DECISION **2026 NSRAB 56**
M12409

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **TELAINA KELLY et al.** from a decision by the Chief Administrative Officer of the Halifax Regional Municipality approving modification of restrictive covenants to allow construction of a backyard suite in accordance with Planning Districts 14 & 17 Land Use By-law at 221 Aberdeen Drive, Fall River (PID 41243676)

BEFORE:	Julia E. Clark, LL.B., Vice Chair Marc L. Dunning, P.Eng., LL.B., Member Darlene Willcott, LL.B., Member
APPELLANTS:	**TELAINA and ROBERT KELLY** **MARK and JENNIFER GOUTHRO** **STEVE and LEAH LATIMER** **MARK and SHIRLEY AYER**
APPLICANTS:	**PETER and KRISTIANA BRIDEAU**
RESPONDENT:	**HALIFAX REGIONAL MUNICIPALITY** William Hatfield, Counsel Meg MacDougall, Counsel
HEARING DATE(S):	October 23, 2025
FINAL SUBMISSIONS:	November 24, 2025
DECISION DATE:	**April 15, 2026**
DECISION:	**The appeal is dismissed.**

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1.0 INTRODUCTION

[1] This is a decision about the scope of the Nova Scotia Regulatory and Appeals Board's jurisdiction to consider an appeal of a decision made by Cathie O'Toole, then Chief Administrative Officer (CAO) of the Halifax Regional Municipality (HRM), to modify private covenants impacting a property on Aberdeen Drive (PID 41243676) in Fall River, HRM. The modification was requested by the Applicants, Kristiana and Peter Brideau, and is being appealed by neighbouring residents Telaina and Robert Kelly; Mark and Jennifer Gouthro; Mark and Shirley Ayer; and Steve and Leah Latimer. HRM filed a Notice of Motion asking the Board to dismiss the appeal on the basis that the Appellants' Notice of Appeal raised no issues that the Board has jurisdiction to decide.

[2] The property is zoned R-1B (Suburban Residential) per the Planning Districts 14 & 17 (Shubenacadie Lakes) Land Use By-law (LUB), which permits an accessory building to a single unit dwelling. The CAO's decision modifies clauses in the private covenants to permit a backyard suite, in addition to a single-family dwelling house, to be constructed on the property as allowed under the LUB.

[3] In 2023, amendments to the *Halifax Regional Municipality Charter,* SNS 2008, c 39 (*HRM Charter)*, authorized the CAO to "modify or discharge a private covenant in so far as it is more restrictive than the current zoning for the land it governs with respect to height or density." A decision made by the CAO under that authority can be appealed to the Board. This is one of the first appeals to the Board under the relevant sections of the *HRM Charter*, ss. 257A and 264-269.

[4] In this matter, the Appellants asked the Board to reverse the CAO's decision to modify private covenants because they believe allowing backyard suites in the area does not reflect the purpose and intent of the applicable Municipal Planning Strategy for

Planning Districts 14/17 (Shubenacadie Lakes) (MPS). They said the area does not have access to many services, and the change does not address the “unique nature and character of the area”, nor concerns about local water resources and affordable housing. They alleged that the decision “creates density in a quiet, residential neighborhood where the residents have agreed to these covenants which support and foster a low-density environment.”

[5] The Notice of Appeal also alleges that the CAO’s decision breached the duty of fairness and was unreasonable because the “Municipality did not provide adequate notice, failed to engage the affected residents who had provided written objections to the original application or the public, and offered no substantive justification for its actions, nor a copy of the reasons underlying the decision.”

[6] HRM argued that the Notice of Appeal does not raise any allowable grounds of appeal and should be dismissed in its entirety. Specifically, HRM argued that the Board does not have jurisdiction to consider the procedural issues raised by the Appellants. HRM further objected to the Appellants’ argument that the CAO’s decision must reasonably carry out the intent of the MPS and submitted that the Appellants’ interpretation is inconsistent with the language set out in s. 257A, and the overall scheme of ss. 264-269 of the *HRM Charter*.

[7] This decision also addresses the issue of whether the Appellants have standing to bring a claim that the CAO had a duty to consult with First Nations communities in making her decision to modify the restrictive covenants.

[8] The Board considered these preliminary arguments in the same timeframe as in the matters of *Ghosn, et al. (Re)* 2026 NSRAB 55 (*Ghosn*) and *Matheson, et al. and*

MacDonald (Re) 2026 NSRAB 54 (*Matheson*). As it did in those matters, the Board reviewed the new provisions of the *HRM Charter* and considered the applicable legal interpretation principles. The Board has jurisdiction to hear appeals from decisions made under s. 257A of the *HRM Charter*. However, as the Board decided in those concurrent decisions, the grounds of appeal that can be made to the Board under s. 257A(3) include grounds related to whether the private covenant is more restrictive than the current zoning for the land for height or density; and whether, and the extent to which, the changes relate to or affect height or density. The Appellants' arguments that the CAO should have considered the intent of the private covenants or the intent of the MPS are not grounds of appeal supported by the text, context and purpose of the applicable provisions of the *HRM Charter.*

[9] The Board finds that past decisions of the Nova Scotia Court of Appeal addressing the limits of the Board's jurisdiction under the planning provisions of the *HRM Charter* apply, with necessary changes, to this appeal. The Board agrees with HRM that the Board does not have jurisdiction to consider any of the procedural grounds raised in the Notice of Appeal. Therefore, the Board strikes those grounds of appeal.

[10] Likewise, the Board finds the Appellants, whether individually, collectively, or on a public interest basis, do not have standing to advance a claim that the CAO had a duty to consult First Nations communities in this case. Therefore, the Board dismisses this ground of appeal without a direct finding on whether the Board's limited appellate authority under s. 257A(2) could include grounds related to rights under s. 35 of the *Constitution Act, 1982,* being Schedule B to the Canada Act, 1982, c. 11 (UK), and the duty to consult.

[11] Having struck the procedural grounds as well as the Appellants' claim about the CAO's failure to consider the intent of the MPS and the duty to consult, there are no remaining issues within the Board's jurisdiction to address. Therefore, the Board dismisses the appeal.

2.0 BACKGROUND

[12] Section 257A came into force on November 9, 2023, as part of a suite of changes to the *HRM Charter* and the *Housing in the Halifax Regional Municipality Act*, SNS 2023, c 18. The new provision authorizes the CAO to discharge or modify a private covenant that is more restrictive about height or density than the applicable municipal land use by-laws. The legislation allows for appeals of the CAO's decisions to the Board under s. 257A(3) and relies on other appeal provisions in ss. 264-269 in Part VIII of the *HRM Charter,* which address planning issues.

[13] On March 3, 2024, the Applicants asked HRM to modify several provisions in the private covenants attached to their property at 221 Aberdeen Drive, Fall River. The private covenants restrict the use of their property to one single-family dwelling with limitations placed on the ground floor area. The Applicants revised their request on April 27, 2025, to suggest modified language for the relevant private covenants.

[14] On July 4, 2025, the Applicants were notified by letter from the CAO that their application was approved. The letter noted that the sections of the private covenants identified by the Applicants are more restrictive than the current zoning for the land it governs with respect to height and/or density.

[15] On July 29, 2025, the Board received the Appellants' Notice of Appeal. On September 25, 2025, counsel for HRM filed a Notice of Motion with the Board seeking a dismissal of the appeal on the basis that the Appellants' Notice of Appeal disclosed no allowable grounds of appeal.

[16] As in the matters addressed in the Board's concurrent decisions in *Ghosn* and *Matheson*, HRM argued that many of the grounds raised in the Notice of Appeal are procedural complaints relating to consultation, public notice and the adequacy of the CAO's reasons. HRM submitted that the Board lacks jurisdiction to hear the Appellants' procedural complaints.

[17] HRM further objected to the Appellants' argument that the CAO's decision must reasonably carry out the intent of the MPS. HRM submitted this is not an appropriate ground of appeal as it is inconsistent with the language set out in s. 257A and the overall scheme of ss. 264 to 269 of the *HRM Charter*.

[18] There was no challenge to the Appellants' standing as aggrieved persons to bring the appeal. However, HRM objected to the Appellants' standing (individually and as a group) to raise any claims that HRM had a constitutional duty to consult First Nations communities prior to taking any action that could negatively affect established or claimed Aboriginal and treaty rights.

[19] On October 23, 2025, the Board held a preliminary hearing with respect to HRM's motion to dismiss. Telaina Kelly and Shirley Ayer attended the hearing on behalf of the Appellants. Ms. Kelly acted as the spokesperson for the Appellants. William Hatfield and Meg McDougall appeared as counsel for HRM.

[20] Following the hearing, the Appellants filed various documents received through a freedom of information request that they said are relevant to this motion. HRM did not object to the documents being filed as an exhibit but took the position that they are not relevant to this motion. The Board has reviewed these documents and considered them in making its decision.

3.0 ANALYSIS AND FINDINGS

3.1 Motion to Strike the Grounds of Appeal

3.1.1 Submissions of the Parties

[21] HRM's arguments on its motion to strike the grounds of appeal aligned across all three matters (*Ghosn, Matheson* and this matter). Its principal argument is that the Board's powers to hear an appeal of a decision made under s. 257A(1) are limited to those expressly conferred or that exist by necessary implication, and that none of the procedural grounds of appeal raised by the Appellants are expressly or impliedly allowed by the *HRM Charter.* In particular, HRM refers to the Board's consistent application of the principles set out by the Nova Scotia Court of Appeal in *Municipal Board Halifax (County) v Maskine,* 1992 CanLII 2469 (NSCA), and its findings that the Board's statutory authority in planning appeals is narrow and does not extend to considering whether a decision under appeal was procedurally flawed or otherwise unlawful. HRM also indicates there are no policy expectations set out in the *HRM Charter* or the MPS to establish a particular public engagement process or procedural requirements for municipal planning decisions that the CAO should have implemented.

[22] HRM also argues that the Board's remedial power to reverse the CAO's decision is strictly limited to the grounds of appeal allowed in the *HRM Charter*. That is, the Board's role in appeals under s. 257A, applying the same approach as for other types of planning appeals articulated in s. 265, is to apply the test set out in the section empowering the original decision-maker to decide the planning application. Using that approach, HRM submits that the Board can only reverse the CAO's decision based on whether the CAO's decision modifies or discharges a private covenant insofar as it is more restrictive than the current zoning for the property with respect to height or density.

[23] The Appellants' comprehensive reasons for appeal are outlined in narrative form in Schedule "C" to their Notice of Appeal. For ease of reference in this decision, the Board refers to "procedural grounds" as including the Appellants' claims of insufficient public notice, engagement and participation opportunities, failure to provide reasons, and conflict of interest. The Appellants included the failure of the CAO to consult with Indigenous groups among those issues; however, the Board addresses this separately. The Appellants also argued that the CAO did not appropriately consider the intent of the MPS policies and the intended restrictions that should have guided her decision-making process.

3.1.2 Grounds of Appeal under s. 257A of the HRM Charter

[24] The Board considers that in applying s. 265 of the *HRM Charter*, with necessary changes, and applying the applicable statutory principles, an appeal of the CAO's decision under s. 257A to modify a private covenant may only be brought to the Board on grounds including whether the private covenant is more restrictive than the current zoning for the land for height or density; and whether, and the extent to which, the changes relate to or affect height or density. Likewise, applying s. 267(2) of the *HRM*

Charter, with necessary changes, the Board may only allow this appeal on the same basis. A full analysis of this issue is set out in *Ghosn*. After considering the parties' arguments and circumstances in this case, the Board finds no distinction that permits a different conclusion on the allowable grounds of appeal. Therefore, the Board repeats that analysis and reasoning from *Ghosn* and applies it in this case. For those reasons, the Board finds that the text, context and purpose of the legislative scheme governing this appeal demonstrate that the Board's appellate jurisdiction is narrow. The Board follows *Hazelview Investments Inc. (Re),* 2025 NSRAB 32 (affirmed in *Halifax (Regional Municipality) v Hazelview Investments Inc*., 2026 NSCA 27 on March 26, 2026, prior to this decision's release), and the cases cited therein, finding that the role of both the CAO under s. 257A(1), and the Board on appeal under s. 257A(3), is, as the Court of Appeal instructed in para. 23 of *Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation*, 2010 NSCA 38, to "do what the statute tells it to do."

[25] In this case, as in *Ghosn*, the proper questions for the Board include whether the private covenants governing 221 Aberdeen Drive, Fall River are more restrictive than the LUB regarding height or density, and whether, and to what extent, the changes made by the CAO allow for the construction of backyard suites relate to height or density.

[26] The Board finds there is nothing in the words of s. 257A that provides, either expressly or impliedly, that the review in an appeal under that section requires a policy choice or a balancing of policies under the MPS by the CAO, or by the Board on an appeal. The Board finds that the role of the CAO and the Board is not to review the intended effect of the private covenant or consider the character of development it was

meant to prioritize and protect. The analysis must focus on the height and density requirements for the applicable zone under the LUB.

3.1.3 Board's Jurisdiction to Consider Procedural Grounds of Appeal

[27] Given the limited scope for appeals to the Board under s. 257A discussed above, the procedural grounds or fairness arguments raised in the Notice of Appeal likewise do not raise any grounds of appeal within the jurisdiction of the Board to determine (a more detailed discussion on this point, which applies equally to the Board's findings in this case, is included in *Matheson*). The Board is guided by the Court of Appeal's decision in *Maskine,* finding that its jurisdiction in planning appeals is narrow, and does not include the authority to consider whether a decision under appeal was procedurally flawed or otherwise unlawful. The Board finds no cause to deviate from its past precedents in interpreting the Board's new appellate authority in respect of the modifications to private covenants on Aberdeen Drive.

3.2 Appellants' Standing to Raise the Duty to Consult

[28] HRM argued that the Appellants do not have standing to bring a claim that HRM had a duty to consult with Mi'kmaq peoples prior to making a decision on the private covenant application. Duty to consult claims arise from s. 35 of *Constitution Act,* 1982 and the Crown's duty to consult with Indigenous Peoples on decisions that impact their asserted Aboriginal and treaty rights. HRM clarified that its motion was limited to the issue of whether the Appellants had standing to raise such a claim. As such, the Municipality took no position as to whether it is bound by the duty to consult, or whether the duty to consult was within the Board's jurisdiction to consider in a planning appeal.

[29] As in *Matheson,* HRM argued that the Supreme Court of Canada provided a clear statement of law in *Behn v Mouton Contracting Ltd.*, 2013 SCC 26, namely, that

standing to bring a duty to consult claim is limited to potentially three groups: First Nations communities who hold or assert an Aboriginal or treaty right; parties authorized by rights holders to bring a duty to consult claim on their behalf; and, potentially, a third category of individual claimants who hold an Aboriginal right with an individual dimension (although this category has yet to be clearly defined).

[30] The Appellants admit that none of the three categories articulated in *Behn* apply to them collectively or to any individual appellants. They acknowledge that they are not members or representatives of a group with a collective right to consultation, and are not asserting that, as individuals, they had a right to be consulted based on s. 35 of the *Canadian Charter*. Alternatively, they argued the Board could allow them to present that aspect of the claim on the basis of public interest standing because the CAO's decision did not respect the rule of law in "ignoring a constitutional constraint", as explained in p. 16 of the Appellants' submissions:

> The Appellants here are not purporting to enforce s. 35 rights on behalf of the Mi'kmaq. They do not claim to speak for or be authorized by any Indigenous group. Their submission is fundamentally a rule of law argument. The CAO's decision is legally unreasonable if it ignores a constitutional constraint that binds the exercise of statutory power.

[31] The Appellants frame their question before the Board as whether the CAO failed to consider or reasonably discharge a mandatory constitutional requirement when deciding to modify and discharge the private covenants, not whether consultation is ultimately owed on the facts. As Ms. Kelly argued:

> And we've mentioned the *Vavilov* case, which directs reviewing bodies to ensure that administrative decisions respect constitutional constraints, and that analysis does require that the Appellants…. does not require that the Appellants be those rights holders themselves. So, where a statutory decision is made in breach of that duty, it is unlawful. Parties affected by the decision, such as the Appellants, may invoke the lawfulness as a ground of appeal. *Behn* does not preclude it, it only prevents individuals from asserting collective Aboriginal rights without authorization.
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> [Transcript, p. 78]

[32] As in *Matheson,* the Appellants also argued that they could be afforded public interest standing to raise arguments about whether the duty to consult was engaged. Factors raised in support of their public interest standing are their interest in the outcome of the matter, the seriousness of the issue, and the fact that the matter is already before the Board and therefore the process provides a venue for the arguments. They argue that the duty to consult issue aligns with the other procedural and substantive issues before the Board in determining whether the CAO's decision was unreasonable, procedurally unfair, or otherwise unlawful.

[33] The factors to be considered in reviewing a claim for public interest standing to raise a constitutional issue are those set out in *Canada (Attorney General) v Downtown Eastside Sex Workers United against Violence Society,* 2012 SCC 45. First, the case must "raise a serious justiciable issue"; second, the proponent must have a "real stake or genuine interest" in the outcome and be capable of raising the issues; and third, having regard to a number of factors, the process is a "reasonable and effective means to bring the issue forward".

[34] The Appellants acknowledge in this case that they have no knowledge of any recognized or asserted Aboriginal or treaty rights that could be impacted by the CAO's decision in respect of the subject property. They claim the CAO did not consult appropriately with interested parties prior to making the decision and ignored a "constitutional constraint" on the exercise of statutory authority.

[35] The Appellants and the Applicants are neighbours. The Appellants are beneficiaries of private covenants that, in the absence of the CAO's decision, appear to restrict development such as backyard suites. HRM acknowledges that they have a

"genuine interest" in the outcome of the CAO's decision and this appeal to the Board on whether the changes to the private covenants are allowed. However, HRM argues, as it did in *Matheson*, that the Appellants have no "real stake or genuine interest" in whether the CAO's decision under s. 257A of the *HRM Charter* triggered a duty to consult under s. 35 of the *Canadian Charter*, and whether such a duty was satisfactorily met.

[36] The Board finds the Appellants did not demonstrate any history, involvement, special knowledge or interest with respect to protection or litigation of s. 35 rights. The Appellants did not engage with First Nations communities or seek a mandate to raise, in this hearing, the issue of a municipality's duty to consult on the matters raised in such appeals. The Appellants' interest in that aspect of the process would be akin to the general societal concern that Aboriginal and Treaty rights must be respected and preserved under the *Constitution,* and in the spirit of truth and reconciliation. The Board addressed this in *Matheson,* at paragraph 37:

> [37] The Supreme Court of Canada has expressed that the potential problem with allowing people with such general interests (somewhat pejoratively referred to in older cases as "busybodies") to litigate an issue that does not directly impact them is not only about scarce judicial resources, but the potential to affect the interests of those with a direct and personal claim. As articulated by Justice Cromwell in *Downtown Eastside*:
>
> > [27] The concern about screening "mere busybodies" relates not only to the issue of a multiplicity of actions, but, in addition, to the consideration that plaintiffs with a personal stake in the outcome of a case should get priority in the allocation of judicial resources. The court must also consider the possible effect of granting public interest standing on others. For example, granting standing may undermine the decision not to sue by those with a personal stake in the case. In addition, granting standing for a challenge that ultimately fails may prejudice other challenges by partes with "specific and factually established complaints."

[37] The Appellants' concern about promoting consultation seems sincere, and their interest in the CAO's ultimate decision is genuine. However, they have no real stake in the question of whether the CAO owes a general duty to consult with First Nations communities about decisions to modify restrictive covenants.

[38] The Board also finds no support for the Appellants' argument that there is a serious justiciable issue in this regard. Without making a finding on whether a duty to consult applies to a decision under the *HRM Charter* or whether the Board would have jurisdiction to consider such a question on a planning appeal, the Board notes the case law on the duty to consult makes clear that this obligation on the Crown is not automatically engaged with every exercise of statutory authority. There is no claim or evidence before the Board in this matter that there is an asserted Aboriginal or treaty right related to the Applicants' property or the surrounding area. The Appellants' argument is premised upon an expansion of procedural fairness principles to include a general obligation of the CAO to pursue consultation with First Nations.

[39] For the reasons explained earlier, the Board's finds its appellate role is constrained by the enabling legislation. Based on its interpretation of the *HRM Charter*, it is outside of the Board's limited scope of authority under this legislation to review whether the CAO's decision was fair, reasonable, or constitutionally sound (see also the Board's discussion in *Ghosn* about its ability to consider arguments advanced under s. 7 of the *Canadian Charter*). Therefore, the Board gives no weight to the Appellants' argument that their appeal to the Board is a "reasonable and effective means to bring the challenge to court."

[40] Based on the *Downtown Eastside* factors, the Board finds that the balance weighs considerably against affording the Appellants standing to raise grounds of appeal related to a duty to consult. That ground of appeal is therefore dismissed.

4.0 CONCLUSION

[41] The grounds of appeal relied upon by the Appellants in this proceeding, as set out in the Notice of Appeal, allege that the CAO's decision should be quashed because it was procedurally unfair and the CAO improperly exercised her discretion and failed to comply with duty to consult obligations.

[42] The Court of Appeal has repeatedly noted that planning appeals to the Board are not intended to provide a full right of appeal. They are restricted in scope, and the Board has only the limited jurisdiction expressly, or by necessary implication, prescribed to it in the legislation. The Board finds no explicit nor implied authority in the *HRM Charter* that would allow it to deviate from the general direction that its authority in planning appeals does not include a review of a decision for questions of fairness, reasonableness or illegality.

[43] The Board finds that the Appellants, neither individually nor collectively, have standing to advance arguments on whether the CAO had a duty to consult. On the question of whether the Appellants may establish public interest standing to advance arguments on this issue, the Board finds that balancing the *Downtown Eastside* factors weighs decidedly against allowing the Appellants' standing to raise grounds of appeal related to consultation with Indigenous Peoples. Therefore, the Board strikes grounds of appeal related to the duty to consult, but without making any decision on whether it has jurisdiction to consider such grounds if brought by someone who has standing.

[44] Having struck the group of procedural grounds in the Notice of Appeal as well as the Appellants' claim about the CAO's failure to consider the intent of the MPS and the duty to consult, there are no remaining issues within the Board's jurisdiction to address. Therefore, the appeal is dismissed in its entirety.

[45] The issue before the Board on these motions is its jurisdiction to consider the grounds of appeal that have been raised by the Appellants. The Board's lack of jurisdiction to hear the grounds set out in the Notice of Appeal does not mean that the Appellants are necessarily without recourse. That recourse may be available to them in another forum.

[46] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of April 2026.

Julia E. Clark

Marc L. Dunning

Darlene Willcott