DECISION **2025 NSRAB 77**
M10921

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE EXPROPRIATION ACT

- and -

IN THE MATTER OF AN APPLICATION by JOHN and **TERESA OOSTVOGELS** to determine compensation to be paid to them by the **ATTORNEY GENERAL OF NOVA SCOTIA representing His Majesty the King in Right of the Province of Nova Scotia**, in respect of property identified by the Claimants as parcels of land in West River, Nova Scotia

BEFORE:	Richard J. Melanson, LL.B., Panel Chair Julia E. Clark, LL.B., Vice-Chair M. Kathleen McManus, K.C., Ph.D., Member
CLAIMANTS:	**JOHN AND TERESA OOSTVOGELS** Michelle M. Kelly, K.C.
RESPONDENT:	**THE ATTORNEY GENERAL OF NOVA SCOTIA** Mark V. Rieksts, Counsel
HEARING DATE:	June 12, 2025
DECISION DATE:	**September 5, 2025**
DECISION:	**The motion to strike the Attorney General of Nova Scotia's defence under the applicable version of the *Limitation of Actions Act* is allowed. It is premature to rule on whether a defence is available to the Attorney General for the Province of Nova Scotia under s. 31(1) of the *Expropriation Act*.**

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I INTRODUCTION

[1] The Province of Nova Scotia expropriated certain lands in West River, Antigonish County by registering expropriation documents at the Antigonish County Land Registration Office on November 6, 2009. John and Teresa Oostvogels (Claimants) brought a claim under the *Expropriation Act*, R.S.N.S 1989, c. 156 before the Nova Scotia Regulatory and Appeals Board (Board) seeking compensation from the Attorney General for the Province of Nova Scotia. The Claimants had transferred title to the expropriated lands to the Farm Loan Board prior to the expropriation. Based on the information currently before the Board, this transfer had been done as security for repayment of a loan, with an agreement to transfer the property back to the Claimants upon the loan being repaid. The Board is satisfied that the Claimants have, at least for the purposes of this preliminary hearing, provided sufficient evidence to establish they had beneficial ownership of the lands when the expropriation occurred.

[2] The subject lands were expropriated as part of a large Highway No. 104 twinning project. The expropriated lands were part of pasture lands the Claimants used in a large dairy operation. In a letter dated January 5, 2010, the Province, through its solicitor, Phil Reid, provided the Claimants with a copy of the expropriating documents, along with an appraisal report prepared by Altus Group Limited dated December 21, 2009 (Altus Report). The Altus Report provided an analysis and opinion about the compensation payable to the Claimants because of the expropriation. This report said the Claimants were entitled to $91,000 for the value of the land taken and $45,000 for injurious affection. By letter dated July 26, 2010, the Province enclosed a cheque to the Claimants for 75% of the appraised value set out in the Altus Report. On April 12, 2011,

the Province sent another letter asking the Claimants to sign a release. The Claimants did not. Finally, by letter dated July 7, 2011, the Province enclosed a further cheque for the remaining 25% of the Altus Report appraised value, plus outstanding interest. The letter asked the Claimants to accept this amount as full and final settlement for the expropriated lands. The Claimants did not accept and returned the second cheque.

[3] In the spring of 2011, John Oostvogels met with his local Member of the Legislative Assembly (MLA), Maurice Smith, Q.C., to discuss his concerns about the Highway 104 construction project. On May 2, 2012, Mr. Smith wrote a letter to the (then) Department of Transportation and Infrastructure Renewal about those concerns, including the height of an overpass and the possible impact on their farm equipment, safety concerns about the location of a stop sign, the width of the new road shoulder, and runoff and potential ice build up allegedly caused by the realignment of the road and a new driveway on a neighbouring property. These latter concerns were related to potential issues with farm equipment and large trucks used for deliveries and carrying milk. The Department responded to Mr. Smith on May 24, 2012. The Claimants also retained counsel in the 2011-2012 timeframe. The Claimants' now former counsel wrote to the Province on September 27, 2012, outlining an intent to make a claim for injurious affection related to drain tile, and potentially fencing. The matter appears to have been dormant until December 20, 2022, when the Claimants' former counsel filed a Notice of Hearing and Statement of Claim. The Claimants requested compensation for both the value of the expropriated lands and injurious affection. The parties' affidavit evidence provided no insight about why over 10 years elapsed from the September 27, 2012, letter to the start of this proceeding.

[4] In December 2023, the Claimants' former counsel indicated an intent to leave the practice of law. In early 2024, the Claimants made retainer arrangements with Michelle M. Kelly, K.C., to advance their claim. Ms. Kelly began discussions with Mark V. Rieksts, counsel for the Attorney General, about various issues, including limitation defences pled by the Attorney General. These limitation defences were twofold: first, that the entire claim was statute-barred because of the applicable limitation statutes; and second, that the injurious affection claim could not be advanced because the Claimants had failed to provide sufficient written particulars about that claim within one year of the damage being sustained, or becoming known to the Claimants, as required by s. 31(1) of the *Expropriation Act*. When no resolution could be reached, and with the concurrence of the Attorney General, the Claimants brought this preliminary motion seeking to strike the limitation defences raised by the Attorney General. This process was proposed to try and avoid the expense of obtaining expert valuation reports if the claims could not proceed in any event.

[5] Counsel for the Attorney General submitted that there was not a sufficient record before the Board to determine the issue about the application of s. 31(1) of the *Expropriation Act*. The Board agrees and will make no determination about this issue. It is best left to a time when there is an evidentiary record about the exact nature of the injurious affection claim, when the particulars of this claim became known to the Claimants, and whether there is any continuing damage for injurious affection arising from the expropriation.

[6] On the remaining issue, the Board has determined that the limitation periods set out in the former *Limitation of Actions Act*, R.S.N.S.1989, c. 258 (*Limitation of*

Actions 1989) and the *Limitation of Actions Act,* S.N.S. 2014 c. 35 (*Limitation of Actions 2014*), apply to court proceedings. The Board has also determined that it is not a court for the purposes of the *Expropriation Act.* Therefore, the Claimants' motion to strike the limitation defence based on the foregoing limitation statutes is allowed.

II ISSUES

[7] The Claimants' Notice of Motion raises two issues:

1) Should the Attorney General's defence based on s. 31(1) of the *Expropriation Act* be dismissed or struck?

2) Should the Attorney General's defence based on the *Limitation of Actions 1989* and the *Limitation of Actions 2014* be dismissed or struck?

III BACKGROUND AND FACTS

[8] The Claimants filed the Notice of Hearing and Statement of Claim with the Nova Scotia Utility and Review Board under the *Expropriation Act.* On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, S.N.S. 2024, c. 2, Sch. A, the Nova Scotia Utility and Review Board was succeeded by the Nova Scotia Regulatory and Appeals Board for all expropriation matters within its jurisdiction.

[9] There is no dispute about most of the facts in this matter as described in the Introduction. For the most part, the relevant information provided in affidavits filed by Mr. Oostvogels and Ms. Kelly on behalf of the Claimants, and Mr. Reid on behalf of the Attorney General, is uncontroverted and readily verifiable. An issue that arose at the outset of the oral hearing was about the Claimants' ownership of the expropriated lands at the time of the expropriation, because of title vesting in the Farm Loan Board. The Attorney General submitted that there was insufficient evidence about ownership at the

time of the expropriation for the Board to be satisfied the Claimants were properly before it.

[10] The Claimants provided a letter from the Farm Loan Board dated June 9, 2025, confirming that historically, loans were provided to farmers on the security of the transfer of their farmlands with an agreement to reconvey the lands once the terms of the loan agreement were completed. While the letter erroneously described the Claimants as the “Oostdales,” it is clear the intent was to address the Oostvogels’ claim. The letter concluded that the Farm Loan Board recognized the Claimants’ ownership of the expropriated lands, comparing its own relationship to the Oostvogels’ lands with the more conventional mortgagor/mortgagee relationship. The Farm Loan Board did not consider itself an owner for expropriation purposes. The Province was apparently satisfied with the Claimants’ status under the *Expropriation Act* at the time of the expropriation, serving them with the expropriation documents and providing them with a cheque for $102,000. This cheque was cashed, and a further cheque, to finalize the matter, was not. The Board ruled, based on the evidence before it, that the Claimants’ status to proceed was sufficiently established so that the preliminary hearing need not be adjourned. If later evidence puts ownership further into question, that can be addressed at that time.

IV ANALYSIS AND FINDINGS

[11] The parties filed legal submissions in advance of the hearing. Counsel presented oral arguments before the Board on June 12, 2025. Parties often raise issues surrounding s. 31(1) of the *Expropriation Act*. However, it appears the availability of limitation defences under either the *Limitation of Actions 1989* or the *Limitation of Actions*

2014, for claims brought pursuant to the *Expropriation Act*, has never been directly considered by the Board or the courts in Nova Scotia. The Board is not aware of any decision where a Nova Scotia expropriation claim was dismissed because of an expired limitation period under these statutes. In these circumstances, the Board appreciates the thorough and able submissions advanced by counsel for both parties on this issue.

a) Injurious Affection and s. 31(1) of the *Expropriations Act*

[12] Section 31(1) of the *Expropriation Act* requires a person to make a claim for injurious affection "…in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred." Paragraph 13 of the Attorney General's Reply dated January 23, 2023, raised this as a defence to the injurious affection component of the expropriation claim. In past cases, the Board has not interpreted this provision to mean that a Notice of Hearing and Statement of Claim for injurious affection must be filed within the one-year period set out in s. 31(1) of the *Expropriation Act*. Rather, the Board has treated it as a prerequisite notice provision. In other words, a party must give notice in writing to the expropriating authority of an injurious affection claim within one year of sustaining damage or learning such damage has been sustained or a claim cannot be brought. In *Tri-C Management Limited v. Nova Scotia (Attorney General)*, 2021 NSCA 26 (leave to appeal to the Supreme Court of Canada denied, 2021 CanLII 102740), the Nova Scotia Court of Appeal disagreed with the Board's findings on a specific point about when the one-year period starts for ongoing nuisance injurious affection claims. However, the Court's decision appeared to endorse the proposition that, to avoid being statute-barred, what a claimant must provide is sufficient notice in writing to the Attorney General within the one-year period.

[13] The burden is on the Attorney General to show that the Claimants have not provided a written notice of an injurious affection claim, with particulars, within the required timeline. In this case, the Notice of Hearing claims compensation for injurious affection "…b) … to their remaining lands … resulting from the expropriation" and "c) … for business losses from the expropriated lands." No further particulars are provided in the Statement of Claim. The Claimants point to the correspondence from Mr. Smith and their former counsel as providing written particulars on their behalf. Leaving aside whether a letter from an MLA outlining certain concerns, without using the words injurious affection, is notice in writing of a claim, the items raised in Mr. Smith's letter relate to the height of the overpass above the road leading to the Claimants' lands, the location of a stop sign, the width of the new road shoulder, and potential runoff and ice build up from a new driveway on a neighbouring property. The issues raised in the September 27, 2012, counsel letter relate to a drain tile and fencing. It is unclear if any of the items addressed by Mr. Smith or the Claimants' former counsel form the basis for the injurious affection claims outlined in the Notice of Hearing and Statement of Claim.

[14] The Claimants also say that because the Altus Report had a head of damages for injurious affection, there was no need for the Claimants to provide additional written notice, since the Province would have written notice of this potential claim through the Altus Report. The Altus Report discusses injurious affection to the Claimants' remaining lands based on how close the new portion of the highway was to them. Altus concluded this would make the remaining lands visually unattractive and subject to more highway noise. The Altus Report valued compensation based on a notional buffer on the Claimants' remaining lands, and presumably a loss of use of the buffer lands. The items

raised by Mr. Smith and the Claimants' former counsel do not appear related to the Altus Report's basis for compensation, except possibly for fencing, and even that is unclear.

[15] The caselaw surrounding the notice required under s. 31(1) of the *Expropriation Act* has generally been accommodating to claimants. An overly rigid interpretation would conflict with the overarching purpose of expropriation legislation that persons subject to the coercive power of the state be fully compensated for the loss of, or injury to, their land. Past Board decisions have indicated that the start of the one-year period only begins when a claimant has enough knowledge to particularize the claim. This relates to particular knowledge and not belief. As well, the Board has previously held that the period only begins to run when the owner has actual knowledge, not when such knowledge should have been gained through due diligence. An expert's report may be needed to particularize the claim (see: *Rhynold (Re)*, 2020 NSUARB 16, paras. 64-70). On the issue of due diligence, during oral argument the Board panel questioned how far a lack of due diligence to determine the particulars can be extended. Ultimately, that issue need not be addressed here. For the following reasons, the Board finds that the Claimants' motion to dismiss this defence is premature.

[16] The difficulty with this matter is that the Board is still not certain on what particulars the claim for injurious affection is being advanced. Is it the closer distance from the highway discussed in the Altus Report? Is it any of the complaints discussed in the correspondence from Mr. Smith or the Claimants' former counsel? Is it some other aspect that an expert report might uncover? The Board does not have that information at this stage and, presumably, neither does the Attorney General. In fact, the Claimants were candid in suggesting that an expert valuation report would likely be needed to address

the full particulars of the injurious affection claim. While the Claimants say that it is for the Attorney General to show the defence in s. 31(1) of the *Expropriation Act* is available, the expected course of action is that the Claimants disclose, with sufficient particulars, what facts or factors form the basis of their claim. The Attorney General then has something to respond to in its reply or, potentially, in a motion such as this.

[17] There is no explicit process under the *Expropriation Rules* to make a demand for further particulars and the timeline for a reply is relatively short. Given the passage of time between the expropriation and the filing of the claim, as well as the lack of any communications from the Claimants during much of this time, the Attorney General appropriately pled s. 31(1) of the *Expropriation Act* as a defence. The Attorney General cannot reasonably be expected to address it further until the basis of the injurious affection claim is clarified. In the Board's view, it is premature to address this issue until the factual basis for the claim is known in more detail and the Claimants' knowledge can be explored further. If there is a continuing nuisance that gives rise to the injurious affection claim, this could also impact any defence under s. 31(1) of the *Expropriation Act*. This is another unknown at this stage. The Board has insufficient evidence on the matter. Therefore, the Board will not grant the Claimants' motion to strike out para. 14 of the Province's Reply pleading s. 31(1) of the *Expropriation Act.*

b) Application of the *Limitation of Actions* 1989 and 2014

[18] As discussed, s. 31(1) of the *Expropriation Act* establishes that a claimant must particularize an injurious affection claim in writing within one year of the damage occurring or a claimant having knowledge of the claim. Otherwise, there are no limitation periods establishing when a claim can be brought under the *Expropriation Act*. During the time the Claimants' lands were expropriated and the filing of the Notice of Hearing and

Statement of Claim, the *Limitation of Actions 1989* was replaced by the *Limitation of Actions 2014*. While submitting that the *Limitation of Actions 1989* likely applies to this matter, the Attorney General says both limitation statutes apply to expropriation claims, depending on when they arise. The Attorney General submits that the claims in this matter are statute-barred regardless of which of the two limitation statutes applies. The Claimants agree that the *Limitation of Actions 1989* is likely the relevant statute. The Claimants also say that it does not matter because neither limitation statute applies to claims under the *Expropriation Act*. The motion raises two fundamental questions: are the two limitation statutes only applicable to court proceedings and, if they are, is the Board a court under the limitation statutes when fulfilling its mandate under the *Expropriation Act*.

[19] The Board's determinations about the two fundamental questions require an exercise in statutory interpretation. The modern principle of statutory interpretation guides this exercise. This concept was most recently reiterated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 117:

> A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must 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."

[20] In *Vavilov*, at paras. 119-120, the Supreme Court of Canada went on to elaborate on this concept in the specific context of administrative tribunals:

> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in

> interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision.

[21] *Vavilov* reiterates that the purpose of statutory interpretation is not to "reverse-engineer" an outcome a tribunal finds desirable. A tribunal must search for the real intent of the wording. It must not choose an interpretation that, although plausible, is inferior to another, to achieve the result the tribunal prefers.

[22] *Holland v. Sparks*, 2019 NSCA 3, is also instructive about the modern principle of statutory interpretation:

> [27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[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 (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).
>
> [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
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> [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
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> 1. What is the meaning of the legislative text?
> 2. What did the Legislature intend?
> 3. What are the consequences of adopting a proposed interpretation?

c) Do the Limitation Statutes Only Apply to Court Proceedings?

[23] The Claimants submit that if the *Limitation of Actions 2014* applies, its application is explicitly limited to court proceedings. The Claimants say that, while there is less explicit language in the *Limitation of Actions 1989*, the wording read in context shows a clear intent that it only applies to court proceedings. The Claimants point out that

this Board's predecessor consistently held, across various mandates, that neither *Limitation of Actions* conferred any powers on the Board.

[24] The Attorney General relies primarily on the premise that there is no conflict between the *Expropriation Act* and the limitation statutes; that claims that can be advanced under the *Expropriation Act* also fit under the description of claims set out in both limitation statutes; and, at least in the case of the *Limitation of Actions 1989*, there is no language which limits its application to court proceedings.

[25] The Board has invariably held in the past that the *Limitation of Actions 1989* and the *Limitation of Actions 2014* apply to proceedings in civil courts, do not apply to the Board, and confer no powers upon the Board. The Claimants have correctly pointed this out, citing several examples. This issue usually arises when an appellant or party tries to extend a limitation period governing a particular proceeding. The parties did not uncover any cases where the Board, or any court in Nova Scotia, has considered whether the time periods in the two limitation statutes apply to proceedings under the *Expropriation Act*.

[26] When the *Limitation of Actions 2014* came into force, it broadly amended and changed the name of the former *Limitation of Actions 1989* to become the *Real Property Limitations Act,* R.S.N.S. 1989, c. 35. Section 3 of the *Limitation of Actions 2014* explicitly states that, except for claims to which the *Real Property Limitations Ac*t applies and judicial review proceedings, the statute "applies to a claim pursued in a court proceeding." The Board does not find anything in the text, context, or purpose of the *Limitation of Actions 2014* that overrides this explicit language and direction. It only applies to court proceedings.

[27] The *Limitation of Actions 1989* does not contain the same explicit language. Sections 2(1) and (2) of this Statute describe the various forms of action to which it applies. These include "(b) actions for penalties, damages or sums of money given to parties aggrieved by any statute…" and "(e) …all actions for direct injuries to real or personal property, actions for the taking away or conversion of property… and all other causes which would formerly have been brought in the form of action called trespass on the case…" Limitation periods are assigned to each form of action.

[28] Section 3(2) of the *Limitation of Actions 1989* then addresses how limitation defences can be disallowed and s. 3(3) sets out how a party who wishes to invoke an expired limitation period can terminate the right to bring an action. If no order has been made under s. 3(3), "…the court in which it is brought… can allow an action to proceed…" despite any time limitation defence, by meeting the appropriate test that balances the interests of the parties on an equitable basis. Under s. 3(3) of the *Limitation of Actions 1989*, where a limitation period has expired, a party "…may apply to the court for an order terminating the right of the person to whom … notice was given from commencing the action…"

[29] These two provisions of the *Limitation of Actions 1989* are meant to act together, providing an opportunity to both a plaintiff and a defendant to address limitation issues on a preliminary basis. Section 3(2) of the *Limitation of Actions 1989* specifies that actions to which the limitation period applies will have been brought in "a court." Theoretically, or conceivably, s. 3(3) could be interpreted as meaning that a court could terminate a right of action that could be brought before a body that is not a court. This would not be consistent with the scheme of the legislation, which offers mirror remedies

where court proceedings are initiated or contemplated, especially where s. 3(2) of the *Limitation of Actions 1989*, which specifically contemplates a court action, refers to s. 3(3). In the Board's view, an interpretation which finds the *Limitation of Actions 1989* applies beyond court proceedings would be a form of reverse-engineering to potentially achieve a desired result. The most plausible interpretation, when the provisions about actions, limitation periods, and the court's discretionary role in enforcing or extending them, are read together, is that the *Limitation of Actions 1989* applies to actions before a court. Accordingly, the Board finds that both the *Limitation of Actions 1989* and the *Limitation of Actions 2014* apply only to court proceedings. The Board must therefore consider if it is a "court" when performing its duties under the *Expropriation Act.*

d) Is the Board a "Court" within the Meaning of the *Limitation of Actions 1989 and Limitation of Actions 2014* when Performing its Duties under the *Expropriation Act*?

[30] The Claimants rely on various Board decisions that say that the *Limitation of Actions 1989* and the *Limitation of Actions 2014* apply to civil proceedings in a court, and not to a statutory tribunal such as the Board (see: *Halifax (Municipality)(Re)*, 2008 NSUARB 62, *Della I. Rhuland and Trevor W. Rhuland*, 2007 NSUARB 106, *Dartmouth Crossing Limited (Re)*, 2015 NSUARB 48, *Partridge (Re),* 2015 NSUARB 254 and *Director of Assessment (Re),* 2024 NSUARB 152). The Board has indicated that it has no jurisdiction to extend certain limitation periods in the way a court is authorized under the *Limitation of Actions* (old and new). The Claimants chose examples showing the Board has concluded it is not a court whether considering the *Limitation of Actions 1989* or the *Limitation of Actions 2014*. There are many more.

[31] The Attorney General says *Her Majesty the Queen (Minister of Transportation) v. Soucy*, 2021 NBCA 11, (leave to appeal to the Supreme Court of

Canada denied), provides a compelling analysis and rationale for reconsideration of the Board's prior decisions in this case. The Attorney General says the Board should follow *Soucy* and find that when exercising its mandate under the *Expropriation Act,* the limitation periods in the *Limitation of Actions 1989* or the *Limitation of Actions 2014* still apply.

[32] *Soucy* involved similar issues to the matter before the Board. The ultimate issue was whether the limitation periods in the *Limitation of Actions Act*, R.S.N.B. 1973, c. L-8 or the *Limitation of Actions Act*, S.N.B. 2009. c. L-8.5 (*New Brunswick LOAs*) applied to a claim made under the *Expropriation Act*, R.S.N.B. 1973, c. E-14 (*New Brunswick EA*). In overturning the decision of a motions judge, the New Brunswick Court of Appeal held that a provision in the *New Brunswick EA* like s. 31(1) of the *Expropriation Act,* established a procedural time limit setting out when and how written notice of an injurious affection claim had to be provided. The *New Brunswick LOAs* had conflicts resolution provisions like s. 4(3) of the *Expropriation Act*, indicating that in the case of a conflict, the expropriation legislation prevails. The New Brunswick Court of Appeal found that the general provisions in the *New Brunswick LOAs* did apply to expropriations. This was because the procedural prerequisite was not a true limitation period, and therefore, there was no true conflict between the statutes. The Board notes that the New Brunswick Court of Appeal's interpretation of a provision like s. 31(1) of the *Expropriation Act* is consistent with how the Board has interpreted this provision, establishing a procedural pre-requisite to a claim for compensation. Like in Nova Scotia, there were no other temporal limitations about expropriation claims in the *New Brunswick EA*.

[33] The New Brunswick Court of Appeal went on to reject the proposition that the lack of any true limitation periods for an originating process in the *New Brunswick EA* meant that the New Brunswick legislature intended that there be no limitation period for these claims. The court said that the legislature could have easily expressly excluded the *New Brunswick EA* from the operation of the *New Brunswick LOAs.* The New Brunswick Court of Appeal noted that expropriation legislation in British Columbia and Alberta had explicit limitations legislation. The court said that the *New Brunswick EA* is based on similar legal principles. Therefore, in principle there was no reason limitation periods should not apply to expropriation claims. There was certainly no reason to infer that silence on the topic indicated that intent.

[34] The New Brunswick Court of Appeal referred to an excerpt from J.A. Coates & Waqué, *New Law of Expropriation* (Toronto: Thompson Reuters Canada 2019) where the authors warn practitioners that despite the lack of an express limitation period in the Ontario expropriation legislation, they should bring claims within the general limitation periods to avoid risk until the issue is determined by the courts. In Ontario, like in Nova Scotia, expropriations are heard by a board (except in Nova Scotia there is a limited carve-out for injurious affection without a taking, which must be brought in the Supreme Court). The New Brunswick Court of Appeal said that because expropriations in that province are heard by a court, the suggestion in Coates & Waqué, that general limitations could still apply where the expropriation legislation is silent on the issue was a strong one.

[35] The New Brunswick Court of Appeal then discussed the distinction between the jurisdiction to hear claims before a court and before a board in expropriation legislation, at para. 49:

> In interpreting very similar language in the British *Limitation Act* 1980, and in dealing with an expropriation under British legislation that, like ours, lacked a limitation period of its own, the English Court of Appeal held a claim for compensation before a board was barred by the *Limitation Act* (*Hillingdon London Borough Council v. ARC Ltd*., [1999] Ch.139 (C.A.). From this, I would distill that a claim before a court would also be barred by the *Act*.

[36] The Attorney General says the interpretation exercise in *Soucy*, supported by *Hillingdon London Borough Council v. ARC Ltd*., [1999] Ch.139 (C.A.), provides a clear analytical path for this Board to find that the intent of the Legislature is that claims under the *Expropriation Act* are subject to the time restrictions in the general limitation statutes, using the modern principles of statutory interpretation recently re-affirmed in *Vavilov.* The Claimants agree with the Attorney General that there is no true conflict between the *Expropriation Act* and the Nova Scotia limitations statutes. The Claimants say *Soucy* is, therefore, completely inapplicable because that decision turned on whether there was a conflict between the *New Brunswick LOAs* and the *New Brunswick EA.* The case was not about the jurisdiction of the New Brunswick Court of Queens Bench to apply the *New Brunswick LOAs*. Its authority was a given since the expropriation claim was an action before the courts. The Claimants say that *Hillingdon* does not assist the Attorney General because it involved a different statutory scheme and, in any event, was not the basis for the New Brunswick Court of Appeal's decision.

[37] As discussed in *Vavilov*, context is a key component of statutory interpretation. The Board agrees with the Claimants' submission that *Soucy* is framed as a legislative conflicts case, and the entire decision is viewed from that context. *Soucy* did

not do a deep analysis of the *Hillingdon* case, or its applicability to the New Brunswick context. The New Brunswick Court of Appeal, in what the Board views as *obiter dicta*, simply said that if a limitation statute could apply to a tribunal in an expropriation context, it made it even more compelling that it could apply to a court. Given the Board's finding that the *Limitation of Actions 1989* and the *Limitation of Actions 2014* are only applicable to court proceedings, the real issue before the Board is whether it is a court for the purposes of the limitation statutes, when exercising its jurisdiction under the *Expropriation Act*. *Soucy* does not determine this issue.

[38] The word "court" is not defined in the *Limitation of Actions 1989* or the *Limitation of Actions 2014*. It is not defined in the *Interpretation Act*, R.S.N.S 1989, c. 235. The Attorney General submits that the name given to a body does not determine whether matters before it are court proceedings. Rather, according to the Attorney General, it is the functions the Board performs and the nature of the claims that are important. The Board agrees with the Attorney General that claims for compensation under the *Expropriation Act* could come under the types of actions or claims outlined in the *Limitation of Actions 1989*, including statutory claims, and trespass on the case, which encompasses nuisance claims. The *Limitation of Actions 2014* defines a claim as "…a claim to remedy the injury, loss or damage that occurred as a result of an act or omission." Claims under the *Expropriation Ac*t involve either an act or omission by the expropriating authority.

[39] The Board also agrees with the Attorney General that the Board performs primarily an adjudicative function when determining expropriations claims. These claims generally involve two parties (the expropriating authority and the landowner). While the

public purse is involved in this case, this is no different than any civil lawsuit involving the Crown. Expropriation does not raise the same broad public interest considerations, beyond the interests of the parties immediately before it, that permeate many of the Board's other mandates.

[40] The Attorney General submits that the word court "…encompasses any tribunal which exercises an adjudicative function in relation to those matters within its jurisdiction where it is called upon to sit as an arbiter of disputes…" The Board notes that such a broad scope would mean the Board is a court for most of its mandates, because it is regularly called upon to be an arbiter of disputes, even in regulatory matters, where the parties before it do not agree a particular remedy should be granted.

[41] The Attorney General says the ordinary grammatical meaning of the word "court" supports the proposition that it is the adjudicative function that is key to the definition. The Attorney General's submissions refer to *Black's Law Dictionary* (10th ed) which defines "court" as:

> …a tribunal constituted to administer justice esp., a government body consisting of one or more judges who sit to adjudicate disputes.

Black's Law Dictionary also has a definition of an "administrative judge" as being:

> an administrative official who presides at an administrative hearing and who has the power to administer oaths, take testimony, rule on questions of evidence, and make factual and legal determinations.

[42] The Attorney General also says *Hillingdon* is a strong precedent in the expropriation context. In that case, a Lands Tribunal was found to be a "court of law" under the British statutory scheme. The Court of Appeal highlighted key aspects of the Land Tribunal's judicial powers and functions in resolving disputes by valuing expropriation claims which seem similar to those of the Board. The Court further indicated it had procedural rules appropriate to a court of law.

[43] The Claimants say that it is not possible to apply the *Hillingdon* decision to the Nova Scotia context. The precise legislative context for the decision is not fully expressed and it is clearly a different legislative scheme. The Claimants also say they are not arguing the Nova Scotia limitation statutes only apply to superior courts, pointing to the example of the Small Claims Court. However, they say this legislative scheme does not show an intent for a broader application to tribunals like the Board.

[44] The Board agrees with the Claimants that *Hillingdon* is distinguishable because of the different statutory scheme. The Board notes that in deciding that the Lands Tribunal was a "court of law" within the meaning of the British *Limitation Act 1980*, a distinction was drawn between an "ordinary court of law" and a "court of law." What the two types of court entail is not disclosed in the materials before the Board. The distinction may relate to courts with a general and comprehensive jurisdiction, as contrasted with a court with a specialized jurisdiction, but that is not entirely clear from the case.

[45] It is true that the Board has many of the same powers as the named courts in Nova Scotia. These include the power to compel the attendance of witnesses under oath, the power to order document disclosure, the power to conduct hearings and the power to adjudicate disputes between the parties before it. Board members also have the same privileges and immunities in exercising their functions as does a commissioner under the *Public Inquiries Act*, R.S.N.S. 1989, c. 372. This statute incorporates some of the same privileges and immunities as a judge. Board orders can also be made orders of the Supreme Court of Nova Scotia, which was also a consideration in *Hillingdon.*

[46] While the foregoing general principles lend support for the Attorney General's position, other parts of the legislative scheme do not. The *Expropriation Act*

itself makes a distinction between the Board and the courts. It defines “Court” as the Supreme Court of Nova Scotia. This is in the context of determining title issues, providing access to expropriated lands, appointing guardians and the jurisdiction to hear injurious affection claims without a taking. It does tend to show that the Legislature does not consider that the Board is “another” court. Also, s. 11(4) of the *Expropriation Act* makes a distinction between the Board and courts in a more general sense. This provision creates a presumption that expropriating documents were duly executed “…unless otherwise directed by a court or the Board.” Therefore, the distinction in the *Expropriation Act* is not limited to distinguishing the Board from the Supreme Court of Nova Scotia.

[47] Unlike many of the other Board adjudicative and regulatory rules, which the Board has the power to make, the *Expropriation Procedures Regulations* are created by the Governor in Council. They govern the procedure before the Board in expropriation matters. They are not extensive. The Board attempts to supplement them with hearing orders and often makes rulings on such things as production and discovery to ensure a fair hearing. That said, it is difficult to describe the *Expropriation Procedures Regulations* themselves as rules appropriate to a court of law.

[48] The Board is not created by the *Expropriation Act*. The *Energy and Regulatory Appeals Board Act* created the Board. Section 27 of the *Act* allows the Board to receive into evidence “…any statement, document, information, electronic records or matter that, in the opinion of the Board, may assist it…” whether the piece of evidence is “…produced under oath or would be admissible in a court of law.” Interestingly, “court of law” is the same term used in *Hillingdon*. This provision clearly implies the Board is different from a “court of law.”

[49] The Attorney General submitted that if the Legislature intended to exclude the *Expropriation Act* from the operation of the *Limitation of Actions 1989* and the *Limitation of Actions 2014*, it could have expressly done so. The converse is also true. When limiting the operation of the limitation statutes to court proceedings, if the Legislature had wanted to include administrative boards and tribunals within the meaning of the word "court," it could have expressly done so. In fact, it has done so in another context. For example, under the *Constitutional Questions Act*, an administrative tribunal is expressly included in the definition of a "court." The Claimants brought up the Small Claims Court. This is not a superior court with inherent jurisdiction. It has limited monetary and subject-matter jurisdiction. Section 3(1) of the *Smalls Claim Court Act*, R.S.N.S 1989, c. 430, specifies it is a court of law and a court of record. Other bodies that are commonly referred to as courts in Nova Scotia, such as the Nova Scotia Court of Appeal, the Supreme Court of Nova Scotia, the Probate Court, the Bankruptcy and Insolvency Court and the Provincial Court all have superior court judges involved in their administration of justice. There is no clear direction in the legislative scheme under the *Expropriation Act* and the Nova Scotia limitation statutes that the Board is or acts as a court. Furthermore, a holistic review of the language of the relevant legislation points to an intent to differentiate the Board from the courts of Nova Scotia.

[50] In *Soucy,* the New Brunswick Court of Appeal said including the *New Brunswick LOAs'* limitation periods in expropriation matters was not contrary to the approach in *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.,* [1997] 1 SCR 32 about providing full compensation to expropriated landowners because that case made it clear this principle related to compensable claims. The Court reasoned once the

limitation period expired, the claim was no longer compensable. The converse is also true. An interpretation that excludes the *Expropriation Act* from the operation of the Nova Scotia limitation statutes is also consistent with the approach in *Dell Holdings* that landowners who have been expropriated should be fully compensated. To some extent, how this is viewed is dependant on which statute is the focus. Where the entire process is before the courts, there is no jurisdictional issue to resolve about the capacity of the body to apply the limitation statute. Therefore, it is entirely reasonable that the focus should be on the limitation statute when looking at the legislative purpose.

[51] The purpose of limitation statutes is to provide finality so that a party is not faced with claims for an indefinite period. Under the *Expropriation Act* and the *Expropriation Procedures Regulations*, once statutory prerequisites have been completed, either party is at liberty to file a Notice of Hearing and ask the Board to determine the compensation payable. Therefore, either party can move the matter forward and have it resolved. If the opposite party refuses to participate, the Board can rule in that party's absence. As discussed at the hearing, this procedure has been used in Nova Scotia for several expropriations involving the Maritime Link project that linked the Nova Scotia and Newfoundland and Labrador bulk power grids. The expropriating authority, NSP Maritime Link Limited, initiated the proceeding to have compensation determined to achieve finality. Those matters all ended up being resolved without a Board hearing. Another example raised by the Panel Chair in questions to counsel was *Municipality of the District of Digby (Re*), 2018 NSUARB 116, where the landowners refused to participate in the expropriating proceeding. In that case, the Municipality of the District of Digby was the expropriating authority initiating the proceeding, and the Board

held a hearing in the absence of the landowners, thus bringing finality for the expropriating authority.

[52] In *Soucy*, the New Brunswick Court of Appeal was somewhat dismissive of a similar argument, holding, at para. 57, that the purposes of the *New Brunswick LOAs* were not satisfied because there was a way for an expropriating authority to initiate a proceeding, saying they are "statutes of repose" that "allow a defendant to 'be secure in his reasonable expectation that he will not be held to account for ancient obligations…'" Again, the focus was on the *New Brunswick LOAs.* The formalistic analysis on this issue does not focus on how the limitation statutes could work together with the expropriating legislation where an ambiguity had to be resolved about what was meant by a court in the expropriation context. In *Soucy*, there was no such ambiguity to resolve. In the Nova Scotia context, determining that a Board proceeding is not a court proceeding does not mean that the expropriating authority loses the ability "…to be secure that it will not be held liable for ancient obligations." It can take the initiative if it is genuinely concerned about this possibility or wait and see without such a resolution. Expropriating authorities can and have used the avenues available under the *Expropriation Act* to achieve finality. Therefore, the Board's interpretation of what a court proceeding is when considering the interplay between the *Expropriation Act* and the Nova Scotia limitation statutes does not lead to unreasonable consequences for the expropriating authority.

[53] A final point the Board wishes to address is the submission by the Attorney General that it does not make sense to interpret the language of the *Expropriation Act* and the Nova Scotia limitation statutes so that a different limitation period would apply to an injurious affection claim with or without a taking. Since an injurious affection claim

without a taking is heard in a proceeding before the Supreme Court of Nova Scotia, the Board's interpretation about what is meant by a court proceeding results in that distinction. In the Board's view, that result does make sense. The clear intent of the Legislature when amendments were enacted to remove injurious affection without a taking from the Board's jurisdiction was to create a different stream for this type of claim. Injurious affection without a taking had a different conceptual and historical background than the rest of the *Expropriation Act* heads of damages. It is akin to a pure nuisance claim against the expropriating authority, without the common law defence of statutory authority. It was a later addition to the *Expropriation Act* which has now been truncated from the remainder of the legislation. In reverting to the Supreme Court of Nova Scotia's expertise in nuisance law, it logically follows that all the evidence law, detailed Civil Procedure Rules, and any legislation within the court's jurisdiction, such as the *Limitation of Actions 1989* and the *Limitation of Actions 2014*, would apply.

V CONCLUSION

[54] The Board has concluded it is premature to decide whether the Attorney General has a defence to the Claimants' injurious affection claim based on s. 31(1) of the *Expropriation Act*. The Claimants' request to dismiss or strike this defence is denied.

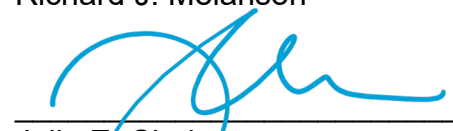
[55] After looking at the wording of the Nova Scotia limitation statutes, their purposes and the context of the legislation, and how the wording of the two legislative schemes can work together to resolve ambiguity, along with the consequences of the potential interpretations, the Board has decided that the Legislature intended the *Limitation of Actions 1989* and the *Limitation of Actions 2014* to apply to court proceedings

and that the Board is not a court when performing its duties under the *Expropriation Act*. Therefore, the Board grants the Claimants' motion on this issue and strikes the limitation defence based on the two limitation statutes set out in para. 15 of the Attorney General's Reply dated January 23, 2023.

[56] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 5th day of September, 2025.

Richard J. Melanson



Julia E. Clark

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