NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Assessment) v. Wolfson,
2008 NSCA 120

Date: 20081219
Docket: CA 292311
Registry: Halifax

Between:

Director of Assessment

Appellant

v.

Louise Wolfson

Respondent

Judge(s): MacDonald, C.J.N.S., Roscoe and Fichaud, JJ.A.

Appeal Heard: December 3, 2008 in Halifax, Nova Scotia

Held: Appeal is dismissed without costs per reasons for judgment of Fichaud, J.A.; MacDonald, C.J.N.S. and Roscoe, J.A. concurring.

Counsel: Valerie Paul, for the appellant
Bruce Outhouse, Q.C., for the Nova Scotia Utility and Review Board
Nobody appearing for the respondent

Reasons for judgment:

[1] The Utility and Review Board, in a ruling preliminary to an assessment appeal, ordered the Director of Assessment to produce information relating to the Director's calculation and use of the general level of assessment. The Director appeals. The Director says that the Board erroneously reversed the onus of proof by failing to accept the accuracy of the Director's unchallenged treatment of the general level of assessment.

Background

[2] Ms. Wolfson owns a residence on Inglewood Drive in Halifax. Under the *Assessment Act,* R.S.N.S. 1989, c. 23, she appealed her 2005 property assessment to the Regional Assessment Appeal Court ("RAAC"). The RAAC issued a decision on January 13, 2006 confirming an assessment of $841,300. On February 9, 2006, Ms. Wolfson appealed further to the Nova Scotia Utility and Review Board ("Board"). The Board is governed by the *Utility and Review Board Act*, S.N.S. 1992, c. 11 ("*UARB Act*"). Her Notice of Appeal to the Board said her ground of appeal was "Assessment is too high." and in particular "Land value too high."

[3] Ms. Wolfson's appeal engaged the assessment principles stated in s. 42(1) of the *Assessment Act.* Section 42(1) says that "all property shall be assessed at its market value ... but ... the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that ... taxation falls in a uniform manner upon all residential ... property ..." This court has approved the principle that "[t]he dominant consideration is uniformity" and that uniformity is determined as stated by Chief Justice MacKeigan in *Hebb v. Director of Assessment and Town of Lunenburg* (1979), 32 N.S.R. (2d) 427 (SCAD) at p 436:

> A county court judge in an assessment trial *de novo* should apply the s. 38 (now 42(1)) rules as directed by Chief Justice Ilsley. He should, I suggest, first ascertain the actual cash value of the property under appeal and determine the ratio of the assessment to that value. He then should determine the 'general level of assessment' relative to the actual cash values of properties in the town or municipality generally. To do so he should ascertain on the evidence before him whether the general assessment ratio is what the assessor states it is or whether it is a different ratio. In most cases lack of other evidence may compel him to accept the

> assessor's ratio. If the ratio is thus higher, the judge should reduce the appealed assessment to confirm with the general ratio.

See: *Director of Assessment (NS) v. Doucette* (1992), 112 NSR (2d) 326 (CA) at ¶ 12-14; *Nova Scotia (Director of Assessment) v. Homco Realty Fund (20) Limited Partnership*, 2006 NSCA 66 at ¶ 14.

[4] Responding to Ms. Wolfson's appeal to the Board, the Director of Assessment ("Director") filed a valuation report dated March 7, 2007 authored by a residential assessor, Mr. Terrance Naugle. The report said that the market value of the Wolfson property was $841,300. Respecting uniformity, Mr. Naugle's report said:

> The Level of Assessment is a tool used to measure assessment fairness. It is statistically calculated using measures of central tendency (i.e., the mean, median, mode and weighted mean). These measures allow for the description of the Level of Assessment in a single statistic.
>
> In Nova Scotia, the **weighted mean**, or aggregate ratio as it is also called, is used to calculate the Level of Assessment. It is calculated as the ratio of total assessed values to total corresponding sales values. It is one of the best measures of central tendency to use because it allows for the comparison of dollar for dollar aggregates of assessments and sale prices. In other words low or high valued properties will receive due weight.
>
> The On-line Appraisal and Statistical Information System, (OASIS), is targeted for a 100% level of assessment to market value for residential and resource properties; with a minimum acceptable standard of no less than 95% and no greater than 105%.
>
> The Level of Assessment for the subject Municipal Unit for the year 2005 is **96.7%**.
>
> The Assessment Services Division regards the level of Assessment as being represented in every assessment value published in the yearly Assessment Roll. If the level of Assessment is applied to an appealed assessment value it would change the assessment value further from the sale value, with an end result reflecting twice the measure of the Level of Assessment.

> Uniformity is not observed if the properties appealed are treated to the application of the Level of Assessment, when the far majority of the assessments are not appealed and not treated in this fashion.
>
> The Level of Assessment is provided above for the consideration of the assessment value in this report, and to give recognition to the current case law.

Mr. Naugle's report recommended an assessment of $841,300.

[5] Before the hearing of Ms. Wolfson's appeal, the Board, on August 16, 2007, wrote to counsel for the Director stating:

> **Wolfson, Louise - 5900 Inglewood Drive, Halifax - Assessment Appeal - AS-06-06**
>
> The Board has perused the report of Mr. Terrence E. Naugle dated March 7, 2007. The Board directs the following be filed on or before **Wednesday September 12, 2007**:
>
> . . .
>
> 4. For each of the properties listed in Schedules B and D, please provide the following:
>
> (a) PRC reports;
>
> (b) if the PRC reports do not provide the assessment value from the date of sale, please provide it for the years not disclosed on the PRC reports;
>
> (c) please provide the assessment price/sale price ratio on the date of each sale; and
>
> (d) were each of these sales included in the calculations for the level of assessment for HRM the corresponding taxation years? If not, why not?
>
> 5. The Board has previously heard evidence from an Assessor for the Director that although he did not do the analysis for the level of assessment, it was his understanding that the ratios [assessment value/sale price] for all qualified sales (the Board understood this to mean all arm's length sales excluding those under duress such as tax sales "arm's length

sales") are plotted on a graph. The person in each area [municipality] responsible for doing the market analysis would then determine the general range on graph within which most of the properties are clustered, like a band of sales around a line. The few outliers that are outside of this general range (above and below this band) are not included in the calculation of general level of assessment. Please advise the Board of the answers to the following questions:

1. Is this how the level of assessment for residential properties for the 2005 taxation year was calculated for HRM? If yes, provide a copy of the plot graph prepared for HRM for 2005.

2. If not, how are "qualified sales" and "outliers" determined? (Attach any written policies)

3. Are all outliers considered unqualified sales?

4. Have the policies for determining "qualified sales" and "outliers" changed since 2005? If yes, provide a copy of the new policies.

5. If the above description is generally correct, what was this general range of ratios for the residential property sales for HRM for the 2005 residential level of assessment? (For example, a range of 5% below and 5% above the line)

6. Why are any outliers excluded from the residential calculation of the level of assessment for HRM in 2005? Include in your comments the relevance and application of the *Homco* decision.

7. If all outliers were included in the calculation for the level of assessment for the residential properties in HRM for 2005, what would the level be?

8. To further understand how the assessment value is determined by the Director in accordance with s. 42(1) of the *Assessment Act*, the Board directs the following information to be provided:

    (a) what affect does the market oriented cost approach in determining assessment values have on the high market value properties like those in Schedule "B" and "D", and how does it compare to the sales at the other end of the market value spectrum throughout HRM?

> (b) in answering question 8(a), please provide the list of sales in HRM 6 months before and 6 months after the base date of January 1, 2003 for these two ends of the spectrum. As the Board understands the computer system used by the Director can produce the lists of the following information, the Board directs the following be provided to the Board:
>
> (i) for the time period noted above, a list of the assessment /sale price ratios for each of the properties sold throughout HRM having a sale price of $750,000 or more; and a separate list of the ratios for each of the properties sold for $100,000 or less? The information for each sale should include the address, sale date, sale price, assessment value, and ratio.

[6] On October 5, 2007, the Director's counsel responded:

> . . . [T]he Director of Assessment objects to answering the Board's question[s] and production of records on the following grounds:
>
> (i) The questions posed by the Board in relation to the general level of assessment for 2005 are not relevant to the appeal; and
>
> (ii) The Board does not have the authority to seek answers to questions concerning matters that are not at issue on an appeal, or which have not been raised by the parties on an appeal;
>
> The Director requests a hearing before the Board on these requests/directives and that a formal decision on the matter be rendered following submissions by the parties.

[7] The Board's hearing of the Director's objections to the Board's requests occurred on December 5, 2007 before Ms. Dawna Ring, Q.C. as Board Chair. The Director's counsel submitted that the Board did not have authority to request the information cited in the August 16 letter. On January 30, 2008 the Board issued a written decision concluding that the Board did have jurisdiction to order production (2008 NSUARB 9). Later I will discuss the Board's reasons.

[8] The Director appeals the Board's ruling to this court. Section 30(1) of the *UARB Act* authorizes an appeal to this court from the Board on questions of

jurisdiction or law. Ms. Wolfson did not appear at the hearing. The Board appeared by counsel to discuss any jurisdictional issues.

Issue

[9] The Director's Notice of Appeal stated eight grounds with nine subgrounds and two sub-subgrounds. There was repetition. The Director's factum refined this to two issues, and at the hearing the Director's counsel streamlined the submission as follows.

[10] The Director says that the property owner, Ms. Wolfson, did not challenge the Director's treatment of uniformity and the general level of assessment ("GLA"). So the Board automatically should have accepted the Director's (i.e. Mr. Naugle's) treatment of uniformity and the GLA, and no further evidence on those topics was relevant. The Director submits that, by ordering production of irrelevant evidence on the Board's own initiative, the Board presumed that the Director's treatment of uniformity was wrong. This reversed to the Director's shoulders the onus of proof that should rest on Ms. Wolfson as appellant. The Director's Notice of Appeal said that the Board Chair exhibited bias. At the hearing in the Court of Appeal, the Director's counsel said that the bias argument was secondary to the principal submission that the Board had improperly reversed the onus of proof.

Standard of Review

[11] In *Police Association of Nova Scotia Pension Plan v. Amherst (Town)* 2008 NSCA 74 this court summarized the standard of review analysis from *Dunsmuir v. New Brunswick* , 2008 SCC 9:

> [38] The Supreme Court issued *Dunsmuir v. New Brunswick,* 2008 SCC 9 after the judge's decision here. Justices Bastarache and LeBel, for five justices, stated the following principles governing the administrative SOR.
>
> [39] Correctness and reasonableness are now the only standards of review (¶ 34). The court engages in "standard of review analysis", without the "pragmatic and functional" label (¶ 63).
>
> [40] The ultimate question on the selection of an SOR remains whether deference from the court respects the legislative choice to leave the matter in the hands of the administrative decision maker (¶ 49).

> [41] The first step is to determine whether the existing jurisprudence has satisfactorily determined the degree of deference on the issue. If so, the SOR analysis may be abridged (¶ 62, 54, 57).
>
> [42] If the existing jurisprudence is unfruitful, then the court should assess the following factors to select correctness or reasonableness (¶ 55):
>
> (a) Does a privative clause give statutory direction indicating deference?
>
> (b) Is there a discrete administrative regime for which the decision maker has particular expertise? This involves an analysis of the tribunal's purpose disclosed by the enabling legislation and the tribunal's institutional expertise in the field (¶ 64).
>
> (c) What is the nature of the question? Issues of fact, discretion or policy, or mixed questions of fact and law, where the legal issue cannot readily be separated, generally attract reasonableness (¶ 53). Constitutional issues, legal issues of central importance, and legal issues outside the tribunal's specialized expertise attract correctness. Correctness also governs "true questions of jurisdiction or vires", ie. "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter". Legal issues that do not rise to these levels may attract a reasonableness standard if this deference is consistent with both (1) any statutory privative provision and (2) any legislative intent that the tribunal exercise its special expertise to interpret its home statute and govern its administrative regime. Reasonableness may also be warranted if the tribunal has developed an expertise respecting the application of general legal principles within the specific statutory context of the tribunal's statutory regime (¶ 55-56, 58-60).

See also *Upshaw v. Nova Scotia (Utility and Review Board)* 2008 NSCA 88 at ¶ 12-14.

[12] Under *Dunsmuir*'s first step, I begin with the existing authority. In *Nova Scotia (Director of Assessment) v. Knickle* 2007 NSCA 104, at ¶ 9- 12, decided before *Dunsmuir*, the court reviewed the contextual factors and held that correctness applied to the UARB's rulings on general issues of law outside the Board's core expertise. In *Knickle*, these general issues of law included whether the

Board, on an assessment appeal, misdefined the burden of proof and determined issues without prior notice to the parties.

[13] I will not repeat *Knickle's* review of the contextual factors for the UARB. Insofar as Ms. Wolfson's appeal hinges on issues similar to those in *Knickle*, I apply correctness as did the Court in *Knickle*. In particular, I will apply correctness to assess whether the Board improperly reversed the onus of proof, pre-judged the uniformity or GLA issue or exhibited bias, as submitted by the Director.

[14] As I will discuss, however, I disagree with the Director that the Board has reversed the onus of proof, prejudged an issue, exhibited bias or committed the type of legal error that occurred in *Knickle*. Rather, the issue here is whether, in a ruling preliminary to an assessment appeal, the Board could on its own initiative order the production of information. The *UARB Act* s. 12 authorizes the Board to make rules respecting practice and procedure. The Board has enacted the *Assessment Appeal Rules* (N.S. Reg. 79/2006). Rules 10(1)(h) and 10(2) state that the Board "may, on its own initiative" deal with various matters that "may aid in the disposition of the hearing", including direction of "further disclosure where necessary". Rule 4(3) says the Board "may make directions on procedure and procedural orders which shall govern the conduct of a specific appeal." Section 19 of the *UARB Act* and Rule 14(5) say that the Board may receive any information "that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the . . . information . . . would be admissible as evidence in a court of law." The *vires* of the Rules is not challenged on this appeal.

[15] Unlike *Knickle*, the outcome here turns on the interpretation of a legislated discretion in the Board to direct disclosure. A legislatively authorized and discretionary practice ruling, that does not impair overriding principles of procedural fairness, generally should attract deference from the reviewing court [*Dunsmuir* ¶ 53; *PANS Pension Plan* ¶ 42(c)]. In the selection of the standard of review, the ultimate question is whether deference respects the legislators' choice to leave the matter in the hands of the administrative decision maker (*Dunsmuir* ¶ 49; *PANS Pension Plan* ¶ 40). The legislators have, with s.12 of the *UARB Act*, chosen the UARB as the source of practice Rules for UARB proceedings. These Rules, particularly Rules 10(1)(h) and 10(2), give the Board discretion to direct disclosure on the Board's own initiative, where the Board believes that disclosure will aid in the disposition of the hearing. Section 19 of the *UARB Act*, manifests

the legislators' choice that the Board have some discretion to assess admissibility of evidence, which includes the assessment of relevance.

[16] True jurisdictional issues are reviewed for correctness. The Director submits that the issue is jurisdictional. I disagree. In *Dunsmuir*, Justices Bastarache and Lebel said that, for standard of review analysis:

> 59 . . . 'Jurisdiction' is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry.

See also *PANS Pension Plan*, ¶ 61. Rules 10(1)(h) and 10(2) gave the Board the authority to make the inquiry whether to direct disclosure. The letter of October 5, 2007 from the Director's counsel requested the Board to conduct a hearing and make a formal decision on the issue (above ¶ 6). So there is no jurisdictional shortcut here to a plenary correctness standard of review.

[17] I will apply reasonableness to whether the Board improperly exercised its discretion to direct disclosure under Rules 10(1)(h) and 10(2) and to the Board's assessment of relevance.

Analysis

[18] The Director's submission hinges on the premise that neither Ms. Wolfson nor the Director raised an issue to which the requested information, relating to the GLA, was relevant. The Director's factum stated only two issues, as follows:

> Issues
>
> 9. Did Board Member Ring err in law or jurisdiction in determining that the Nova Scotia Utility and Review Board had jurisdiction to require a party to an appeal hearing, to provide information and evidence in the matter of an appeal before the Board prior to the hearing and production of all evidence, ***and where neither party*** either requested the information or evidence, or ***raised issues on appeal which would require the production of such information or evidence?***
>
> 10. Did Board Member Ring err in law or jurisdiction in determining that an inquiry into uniformity must always occur, ***whether the parties to the appeal raise the issue or not?***

[emphasis added]

[19] The Director's premise is mistaken. Ms. Wolfson and the Director each raised the issue to which the evidence was relevant.

[20] Ms. Wolfson's notice of appeal said the "matter of appeal" was: "Assessment is too high." Section 42(1) of the *Assessment Act*, as interpreted by the authorities, says that the assessment is the market value adjusted according to the dominant principle of uniformity. Uniformity, under this court's repeated rulings, requires the application of the GLA. (Authorities above, ¶ 3).

[21] At the hearing before the Board, Ms. Wolfson's spokesman, Mr. Turner (an appraiser) said:

> I just have a couple of quick points to make. -- spoken at length that the issue of the general level has not been brought forward in this appeal as an issue. We would disagree with that point emphatically. The appeal by Ms. Wolfson states the land value is at issue, and in our submission this refers to the assessed value of the land. The Court of Appeal holds that assessed value is calculated as the market value times the general level. Therefore, by claiming as a grounds of appeal the assessed value that would include implicitly the general level. The second point I wanted to make -- and perhaps this has already been addressed this morning -- is that Mr. Arab has mentioned that the Board can only deal with issues that have been put before it. Following Ms. Wolfson's appeal to the Utility and Review Board Mr. Naugle submitted his report and within his report included information on the general level. Since the Director has effectively put this information before the Board, we believe the Board now has the jurisdiction to seek clarification on the general level figure and how it was calculated. In other words, we feel that the general level has been brought forward by both parties in this appeal. We have not yet submitted our report on market value. We fully expect it will be lower than the value asserted by the Director and the correctness of the general level may assist the Board in determining why there's a discrepancy between the positions advocated by the two parties. With this in mind, we believe the Board's request not to be one that advocates the Appellant's position but one that will assist it in making a full investigation. Thank you very much.
>
> [Appeal Book pp. 377-79, transcript pp. 167-69]

Ms. Wolfson did raise the uniformity issue involving the GLA.

[22] The Director, in response to Ms. Wolfson's notice of appeal, filed Mr. Naugle's valuation report. That report expressly stated a view on the calculation and application of the GLA (quoted above ¶ 4). Mr. Naugle's report said the GLA was 96.7%, but declined to apply that GLA to Ms. Wolfson's assessment.

[23] Uniformity, involving the GLA, was an essential legal element of the assessment under s 42(1) of the *Assessment Act*, and each party had tabled the issue in this appeal to the Board. Clearly the GLA was relevant. The Board did not, as the Director suggests, unilaterally inject a rogue issue into the proceeding. I would uphold the Board's view of relevance under any standard of review.

[24] The Director then submits that, by requesting the GLA information, the Board made a determination that the Director's views on uniformity and the GLA were incorrect, and that this determination was made prematurely before any evidence was adduced on the Wolfson appeal. Further, and this was the submission most forcefully advanced by the Director, the Board's supposed premature determination reversed the burden of proof from the appellant to the Director similarly to the burden reversal for which this court overturned the Board in *Knickle*. The Director's factum summarizes the point:

> 23. In the case at bar, the Board, as trier of fact, begins the case with the presumption that the Director’s evidence will be incorrect, and that the assessment will not be uniform as tested by the general level of assessment. She therefore undertakes to demand information by which she expects to test the Director’s calculations without waiting for the Appellant to even raise the matter. The Board thus reverses the burden of proof in fact, if not in word, by not only requiring the Director to overcome a presumption that her evidence is incorrect, but by making a case on behalf of the Appellant, with regard to an issue the Appellant had shown no intention of pursuing.

[25] I disagree with the Director's submission. The Board made no determination of any issue related to uniformity or the GLA and did not reverse the burden of proof.

[26] In *Knickle* the Board, again chaired by Ms. Ring, issued its final decision on an assessment appeal. The Board's decision said:

> ..the *Act* displaces the common law principles respecting the burden of proof and instead directs the Board to investigate the issues and satisfy itself of the proper assessment value pursuant to the *Act*. Neither participant bears the burden of proof. [quoted in NSCA decision in *Knickle* ¶ 19]

The Court of Appeal held that this view was mistaken and that the appellant has the burden of proof.

[27] The *Wolfson* decision under appeal is just a pre-hearing direction for disclosure. The Board made no ruling on the merits of the GLA or uniformity for Ms. Wolfson's appeal. There was no tinkering with the burden of proof that will apply at the hearing of the merits. To the contrary, the decision under appeal says:

> 22. ...The Appellant bears the burden of proof and must meet the standard of balance of probabilities. It is a *de novo* process. The decision of the Board is based on the evidence before it. ...
>
> 58. In each of these proceedings, whether it is an expropriation, planning or assessment appeal, the disclosure of relevant documents and information does not alter the burden of proof, which is upon the Appellant. Nor does it change the fact that the Board will render its decision based only upon the evidence and information before it in each hearing.

[28] A direction for disclosure is not a ruling that the producing party's position presumptively is wrong. The direction merely assumes that the issue is alive, as uniformity is alive in Ms. Wolfson’s appeal. The disclosure is an aid to the effective disposition of this live issue at the eventual hearing where the Board will rule on the merits after applying the appropriate burden of proof.

[29] The Director's factum and submission at the hearing in the Court of Appeal submitted that the Board's Chair showed bias. At the hearing in the Court of Appeal, when asked for particulars from the record exhibiting bias, the Director's counsel could identify nothing from the transcript, but cited eight passages from the Board's decision under appeal. These passages contained a recurring theme, represented by the following extract from ¶ 63 of the Board's decision:

> As described above, the Director argued that even if the GLA disclosed in her report has been calculated incorrectly, the Board must apply it in the *Doucette* formula if required to conclude Ms.Wolfson's appeal. Such an injustice must never occur.

The Director's counsel said that the Director did not, at the Board hearing, advocate the use of incorrect GLA calculations, and the Board Chair's mischaracterization of the Director's submission showed bias.

[30] The transcript of the submissions to the Board contains the following exchanges between the Director's counsel, Mr. Arab, and the Board Chair:

(i) MS. RING

> . . . Let's assume at the end of the day, at the end of the hearing, the parties have -- the Appellant has proven to me that the market value is different than what the Assessment Department has put forward on the property. I'm now in a situation where I need to multiply the market value by the general level of assessment, 96.17 percent. Are you telling me that the Board is to just apply the 96.17 percent even though it has some concerns that maybe that figure is not accurate?
>
> MR. ARAB
>
> That's what you -- in our submission, that's what you have to do. I don't know the basis of your concerns. You're suggesting -- [appeal book pp. 318-19, transcript pp. 108-9]

(ii) MS. RING

> And so it's the Director's position that the Board is to apply that general level of assessment even if it may be inaccurate?
>
> MR. ARAB
>
> If there's no evidence before you that it's inaccurate, our position is that you're compelled to accept it. [appeal book pp. 324-5, transcript pp. 114-5]

[31] The comments in the Board's decision, challenged as biased, are based on the record. The Director has not established the premise for its submission of bias.

[32] In summary, the Board did not request irrelevant information, did not prejudge an issue of the merits, did not reverse the burden of proof and did not exhibit bias.

[33] Finally, I will consider whether the Board contravened the reasonableness standard of review by exercising its discretion under Rules 10(1)(h) and 10(2) to direct disclosure on its own initiative.

[34] In applying reasonableness, the court examines the tribunal's decision, first to identify an intelligible line of reasoning to a conclusion, then second to determine whether that conclusion is within the range of acceptable outcomes. *Dunsmuir*, ¶ 47, 49; *Lake v. Canada (Minister of Justice)*, 2008 SCC 23 at ¶ 41; *PANS Pension Plan* ¶ 63.

[35] The Board's 45 page decision cited the provisions of the statutes and Rules I have discussed earlier, cited case authority for the principle that there should be sufficient disclosure to permit meaningful participation in the hearing process and referred to the contextual factors that impact the application of that standard. The Board considered the issues under the *Assessment Act* for which participation should be meaningful. These include uniformity, determined by use of the GLA, as prescribed by s. 42(1) of the *Assessment Act* and interpreted by the decisions of this court (above ¶ 3). The Director has calculated the GLA and the Director, not the taxpayer or Board, has the information that explains how the Director derived its calculation. The Board summarized its reasoning and conclusion:

> [69] The Board cannot and will not ever use an incorrect GLA percentage in the *Doucette* formula to conclude the issues raised in this or any other assessment appeal. The Director also can not permit such an injustice to occur and certainly can not demand the Board preform an injustice. The Director's role is to disclose all relevant and accurate information.
>
> [70] The Board has the jurisdiction to direct the disclosure of all relevant information. If the Director does not disclose all relevant information, the Board has the jurisdiction to order its production.

[36] The Board's decision discloses an intelligible reasoning path to its conclusion. By this, I mean that a reviewing court can understand why the Board reached its conclusion, and the Board's decision affords the raw material for the reviewing court to assess whether or not the Board's conclusion inhabits the range of acceptable outcomes.

[37] The Board's conclusions rest within the range of reasonable outcomes.

[38] The information related to a relevant issue under s 42(1). As I have discussed, the parties' materials or statements of position raised the issue, making it relevant. I disagree with the Director that, absent a request by Ms. Wolfson, the Board had no jurisdiction to request the information. The Board is not a mere automaton whose every robotic movement must be programmed externally. Once

the issue of uniformity is relevant, Rule 10 entitles the Board to seek disclosure of information to aid in the disposition of the uniformity issue.

[39] The information respecting the GLA was possessed by the Director and unavailable to Ms. Wolfson or the Board without production by the Director. Had the information not been requested before the hearing, the alternative may well have been a request during the hearing leading to an unnecessary adjournment.

[40] Rule 10(1)(h), with Rule 10(2), permits the Board "on its own initiative" to seek, then direct disclosure where necessary, in the Board's view, to "aid in the disposition of the hearing". The Board's conclusion that this direction was necessary to aid in the disposition of the Wolfson appeal was reasonable.

Conclusion

[41] I would dismiss the appeal without costs.

Fichaud, J.A.

Concurred in:

MacDonald, C.J.N.S.

Roscoe, J.A.