



## BOARD OF DIRECTORS 2007-2008

### PRESIDENT

Norma Edelman  
Employment Standards  
Tribunal

### VICE PRESIDENT

Iain Macdonald  
Workers' Compensation  
Appeal Tribunal

### SECRETARY

Simmi Sandhu  
Property Assessment Appeal  
Board

### TREASURER

Steve Guthrie  
Property Assessment Appeal  
Board

### DIRECTORS

Jeannette (Tonie)  
Beharrell  
Human Rights Tribunal

Joanne Kembel  
Workers' Compensation  
Appeal Tribunal

Anne-Marie Lafleur  
Residential Tenancy Branch

Kurt Neuenfeldt  
B.C. Human Rights Tribunal

Ib Petersen  
Mediation Arbitration Board

Margaret Ostrowski  
Immigration and Refugee  
Board - Immigration Appeal  
Division

Frances Sasvari

Cheryl Vickers  
Property Assessment Appeal  
Board\*

## PRESIDENT'S MESSAGE

### Adjudicators' Manual

The final draft of the Manual is due to be completed by mid September 2008 and it will then go to the printers. We hope to have it available for purchase at our annual conference on October 20, 2008. Gwen Taylor is the primary writer of the Manual reporting to an Editorial Board whose members are Heather MacNaughton, Cheryl Vickers and me. Gwen, as many of you know, is one of the founding Directors of BCCAT and served in various capacities on the Board and committees for many years. She is a lawyer with a practice in Dispute Resolution and is a member of both the Civil Mediation Roster and the Child Protection Mediation Roster. Gwen has also served on various boards and agencies including the Expropriation Compensation Board, the Liquor Control and Licensing Branch, and the Employment Standards Tribunal. She also served as Chair and CEO of the Property Assessment Appeal Board and the Medical and Health Care Services Appeal Board. This Fall, she will commence work as an adjudicator for the Indian Residential School Adjudication Secretariat. As you can see, Gwen has an enormous amount of knowledge and experience in the area of administrative law. On behalf of BCCAT and the other members of the Editorial Board, I want to thank Gwen for her excellent work on this project.

### Update on McKenzie case

As I indicated in my last message, BCCAT advised the Supreme Court of Canada that it would not participate in McKenzie's leave to appeal application, but reserved its right to participate if leave was granted. On April 24, 2008, leave to appeal the BC Court of Appeal judgment was dismissed. On May 15, 2008, on behalf of BCCAT, I sent letters to Frank Falzon Q.C., (Frank A. Falzon Law Corporation), our counsel at the BC Supreme Court level and to John Hunter, Q.C., Peter Voith, Q.C., K. Michael Stephens, and Gib van Ert (Hunter Litigation Chambers), our counsel at the BC Court of Appeal level, thanking them for their top-notch quality of work and generosity in the fees department. Finally, I want to thank those members of BCCAT who donated money to this cause. That money was used to help pay our legal fees and disbursements. Your donations assisted us to proceed as an intervenor in this case and to further the important administrative law principle of independence.

### New President

I have enjoyed serving as President for the last 2 years. My experience has been very rewarding. It is now time to move on and give someone else the opportunity to lead this amazing organization. I want to thank the membership for giving me the opportunity to be President and I want to thank the other Board members and Committee members for their work, commitment and support during my term.

### Board and Committee Positions Available

Various Committee positions are currently vacant and some members of the Board of Directors are stepping down from their positions effective the date of the AGM. I strongly urge you to put your name forward now or at the Annual General Meeting to fill one or more of these positions. If you are interested, please contact me at [registrar@bccat.net](mailto:registrar@bccat.net).

**REGISTER NOW!****B.C. Council of Administrative Tribunals  
Annual Conference and Annual General Meeting**

Monday, October 20, 2008  
9:00 a.m. – 3:30 p.m.

Dunsmuir Lodge  
1515 McTavish Road  
Sidney, B.C.

**“The World According to Dunsmuir:  
Re-examining the Tools of Administrative Justice”**

This in-depth program will bring you valuable workshops, updates, and analysis on the most significant issues and developments facing tribunal members, adjudicators, regulators, tribunal staff and administrative lawyers. You will hear from a learned and well rounded faculty of judges, leading academics, seasoned adjudicators and course instructors.

**Highlights include:**

- Opening address: Jerry McHale, Office of the Attorney-General of B.C.
- Lunch speaker: Angus Gunn
- Plenary Panel: Tips from the Bench with Mr. Justice Paul J. Pearlman, and others.

**Featured workshops include:**

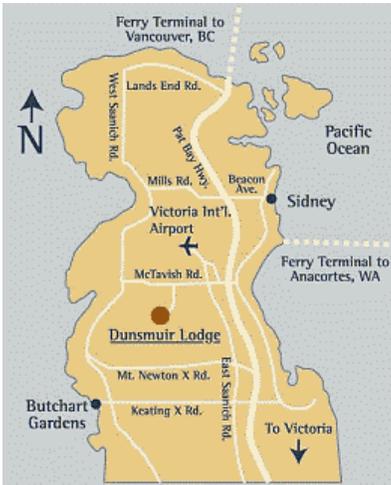
- Sufficiency and adequacy of reasons
- Credibility and reliability of evidence in written submissions and oral hearings
- Appropriate dispute resolution
- Hearing skills for self-represented litigants
- Administrative law Update

**FEES: BCCAT MEMBER \$225.00 (+ 5% GST)**

**NON-MEMBER \$300.00 (+ 5% GST)**

Learn valuable information about recent developments in the administrative law field and current and practical issues that you deal with every day, in the spectacular setting of Vancouver Island.

**Go to [www.bccat.net](http://www.bccat.net) for more details and registration!**



Go to [www.bccat.net](http://www.bccat.net) for more details and registration.

## NOTABLE DECISIONS: PROPERTY ASSESSMENT APPEAL BOARD

### PROCEDURAL FAIRNESS IN THE DENIAL OF AN APPLICATION TO ADJOURN AND TENDER EVIDENCE

By Simmi Sandhu, Vice-Chair, Property Assessment Appeal Board

In the recent B.C. Supreme Court Decision of [\*Vancouver Pile Driving Ltd. v. Assessor of Area #08\*](#), 2008 BCSC 810, the Court reviewed the Property Assessment Appeal Board's jurisdiction and exercise of discretion under the Assessment Act to refuse to adjourn a hearing when the appellant filed a last minute adjournment application and to accept expert evidence that the appellant sought to tender contrary to pre-hearing Board orders.

In this instance, the Board had extensively appeal managed the appeals and issued a number of Orders with respect to timelines for production of documents and preparation for the hearing. The appellant did not file evidence in compliance with these Orders.

Rather, in the late afternoon the day before the hearing, the appellant applied to have the hearing adjourned. The Board, after hearing submissions from both parties, denied the application on the basis of a number of factors including, that the appellant had not acted diligently in making the application, the prejudice that would be suffered by the respondent who was prepared to proceed, etc. The Board balanced what was fair to each party and considered the "delicate application of the rules of natural justice" and determined that the balance tipped in favour of denying the application.

The Board proceeded with the hearing, but denied the appellant the opportunity to introduce expert opinion evidence at the hearing as the appellant had not filed the evidence in compliance with the pre-hearing Orders. However, the appellant was permitted to cross-examine the respondent's expert and to give evidence as to matters of fact, as well as provide written submissions. Subsequent to the hearing, the appellant applied to reopen the hearing in order to introduce new evidence, which application the Board denied as it considered the application to re-open as essentially an attempt to have the Board reconsider its decision on the adjournment and evidence applications.

The Board held that if the appellant's application was accepted, there would be little point in the Board having any rules or procedures to ensure some efficiency and fairness in the process. The Board considered factors such as the Board's power to make rules respecting practice and procedure under section 11 of the *Administrative Tribunals Act*, and the need to render decisions in a timely and efficient manner.

The Court held that, despite the fact that the Board has an inquisitorial function under the *Assessment Act*, it was entitled to proceed in this manner and its procedural decisions were correct. The Court also held that the Board was entitled to deference with respect to its exercise of discretion in applying its Rules, and that the Board came to its conclusions on how to proceed after considering the circumstances and the appropriate principles. The Court also held that the appellant was not denied a fair hearing as the appellant was allowed to adduce some evidence and to make submissions in accordance with its Rules.

Interestingly, in determining the appropriate standard of review, the Court applied the standard of review analysis directed by the S.C.C. in *Dunsmuir v. New Brunswick* 2008 SCC 9, namely that the analysis is contextual and includes a consideration of a number of relevant factors, such as the nature of the question at issue, the expertise of the tribunal etc.

In its written decision, the Board clearly set out the relevant considerations and principles that it applied in making these procedural decisions which assisted the Court to subsequently review those decisions and, ultimately to uphold them.

## THE ADMINISTRATIVE JUSTICE OFFICE: AN UPDATE

Justice transformation remains the focus of the AJO's work and since our Spring 2008 report the AJO has initiated, undertaken or completed a number of projects aimed at providing earlier solutions and faster justice, both in-government and by administrative tribunals.

### **In-government:**

Developing a consistent framework for SDMs: The AJO is excited to be leading a systemic review of in-government decision-makers (Statutory Decision-Makers, or "SDMs") powers, procedures and authorities, with the support of a small Advisory Committee. The project will:

- develop a catalogue of all SDMs across government ministries;
- publish a series of discussion papers and solicit comments (each paper will indicate the response timeline);
- consult with ministries, their SDMs and the public, as appropriate; and
- develop recommendations, including for possible systemic legislation similar to the standard framework provided for tribunals by the Administrative Tribunals Act (ATA).

The first of the discussion papers is expected to be posted on the AJO website in September 2008.

Administrative justice education and training: The AJO, with the support of BCCAT and in collaboration with the AG's Legal Services Branch, has been supporting quality government decision-making by expanding the opportunities for government staff to take the Administrative Justice for Decision Makers course. A high level of interest in that course has been demonstrated, with both May and September offerings being fully subscribed, and an additional offering, planned for November 2008, also well on its way to being fully subscribed. Further additional offerings are being planned for 2009. The AJO is also working with a number of government offices to develop specialized course offerings, focussing on specific program needs. The AJO has been working with and thanks BCCAT instructor, Cheryl Vickers, for assisting the AJO in minor revisions to the course materials.

Improving review processes: The AJO is pleased to be hosting its second workshop to support the principled development of review processes for in-government decision-making. Scheduled for October 2008, the workshop is directed to policy analysts and others who are responsible for developing new programs and review processes. Participants will learn about the full range of policy and legal issues and the practical factors of designing decision reviews, through interactive exercises that apply the AJO's Design Guide to Review Administrative Decisions.

Simplification – faster, proportional procedures: The AJO is also continuing to consult across government ministries in preparation for the Spring 2009 legislative agenda, advising on draft legislation to ensure provisions for administrative decision-making are consistent with government's goals of earlier and faster solutions.

### **Tribunals:**

Simplification – standards of judicial review: The AJO is looking at the implications for BC of the SCC decision in *Dunsmuir v. New Brunswick* (2008 SCC 9), with a discussion paper to be posted to the AJO website in September. The SCC radically transformed the common law to address issues of complexity, costs and lack of predictability of outcome, by reducing the three standards to two. BC had already addressed these flaws by codifying the standards in the ATA. You can use the feedback option at [www.gov.bc.ca/ajo/](http://www.gov.bc.ca/ajo/) to send us your comments. We'd appreciate hearing from you by November 14, 2008.

A consistent legislative framework: In the Spring 2008 legislative session, ATA powers and procedures were adopted by two new BC tribunals - the Health Professions Review Board and the Oil and Gas Appeal Tribunal, and the AJO is working with the ministries on establishing the new tribunals. An example of good use of existing tribunal resources is the legislation establishing the Oil and Gas Appeal Tribunal which provides the opportunity to appoint its members from among the Environment Appeal Board and/or the Forest Appeals Commission.

See *AJO* on page 5

AJO cont'd

Integration and resource sharing: Another example of excellent use of existing tribunal resources is the Safety Standards Appeal Board, now also hearing appeals from decisions made about residential builders licensing and owner builder authorizations under the Homeowner Protection Act. The Board will hear these appeals using the same powers and processes as it currently uses to hear appeals under the Safety Standards Act.

A workshop for Senior Tribunal Staff proposed for November 2008 is still in the planning stages, with arrangements underway to conduct the workshop using video conferencing facilities, so that participants can get a better sense of how those facilities may operate to support their tribunal's activities. These workshops have been an excellent opportunity for the exchange of information and creative problem solving. Suggestions for speakers and discussion topics are invited. Please contact the AJO's Elizabeth Loughran at 250-387-1746 or by email at [Elizabeth.Loughran@gov.bc.ca](mailto:Elizabeth.Loughran@gov.bc.ca).

Early resolution: The AJO and the Dispute Resolution Office (DRO) have prepared a "Guide to Implementing Dispute Resolution in Tribunal Processes", to assist tribunals in considering greater implementation of dispute resolution programs, taking into account the tribunal's unique organizational culture, people, technology and mission. The Guide will be available on

the AJO and DRO websites, and both offices will be available to support tribunals who are interested in undertaking work in this area. Work also continues on a generic evaluation toolkit, which will help tribunals to ensure that their dispute resolution processes achieve their intended objectives.

Information – better and more accessible information for citizens: The AJO continues to update its website to provide current, relevant information about the administrative justice sector ([www.gov.bc.ca/ajo/](http://www.gov.bc.ca/ajo/)), and was thrilled to see the website recommended (and described as "truly outstanding") by leading administrative law expert, James Sprague in the Author's Note to 2008 Release 4, Macaulay and Sprague, *Practise and Procedure before Administrative Tribunals*.

The AJO welcomes questions or concerns related to the ATA or the administrative justice system and encourages BCCAT members to contact us about upcoming events and information related to administrative justice and/or "Tribunal Success Stories" for the AJO website.

The AJO can be contacted by calling 250-387-0058 or by emailing [Dianne.Flood@gov.bc.ca](mailto:Dianne.Flood@gov.bc.ca).

## INTERESTING DECISIONS:

It is often difficult to make a decision interesting and readable, particularly given some of the subject matter that we often deal with. Here is one judicial decision that does just that, with tongue firmly in cheek. From *The Commonwealth of Pennsylvania v. Gosselin*, 2004 PA Super 426 (Superior Court of Pennsylvania), Hudock J. wrote the following decision:

*"This appeal revolves around the life and times of Nutkin the squirrel.*

*Nutkin's early life was spent in the state of ferrae naturae, in the state of South Carolina, and, as far as we can tell, in a state of contentment. She apparently had plenty of nuts to eat and trees to climb, and her male friends, while not particularly handsome, did have nice personalities. Life was good.*

*Then one day tragedy struck: Nutkin fell from her tree nest!*

*But fate was kind. Nutkin was found and adopted by Appellant and her husband who, at that time, were residents of South Carolina. Appellant lovingly nursed Nutkin back to health, and Nutkin became the family pet. A large room-sized enclosure was built so Nutkin had plenty of room to run and climb. Life was good again.*

*Nutkin's captivity and domestication were perfectly legal in South Carolina, possibly a reflection of that state's long tradition of hospitality to all.*

*In 1994, Appellant and her husband moved to Pennsylvania and brought Nutkin with them. Life was full of promise.*

*Dark clouds began to gather, however, in November, 2002, when Appellant's husband phoned the Pennsylvania Game Commission*

See *Nutkin* on page 6

*Nutkin cont'd*

*concerning a hunter who he and Appellant believed was hunting near an area on their property where they had set out food for deer. In response to that complaint, a Wildlife Officer appeared at Appellant's property to investigate.*

*At that time the Officer became aware that a deer had been illegally shot on Appellant's property and dragged to a neighboring property. Appellant and her husband requested that the Game Officer further investigate the poaching of the deer. The Officer refused to do so, but when he spotted Nutkin in her room-sized enclosure, he advised Appellant that it was a violation of the law to keep Nutkin in this manner. The Game Officer acknowledged that the squirrel was too old and too tame to be released to the wild (A situation akin to that of an old appellate judge, like the undersigned, attempting to return to the boiling cauldron of the trial court after being tamed by years of peace and quiet above the fray. Chances of survival of both species are poor.) He offered to*

*forgo citing Appellant if she would relinquish Nutkin to his control. Appellant and her husband refused.*

*The reasons for this refusal are not apparent of record, but familial ties no doubt played a part in the decision. (At oral argument, our esteemed colleague, Judge Klein, alluded to the possibility of 'squirrel sten', but there is insufficient evidence to support this horrific supposition.)*

*Nutkin would then learn the shocking truth that the cheery Pennsylvania slogan 'You've got a friend in Pennsylvania' did not apply to four-legged critters like Nutkin. On December 2, 2002, the Wildlife Conservation Officer issued a citation directed to Appellant's husband for violating section 2307(a) of the Game and Wildlife Code, entitled 'Unlawful taking or possession of game or wildlife.'"*

The Appellant was accordingly prosecuted. To find the ending to the story of Nutkin (and the Appellant), go to [http://www.courts.state.pa.us/OpPosting/Superior/out/A29015\\_04.pdf](http://www.courts.state.pa.us/OpPosting/Superior/out/A29015_04.pdf).

## BCCAT Course Schedule

<b>AJ1: Practice &amp; Procedure for Decision Makers</b>	October 28-29, 2008, Vancouver
<b>Decision-Writing Workshop</b>	November 6 - 7, 2008, Vancouver
<b>Hearing Skills Workshop</b>	November 27 & 28, 2008 , Vancouver

If you wish to register for any of these courses, please contact the registration staff of the Provincial Instructor Diploma program at 604.871.7488 or 1-888.332.3212 or visit their website at [Vancouver Community College](http://www.vccollege.ca).

If you have any contributions to make to our newsletter, please contact us at [registrar@bccat.net](mailto:registrar@bccat.net).



**Editor:**  
Simmi Sandhu

**Layout:**  
Marcella Gordon

British Columbia Council of  
Administrative Tribunals  
P.O. Box 97196  
Richmond Main Post Office  
Richmond, B.C. V6X 8H3