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(Winnipeg Centre)

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COURT OF QUEEN’S BENCH OF MANITOBA
(GENERAL DIVISION)

B E T W E E N:

)	<u>Appearances:</u>
)	
WAYNE KLEPATZ,	)	<u>Grant A. Stefanson and</u>
	)	<u>Ian B. Scarth</u>
applicant,	)	for the applicant
)	
- and -	)	<u>Denis G. Guénette and</u>
	)	<u>Sarah J. Zagozewski</u>
HER MAJESTY THE QUEEN IN RIGHT OF	)	for the respondent
MANITOBA AS REPRESENTED BY THE)	
MINISTER OF SUSTAINABLE DEVELOPMENT,	)	<u>T. David Gisser, K.C. and</u>
	)	<u>Tamara D. Edkins,</u>
respondent.	)	for the Manitoba Municipal
	)	Board
)	
)	
	)	JUDGMENT DELIVERED:
	)	November 17, 2022

McCARTHY J.

INTRODUCTION

[1] This a decision on judicial review of a Decision and Order of the Municipal Board of Manitoba.

[2] The applicant, Wayne Klepatz (“Klepatz”), was issued an Order by the Minister of Conservation and Water Stewardship (“Water Stewardship”) on November 14, 2013, requiring the applicant to construct a block (“Block”) on the

east end of an east to west drain located along the northern border of the southeast quarter of section 26-12-11E in the Rural Municipality of Whitemouth (the "Klepatz property").

[3] The applicant completed the work in compliance with the Order, but appealed the Order to the Municipal Board of Manitoba (the "Board").

[4] The Board heard the appeal of the Order and dismissed the appeal.

[5] The applicant now proceeds to the Court of Queen's Bench on an application for judicial review, seeking an order setting aside the Decision and Order of the Board ("the Decision") dated December 28, 2017, and sending the matter back to the Board for reconsideration.

[6] The grounds for the application are that:

- (a) the Board committed an error of fact and law by determining that the work conducted on the applicant's land required a licence under ***The Water Rights Act***, C.C.S.M. c. W80 (the "***Act***");
- (b) the Board committed an error of fact by determining that the Block serves a justifiable purpose to prevent the overflow of water from the Whitemouth bog;
- (c) the Board committed an error of fact by determining that no benefit would result from any changes to the location or size of the Block;
- (d) the Board committed an error of fact by failing to consider the detrimental impact that the Block could have on the land owned by the applicant.

FACTUAL BACKGROUND

[7] The applicant owns the real property described as the Klepatz property in the Rural Municipality of Whitemouth, Manitoba (the "RM"). The applicant's family has farmed the Klepatz property for over 100 years and at the time of this application continued to farm the property.

[8] The applicant's neighbour, Michael Becker ("Becker"), at the relevant time owned SW 26-12-11E, being the quarter section immediately adjacent to the Klepatz property to the west.

[9] A drain runs from east to west bordering the northern boundary of the Becker and Klepatz properties (the "Existing Drain"). The Existing Drain is comprised of a portion which runs along the northern boundary of the Klepatz property (the "Klepatz Drain") and a portion which runs along the northern boundary of the Becker property (the "Becker Drain"). These drains, which together comprise the Existing Drain, traditionally flowed from east to west as the Whitemouth Bog (the "Bog"), which is a natural water retention area located to the east of the Whitemouth Drain and sits at a higher elevation than the Klepatz and Becker properties.

[10] The Becker Drain and the Klepatz Drain were constructed around the same time in the 1940's and were intended to function as one unit draining water to the west, and away from their respective properties.

[11] The NE 26-12-11 is the quarter section directly to the north of the Klepatz property (the "Steiner property"). Water from the Steiner property also flows into the Existing Drain.

[12] A municipal drain runs from north to south along the eastern border of the Klepatz property (the "Whitemouth Drain"). Water in the Whitemouth Drain flows from north to south. There is a large dike bordering the Whitemouth Drain which protects the Klepatz and adjacent properties from flooding from the Bog.

[13] The applicant asserts that prior to the installation of the Block at the east end of the Existing Drain, as required by the Water and Stewardship Order, water flowed from east to west in the Existing Drain and away from the Klepatz property.

[14] Prior to October 2013, the Klepatz Drain was last cleaned out in the 1990's. As a result, the Existing Drain was largely filled in with topsoil and vegetation. The applicant asserts that the Becker Drain had also not been cleaned out over that period and remained largely filled with topsoil and vegetation at the time of this hearing.

[15] In October 2013, the RM contracted with a backhoe operator to clean out the Whitemouth Drain. At the request of the applicant the contractor also cleaned out the Klepatz Drain at that time.

[16] Becker observed and reported the cleanout of the Klepatz Drain to Water Stewardship by e-mail on October 15, 2013.

[17] In response to that e-mail a Water Resource Officer issued the applicant a Common Offence Notice pursuant to section 3(1)(c) of **Act**. The same Common Offence Notice was also issued to the contractor.

[18] On October 16, 2013, two Water Resource Officers attended to the Klepatz property and observed the Klepatz Drain with Becker.

[19] On October 24, 2013, those two officers, together with two other officers attended to the Klepatz property and conducted a survey of the Klepatz Drain.

[20] On November 14, 2013, Water Stewardship issued an Order to Klepatz to install a Block at the upstream (eastern) end of the Klepatz Drain.

[21] Klepatz constructed the Block as required by the Water Stewardship Order and then appealed the Order to the Municipal Board.

[22] On December 28, 2017, the Board released its Decision dismissing the applicant's appeal and upholding the Order.

The Decision and Order of the Board

[23] On December 28, 2017, the Board held that:

- (a) a licence was required for the clean out of trees, vegetation and earth from the Existing Drain;
- (b) the Block served a justifiable purpose as the Whitemouth Drain was inconsistently maintained and therefore the Block prevented the overflow of water from the Bog; and
- (c) there was no benefit in making any changes to the location or size of the Block.

STANDARD OF REVIEW

[24] All parties argued that pursuant to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (“*Vavilov*”), the applicable standard of review in this case is reasonableness. I agree.

[25] In light of the guidance from the Supreme Court of Canada in *Vavilov*, I make the following observations with respect to the role of the court in reviewing the administrative decision of the Board.

[26] The court’s role upon judicial review is not to assess the information and determine if the administrative tribunal made the correct assessment, or to determine what assessment the court would have made, or even what outcomes were possible (*Vavilov* at para. 83).

[27] The issue upon review is whether there was information available upon which the decision could reasonably have been made, and a logical rationale provided for the decision (*Vavilov* at para. 85). The reviewing court is to determine whether the decision bears the hallmarks of reasonableness, being justification, transparency and intelligibility (*Vavilov* at para. 99).

[28] I agree with the submissions of the Board that where the legislature has not set out a right of appeal in the legislation it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference. Therefore on judicial review where there is no statutory right of appeal the court should adopt a posture of restraint in interfering with the decision of the tribunal (*Vavilov* at para. 24).

[29] Finally, with respect to factual findings made by the decision maker, the court should generally not reweigh or reassess the evidence already considered by the administrative decision maker, particularly in the case of an expert tribunal. Interference with the factual findings should occur only in exceptional circumstances where the decision maker has “fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para. 126).

ANALYSIS

[30] The applicant submits that the Board’s Decision is not reasonable as the decision lacks internally coherent reasoning and is untenable in light of the relevant factual and legal constraints that bear upon it.

[31] The specific issues to be decided are as follows:

1. **Did the Board commit an error of fact and law by determining that the work conducted on the applicant’s, Wayne Klepatz, land required a licence under *The Water Rights Act*, C.C.S.M. c. W80?**
2. **Did the Board commit an error of fact by determining that the Block serves a justifiable purpose to prevent the overflow of water from the Bog?**
3. **Did the Board commit an error of fact by determining that no benefit would result from any changes to the location or size of the Block?**
4. **Did the Board commit an error of fact by failing to consider the detrimental impact that the Block could have on the land owned by the applicant, Wayne Klepatz?**

Did the Board commit an error of fact and law by determining that the work conducted on the applicant's, Wayne Klepatz, land required a licence under *The Water Rights Act, C.C.S.M. c. W80*?

[32] The applicant argued that the Board erred in fact and law in determining that the work conducted at the request of the applicant required a licence.

[33] The basis for this argument is that the Board erred in:

- (i) failing to consider whether the Klepatz Drain came within the jurisdiction of the **Act** given that the Klepatz Drain has been in existence since the 1940's and prior to the enactment of the **Act**,
- (ii) interpreting the applicable statutory provisions in a manner that was unreasonable; and
- (iii) finding that the actions of the applicant fell within section 3(1) of the **Act**.

[34] With respect to the above alleged jurisdictional error, I am satisfied based upon the applicable case law, and the submissions of the respondent, that all water control works, including drains, fall within the jurisdiction of the provincial government under the **Act**. There was no basis argued by the applicant that would make the application of the legislation to this situation contrary to law or unreasonable.

[35] With respect to the second basis raised by the applicant, he argues that the Board's interpretation of section 3(1) of the **Act** was wrong at law as the language, context and purpose of the legislation requires a finding that the activity in question (here the "maintenance" of the drain) meets the criteria under (a) and

(b) of the definition of “water control works” in the legislation. That is, the activity must be found to have temporarily or permanently altered the flow or level of water, or to have changed, or potentially changed, the location or direction of flow of the water, by any means including drainage in order for a licence to be required to carry out the activity.

[36] The respondent argued that the correct interpretation of section 3(1) was that any activity which falls within the definition of “maintaining” a structure which falls within the definition of a “water control works” requires a permit. They argued that the definition of “water control works” as included in the legislation must be satisfied only to determine that the *structure* being maintained falls within the ambit of the section. Then, because the undisputed evidence is that the applicant cleaned out his drain, and the drain fits the definition of a “water control works”, the activity is sufficient to bring the applicant under the section and require a licence.

[37] Having regard to the legal framework for judicial review of the Board’s Decision as set out above, I must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (***Vavilov*** at para. 100).

[38] Any decision maker, including an administrative tribunal, is required in interpreting legislation to employ the modern approach and consider the text, context and purpose of the legislation (***Vavilov*** at paras. 117 and 120). If the decision maker does so, and the interpretation is within the range of reasonable

interpretations, the reviewing court should not interfere. The court should only interfere if it is clear that the tribunal failed to consider a key element of the text, context or purpose, or that when doing so there was only a single reasonable interpretation and that is not the one applied (*Vavilov* at paras. 122 and 124).

[39] In this case the Board expressly accepted the respondent's submission on the correct interpretation of the legislation, and by inference, rejected the argument of the applicant. Given the substance of the respondent's submissions, which were not in any way inconsistent with the applicable principles of statutory interpretation, they were entitled to do so. The interpretation they applied was logical and did not fail to consider any key elements of interpretation.

[40] With respect to the comment in the Board's Decision that the witness, John Arthur, agreed with the respondent's interpretation, I agree that that was an oversimplification of his evidence on this point. However, the comment in the Decision is in response to a brief reference to that evidence (almost as an aside) in the respondent's submission and did not form a significant basis for their argument on the correct interpretation to be applied. I find that this reference in the Decision is not sufficient to render the Board's interpretation unreasonable.

[41] With respect to the third basis raised by the applicant, he argues that on a proper assessment and understanding of the evidence the Board was precluded from finding that the applicant maintained water control works that had the effect of altering, or possibly altering, the flow or level of water, and therefore bringing him under the section requiring a licence.

[42] The applicant's third argument fails because, having determined that the Board's interpretation of section 3(1) of the **Act** was not unreasonable, the undisputed evidence is that the applicant cleaned out his drain, and the finding that the Existing Drain fits the definition of a "water control works", is sufficient to bring the applicant under the section and require a licence.

[43] Therefore, the Board's conclusion that a licence was required was not based upon the alleged misapprehension of the evidence, but rather upon their interpretation of the relevant legislation.

[44] I therefore find that the Board's finding that a licence was required to clean out the Existing Drain was not unreasonable and I would not quash the decision on that basis.

Did the Board commit an error of fact by determining that the Block serves a justifiable purpose to prevent the overflow of water from the Bog?

[45] The applicant is concerned that as a result of the Block, water could flood his property if the Whitemouth Drain is not properly maintained by the municipality. The evidence was undisputed, and it was a finding of the Board that the Whitemouth Drain has not in the past been consistently maintained. The Board also stated that it has no authority to require the municipality to maintain it.

[46] The applicant's expert witness, John Arthur, an engineer with considerable experience in water drainage and management issues, conducted a survey of the drainage system which is the subject of this application. The survey method he used was accepted to be more accurate than the survey done by Water Resources.

He found that unless there are remedial measures taken, due to poor maintenance of the Whitemouth Drain, the municipal Block holding back water to the north in the Whitemouth Drain will ultimately fail. And if it fails with the Klepatz Block in place, or if there is a blockage of any sort in the southern portion of the Whitemouth Drain, the water will likely flood the Klepatz property from the east.

[47] Mr. Arthur also testified that the Block required by the Order serves no purpose in preventing flooding of the Klepatz or downstream properties. The only things affecting the flow of the water and the flood risk, in his opinion, are the poorly maintained municipal drains and Becker Drain. In his opinion the Block should never have been installed and serves no useful purpose. He stated that if the Bog was to spill out it would wash out the Block within 30 minutes and flood the entire area. In his opinion the Block would be irrelevant to the flow of water if the Whitemouth Drain was properly maintained, however, if it is not properly maintained the water needs to be able to flow from east to west in the Klepatz Drain.

[48] Mr. Arthur found no increase in the risk of flooding to the Klepatz or Becker properties resulting from the cleanout of the Klepatz Drain which he was 99% certain was just restored to its original depth. In fact, he stated that the Klepatz Drain was acting as a reservoir and preventing flooding of both properties at the time of his survey.

[49] The representatives from Water Resources who testified for the respondent were not as clear in their opinions. No specialized training, qualifications or expertise were identified with respect to either of these witnesses.

[50] Water Resource Officer Kapy, testified that she originally viewed the work done by the applicant in response to a complaint from Becker and issued the Offence Notice for the work being done without a licence. She was also present when a survey was done to identify the direction of the water flow in the area. She testified that most of her analysis was visual and she confirmed that the department did not do a geodetic survey which is a more accurate form of survey.

[51] Officer Kapy testified that Water Stewardship ordered the Block to be constructed at the east end of the Klepatz Drain to prevent any flooding of the downstream properties. Her concern is that if the Block is removed it could potentially add water to the Existing Drain from the Bog. She stated that the Block was intended to be a temporary measure. When asked whether she had any information to consider whether the Block adds to or detracts from the functional water system to protect landowners downstream she answered "not at this time".

[52] Officer Kapy confirmed that water from the east flows to the west through the Klepatz and Becker Drains (together the Existing Drain) and into a municipal drain to the west of their properties and that the Existing Drain was in fact an actual outlet for the water that has now been blocked. Her specific response when this was put to her was "you could look at it that way".

[53] It was also put to Officer Kapy that the idea that the Block would protect the properties downstream was an assumption and she replied "absolutely".

[54] And finally, Officer Kapy agreed that if water was to flood into the Whitemouth Drain, it is possible that the water would flow over low spots along the wall of the municipal drain and onto the Klepatz property.

[55] That was the extent of the testimony from Officer Kapy with respect to the necessity for, and effectiveness of, the Block in protecting the properties.

[56] Water Resource Officer Maksymchuk testified that he took over for Officer Kapy when she was reassigned. His involvement started with the task of preparing a draft licence for the consideration of the applicant and other affected landowners.

[57] Officer Maksymchuk testified that in his opinion the Block could be lowered somewhat to allow flow west into the Existing Drain if water reached a significant level in the Whitemouth Drain.

[58] Officer Maksymchuk's opinion was based in part on an assumption that the Klepatz Drain needs to be at the same level as the field drains on the Klepatz property. This opinion is contrary to the explanation of the applicant as to how his drains were designed to work and have worked, and the opinion of the engineer, John Arthur, that the Klepatz Drain needs to be 12 inches lower than the field drains to allow the drains to flow into the drain.

[59] Officer Maksymchuk agreed that if Becker cleaned out his drain the whole system would benefit. He offered no other evidence with respect to the efficacy or necessity for the Block and how it protects downstream properties.

[60] The applicant argues that based upon the evidence of the engineer the Block does not prevent the overflow of water from the Whitemouth bog, but rather constricts the water system in the area by preventing flow of water through the Existing Drain from east to west along the northern border of the Klepatz and Becker properties.

[61] The applicant states that there was no hydrology study or evidence provided by the respondent upon which the Board could conclude that the Block served a justifiable purpose. Therefore, this conclusion of the Board resulted from a failure to take into account, or a fundamental misapprehension of, the evidence and is therefore unreasonable.

[62] The respondent in its submissions argued that the Board received various and conflicting opinions on whether the Block served a justifiable purpose. They argued that it was open to the Board to weigh the evidence in this regard and conclude as they did that, "The evidence is clear that the Whitemouth Drain is inconsistently maintained. For this reason alone, the Board finds that the Block serves a justifiable purpose to prevent the overflow of water from the Bog" (the Decision at p. 12).

[63] Analysis of the evidence before the tribunal, and the findings and conclusion of the Board in this regard, in my view bears close scrutiny.

[64] The Board in arriving at their decision stated that they accepted the evidence that the Whitemouth Drain has not been consistently maintained and that "It would have been helpful to have received representation from the Municipality with respect to work that they have undertaken in the Whitemouth Drain and in the general area". They also commented that the Board had no authority to make any orders with respect to the Municipality's maintenance of its drains.

[65] The Board does not, in its reasons, go any further than that to outline its findings of fact based upon the evidence, or its reasoning which led to the conclusion that the Block serves a justifiable purpose. They do not give any reason for disregarding the expert evidence of the engineer. They also do not state that they preferred some other evidence as to the benefit or utility of the Block. They also do not address the evidence with respect to the potentially adverse consequences of the Block on flooding of the downstream lands.

[66] With respect, the Decision and Order that the Block must remain, and remain at its current height, does not flow logically from any reasonable interpretation of the evidence.

[67] The rationale for upholding the requirement that the applicant maintain the Block, in the face of evidence from John Arthur that the Block serves no useful purpose and in fact prevents the ability of the water to flow from east to west, is not at all clear and leads me to conclude that they either failed to consider, or significantly misapprehended, the expert opinion. There was no similarly qualified

expert giving a contrary opinion, no basis cited for disregarding the opinion of the engineer, and no consideration given to the potentially adverse outcome to the applicant if the expert was correct and flooding to the applicant's, and potentially Becker's property, results.

[68] The RM's refusal, or neglect, of its responsibilities with respect to maintaining the Whitemouth Drain are not, in my view, a logical or reasonable basis upon which to require the applicant to maintain a Block without making a finding that the Block serves a purpose in preventing flooding of downstream landowners. The Board appears to make no such finding. Their decision does not address and arguably runs counter to all of the evidence before it that the Existing Drain was built to allow the flow of water from east to west thereby preventing flooding of the applicant's and adjacent owners' lands.

[69] A decision maker is always entitled to reject expert opinion evidence, however there must be some reasonable basis for doing so articulated in its reasons.

[70] In my view the argument of the respondent that the finding that the Block serves a justifiable purpose is not a requirement under the legislation is not persuasive. For the decision of the Board to be reasonable, the components of their order must be reasonable.

[71] As stated in **Vavilov** a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts, and the law that constrain a decision maker (at paras. 85 and 99).

[72] I find little assistance in the respondent's argument that an individual who undertakes unauthorized work without a licence is, from that fact alone, at risk of being issued an administrative order that the land be put back to the state it was in. This in my view does not assist in the determination of whether the decision to uphold the order with respect to the Block was reasonable.

[73] While I have found that the Board's Decision that the applicant required a licence to undertake maintenance of the Existing Drain was not unreasonable, my decision does not go so far as to consider whether a licence would, or should, have been issued in the circumstances. That issue is not before the court. It is not necessarily the case that all work done without the licence must be undone, or could not later be authorized. Decisions in that regard would also presumably be subject to review by the courts as to their reasonableness in the individual circumstances. The argument that a potentially worse outcome for the applicant exists cannot, in my view, be used as a basis for finding that the decision to require the applicant to maintain the Block, must be reasonable.

[74] I find in this case that the Board's Decision to uphold the portion of the order requiring the applicant to maintain the Block is not reasonable in light of the evidence before the Board and the reasons given. I therefore quash that portion of the Order and order that the matter go back before the Board for reconsideration.

[75] My decision on this point is not intended to replace any determination of the Board that the Block should be retained, but rather to caution the Board that

in arriving at their decision they are required to consider all of the evidence, including any expert evidence, to weigh the evidence, and to reach a decision that logically and transparently flows from that evidence. Failure to do so is an error in law.

Did the Board commit an error of fact by determining that no benefit would result from any changes to the location or size of the Block?

[76] With respect to the Board's finding that there would be no benefit in making any changes to the location or size of the Block in my view this conclusion also does not logically flow from the evidence.

[77] The respondent witness, Officer Maksymchuk, testified that the applicant may want to lower the Block to allow some water to flow over the Block and into the Existing Drain if the Whitemouth Drain was filled for some reason. He said that this was not required, but seemed to suggest that it may be beneficial to the applicant.

[78] Further, the applicant's engineer, and the respondent's witness, Officer Kapy, provided evidence that there was a possibility of flooding of the Klepatz property from the east if the current Block was in place and the Whitemouth Drain filled with water from the Bog.

[79] In my view the Board has reached a conclusion with respect to the effect of the size of the Block which is not supported by any interpretation of the evidence before it and is not the result of a logical chain of reasoning.

[80] I therefore find this portion of the Board's Decision to be unreasonable and order that this issue should go back to the Board for reconsideration.

Did the Board commit an error of fact by failing to consider the detrimental impact that the Block could have on the land owned by the applicant, Wayne Klepatz?

[81] As outlined in my review of the evidence above, I find no indication that the potentially detrimental impact of the order to maintain the Block on the applicant and the adjacent landowners was considered in arriving at its decision.

[82] There was evidence before the tribunal as to the potential for the Block to exacerbate, rather than relieve, potential flooding to the applicant's lands. There was also evidence of the detrimental impact of flooding of farmland on the applicant's ability to grow his crops, which was his livelihood.

[83] This evidence is not addressed in the decision and there is no indication as to why the Block should still be required notwithstanding this evidence.

[84] There was evidence, and a finding by the Board, that the Whitemouth Drain was not consistently maintained by the municipality which caused an increased risk of flooding of the applicant's lands. There was also evidence called by both parties that the failure of the applicant's neighbour, Becker, to maintain and clean out the Becker Drain was having adverse effects on drainage of the applicant's lands and the drainage system as a whole.

[85] Arguably if the applicant had been solely responsible for the flood risk then perhaps the impact upon him would have been entitled to less weight. However, the evidence was that the applicant was being adversely affected by factors outside of his control, or the control of the Board. The Board's apparent failure to

consider these relevant factors, and the impact of their decision on the applicant are concerning.

[86] The Supreme Court of Canada in *Vavilov* cautioned that the importance of providing procedural protections where decisions have the potential of significant personal impact also has implications for how the court conducts reasonableness review.

[87] The court stated that (at para. 133):

.... The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[88] And went on to state that (at para. 135):

Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[89] I find here that there is no indication that the Board considered the potentially detrimental impact of the order to maintain the Block on the applicant and its failure to do so renders their Decision unreasonable.

[90] I therefore find this portion of the Board's Decision to be unreasonable and order that this issue should go back to the Board for reconsideration.

CONCLUSION

[91] I find that the misapprehension of the evidence as a whole, and the failure to adequately consider the evidence of the expert as to the risk of flooding, the utility of the Block, and the potential impact upon the applicant of maintaining the Block, together with the absence of a logical chain of reasoning in arriving at some of its conclusions has rendered the Board's Decision and Order unreasonable.

[92] The Decision of the Board is therefore quashed and the matter is sent back to the Board for reconsideration.

McCarthy J.