SC 546 Allard, James T v AA24 and PAAB

Link to Property Assessment Appeal Board Decision

JAMES T. ALLARD
v.
ASSESSOR OF AREA 24 – CARIBOO and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S115787) Vancouver Registry

Before the HONOURABLE MR. JUSTICE A. SAUNDERS
Date and Place of Hearing: June 18, 2012, Vancouver, B.C.

C. Willms for the Applicant
R. Gill for the Respondent, Assessor of Area 24 – Cariboo
J.G. Penner for the Respondent, Property Assessment Appeal Board

Expert opinion – Rules of natural justice – Apprehension of bias

This appeal concerns the assessment of three rural waterfront properties located on Horsefly Lake and owned by the Appellant. The Board conducted an Appeal Management Conference and scheduled the appeals for written submission hearing. Both the Appellant and the Assessor filed written submissions with the Board. The Appellant then applied for an order to exclude the Assessor's submission and in the event that application was not summarily granted, to have an oral hearing for the purposes of cross-examining the author ("Ms. Harding") of the Assessor's report in order to demonstrate that she was not qualified to prepare a report and was otherwise not an independent witness.

The Board found that Ms. Harding, an appraiser employed by BC Assessment, was qualified to express an opinion regarding the fair market value of the three properties at issue. The Board admitted the Assessor's submission including the report into evidence and declined to hold an oral hearing. The Board then considered the merits of the appeal by way of written submissions and dismissed the appeal finding that the Assessor's values were reasonably supported.

The Appellant appealed to this Court asking the following questions of law:

1. *Did the Board err in law by breaching the rules of natural justice in refusing to allow an oral hearing, including cross-examination of the Respondent's expert witness?*
2. *Did the Board err in law in accepting the Respondent's appraiser as an expert witness despite lack of independence due to her employment by the British Columbia Assessment Authority?*

HELD: Appeal Dismissed.

In regards to question 1, this Court accepted the argument of the Assessor, that to require cross-examination of an assessment authority employee because of an apprehension of bias would inevitably result in an oral hearing having to be held in every case in which the question of bias is raised. This Court found that depriving the Appellant of the ability to cross-examine Ms. Harding on her qualifications and purported bias did not amount to a breach of the rules of natural justice. The Board's exercise of its statutory discretion not to hold an oral hearing was entirely appropriate in the circumstances.

In regards to question 2, this Court found no merit in the contention that Ms. Harding's employment by BC Assessment disqualified her from providing opinion evidence. The Board's consideration of Ms.

Harding having no financial interest in her employer, and her employer having no financial interest in the outcome of the inquiry, given that the assessment function is independent of the taxation function, was appropriate and persuasive.

Reasons for Judgment August 30, 2012

[1] At the request of the applicant, James T. Allard, the Property Assessment Appeal Board referred to this Court an appeal from the July 27, 2011 decision of the Board, on a question of law alone in the form of a stated case, pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20. The pertinent provisions of the stated case took the following form:

> **Part 1: RELEVANT FACTS**
>
> The following facts are relevant to the questions of law to be determined by the Supreme Court:
>
> 1. The appeals before the Board were from the decisions of the 2010 Property Assessment Review Panel respecting the assessment of three recreational properties on Horsefly Lake, British Columbia.
>
> 2. On July 7, 2010 the Board conducted an Appeal Management Conference (AMC) and made certain orders. By order dated January 22, 2011, the Board scheduled the appeals for written submission hearing. In accordance with this order, both the Applicant (Appellant in the appeals before the Board) and the Assessor (Respondent in the appeals before the Board) filed written submissions. Following receipt of the Assessor's submission, the Applicant applied for an order extending the deadline for filing a reply submission, which application was granted on May 12, 2011. The Board granted a further extension for the Applicant to file reply submissions on June 3, 2011. In his reply, the Applicant applied for an order to exclude the Assessor's submission filed April 28, 2011 and, in the event that application was not summarily granted, to have an oral hearing for the purpose of cross-examining the author of the Assessor's report in order to demonstrate that she was not qualified to prepare a report and was otherwise not an independent witness.
>
> 3. The Board found that Nancy Harding, the author of the appraisal report submitted by the Assessor, was qualified to express an opinion regarding the fair market value of the three properties at issue. The Board admitted the Assessor's submission including Ms. Harding's report into evidence.
>
> 4. The Board declined to hold an oral hearing.
>
> 5. The Board considered the merits of the appeal by way of written submissions and confirmed the decisions of the 2010 Property Assessment Review Panel as follows:
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> Appeal No. 2010-24-00019 – Roll No. 24-27-727-06985.050:
>
> | | | |
> |---|---|---|
> | Land: | Class 1 – Residential | $302,000 |
> | Improvements: | Class 1 – Residential | $8,300 |
> | Total Assessed Value: | | $310,300 |

Appeal No. 2010-24-00020 – Roll No. 24-27-727-06985.053:

Land:	Class 1 – Residential	$305,000
Total Assessed Value:		$305,000

Appeal No. 2010-24-00021 – Roll No. 24-27-727-06985.057:

Land:	Class 1 – Residential	$324,000
Improvements:	Class 1 – Residential	$50,600
Total Assessed Value:		$374,600

. . .

Part 2: QUESTIONS OF LAW

The questions of law to be determined by the Supreme Court are as follows:

1. Did the Board err in law by breaching the rules of natural justice in refusing to allow an oral hearing, including cross-examination of the Respondent's expert witness?

2. Did the Board err in law in accepting the Respondent's appraiser as an expert witness despite lack of independence due to her employment by the British Columbia Assessment Authority?

[2] The stated case also included evidence consisting of the record before the Board, e.g., notices of appeal, communications between the Board and the parties, and the parties' written submissions made to the Board.

Background Facts

[3] The proceedings before the Board concerned the 2010 assessment of three rural waterfront properties on Horsefly Lake owned by Mr. Allard. The assessments were challenged by Mr. Allard before a Review Panel. He was not satisfied with the decision of the Review Panel, and gave written Notice of Appeal to the Board by way of a letter dated April 26, 2010.

[4] An Appeal Management Conference was conducted by telephone by Vice-Chair Fraser of the Board on July 7, 2010. Orders were made for the production by the Assessor of various property valuation summaries and records, and Mr. Allard was to provide a status report summarizing the issues in dispute and recommended next steps with suggested dates, by August 13, 2010.

[5] By way of letter dated January 22, 2011, Vice-Chair Fraser set dates for written submissions. Mr. Allard's submissions were due March 31, 2011; the Assessor's, by April 29; and Mr. Allard's reply, by May 13.

[6] Mr. Allard's submission was filed March 31, 2011. It was based, in part, on what he understood to be the four comparable properties being relied upon by the Assessor. No expert opinion evidence was provided with this submission.

[7] The Assessor's submission filed April 27, 2011, consisted of a two-page summary letter, and a 94-page (including appendices) appraisal report prepared by Nancy Harding, a residential appraiser with the Williams Lake office of BC Assessment. With respect to each of the three properties in issue, Ms. Harding's appraisals arrived at values somewhat higher than those advanced by the Assessor ($317,300 *vs.* $310,300; $322,800 *vs.* $305,000; $377,000 *vs.* $374,600).

[8] Ms. Harding's Appraisal Report did not utilize all four of the comparables which Mr. Allard had assumed would be in issue. Instead, only two of those four comparables were used, and two new comparables had been introduced.

[9] Mr. Allard sought an extension of time for filing his reply. The grounds of his application are described in a written decision of Board Chair Vickers dated May 12, 2011:

> Mr. Allard indicates the reason for the requested extension to June 17 is that he is "extremely busy". Further, he advises that he will object to the admissibility of the report prepared by Nancy Harding on behalf of BC Assessment on the grounds that Ms. Harding is not qualified and is not independent. He argues that he needs to cross-examine Ms. Harding to demonstrate this. He says if his objection is overruled, he needs to hire an appraiser to provide a rebuttal report submitting Ms. Harding's report was the first time he learned which comparables the Assessor was relying on.

With respect to the possibility of an oral hearing, Board Chair Vickers held:

> These appeals were scheduled for written submissions in consultation with the parties and without objection. Initial submissions have been filed without mention of the need for an oral hearing or any request for an oral hearing. If the Appellant now seeks an oral hearing for the purpose of cross-examining the Assessor's witness, he may make that application and provide his submissions in support to the Board member panel to hear the appeal in the context of his written submission. The admissibility and weight of the evidence provided in the written submissions, and whether cross-examination is necessary in the circumstances of these appeals, will be for the panel to determine.

The date for the filing of Mr. Allard's response was extended to June 3, 2011.

[10] Mr. Allard did retain an appraiser, who was not able to deliver a report within that timeframe, and one final extension, to June 24, 2011, was granted.

[11] Mr. Allard's rebuttal submission, filed June 24, enclosed a four-page argument, together with a report authored by Mr. C.D. Blanchette, dated June 15, 2011. Mr. Blanchette's report is confined to a review of Ms. Harding's appraisals. Mr. Blanchette undertook no appraisals and offered no alternative opinion of market value.

[12] In his rebuttal submission to the Board, Mr. Allard summarized Mr. Blanchette's opinion that the data and analysis in Ms. Harding's report did not support the conclusions reached therein. Mr. Allard also made specific reference to, and provided quotations from, a passage from Mr. Blanchette's report in which he took issue with Ms. Harding's reliance on lot frontage on a lake as a significant factor in adjusting the value of comparables.

[13] Mr. Allard then went on in his rebuttal submission to argue that cross-examination of Ms. Harding ought to be permitted:

> Mr. Blanchette's report is a true expert report. Ms. Harding, who is an employee of the Assessor, does not have the expertise to give the opinions she has given and is not

disinterested.

Admissibility of expert opinion is contingent on the requirement that the expert witness possess special knowledge and experience in the subject matter at issue, that goes beyond the trier of fact. The weight given to an expert's evidence may depend on the extent of their expertise and the method by which that experience was gained. [Citations omitted.]

Where an expert may be seen not to be disinterested because of a personal or employment relationship with a party, the Board may decline to admit the evidence or admit it and give it no weight. [Citations omitted.]

If it is not already clear from the report of Ms. Harding, I will be able to demonstrate in cross-examination that Ms. Harding does not have the qualifications to express the opinions on values that she expresses and in addition that because she is an employee of the Assessor, she is not an independent witness. Independence of an expert is key, as is evident from the new B.C. Supreme Court Rule 11-2(1) which requires:

> (1) In giving an opinion to the court, an expert appointed under this Part by one or more parties or by the court has a duty to assist the court and is not to be an advocate for any party.

Unless Ms. Harding's report is rejected, in order that this appeal proceed fairly, I must be given the opportunity to cross-examine Ms. Harding to show that as an employee of the Assessor, she is not disinterested, and is therefore not an expert. If I am not given that opportunity, there will be an [sic] breach of the basic rules of natural justice and fundamental fairness.

[14] Mr. Allard concluded his rebuttal submission with a summary, including a table setting out his position with respect to the proper assessed value of each property, and then this final comment:

Further, I object to the admissibility of the Assessor's report as the author, Ms. Harding is not qualified to give the report and is not independent.

Unless the Board rejects the report of Ms. Harding, I request an in-person hearing at which I can cross-examine Ms. Harding to demonstrate she is not qualified and is not independent. [Boldface in Original]

The Decision of the Property Assessment Appeal Board

[15] The Board's 16-page decision, dismissing the appeal and confirming the decision of the Review Panel, was issued by Mr. Kenneth Thornicroft, sitting as a panel of one, on July 27, 2011.

[16] In respect of the Assessor's expert's purported lack of qualifications, the panel noted that the Review Board is not bound by strict application of the laws of evidence, and has a wide discretion to receive evidence that it considers relevant, in a variety of forms, whether or not it would be admissible in a court of law; reference was made to s. 40(1) of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45, and to Rule 19(1) of the Board's Rules of Practice and Procedure.

[17] The panel considered Harding's education, training and experience, which included employment with B.C. Assessment as an appraiser since 2003, to be sufficient to qualify her as an expert. Further, he stated:

> Even if I had concluded that Ms. Harding were not an expert in residential real property valuation, I would nonetheless accepted her report because I consider it to be relevant to the issues before me in these appeals.

[18] The panel also noted the contradiction of Mr. Allard criticizing Ms. Harding's qualifications, when he had no qualifications of his own to support the opinions expressed in his submissions:

> [14] ... Parenthetically, in this case I note that the Appellant, at pages 5 and 6 of his initial submission, provided his own "opinion" about the fair market value of each of the three properties in issue even though there is nothing in his submission that appears to qualify him as an "expert" in the field of residential real estate valuation. The Appellant does not appear to see any irony in the circumstance that although he apparently does not have any professional education or training in residential real estate valuation (and also has a direct pecuniary interest in the outcome of these proceedings), he should be allowed to express an opinion regarding the fair market value of these three properties but Ms. Harding, a qualified and experienced appraiser with no direct pecuniary interest in the outcome of these appeals, should not be given equal consideration.

[19] The panel noted that simply because evidence is admissible, it does not follow that the valuation opinions offered would be accepted; admissible evidence may ultimately prove to have little probative value.

[20] The panel then turned to Mr. Allard's objection as to Ms. Harding's "independence". As there was no suggestion that Ms. Harding was in a personal conflict of interest, the panel analyzed the objection in terms of whether there was some sort of institutional bias arising by reason of Ms. Harding being employed by B.C. Assessment. The panel summarize the procedural mechanisms available to a property owner to appeal an assessment, and then stated:

> [21] If a property owner challenges their assessment, the Assessor is invariably the respondent in the matter. Although the relevant local government has a direct financial interest in the outcome of the dispute, local governments typically do not (although they may) participate in the proceedings. The Assessor has no direct financial interest in the outcome of the assessment dispute. Although the Assessor often defends its original assessment decision in an appeal to the Review Panel, to the Board or to the courts, the Assessor is not the decision-maker. As our Court of Appeal noted in a decision involving the Appellant: "The *Authority Act* creates a province-wide assessment authority which is independent of the taxing function" (*Allard v. Assessor of Area #10 – North Fraser Region*, 2010 BCCA 437 at para. 45). Whatever evidence the Assessor tenders in the course of these various appeal proceedings is disclosed to the property owner who is afforded an opportunity to challenge the Assessor's evidence and to present their own evidence to the decision-maker. I am not satisfied that this scheme creates any sort of institutional bias as is apparently asserted by the Appellant.

[21] Having disposed of Mr. Allard's objections as to Ms. Harding's qualifications and purported bias, the panel ruled that no oral hearing for the purpose of cross-examination of Ms. Harding would take place:

> [22] ... I am not satisfied that the Appellant has raised any credible basis for his assertions that Ms. Harding is not an expert or that Ms. Harding and/or the Assessor is biased against him. In my view, ordering an oral hearing in this matter would be a waste of time and money. The Board is not required to hold any sort of oral hearing. Section 55(1) of the *Assessment Act* states: "In a proceeding, the board may hold any combination of written, electronic and oral hearings." This is not a complicated matter.

> The only issue before me is the fair market value of the properties as of the July 1st, 2009 valuation date and both parties have been granted the opportunity to present evidence and argument regarding this issue and have availed themselves of the opportunity presented. It is perhaps also important to note that my decision only concerns the fair market value of these properties for the 2010 assessment year. I see no need to lengthen this matter - and to increase all parties' (including the Board's) costs - by way of a further and, in my view, wholly unnecessary oral hearing process. ...

[22] Moving to a discussion of the evidence of value of each of the three properties, the panel noted that both Mr. Allard and Ms. Harding had attempted to provide values based on comparables:

> [24] Both the Appellant and the Assessor have endeavoured to value these three properties based on the direct sales comparison method and I find that to be the appropriate valuation methodology in this instance. Unfortunately, and this is not surprising given the somewhat isolated rural location, there is a paucity of Horsefly Lake sales comparables. Since no two properties are likely to be exactly identical, the direct sales comparison method requires "adjustments" to be made so that one can determine a value for the subject property based on the sale of the "comparable" property. I find the Appellant's expert, Mr. Blanchette's, comment at page 5 of his review to be most apposite: "...the appraiser has made a diligent attempt at justifying the quantity of adjustment applied in each category. However, a great deal can be said without actually proving anything. An admirable attempt was made to support the various adjustments; however, the final adjustment used in most categories is mostly a matter of reasoned opinion." I do not disagree with this commentary. However, I am generally persuaded that the approach taken by the Assessor in its report is "reasoned" and the ultimate conclusions regarding fair market value appear to be in line with the available sales evidence; I cannot say the same for Mr. Allard's analyses.

[23] With regard to Mr. Blanchette's criticism of Ms. Harding's reliance on lot frontage as a significant factor in adjusting the value of comparables, the panel said:

> [27] Lakefront properties tend to trade in the market based primarily on the lake frontage although undoubtedly other factors such as the overall lot size and the nature of the improvements come into play. Mr. Blanchette, at page 8 of his review, states: "A lake front recreation property has value because if its lake front location and exposure. The additional usable land area is not much more than a parking area for vehicles". While this latter comment may be a bit of hyperbole the fact remains that appraisers generally agree that the driving factor in waterfront property valuation is the extent of the water frontage.

[24] Analyzing the evidence with respect to each of the three lots in turn, the panel found that the Assessor's values were reasonably supported, and that there was no reason to disturb the Review Panel's decisions.

Discussion

[25] I deal at first with the second of the two questions of law posed in the stated case: did the Board err in accepting Ms. Harding's appraisal as an expert opinion, despite lack of independence due to her employment by the British Columbia Assessment Authority?

[26] Assessment authorities are empowered by statute – specifically s. 13(1) of the *Assessment Authority Act*, R.S.B.C. 1996, c. 21 – to appoint assessors and appraisers, define their duties and set their remuneration. It must be the case that the expertise of these employees forms a large part of the

institutional competence of the assessment authority. In my view, it would only be natural to expect an assessment authority to draw on that expertise in presenting evidence in defence of its assessments. The employment of an appraiser by the Assessment Authority does not give rise to an apprehension of bias sufficient to preclude admission of their opinion. If anything, it seems to me that the converse is more likely; that the failure of an assessment authority to present evidence from its own staff could expose the assessor to the risk of an adverse inference being drawn.

[27] The previous decision involving the appellant Mr. Allard noted in the Board's reasons for judgment, *Allard v. Assessor of Area #10 – North Fraser Region*, also concerned purported errors on the part of the Board in accepting an appraiser's evidence without cross-examination. In that decision, the Court of Appeal cited the summary of the factors potentially relevant to determining the content of the duty of procedural fairness, set out in the headnote to the S.C.R. report of the decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193:

> The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive.

[28] After reviewing the circumstances of the case before her, Madam Justice Rowles, with whom Madam Justice Saunders concurred, decided that the fifth factor from *Baker* at para. 27 ought to be given considerable weight:

> 27. Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, [*Judicial Review of Administrative Action in Canada,* loose-leaf (Toronto: Canvasback, 1998)], at pp. 7-66 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, *per* Gonthier J.

[29] Madam Justice Rowles summarized:

> [101] In my opinion, the duty of procedural fairness the Board owed Allard was not breached by the procedures the Board adopted in determining his appeal. Accordingly, there is no reason to interfere with the order the chambers judge made in answering in the negative each of the three questions posed on the Stated Case.

[30] In *IWA v. Consolidated-Bathurst Packaging Ltd.*, Gonthier J. discussed the significance of institutional constraints in the following terms:

> I agree with the respondent union that the rules of natural justice must take into account the institutional constraints faced by an administrative tribunal. These tribunals are created to increase the efficiency of the administration of justice and are

> often called upon to handle heavy caseloads. It is unrealistic to expect an administrative tribunal such as the Board to abide strictly by the rules applicable to courts of law. In fact, it has long been recognized that the rules of natural justice do not have a fixed content irrespective of the nature of the tribunal and of the institutional constraints it faces. ...

[31] I find no merit in the contention that Ms. Harding's employment by the British Columbia Assessment Authority disqualified her from providing opinion evidence.

[32] The Board's consideration of Ms. Harding having no financial interest in her employer, and her employer having no financial interest in the outcome of the inquiry, given that the assessment function is independent of the taxation function, were appropriate and persuasive. Any concern as to the potential for bias would only arise in respect of the seemliness of one employee of the Board giving testimony in defence of another employee's work product. That concern is more than outweighed by the efficiencies gained through this process.

[33] I turn to the first question of law posed in the stated case, whether the Board erred in refusing to allow an oral hearing, including cross-examination of Ms. Harding. It is common ground that the standard of review in respect of questions of natural justice is correctness. The issues as framed in the stated case do not call for deference to the tribunal.

[34] On this appeal, the appellant contends that through being denied the right to cross-examine Ms. Harding, he lost the opportunity to demonstrate that her opinion ought to be given less weight than that of Mr. Blanchette, on the significance of water frontage as a factor to be considered in analyzing the value of comparables. This broad argument in favour of cross-examination goes considerably beyond the position taken by the appellant in his June 24 rebuttal submission. In that submission, Mr. Allard did not take the position that Mr. Blanchette's opinion ought to be given more weight by reason of his independence and his superior qualifications. Further, Mr. Allard did not submit to the Board that an argument as to the relative weight to be assigned to the expert's opinions required cross-examination; indeed, I find it difficult to understand how that could have been so, when the qualifications of both experts were set out in their reports. The summary of Mr. Allard's legal position set out in that rebuttal submission did make mention in general of the potential for an expert witness's expertise and methodology affecting the weight to be given their opinion, and of the possibility of an opinion being admitted but being given no weight. But his submission then went on – repeatedly – to assert that Ms. Harding was not qualified and was biased, and that cross-examination was required to provide Mr. Allard with the opportunity to demonstrate these points. I limit my analysis of the consequence of the denial of an oral hearing, to the loss of those opportunities.

[35] It is argued on behalf of Mr. Allard that given the concerns with respect to bias and qualifications, the conflicts in the evidence between the experts could not have been resolved in a fair, justified, transparent and intelligible manner without cross-examination.

[36] I accept the argument of the assessor, that to require cross-examination of an assessment authority employee because of an apprehension of bias would inevitably result in an oral hearing having to be held in every case in which the question of bias is raised. Given the prevalence of expert opinions submitted by assessment authority appraisers, this would render illusory the ability to hold written hearings pursuant to s. 55 of the *Act*.

[37] Further, the Board's preference for Ms. Harding's analysis, notwithstanding Mr. Blanchette's criticisms, was based not on Ms. Harding's qualifications, but on the Board's own conception of the soundness of Ms. Harding's methodology. The Board stated:

> ...The fact remains that appraisers generally agree that the driving factor in waterfront property valuation is the extent of the water frontage.

This statement does not represent a selection of one expert's opinion over that of another. Ms. Harding did not contend that appraisers generally agree with this proposition, and Mr. Blanchette did not deny that it was so. Rather, this statement reflects a body of knowledge acquired by the Board through its expertise, which entitles it to make a presumption. In this case, the presumption was found to be consistent with Ms. Harding's analytical approach, and was not found to have been negated by the concerns raised by Mr. Blanchette. Whether or not the Board was correct in presuming the soundness of appraisals based on water frontage is not in issue. The soundness of that presumption, which the Board was willing to make, could not have been tested through, and would therefore not have been affected by, cross-examination of Ms. Harding on her qualifications and bias.

[38] In his written reply submissions on this appeal, Mr. Allard argued that after cross-examination:

> ... [t]he Board would have been in a better position to choose between Ms. Harding's heavy reliance on lake frontage and the rejection of that as a reasonable basis of evaluation by Mr. Blanchette and the Board itself in a case drawn to the attention of the Board to which it did not even refer in its reasons.

Again, it is not explained how such a cross-examination of one expert witness on her own qualifications and purported biases could lead the Board to abandon a presumption which was within its institutional competence, and which it had apparently arrived at independent of Ms. Harding's opinion.

[39] The "case drawn to the attention of the Board" referred to, is *Rayner v. Assessor of Area #06 – Courtenay*, 2010 PAABBC 20100694. In his original written submissions of March 31, 2011, Mr. Allard had enclosed a copy of that decision, describing it in this fashion:

> ...This decision, for a summer cabin on Upper Campbell Lake showed that:
>
> a) "*sales indicate there is little increase in value for larger lots"*; and
>
> b) "*in the Upper Campbell Lake area sales have not supported valuation by length of waterfront".*
>
> In my own experience, this is typically true for rural, recreational properties, and there is no evidence to suggest it is not true for Horsefly Lake.

What the Board actually said in the *Rayner* decision was:

> [22] Mr. McPhail [the Assessor's appraiser] agrees with Ms. Rayner that <u>in many areas waterfront property values are based on length of waterfront</u>. However, in the Upper Campbell Lake area sales have not supported valuation by length of waterfront. As a rough check of Mr. McPhail's finding, that length of waterfront is not a major determinant of land value, I took the four adjusted-for-time sale prices, deducted the 2010 improvement assessment and divided the indicated land value by Ms. Rayner's lineal waterfrontage figures used in her analysis. The two comparables with 130 feet of lineal frontage indicate $1,662 per lineal foot and $1,992 per lineal foot. The two comparables with 350 feet of lineal frontage indicate $1,005 per lineal foot and $1,062 per lineal foot.

[40] In other words, there was specific evidence before the Board in that case as to whether the commonly observed relationship between water frontage and value was applicable in that particular area. In the present case, there was no such evidence before the Board. Mr. Blanchette's report was limited to a critique of Ms. Harding's methodology. No alternative expert valuations were put forward.

[41] In the circumstances of this case, I cannot conclude that depriving Mr. Allard of the ability to cross-examine Ms. Harding on her qualifications and purported bias amounted to a breach of the rules of natural justice. Mr. Allard had every opportunity to advance evidence in support of his position. Given the Board's understanding that Ms. Harding's methodology was conventional, there is no reason to believe that the Board's acceptance of her conclusions would have been undermined by cross-examination on her qualifications and purported bias. The Board's exercise of its statutory discretion not to hold an oral hearing was entirely appropriate in the circumstances. The *Baker* factors, in particular nos. 1, 2 and 5 all point towards the duty of procedural fairness having been satisfied in this case.

[42] The two questions of law posed in the stated case are answered in the negative, and the appeal is dismissed.