

**CASE NO.**

**VOL. NO.**

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**The Director of Assessment**

- and -

**J. Paul Warren and Bernadette  
Warren and the Cape Breton  
Regional Municipality**  
(Respondents)

(Appellant)

**CA156272**

Halifax, N.S.

**Chipman, J.A.**

[Cite as: Nova Scotia (Assessment) v. Warren, 1999 NSCA 135]

**APPEAL HEARD:**

November 9, 1999

**JUDGMENT DELIVERED:**

November 9, 1999

**WRITTEN RELEASE OF ORAL:**

November 10, 1999

**SUBJECT:**

**Statutes - waiver by a party of statutory requirement in that party's favour.  
Real property tax - assessments - assessment appeal to Nova Scotia Utility and Review Board - Board's jurisdiction**

**SUMMARY:**

The Director of Assessment appealed a preliminary decision of the Nova Scotia Utility and Review Board holding that it had jurisdiction to hear an assessment appeal where, although the appellant failed to comply with the service requirement of s. 86(1) of the **Assessment Act**, the party not properly served waived the requirement.

**ISSUE:**

Whether the Utility and Review Board was correct in holding that it had jurisdiction to hear the appeal notwithstanding the failure of the appellant to comply with the service of notice requirement in s. 86(1) of the **Assessment Act**.

**RESULT:**

The Nova Scotia Court of Appeal held that in the circumstances of this case, where the party that was not properly served expressly waived its right to notice as required by statute, the Board had jurisdiction to hear the appeal. Reference was made to the decision of Rand, J., in **Canadian Acceptance Corporation Limited v. Fisher** (1958), 14 D.L.R. (2d) 225 (S.C.C.), and the decision of the Divisional Court of the Ontario High Court of Justice in **Re N.H.D. Developments Limited and Regional Assessment Commissioner, Region No. 11 et al.** (1980) 118 D.L.R. (3d) 365, 30 L.R. (2d) 689.

The appeal was dismissed with costs.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.**