DECISION **2026 NSRAB 166**
M12950

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE ASSESSMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **FACTORY 58 HOLDINGS INCORPORATED** of the refusal of the Nova Scotia Assessment Appeal Tribunal to consider an application respecting a late appeal under s. 84 of the *Assessment Act*

BEFORE: Julia E. Clark, LL.B., Vice Chair

APPELLANT: **FACTORY 58 HOLDINGS INCORPORATED**
Mitchell Cooke

RESPONDENT: **DIRECTOR OF ASSESSMENT**
PROPERTY VALUATION SERVICES CORPORATION
Robert W. Andrews, Counsel

HEARING DATE: August 25, 2026

FINAL SUBMISSIONS: August 25, 2026

DECISION DATE: **November 23, 2026**

DECISION: **The appeal is dismissed.**

1.0 INTRODUCTION

[1] Factory 58 Holdings Incorporated (Factory 58) appealed a decision of the Nova Scotia Assessment Appeal Tribunal (NSAAT) denying its application for an extension of time to allow the late filing of Factory 58's appeal of the 2026 Notice of Assessment for its property at 24 Havelock Street, Truro – AAN 03025411 under s. 84(1) of the *Assessment Act,* RSNS 1989, c 23 (*Assessment Act,* or *Act*). Factory 58's Notice of Assessment appears to have been misdirected to a neighbour's mailbox while the company's sole owner, Mitchell Cooke, was out of the country. Once it was retrieved and Mr. Cooke had the opportunity to review it on his return to the province, the 31-day deadline for the appeal of an assessment under s. 63 of the *Act* had expired.

[2] The Board held a preliminary hearing by telephone conference on August 25, 2026, to consider whether to allow Factory 58's assessment appeal to proceed to a hearing on its merits. Mr. Cooke participated in the conference call, as did Robert W. Andrews, BA, LL.B., VP Legal Services, Property Valuation Services Corporation (PVSC), representing the Director.

[3] The Board may consider allowing an appeal to be filed beyond 31 days from the service of the Notice of Assessment if the request to do so is made within 60 days, as allowed under s. 84 of the *Act,* and the intended appellant demonstrates on a balance of probabilities that they were "prevented by absence, illness or other sufficient cause" from appealing their assessment in the time allowed. In this case, the Board finds the Appellant did not meet that threshold and dismisses the appeal.

2.0 ISSUE

[4] The issue to be decided in this case is whether a hearing for Factory 58's appeal of its 2026 Notice of Assessment should be granted under s. 84(1) of the *Assessment Act* which, at the relevant time, stated:

> **Special hearings and time extensions**
> **84 (1)** If any person shows, within sixty days from service of the notice of assessment by oath or affidavit on *ex parte* application, to the satisfaction of the Tribunal, that he has been prevented by absence, illness or other sufficient cause from appealing the assessment or from duly prosecuting his appeal, the Tribunal may grant such a person a hearing and arrange a sitting of the Tribunal to hear the appeal.

[5] The parties agreed, for the purpose of this appeal, that the appeal was filed beyond the 31-day time limit dictated by the *Assessment Act*, but within the 60-day period allowed under s. 84(1) for the Board to consider whether to allow the appeal to proceed. Therefore, the only issue for decision is whether the Appellant has demonstrated that a hearing should be granted because they have "been prevented by absence, illness or other sufficient cause", from appealing the assessment or duly prosecuting the appeal.

3.0 ANALYIS AND FINDINGS

3.1 Service of the 2026 Notice of Assessment

[6] By December 31st each year, the Director of Assessment must complete an assessment roll, which sets out information about each assessable property in the province including its location, a concise description, the name and address of the owner, the assessed value and classification of the property, and other information required under the *Act*, for the purpose of taxation.

[7] Section 53(1) of the *Assessment Act* requires that, on completion of the roll, the Director must give notice of the assessment to anyone who may be subject to taxes based on it. Section 53(2) establishes how that notice of assessment may be served:

> **53 (2)** The notice may be served either personally or by leaving it at the residence or place of business of the person assessed or by posting in a conspicuous place on the property assessed or by mailing it, postage prepaid, addressed to his last or usual place of residence or business, if known to the assessor, but where such place of residence or business is not known to the assessor, failure to serve the notice shall not render invalid the assessment or any subsequent proceedings based on the assessment.

[8] The Board notes that s. 53(2) of the *Assessment Act* was amended by the *Financial Measures Act,* 2026 SNS, c 3, s 25, effective April 9, 2026. The prior version of the section, set out in the previous paragraph, was applicable at the relevant time for this appeal.

[9] Section 63(1) of the *Act* establishes the 31-day time limit in which a notice of an appeal must be given to the Director in relation to the date of service under s. 53:

> **63 (1)** The notice of appeal shall state with particularity the grounds of objection to the assessment and shall be given not later than thirty-one days after notices of assessment are served as provided in Section 53.

[10] For the 2026 assessment year, the Director of Assessment bulk-mailed notices of assessment for residential property tax assessments on January 12, 2026.

[11] Factory 58's Notice of Assessment for the property located at 24 Havelock Street, Truro [Exhibit F-4, p. 5] was dated January 12, 2026, and addressed to the business' correct mailing address at 72 Inglis Place, Truro, according to Mr. Cooke. Mr. Cooke says that, despite that correct address, he believes that a mail carrier must have delivered the notice into a neighbour's mailbox instead of the company's. The mailbox for 72 Inglis Place, along with three others for the other units in the building, are located in a common area in the building. They are numbered, as shown in a picture Mr. Cooke provided [Exhibit F-3, p. 2]. Factory 58's mailbox is marked with "72". The others are numbered "1", "3" and "4". Mr. Cooke said the tenant in unit 1 received Factory 58's mail but failed to turn it over in a timely manner.

[12] The Board's accepted interpretation of s. 53(2) is that the date of service is the date of mailing by the Director of Assessment, not the date of receipt by the person assessed. (*David v Nova Scotia (Director of Assessment),* 1999 NSUARB 95; *Hinspergers Poly Industries Ltd. v Nova Scotia (Director of Assessment),* 2003 NSUARB 83, paras. 9-11 (aff'd 2004 NSCA 12)). In this case, service occurred on January 12, 2026.

3.2 Deadline for Appeal of the 2026 Notice of Assessment

[13] Under s. 63*,* and as noted on the Notice of Assessment [Exhibit F-3, p. 6], an appeal had to be filed no later than 31 days after the date of mailing of the Notice of Assessment. The appeal period for the Appellant's 2026 assessment ended on February 12, 2026, a Thursday. The documentary evidence shows that the Appellant's appeal was filed and received by PVSC by email on Friday, March 6, 2026, 22 days after the 31-day appeal period expired [Exhibit F-4, pp. 5-6].

[14] Section 84(1) allows an additional period of time during which, in limited circumstances, the NSAAT (and the Board, on an appeal) can allow an appeal to proceed despite it being filed beyond the 31-day limitation period:

> **84 (1)** If any person shows, within sixty days from service of the notice of assessment by oath or affidavit on an *ex parte* application, to the satisfaction of the Tribunal that he has been prevented by absence, illness or other sufficient cause from appealing from the assessment or by duly prosecuting his appeal, the Tribunal may grant such a person a hearing and arrange a sitting of the Tribunal to hear the appeal and the Tribunal may impose such terms as to notice and service of documents as it considers proper.

[15] After the NSAAT received Mr. Cooke's request for late filing and supporting affidavit on March 6, 2026, an *ex parte* hearing under s. 84 of the *Assessment Act* was set down before the Tribunal to consider the Appellant's request to proceed with its appeal. The NSAAT did not allow the late filing, stating that it did not find that the

Appellant's reasons for missing the deadline demonstrated that they were prevented from appealing the assessment or prosecuting the appeal as intended by s. 84(1). The NSAAT decision states:

> … s. 84(1) enables to tribunal to allow late-filed appeals to proceed where appellants can establish that timely filing was "prevented by absence, illness or "other sufficient cause". In this case, the tribunal accepts Mr. Cooke's evidence that he never received the notice of assessment, apparently as a result of mis-delivery or non-delivery by the post office.
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> However, the right and ability to file an appeal do not depend on having a notice of assessment. An appellant is free to file a notice of appeal without it, and the appeal need not be in any particular form, so long as it "states with particularity the grounds of objection to the assessment", as required by the *Assessment Act.*
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> The law places the onus on the property owner to be cognizant of annual assessment, to watch for notices and to be aware of the appeal period. PVSC issues notices of assessment early in the new year, usually in January. The specific date may vary from year to year but it is readily ascertainable, either on the PVSC website or by telephone or email inquiry. Typically, the date is widely reported in the news media as well. From that date the 31-day appeal period begins to run. If a notice of assessment has not been received by a property owner within that time, follow-up with PVSC is advisable to confirm the new assessed value and to decide whether to appeal.
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> [Exhibit F-2, p. 3]

3.3 Requirements for an Appeal to the Board of the NSAAT's Decision under s. 84(1)

[16] Any NSAAT decision, including a decision to refuse an extension, can be appealed to the Board as long as the appeal is filed within the 30-day period set out in s. 86 of the *Act,* as occurred in this case. The NSAAT decision was mailed to the Appellant on June 25, 2026, and the appeal was filed with the Board on July 7, 2026.

3.4 Legal Burden and Statutory Interpretation

[17] Once the issue is properly before the Board, the legal burden is on an appellant to establish that the appeal should be allowed to proceed (*Nova Scotia (Director of Assessment) v Wandlyn Inns Ltd.,* 1996 NSCA 80). Applying the balance of probabilities standard, means that, based on the evidence, the Board must be satisfied

that it is “more likely than not” that the appellants were prevented by “absence, illness or other sufficient cause” within the meaning of s. 84(1) (*Wilkes (Re),* 2014 NSUARB 187).

[18] The *Act* does not define the term “prevent” or what it considers “sufficient cause” that would assist the Board in interpreting how s. 84 should be applied. When a word or term is not defined in a statute, the Board follows the modern approach to statutory interpretation to give meaning to those words. The modern approach requires “[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (see, *Sparks v Holland*, 2019 NSCA 3, at para. 27 with reference to *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at para. 21). The legislation should be interpreted in a manner that is both reasonable and just and must also take into consideration s. 9(5) of the *Interpretation Act*, RSNS 1989, c 235, (see, *Sparks v Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82, paras. 27 and 31).

[19] These principles apply to administrative decision makers and require that legislation be interpreted in a manner that is consistent with its text, context and purpose. However, the form of analysis may look different than one undertaken by a court and may be enriched by the specialized expertise and the experience of the decision maker (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paras. 117-121).

[20] The Board’s decision in *Hinspergers,* which was relied on by the NSAAT member in dismissing the application, has been applied by the Board and its predecessor, the Nova Scotia Utility and Review Board (NSUARB) in many past cases to guide the

Board's review. In that case, the Board addressed the late filing of an appeal under s. 84(1) of the *Act* as follows:

> [19] Section 84(1) refers to an appellant taxpayer having been "prevented by absence, illness or other sufficient cause" from appealing the assessment. The Board considers the use of the word "prevent" implies a higher threshold of the exercise of the Board's discretion to extend than would apply if, for example, the Board was simply authorized to grant an extension if it though it was reasonable in the circumstances. [Emphasis added]

[21] *Hinspergers* indicates that the use of the word "prevented" in s. 84(1) suggests a higher threshold must be met, higher than a merely "reasonable excuse" for the Board to extend the deadline for filing a notice of appeal. On this point, the Court of Appeal quoted the Board's decision, finding it made no reviewable errors of law or jurisdiction on the application of s. 84 to the facts of the case:

> [2] …The Board referred to the situation in which the respondent found itself at the relevant time as being engaged in a "degree and intensity of activity … [which was]…remarkable and unprecedented […] The Board stressed its conclusion that the circumstances were "extenuating" and "unique" and that the word prevented in s. 84(1) implies a high threshold for extensions.
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> [*Director of Assessment v Hinspergers Poly Industries Ltd*., 2004 NSCA 12]

[22] The Board's hearing is *de novo* under s. 87(1) of the *Act,* meaning it is not simply a review of the NSAAT's decision, but a new proceeding where the parties can provide additional evidence to support their respective cases.

[23] Besides the record that was before the NSAAT, oral evidence was provided by Mr. Cooke to support the written claims in Factory 58's Notice of Appeal. In 2026, Mr. Cooke, who owns and operates Factory 58 and manages its administrative tasks, was out of the country from around January 13 to March 3, 2026. For the past several years he has travelled out of country to the southern United States between January and May/June to attend to another of his businesses, which shares an address with Factory 58.

[24] As noted in the NSAAT decision, Mr. Cooke's notice of appeal to NSAAT states:

> I realize its late but that can be blamed on the courier not delivering it on time and to the wrong mailbox. I had been anticipating it and it never showed up.

[25] At the Board hearing, Mr. Cooke testified that he did not open his mail until his return to the province. He said that one of the tenants had received some mail for Factory 58 in their mailbox but had failed to redeliver it to Factory 58's mailbox until the end of February. One of Mr. Cooke's employees from his other company collects the mail for him in his absence, puts it on his desk, and takes care of deliveries. That employee does not open or otherwise deal with the mail. Mr. Cooke does not employ an office manager, although he has a maintenance employee to take care of physical issues with Factory 58's properties.

[26] Factory 58 owns 10 properties, but Mr. Cooke says he was not keenly aware of the appeal deadlines under the *Assessment Act*, nor exactly when the Notice of Assessment should have arrived. However, he had been anticipating an increase in the assessed value of the property given its purchase price. He had contacted PVSC earlier, in the fall of 2025, to inquire about the assessment to prepare for a possible appeal but did not receive a response at that time.

[27] As the Board noted in its decision in *Lively and Veysey,* 2026 NSRAB 165, a matter that was heard on the same day as Factory 58's appeal, in *Northwoodcare Inc. v Nova Scotia (Assessment),* 2014 NSSC 167, the Nova Scotia Supreme Court considered the purpose of s. 84(1) in an application for an order declaring that the NSAAT had jurisdiction to grant an extension of time for another type of filing under that section.

In that context, Justice Muise reviewed the purpose and intent of s. 84, indicating at para. 35 that the "apparent purpose" is "to provide relief from failure to meet a deadline."

[28] The Board agrees with this interpretation of this section's purpose. This relief for a brief delay in filing is allowed as an exception to the overall direction in the *Act*, which prioritizes administrative efficiency of the process timelines over flexibility or second chances for prospective appellants. As the Board said in *Hinspergers,* at para. 22:

> [22] The Board is conscious of the concern expressed by counsel for the Director that a "helter skelter" situation not be created in which all people who simply fail to open their mail in a reasonable period of time will consider themselves automatically entitled to an extension. Having reviewed the facts of this case, however, the Board considers that granting an extension in these circumstances ought not to lead to such a situation. The degree and intensity of activity in which Hinspergers found itself engaged in January and February, which the Board accepts as remarkable and unprecedented, imposed severe strains on an administrative and management structure which had minimal staff, an increasingly common characteristic of modern business organizations. The Board does not see the failure to file within the 21-day period as the result of merely an inattentive, careless or cavalier attitude in dealing with one's mail, but as the direct result of a set of "extenuating" and "unique" circumstances (the terms which were used by the Board in *Re Ounanlan*), facing the company. [Emphasis added'

[29] The submissions of the Director highlight that the Board has interpreted the *Act* as providing that a Notice of Assessment is served, from a legal perspective, on the date it is sent, not the date it is received. (*Neenah Paper Company of Canada (Re)*, 2006 NSUARB 132). The *Act* authorizes the Director to serve notices by mail but does not require that the notices be successfully delivered (*Maksimyv (Re),* 2025 NSRAB 63). This has determined the Board's approach in calculating when a limitation period begins.

[30] Where the Board has no jurisdiction to extend the limitation period for an appeal, such as if an appeal to the NSAAT is filed beyond the 60-day deadline, or an appeal to the Board is filed late, an appellant cannot rely on the non-delivery of a Notice of Assessment to excuse the late filing.

[31] In past cases, including *Springer (Re),* 2024 NSUARB 138, the Board has found that the absence of prospective appellants from the province, and the late delivery

of their Notices of Assessment because of a mail delay, was insufficient to invoke the exception in s. 84(1) where there were no other extenuating circumstances that prevented their appeal. In *Noel (Re),* 2024 NSUARB 125, the property owner in possession of the only mailbox key was out of town for part of the appeal period, and the appellant did not take any steps to get another key. The Board found the appellants' failure to regularly check the mail, rather than their absence, was the direct cause of the late appeal, and this did not amount to them being prevented from filing by "absence or other sufficient cause."

[32] The Board's decision in *MacEachern (Re)* 2026 NSRAB 151, on the other hand, was released after the close of arguments in this matter, but just prior to the release of this decision. It was not available at the time the parties provided their final arguments. In that case the Board found that a Notice of Assessment was an essential part of the appeal process and the appellants' ability to duly prosecute their appeal was impeded when they did not receive a Notice of Appeal until well after the expiry of the appeal period. This case is distinguishable on the facts and the Board found sufficient interpretative assistance in the suite of decisions already referenced in this appeal.

[33] An unexpected and exceptional absence, by itself or in combination with other unforeseeable circumstances may present as a sufficient cause that prevents a timely filing, but the Board is not satisfied on an objective basis that this threshold has been met. Although Mr. Cooke travels and is absent over the winter to attend to his other business, Factory 58, the company is not. In the absence of a crucial employee, a company must take steps to protect its interests. Normal procedure would be to have a proper system in place to address company mail. In this case, Mr. Cooke's travel out of

country was part of his regular routine. Although he was not inclined, in past years, to pay much attention to the property tax assessments and related appeal deadlines, he was familiar with the process and aware that if he disagreed with the assessment, he would have to act promptly to appeal it. He owns 10 other properties. The apparent misdelivery of the Notice of Appeal into a neighbouring mailbox was a hindrance, as was the tenant's delay in alerting Factory 58 about the issue. However, the Board found the evidence was unclear about whether the mail was delivered to Mr. Cooke's employee or brought to Mr. Cooke's attention before the close of the appeal period. Furthermore, Mr. Cooke's practice was to be the only person to open Factory 58's mail, and the mail was not opened until about three weeks after the end of the appeal period upon Mr. Cooke's return to the province. There is no evidence that the assessment would have been opened and the appeal filed on time, in any event.

[34] Although s. 53 allows for service of the Notice of Assessment by personal service and mail, there are other options available for property owners to file their appeal. The Board notes that the assessed values for the past five years (including the current year) for properties in the province are open source, public information. On this point, Mr. Cooke argued that this issue would not have arisen if only the Notice of Assessment was sent electronically. He said he would have received the necessary information directly from his email whether in Canada or not. However, at the time the 2026 Notices of Assessment were served, the legislation did not allow for electronic service, although the Board notes that amendments to the *Assessment Act,* including s. 53(2)(e), which was introduced in April 2026, now contemplate that Notices of Assessment may be served by electronic means.

[35] Administrative tribunals may only exercise the authority given to them by legislation. This authority may be explicitly stated or may arise by necessary implication. Both the NSAAT and this Board are administrative decision-making bodies that have no inherent jurisdiction to provide equitable remedies and must follow the authority that the relevant legislation gives to them.

4.0 SUMMARY OF BOARD FINDINGS

[36] After considering Mr. Cooke's travel out of province, business sophistication and the company's experience with the assessment regime, the fact he had been anticipating an increase in the assessed value of the property and inquired about the assessment to prepare for a possible appeal, as well as the circumstances of the misdirection of Factory 58's Notice of Assessment, the Board finds the Appellant has not established, on the balance of probabilities, that these circumstances prevented it, within the meaning of s. 84(1), from appealing the assessment within the time constraints ordinarily imposed under the *Act*.

[37] The Board declines to make a finding that Factory 58 be allowed a hearing before the NSAAT to proceed with an appeal of its 2026 Assessment. The Board notes the *Assessment Act* contemplates annual assessments and provides a right of appeal for those assessments each year. This decision makes no judgement on the merits of the 2026 Assessment, or any future assessment of Factory 58's property.

[38] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 23rd day of November 2026.



Julia E. Clark