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**INCENTIVE ENTERPRISES LTD. (AGGRESSIVE),
805030 TRANSPORT INC. (SHULAR),
FRASER VALLEY MUSHROOM GROWERS COOP. ASSOCIATION (FRASER VALLEY MUSHROOMS),
DELESALLE HOLDINGS LTD. (LUMBERLAND), and
ASTROGRAPHIC INDUSTRIES LTD.**

v.

ASSESSOR OF AREA 15 - LANGLEY/MATSQUI/ABBOTSFORD

Supreme Court of British Columbia (A960925) Vancouver Registry

Before the HONOURABLE MR. JUSTICE K.C. MACKENZIE (in chambers)

Vancouver, September 13, 1996

Brian J. Wallace and James D. Fraser for the Appellants
John H. Shevchuk for the Respondent

Reasons for Judgment (Oral) September 13, 1996

This is an appeal by way of Stated Case pursuant to s. 74(2) of the *Assessment Act*.

The Appellant property owners were represented before the Board by Richard Boden of Edapho Consultants. At the opening of the hearing Mr. Boden took the position that the hearings were a nullity because the notices of hearing were issued over the signature of Sandra Craig, hearing coordinator of the Board. Section 68(5) of the *Act* states:

The chairman of the board shall set a time, date and place for hearing the appeal and shall give notice of this to the appellant and to those persons notified under subsection (4)(a), (b) and (e).

The Appellants contend that only the Chairman of the Board can exercise the authority conferred by s. 68(5), and purported notices of hearing over the signature of Ms. Craig are a nullity.

I am satisfied that the scheduling of hearings is a ministerial or an administrative function in the first instance, at least where, as here, the dates were originally set in consultation with the Assessor and Mr. Boden on behalf of his clients, and initially acquiesced in by them.

I think that the section does not require that the Chairman personally give notice of hearings or to set the date if the parties acquiesce to a date at the time it is set. The cases cited by the Respondent on this issue - *United Cigar Stores Ltd.* v. *Freeman*, [1949] 1 D.L.R. 188 followed in *Pawliuk* v. *Drinkwater and Drinkwater* (1955) 1 D.L.R. (2d) 338 - confirm that interpretation.

The answer to Question 1 is therefore no.

After Mr. Boden's objection was rejected by the Board, he asked for an adjournment of the hearing to pursue an appeal of the Board's ruling by way of Stated Case. The Board was prepared to grant an overnight adjournment but Mr. Boden discouraged that suggestion by advising the Board that he would be unable to call evidence or be prepared to advance the

appeals the following morning. He was generally recalcitrant, influenced by a broader issue of the scheduling of appeals before the Board, which it is not necessary to get into in these reasons.

Mr. Wallace submits that in refusing the adjournment, the Board failed to consider prejudice to the Appellants and thereby failed in its duty to decide fairly on the issue of the adjournment. The Appellants, however, put themselves in the hands of Mr. Boden as their agent and they are presumably substantial commercial enterprises with some degree of sophistication. In view of the position Mr. Boden took at the hearing, emphasizing his technical objection, and showing no willingness to proceed on the merits with reasonable dispatch, I do not think it can be said that the Board failed to adequately consider the Appellant's interest and prejudice in refusing the adjournment. After the adjournment was refused, counsel for the Assessor made a motion that the appeal be dismissed on the basis of no evidence. The Board acceded summarily and dismissed the appeals. Mr. Boden made it clear at that time that he opposed the motion and he certainly did not acquiesce in it.

Mr Shevchuk accepts that the appeal before the Board was in effect a hearing *de novo* and the Board is required to act on evidence, subject to certain qualifications referred to in the cases. Mr. Shevchuk contends, however, that the decisions of the Court of Revision below and the assessments confirmed by that court are evidence that underpins the Board's decision, and that counsel was not required to call the Assessor to defend the assessment or lead other evidence before the Board. He relies on the majority opinions of the Court of Appeal in *Captains Enterprises Limited* v. *Assessor of Area 13 - Dewdney/Alouette* (1989) B.C. Stated Case No. 249. There it was held that the Board had discretion to allow an Appellant to withdraw an appeal and to confirm an assessment over the objection of the Assessor who wanted a higher assessment. In so doing, both Mr. Justice Seaton and Mr. Justice Macdonald, in the majority, approved observations of Mr. Justice Meredith in *Quintet Coal Ltd.* v. *Assessment Appeal Board of B.C. et al* (1986) 88 B.C.L.R. (2d) 51 at p. 55 to the effect that proceedings before the Board are essentially inquisitorial and not adversarial.

The thrust is that the Board must have evidence before it to determine the value and act on that evidence. *Captains Enterprises* decides that such a decision is not required if an appeal is withdrawn, of course with leave of the Board, as there was in that case. Here the Appellants through their agent Mr. Boden neither withdrew nor abandoned their appeal. Accordingly, having declined a lengthy adjournment the Board was required to decide the appropriate valuation and to do so on evidence. A submission to confirm the assessment based on the Court of Revision's decision and the assessment below might well have succeeded.

If such a submission had been made, the Board would have put its mind to the evidence, limited though it was, and decided the appeal on the basis of the evidence. However, the motion put was a no-evidence-motion, and the Board accepted that motion summarily. From the transcript it seems clear that it did not decide on evidence. It imposed a burden of proof on the Appellants and dismissed the appeal on no evidence. In my view that was an erroneous approach to the issue before it; the error was an error in law.

Mr. Shevchuk pointed out that the Board's reasons and decision are required to be in writing, and the written decision of the Board recites the values for each of the properties as determined by the Court of Revision at the outset of the reasons. However, the written reasons reiterate that the appeals were dismissed for no evidence and there is no assertion that the Board considered the issue of the adequacy of the evidence before it. The distinction is a narrow one but in my view it is important. The Board was required to consider the evidence before it and on the record it failed to do so.

Accordingly, Question 2 must be answered yes.

In the circumstances of this case, Mr. Wallace, I think it is appropriate to make no order as to costs.