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## CASE SUMMARY: COURT OF APPEAL ALLOWS AN APPEAL ON THE BASIS THAT THE UNDERLYING JUDGMENT EFFECTIVELY REVIEWED A DECISION OF AN ASSESSMENT BOARD BY APPLYING A CORRECTNESS STANDARD

**Administrative law – Decisions reviewed – Assessment Review Board – Expert evidence – Judicial review – Appeals – Standard of review – Correctness – Municipalities – Tax**

*Wheatland County v. Federated Co-Operatives Limited*, [2019] A.J. No. 1768, 2019 ABCA 513, Alberta Court of Appeal, December 23, 2019, F.F. Slatter, M.G. Crighton and R. Khullar JJ.A.

The Wheatland County Composite Assessment Review Board assessed a fuel blending and storage facility owned by the respondent at \$145,024,910 on the basis that most of the facility was “building” or “structure” rather than “machinery and equipment”. An assessment of “machinery and equipment” receives preferential tax treatment and does not attract the education levy. By asserting much of the facility was “machinery and equipment” as part of an operating unit used or intended to be used for “processing”, the respondent sought to reduce the assessment to \$83,854.588.

The Board preferred the appellant’s expert over the respondent’s expert. The respondent’s expert opined that if processing occurred at the facility, then everything in the facility was integral to the processing operation. If accepted, this opinion meant the entire facility would be “machinery and equipment” and therefore assessed on a preferential tax basis. The Board rejected this opinion, finding that there were other systems and equipment that were not part of the fuel blending process, including the fire suppression system and the office.

The chamber’s judge set aside the Board’s decision. The chamber’s judge held that the Board’s decision did not fall within a range of possible, justifiable outcomes as it failed to display justification, transparency and intelligibility. The chamber’s judge was also critical of the Board’s use of expert evidence because it usurped the role of the trier of fact.

The Court of Appeal allowed the appeal. The Court of Appeal held that the chamber’s judge engaged in a correctness review while failing to afford the Board appropriate deference to interpret its home statute and its ability to weigh evidence, including expert evidence. The Court found that the Board was entitled to conclude that some systems were not integral to the processing facility as this evidence was properly before the Board and its reasons for reaching such a conclusion were transparent and intelligible. The Court concluded that “the fact that the reviewing court takes a different view of the fiscal and social policy behind the taxing statute does not render the Board’s decision unreasonable. This approach converts the analysis to a review for correctness.”

This case was digested by [Jackson C. Doyle](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Jackson C. Doyle at [jdoyle@harpergrey.com](mailto:jdoyle@harpergrey.com).