent, and then to object when the Chairman complied? To ask the question is to provide the answer.

In my view, the rules of natural justice were not breached in this case. The petitioner was not deprived of a fair hearing, and no foundation has been shown for granting the relief sought by the petitioner. The petition for judicial review must be dismissed.

V

The usual order for costs where a petition is dismissed is to award party and party costs to the respondents. I make such an award to the respondent Assessor. However, the other respondents are in a different position. The respondents Assessment Appeal Board, Gordon D. Frampton, Fred M. Cunningham and Keith T. Routley appeared by separate counsel from the respondent Assessor. Counsel for these respondents also resisted the petitioner's claims. In my view, such a defence was unwarranted.

At common law, a statutory decision-maker has the right to be represented in court for the purpose of defending its jurisdiction but not for the purpose of arguing the merits of the case: *Labour Relations Board of Saskatchewan* v. *Dominion Fire Brick and Clay Products*, [1947] 3 D.L.R. 1 (S.C.C.) at p. 7; *International Association of Machinists* v. *Genaire* (1958),18 D.L.R. (2d) 588 (Ont. C.A.) at pp. 589-590; *Labour Relations Board of New Brunswick* v. *Eastern Bakeries Ltd.* (1960), D.L.R. (2d) 322 (S.C.C.) at p. 336; *Canada Labour Relations Board* v. *Transair Ltd*. (1976), 67 D.L.R. (3d) 421 (S.C.C.) at p. 424-5, 439-40; *Central Broadcasting Co. Ltd.* v. *Canada Labour Relations Board* (1976), 67 D.L.R. (3d) 538 (S.C.C.) at p. 544; *Northwestern Utilities Ltd.*

v. *City of Edmonton*, [1979] 1 S.C.R. 684, (1978), 89 D.L.R. (3d) 161, 12 A.R. 449, 23 N.R. 565 (S.C.C.) at pp. 709-711; *British Columbia Government Employees Union and Sealey* v. *The Public Service Commission* (1979), 10 B.C.L.R. 89 (B.C.S.C.) at p. 94.

The policy for restricting the role of statutory decision-makers in court proceedings to questions of jurisdiction was summarized by Estey, J. in *Northwestern Utilities* v. *Edmonton*, *supra*, where he discussed the drawbacks of an unrestricted role. At p. 709 he said;

> . . . Such active and even aggressive participation can have no other effect than to discredit the impartiality of an administrative tribunal either in the case where the matter is referred back to it, or in future proceedings involving similar interests and issues or the same parties. The Board is given a clear opportunity to make its point in its reasons for its decision, and it abuses one's notion of propriety to countenance its participation as a full-fledged litigant in this Court, in complete adversarial confrontation with one of the principals in the contest before the Board itself in the first instance.

The common law position that a statutory decision-maker is restricted to making submissions and taking appeals on questions of jurisdiction can, of course, be altered by statute. The statute governing the procedure for judicial review applications in British Columbia is the *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209. Has this Act enlarged the common law role of a statutory decision-maker in court where its decision is being challenged by way of an application for judicial review?

The only section of the Act that might be said to broaden the common law rule is s. 15 (1) which provides:

> Party to application
>
> 15. (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power must be served with notice of the application and a copy of the petition and may at the person's option, be a party to the application.

This section allows the statutory decision-maker to be a "party" to the application for judicial review.

There are no reported cases on the meaning of this section or the equivalent section in the Ontario *Judicial Review Procedure Act*, R.S.O. 1980, c. 224, s. 9 (2). The question raised by this section is whether the use of the word "party" has the effect of broadening the role of a statutory decision-maker at the hearing of a judicial review application beyond questions of jurisdiction. In my view, it does not.

To change the common law by statute, express and clear language is required: Maxwell, *Interpretation of Statutes* (12th ed.), p. 116. Use of the word "party" in s. 15 (1) is not a sufficiently clear expression of an intention to broaden the role of a statutory decision-maker at the hearing of a judicial review application beyond questions of jurisdiction. If the legislature had intended that statutory decision-makers be permitted to make submissions beyond issues of jurisdiction it could have said so expressly in the section. The use of the word "party" in itself is not enough.

The use of the word "party" only indicates an intention that the statutory decision-maker be permitted to appear at the hearing of the application. It does not define the extent of the role of the decision-maker if an appearance is made. This position is consistent with this further statement of Estey, J. in *Northwestern Utilities* v. *Edmonton*, *supra*, at p. 709:

> It has been the policy in this Court to limit the role of an administrative tribunal whose decision is at issue before the Court, even where the right to appear is given by statute,

> to an explanatory role with reference to the record before the Board and to the making of representations relating to jurisdiction.
>
> [my emphasis]

I conclude that s. 15 (1) of the *Judicial Review Procedure Act* does not alter the common law role of a statutory decision-maker in court. Statutory decision-makers are restricted to making submissions on jurisdiction where their decisions are challenged by way of applications for judicial review. In this case the issues were not jurisdictional in nature and the Board's position was adversarial rather than explanatory. Whether to grant an adjournment or order a discovery are certainly not jurisdictional issues. Neither is the question of whether a statutory decision-maker has adhered to the rules of natural justice: *Northwestern Utilities* v. *Edmonton*, *supra*. The respondent Board and its members had the right to appear and to offer any necessary explanation. But they had no right to defend the petition. Accordingly, I award no costs to the respondents Assessment Appeal Board, Gordon D. Frampton, Fred M. Cunningham, and Keith T. Routley.