

DECISION

2024 NSUARB 212  
M11265; M11460

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE FIRE SAFETY ACT**

- and -

**IN THE MATTER OF APPEALS** by **NOVATEC BRAIDS LIMITED, ET AL** from an Order to Take Action dated July 18, 2023, and **THE YARMOUTH AREA INDUSTRIAL COMMISSION** from an Order to Take Action dated December 6, 2023, issued by the Fire Inspector, in respect of a property located in the Town of Yarmouth, Nova Scotia

**BEFORE:** Julia E. Clark, LL.B., Member

**APPELLANTS:** **NOVATEC BRAIDS LIMITED**  
**GERMAIN MECHANICAL & ELECTRICAL LTD.**  
**TECH PAK CANADA INC.**  
**TRI-STAR CHARTERS INC.**  
**WARP TEXTILES ULC**  
Andrew Nickerson, K.C.

**YARMOUTH AREA INDUSTRIAL COMMISSION**  
Brian Casey, K.C.

**RESPONDENT:** **TOWN OF YARMOUTH**  
Kevin Latimer, K.C.

**HEARING DATE:** June 25-26, 2024

**DECISION DATE:** **December 18, 2024**

**DECISION:** The Orders to Take Action against Novatec Braids Limited, Germain Mechanical & Electrical Ltd., Tech Pak Canada Inc., Tri-Star Charters Inc., and Warp Textiles ULC, are varied. The Order to Take Action against Yarmouth Area Industrial Commission is revoked.

## Table of Contents

I	INTRODUCTION .....	3
II	BACKGROUND AND RELEVANT FACTS.....	7
	1. History of the Domtex Properties and the Private Water Main.....	7
	2. Past Fire Inspections .....	11
	3. Current Proceedings.....	12
III	ISSUES .....	14
IV	ANALYSIS AND FINDINGS .....	15
	1. What is the Legal Framework for the Board’s Authority in this Appeal .....	15
	2. Principles of Statutory Interpretation.....	17
	3. Evidentiary Issues .....	19
	4. Were the Orders properly issued?.....	21
	a) Was there a contravention of the <i>Act</i> , the <i>Regulations</i> , or the <i>Fire Code</i> ? ...	21
	b) Are the Appellants “owners” of the private water line and fire suppression systems for the purpose of s. 25 of the <i>Fire Safety Act</i> ? .....	22
	c) Can there be more than one “owner” for the purpose of the <i>Fire Safety Act</i> . 27	
	d) Is the YAIC an “owner” of the private water line and fire suppression systems for the purpose of s. 25 of the <i>Fire Safety Act</i> ? .....	29
	e) Limits on the Board’s jurisdiction.....	33
	5. Should the July 18 Orders against the property owners be modified?.....	35
V	CONCLUSION.....	37

## I INTRODUCTION

[1] After over a century in operation under different owners, the former Dominion Textiles manufacturing facility (Domtex) on Water Street in Yarmouth was sold to the Yarmouth Area Industrial Commission (YAIC) in 1994, after the mill closed. Between 1994 and 2018, the YAIC sold all the remaining buildings and lots to private commercial owners including Novatec Braids Limited, Germain Mechanical & Electrical Ltd., Tech Pak Canada Inc., Tri-Star Charters Inc., and Warp Textiles ULC (collectively, the property owners). The central factory building was demolished, the remaining buildings reconfigured, and the final empty lots were eventually sold by YAIC in 2018-2019.

[2] The expansive former Domtex site was served by common utility infrastructure, including its own asbestos cement water main that likely served the factory for more than 100 years. This private water main connects to the Town of Yarmouth's domestic water supply and encircles the site. It supplies water to the water-based fire suppression (sprinkler) system that continues to serve the remaining buildings owned by Novatec, Germain, Tech Pak, Tri-Star and Warp Textiles, as well as a building owned by the Town of Yarmouth. The water line infrastructure is aging and will be costly to replace. YAIC serviced and maintained the private water main and system until about 2019, when it received a legal opinion prompting it to adopt the position that it did not own the private water main or any land or premises associated with it.

[3] The adjoined appeals are brought under s. 41(2) of the *Fire Safety Act*, S.N.S. 2002, c. 6 (the *Act*, or the *Fire Safety Act*) which allows:

41(2) An affected person may

- (a) appeal the order or decision referred to in subsection (1), in writing, to the Board within fifteen days after the order is served on, or the decision is received by, the affected person;
- (b) proceed with an appeal referred to the Board pursuant to clause 39(6)(d).

[4] The Appellants in Matter M11265 are the six private commercial property owners named earlier: Novatec Braids Limited (M11265), Germain Mechanical & Electrical Ltd. (M11269), Tech Pak Canada Inc.(M11266), Tri-Star Charters Inc. (M11328), and Warp Textiles ULC (M11270). These owners were served with Orders to Take Action issued by Fire Inspector David Winship under section 25(1)(b) of the *Fire Safety Act* on July 18, 2023. The Orders cite a single contravention of the *National Fire Code of Canada* 2015, Division B, Article 6.4.1.1 Sentence 1 regarding the inspection and testing of “Water-based fire suppression systems” connected to the former Domtex private water main. The Orders required repair to a “fire department connection on the private waterline” and that a “quarterly inspection at the fire department connection be conducted and a record maintained.”

[5] The property owners admit that they are assessed owners of their respective properties but argued that they are not, and have never been, responsible for maintenance and ongoing inspections of the private water main, the fire suppression system, or any of the associated components, including the fire department connection. At an initial preliminary hearing for Matter M11265, Counsel for the property owners indicated their agreement to consolidate their appeals, and their collective intention to argue that YAIC is responsible for taking any required actions related to the private water main and devices.

[6] On December 5, 2023, Inspector Winship issued a subsequent Order to Take Action against YAIC, who appealed that Order on December 13, 2023, in Matter

M11460. The Order required YAIC to provide documentation demonstrating “the inspection testing, maintenance and impairment procedures for the private service main and all devices within.”

[7] YAIC objected to the Town’s proposal to consolidate the appeals into one hearing process. Following a preliminary hearing and exchange of oral and written arguments on the issue, the Board decided in a letter dated January 29, 2024, that the appeals involved common questions of law and fact and should be heard together. The Board granted the property owners intervenor status in YAIC’s appeal, and vice versa.

[8] The Board held an oral hearing at Town Council Chambers in Yarmouth June 25-26, 2024. The parties demonstrated a high level of pre-hearing cooperation and significantly narrowed the issues to be decided. None of the parties contested the remedial actions set out in the Orders to Take Action. They agree that the private fire service water main and its components require ongoing inspection. By the time of the hearing, the only outstanding issue to be decided was whether the Appellants are responsible to carry out the required inspections and reporting under their respective Orders. The parties agreed to an exchange of written final arguments, which concluded on September 27, 2024.

[9] The Board carefully considered the documentary and visual evidence, oral testimony, and arguments presented by the parties. After deliberation and review of the *Fire Safety Act and Regulations*, past decisions and the applicable principles of statutory interpretation, the Board makes the following findings:

- As the assessed owners of the properties served by the private water main, each property owner is *prima facie* an owner for the purposes of the *Act* and, on a balance of probabilities, the evidence did not displace that presumption;
- The property owners are owners of land or premises served by the private fire service main which is, at present, an integral part of their fire suppression (sprinkler) system. They are subject to the respective Orders to Take Action and must ensure the quarterly inspections of the fire department connection and reporting are carried out;
- Until at least 2019 and on several occasions since divesting the former Domtex properties, the YAIC exercised control over the private water main and related fire suppression infrastructure and accepted responsibility for it. YAIC undertook these activities with, at minimum, the tacit agreement and reasonable expectations of the property owners;
- On a balance of probabilities, at the time the December 5, 2023, Order was issued, the YAIC did not own nor control the land or premises and was not controlling “the activity on the land or premises”. The Order to Take Action against YAIC was, therefore, improperly issued;
- The Board’s findings of fact and analysis on the questions of ownership and control are made in the context of the Board’s authority to decide an appeal under the *Fire Safety Act*. The Board’s jurisdiction does not extend to considering other potential legal responsibilities that YAIC may have to the property owners or findings unrelated to the application of the *Fire Safety Act*.

- Given the time required to complete the hearing and decision, the approaching holiday period and winter months, and allowing time for the property owners to take the necessary steps to arrange for the inspection, the property owners' time for compliance is extended to a date at least 65 days from the date of the Board's Order.

[10] The Orders to Take Action against Novatec Braids Limited, Germain Mechanical & Electrical Ltd., Tech Pak Canada Inc., Tri-Star Charters Inc., and Warp Textiles ULC, are, therefore, varied to extend the time for compliance and confirmed in all other respects. The Order to Take Action against YAIC is revoked.

## **II BACKGROUND AND RELEVANT FACTS**

[11] The facts of this case are not substantially in dispute. Before the hearing the parties filed an Agreed Statement of Facts [Exhibit N-16] which I accept as a primary source of the relevant factual evidence informing the Board's decision.

### **1. History of the Domtex Properties and the Private Water Main**

[12] In 1994, the former Domtex property in downtown Yarmouth, spanning the east and west sides of Water Street from south of Richards Lane to approximately Gardner Street, was sold to YAIC after the textile mill ceased operation. YAIC is a society established by the Town of Yarmouth, Municipality of Yarmouth, and Municipality of Argyle, to support economic development for the Yarmouth region. Its relevant objectives, set out in its Memorandum of Association, include acquiring, holding, leasing or selling real property to benefit the area, and "any other matter that will benefit or tend to benefit its area." [Exhibit N-17, p. 22] In acquiring the Domtex property, YAIC intended to help

attract new industrial employers to the area to compensate for job losses with the closure of the textile manufacturing facility.

[13] As a large industrial complex, Domtex was served by an interconnected system of mechanical, electrical, sanitary sewer and water infrastructure that extended around the facility and with connections to buildings on both sides of Water Street. Water was supplied from a private asbestos cement waterline that encircled the facility to provide domestic water and fire protection. This line connected to the Yarmouth Water Utility Main and eventually was modified to provide only water for fire protection.

[14] Greg Shay, Acting General Manager of YAIC, and Municipal Fire Inspector David Winship testified about the history and current state of the infrastructure, including the private water main and water-based fire suppression system. Their testimony gave more detail to the key elements of the private water main and water-based fire suppression system set out in the Agreed Statement of Facts. The system is interconnected and includes fire hydrants, fire department connections (FDCs) that connect by pipes and provide water to sprinkler systems in the remaining buildings, and devices connecting and managing water flow between the private system and the Town infrastructure. The stand-alone FDC that was leaking at the time of Inspector Winship's Orders is shown in photographs in Exhibit N-6, Schedule E. That FDC is located on a vacant lot owned by Novatec. The parties referred to a visual representation of the location of the private water line and the remaining external FDCs and hydrants [Exhibit N-16, Schedule B]. On my site visit to the property following the hearing, I was able to use this diagram, supported by the oral testimony and other documents, to visually



identify the external components and the remaining buildings, as well as visualize the configuration of the water line.

[15] YAIC subdivided and sold parcels from the Domtex property to private owners, shown on a plan identified as Schedule C to the Agreed Statement of Facts [Exhibit N-16]:

- a. Civic No. 234 Water Street (PID 90193723) to NovaTec (1995);
- b. Civic No. 242 Water Street (PID 90020041) to Hurlburt Construction (1995), subsequently to Tristar Charters;
- c. Civic Nos. 240 and 244 Water Street (PID 90193731) to Germain Mechanical and Electrical (1995);
- d. Civic No. 239 Water Street (PID 90297078) to Warp Textiles (2008);
- e. Civic No. 243 Water Street (PID 903418353) to TechPak (2010); and
- f. Civic No. 233 Water Street (PID 90297086) to [Town of Yarmouth] (2012).

[16] The private water main provides fire protection to six buildings located on those properties including the one owned by the Town of Yarmouth, which operates as an RCMP detachment. Inspector Winship confirmed that he issued an Order to Take Action to the Town at the same time as the property owners. Mr. Gushue explained the Town did not appeal to the Board because it supports the Fire Inspector's Orders and the Town expected to either be responsible for decommissioning costs (given its share in YAIC) or as property owner of the RCMP building. The parties agreed that none of the Deeds or Agreements regarding the sales of the former Domtex parcels specifically addressed the private water and fire suppression systems nor how it would be maintained in the future [Exhibit N-8, Tab 8-18; Exhibit N-16 p.3].

[17] In 2017, YAIC undertook the demolition of central Domtex buildings situated on the remainder lot it then owned. The demolition project required additional

reconstruction for some of the private owners' buildings. YAIC upgraded components of Novatec's fire suppression system under an Agreement between them for work and improvements during the demolition process.[Exhibit N-8, p. 4]. During this period, YAIC retained Dillon Consulting to develop plans and a budget to decommission the private water main and reconnect the property owners (and the Town) to the Town's Water Utility Main. After demolition, between 2018-2019, YAIC sold certain parcels from the central site [Exhibit N-16, Schedule F] to create new parcels for Tri-Star, Germain, and Novatec. A direct domestic water connection for Germain was later installed to ensure potable water for that building. After reviewing bids from the tender process, YAIC decided not to proceed with the project to decommission and reconfigure the fire service water main.

[18] The Domtex system connects to the Yarmouth Water Utility Main through a double check valve at a single point under Water Street at the intersection of Richards Lane [Exhibit N-16, Schedule B]. The double check valve allows water to flow into the private water line but prevents stagnant Domtex fire line water from backflowing into the Yarmouth Water Utility's domestic supply at the connection point.

[19] In 2019 YAIC sold a remaining parcel, consisting of vacant land where the central facility was demolished, to Mirza Holdings Inc. YAIC holds (by Quit Claim Deed from the Town of Yarmouth) one other property located on Water Street. That lot is not serviced by the private water main and is not subject to an order. A Town of Yarmouth fire hydrant served by its utility infrastructure provides water for fire protection in the event of a fire on that property. YAIC otherwise does not own any property on Water Street and has no property connected to the private water main or serviced by it.

## 2. Past Fire Inspections

[20] The Office of the Fire Marshall carried out periodic inspections of the Domtex water line and submitted reports to YAIC between 1995-2003 [Exhibit N-16, Schedule D]. The evidence of the property owners and YAIC was consistent that YAIC managed the fire suppression system as well as the water line, including arranging for inspections and testing of sprinklers and fire alarm systems while the central portion of the facility was operating. Between 2013-2017, after the initial parcel sales, YAIC communicated with property owners about the system and continued to manage it. After the demolition of the central structure in 2017-18, the Domtex water system was retained and continued to provide water for fire protection to the six buildings owned by the property owners and the Town. YAIC engaged Terry Sprinkler Limited to carry out required fire safety inspections and testing of the fire-protection system. The property owners were not involved in the tender process for the water line decommissioning project, which was tabled by YAIC in August 2019, after quotes came in significantly higher than anticipated. YAIC has not retained Terry Sprinkler Limited to conduct regular inspections since it sold the last Domtex property.

[21] YAIC was served with an Order to Take Action on September 7, 2022, to conduct inspections, testing and maintenance, and correct any deficiency on the private water line and devices providing fire protection. This Order related to repairs to a fire hydrant (on property owned by Germain Mechanical) and FDC. YAIC appealed the Order to the Board (M10757), arguing that it was not the owner of “the private water line and all devices attached supplying fire protection for the former Domtex buildings”, which was the subject of the Order. On a without-prejudice basis, while maintaining it did not own

the property or the system, YAIC arranged for an inspection and the necessary repairs were completed. With the immediate issue resolved, the Fire Inspector withdrew the Order and the appeal was withdrawn [Exhibit N-18]. Following that process, Mr. Winship wrote to the property owners whose buildings are serviced by the water line on January 12, 2023, indicating that YAIC advised the Town that they “are no longer owners of the former Domtex water system or any of the components...” [Exhibit N-16, Schedule G].

### 3. Current Proceedings

[22] On July 18, 2023, Fire Inspector David Winship issued the Orders to each of the appellant owners in respect of a leaking FDC that is part of the Domtex system, in front of the building currently owned by Novatec (identified in Exhibit N-16, Schedule B as “approximate location of FDC”). Each Order listed one contravention in Schedule A to the Order [Exhibit N-6, pp. 1-15].

ID	Contravention
1	Water based fire protection systems shall be inspected, tested and maintained in conformance with NFPA 25, “ Inspection, Testing, and Maintenance of Water Based Fire Protection Systems.” (National Fire Code of Canada 2015, Division B, Article 6.4.1.1, Sentence 1) Fire department connections shall be inspected quarterly to verify the following: (1) The fire department connections are visible and accessible. (2) Couplings or swivels are not damaged and rotate smoothly. (3) Plugs or caps are in place and undamaged. (4) Gaskets are in place and in good condition. (5) Identification signs are in place. (6) The check valve is not leaking. (7) The automatic drain valve is in place and operating properly. (8) The fire department connection clapper(s) is in place and operating properly. (9)*Interior of the connection is inspected for obstructions. (NFPA 25, 13.7.1)

The Orders described the actions required to remedy the contravention as follows:

ID	Action Required
1	While in the area of the former Domtex property, it was noticed that water was dripping from the fire department connection on the private water line and one of the caps was missing. This connection and private water line provides fire protection to this building. Repairs to the fire department connection shall be completed and a quarterly inspection of the fire department connection shall be conducted and a record maintained.

[23] The property owners’ appeals (linked under Matter M11265) were filed with the Board between July 27 and 31, 2023, all within the statutory deadlines. At a preliminary hearing, the property owners identified their principal legal argument that they

were not the “owners” of the system and that YAIC should have been served with the Order, instead. Subsequently, on December 5, 2023, Inspector Winship made a subsequent order to YAIC, requiring its inspection, testing and maintenance of the Domtex system [Exhibit N-6 p. 16]. The Order provides:

Action(s) Required

Documentation shall be provided to this office for the inspection, testing, maintenance, and impairment procedures for the private fire service main and all devices within. Devices would include hydrants, backflow valves, check/control valves, fire department connection all piping as required in accordance with NFPA 25 “inspection, testing and maintenance of water-based fire protection systems”.

YAIC maintained that it is not the owner of the system, as defined in the *Fire Safety Act*.

[24] The Board held a preliminary hearing on the procedural question of whether YAIC’s appeal should be consolidated with the property owners. The Board issued a written decision by letter dated January 29, 2024, deciding that the matters involved common questions of fact and law and ordering the matters to be heard in one hearing, originally scheduled for April 9-10, 2024. The Board granted intervenor status to YAIC in the property owners’ appeals and to YAIC in the property owners’ appeals. Admissible evidence and argument submitted by any party was considered for the purpose of all appeals. The hearing was later rescheduled to June 25-26, 2024, due to illness. After oral testimony, the parties agreed to the exchange of written final arguments over a period concluding on September 27, 2024.

[25] With the agreement of the parties, I visited the Water Street properties, unaccompanied, after the oral hearing adjourned. I was able to identify all the property owners’ and Town buildings and each FDC and hydrant as discussed, guided by Dillon Consulting’s Waterline and Sewer Line Plan [Exhibit N-16, Schedule B]. I saw the new asphalt on Water Street in front of Novatec Braids Inc., approximately where the private

water main connects to the Yarmouth Utility Water Main, and the stand-alone FDC with the cap replacement. My observations confirmed and gave additional context to the testimony of Mr. Gushue, Mr. LeBlanc, Mr. Zanis and Mr. Shay on the locations of the relevant properties and infrastructure.

[26] The Office of the Fire Marshal, the Provincial authority responsible for fire safety, has standing as a party to any appeal of a Fire Inspector's Order, under s. 43(1) of the *Act*. No one from the Office of the Fire Marshal participated in the hearings or filed written legal arguments.

[27] The Board did not receive any requests to intervene nor any letters of comment or requests to speak in these proceedings.

### III ISSUES

[28] The principal issue the Board must decide is whether the Appellants have established that the Fire Inspector's Orders against them should be revoked or varied.

[29] The parties did not dispute that there was a contravention of s. 25 of the *Fire Safety Act* justifying the Orders. They do not dispute the remedial actions the Fire Inspector requires, and the evidence supports that regular inspections and testing of the system are required and have not yet been arranged since the Order was issued. In this case, the Appellants each ask the Board to determine who is responsible for the required actions on the private asbestos cement fire service main and attached devices, including the FDCs, under the *Act*. If the Board determines they are not "owners" as that term is defined in the *Act*, the Orders were not properly issued.

## IV ANALYSIS AND FINDINGS

### 1. What is the Legal Framework for the Board's Authority in this Appeal

[30] The Board is a statutory tribunal, not a court. It has only the authority granted to it under its enabling legislation, the *Utility and Review Board Act*, S.N.S. 1992, c. 11, and, in this case, the *Fire Safety Act*. In *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2015 NSCA 43, the Court of Appeal said:

[23] In my view, the Board got it right. It is a creature of statute and its jurisdiction is limited to the parameters of the enabling legislation.

[31] Under the *Utility and Review Board Act*, the Board has sole jurisdiction to decide the cases and matters conferred up on it (s. 22(1)). Under the *Fire Safety Act*, the Board hears appeals from orders issued by a fire official. Sections 38-41 of the *Fire Safety Act* set out the scope and manner of these appeals. On an appeal by a person affected by a municipal fire inspector's order, the Board may confirm, revoke, or vary an order appealed from, or extend the time for compliance (s. 41(8)(a) and (b)). The Board may make "any order or decision that the fire official making the original order or decision could have made" (s. 41(8)(c)). The burden is on an appellant to show that the order should be revoked or varied.

[32] The Board is guided by the usual rules of statutory interpretation. In making its decision, the Board is to achieve the purpose of the *Act*, considering the *Act* as a whole. It must give the legislation a broad and liberal interpretation to ensure its objects are obtained, (*Interpretation Act*, R.S.N.S. 1989, c. 235, s. 6 and s. 9).

[33] The purpose of the *Fire Safety Act* is set out explicitly in Section 2:

**2** The purpose of this Act is to educate and encourage persons and communities to apply the principles of fire safety so as to prevent fires, preserve human life and avoid unwarranted property loss due to the destructive forces of fire.

[34] Section 42 of the *Act* confers on the Board the following jurisdiction:

42 The Board has exclusive jurisdiction to determine all questions of:

- (a) law respecting this Act, the regulations and the Fire Code;
- (b) fact; and
- (c) mixed law and fact, that may arise in any matter before it, and an order or decision of the Board is final and binding and not open to review except for an error of law or jurisdiction.

[35] For clarity, any decision or order may be rescinded or varied by the Board or the fire official that made the order or decision under s. 43(3).

[36] Beyond outlining the Board's jurisdiction to confirm, rescind or vary any decision or order under the *Fire Safety Act* and "make any order or decision that the fire official making the original order or decision could have made", the *Act* gives no further direction on the standard the Board should apply in determining the appeal. In past cases (e.g. *Re Kwan*, 2012 NSUARB 42; *Subway Sandwich Shop*, 2011 NSUARB 36), after hearing the evidence, the Board first determined whether there had been a contravention and then decided what was the appropriate remedy, in the manner of a *de novo* appeal. This means that the Board decides the issues independently, rather than focusing on the correctness of the Order. It may consider other evidence beyond what is included in the Appeal Record. The Board has the same authority as the fire official under s. 25 of the *Act*, subject to any restrictions in the *Act*. What the Board may decide in any appeal is, therefore, case-specific and depends on the issues and facts in each appeal.

[37] ~~Section 125(1) states:~~ Section 125(1) states: When the Fire Marshal ... or a municipal fire inspector believes that there is a contravention on land or premises of this Act, the regulations, the Fire Code or an order made pursuant to this Act, the regulations or the Fire Code, the fire official may issue to an owner of the land or premises an order that

- (a) is substantially in the form set out in subsections 26(1) and (2);



(b) may direct the owner to do one or more of the following within the time limit set out in the order;

(i) remedy the contravention, including do anything in relation to the land or premises that the fire official considers necessary to remedy the non-compliance,

(ii) carry out repairs or alterations,[...]

[38] To summarize, if the fire official believes there is a contravention, they may order an “owner of the land or premises” to take any of the actions outlined in s. 25(1)(b), which include: remedying the contravention, carrying out repairs or alterations, discontinuing a certain use or occupancy of the land or premises, or an activity or practice that creates or poses a fire hazard or compromises fire safety, or doing “anything respecting arrangements for fire safety including but not limited to, fire prevention, the containment of a possible fire, egress, the operation of a fire protection system, ...”. There are restrictions on what actions can be ordered.

[39] Under the *Fire Safety Act*, owners of land or premises are required to take “every precaution that is reasonable in the circumstances to achieve fire safety and to carry out the provisions of this Act, the regulations and the Fire Code.” Section 16 describes the circumstances required to ensure “fire safety is achieved.”

[40] The Fire Code currently in effect in Nova Scotia is the *National Fire Code of 2015* as modified by Part 3 of the *Fire Safety Regulations*, adopted in accordance with the *Act*.

## **2. Principles of Statutory Interpretation**

[41] As stated earlier, the principles of statutory interpretation apply in determining the scope of the powers conferred by the *Fire Safety Act*. The “modern rule” of statutory interpretation has been affirmed many times in Nova Scotia and guides the Board’s decision-making. In *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017

NSCA 82, the Court of Appeal reviewed the law and added comments about the importance of the *Interpretation Act*, R.S.N.S 1989, c. 235 (*Interpretation Act*), as follows:

[24] The Supreme Court of Canada has reminded us time and time again that we are to take a pragmatic approach to statutory interpretation. Our approach must be both purposive and contextual. For example, in *Bell ExpressVu Ltd. v. Rex*, 2022 SCC 42 (S.C.C.) at ¶ 26 Justice Iacobucci describes this “modern approach”:

[26] In Elmer Driedger’s definitive formulation, found at p. 87 of his *Construction of Statutes* (2<sup>nd</sup> ed. 1983):

Today there is only one principle or approach, namely, the 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.

Driedger’s modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretative settings: [cites omitted]

...

[27] As well, Section 9(5) of the *Nova Scotia Interpretation Act*, R.S., c. 235, s. 1, holds that all enactments shall be deemed remedial, and interpreted to ensure the attainment of their objects by considering among other matters:

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

...

[31] All that said, at the end of the day, we should interpret legislation in a manner that is both reasonable and just. Ruth Sullivan in *Sullivan on the Construction of Statutes*, *supra*, explains at §2.9:

At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. **An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotions of legislative intent; and (c) its**

**acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.** [Emphasis added in original]

[32] This passage has been recently endorsed by a majority of the Supreme Court of Canada in *R. v. Alex*, 2017 SCC 37 (S.C.C.) ¶32...

[42] In *Sparks v. Holland*, 2019 NSCA 3, the Nova Scotia Court of Appeal reiterated the modern principle of statutory interpretation and stated the three questions it typically asks when applying it:

[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*, 6<sup>th</sup> ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.

[29] Ms. Sullivan’s questions have been applied in several cases, including *Slauenwhite v. Keizer*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:

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?

[43] These principles also apply to administrative decision-makers like fire officials and the Board, requiring that legislation be interpreted consistently with its text, context, and purpose. However, the form of analysis for these decision-makers may look different than one undertaken by a court and may be enriched by the specialized expertise and the experience of the decision-maker (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 117-121).

### **3. Evidentiary Issues**

[44] The Board must consider the documentary and oral evidence provided by the parties to support their respective arguments. The Town filed an appeal record that

included the documents gathered by the Fire Inspector in his investigations, and other relevant documents related to the properties. The parties' Agreed Statement of Facts [Exhibit N-16] largely forms the evidentiary support for this decision along with other findings of facts referenced throughout.

[45] The Appellant property owners' witnesses included representatives from each of the respective companies: Jean Crosby, employee of Warp Textiles, Robert Cunningham, manager of Tech Pak, Bruce Green, co-owner of Germain Mechanical and Electrical, and Stan Zanis, owner of Novatec. Each testified about the history of their company's ownership of their respective properties and their interactions with YAIC and the Town in respect of past fire safety inspections or issues with the fire suppression system and private water line. The property owners' witnesses were cross-examined by Counsel for the Town and questioned by the Board.

[46] YAIC submitted an affidavit from Greg Shay [Exhibit N-7] prior to the hearing. Mr. Shay attended the hearing for the purpose of cross-examination by Counsel for the Town and the property owners. Mr. Shay also answered Board questions. YAIC otherwise relied on the evidence in the Agreed Statement of Facts and the pre-filed visual and documentary evidence.

[47] Town Fire Inspector David Winship testified for the Town about his observations and actions as the attending Fire Inspector. He also provided information on his methodology in interpreting and applying the *Act*, *Regulations* and the *Fire Code* in this case. Jeff Gushue, CAO for the Town of Yarmouth, and Chad LeBlanc, Director of Public Works testified and were cross-examined as a panel on the Town's involvement with the Domtex property and the private water line. I found the evidence provided by

Inspector Winship, Mr. Shay, Mr. Gushue and Mr. LeBlanc to be helpful and credible. Although they disagreed on the position of YAIC as to its responsibility, their recollections and recounting of relevant facts were not meaningfully contradictory.

[48] Unless otherwise noted in this decision, the Board found all parties' witnesses to be responsive to questions, and forthright and credible on the matters they testified about. Section 19 of the *Utility and Review Board Act* states that the Board is not bound by the strict rules of evidence and may assess how much weight to give evidence in these presentations. The Board did not exclude any witness' testimony that included hearsay, which was given, to some extent, by all witnesses. The Board was able to weigh the relevance and evidentiary value of those statements. Where lay witnesses provided an opinion that they were not qualified to provide, the Board awarded those statements little to no weight. The outcome of this decision was largely based on legal interpretation of the *Act*, rather than the weighting of conflicting evidence.

#### **4. Were the Orders properly issued?**

##### **a) Was there a contravention of the *Act*, the *Regulations*, or the *Fire Code*?**

[49] The parties did not dispute that there was a contravention of s. 25 of the *Fire Safety Act* justifying the Order. The Board agrees that there was a contravention of the *National Fire Code of Canada 2015*, Division B, Article 6.4.11, Sentence 1, which requires that water-based fire protection systems be inspected, tested and maintained in conformance with National Fire Protection Association 25, which sets the standards for those systems. Inspections to verify the components of the system and documentation were required as ordered by Fire Inspector David Winship and remain outstanding. All parties agreed that the Orders were properly issued, insofar as the cited contravention

and required actions to remedy it. Their disagreement is about which Appellant(s) would be responsible for carrying out the actions, because s. 25(1)(b) required the Fire Inspector to issue his order “to an *owner* of the land or premises.”

**b) Are the Appellants “owners” of the private water line and fire suppression systems for the purpose of s. 25 of the *Fire Safety Act*?**

[50] The interpretation of s. 3(ab) of the *Fire Safety Act* and its application to the facts of this case is central to this appeal. This section includes what the parties describe as an “extended” definition of owner:

- 3 (ab) “owner” includes
- (i) a person controlling land or premises or the activity on the land or premises,
  - (ii) *prima facie* the assessed owner of land or premises whose name appears on the assessment roll prepared in accordance with the Assessment Act, and
  - (iii) where land or premises is owned or leased by Her Majesty in right of the Province, *prima facie* the Department of Transportation and Public Works;

[51] As set out in the Agreed Statement of Facts [Exhibit N-6], the former Domtex property, consisting of several connected buildings and infrastructure on either side of Water Street, was sold to YAIC in 1994. The property was then further subdivided and individual parcels were sold to each of the property owners, the Town of Yarmouth, and another private company (Mirza Holdings) that was not subject to an order and did not participate in the appeals. For the purposes of this hearing the important element of the “land and premises” are the underground asbestos cement water line (the underground line), the associated devices including FDCs and hydrants and its connections to the Town Water Utility Main, and the sprinkler and fire suppression systems within the buildings which were (and are) supplied by that private water line.

[52] The evidence established that the private water line runs under the land and premises owned by the property owners, the Town, and Mirza Holdings. Discrete parts of the system including laterals leading to the building, hydrants and FDCs are situated on the land or buildings of the property owners. The underground private line connects to the Yarmouth Water Utility Main at a single point in Water Street at the bottom of Richards Lane. The line runs beneath a portion of Water Street and Richards Lane. These roads are owned by, and the responsibility of, the Town. The parties agreed that the diagram at page 21 of Exhibit N-6 gave the best overall representation of the location of the underground line and the Board accepts that the evidence supports this.

[53] The entire system was owned by YAIC when it owned the whole of the Domtex property. The Town witness panel explained that the part of the system that connects to the Yarmouth Water Utility Main under Water Street likely pre-dates the roads themselves. There was no evidence of an easement in favour of either the Town or Domtex/YAIC to allow for that infrastructure.

[54] The property owners acknowledge their legal ownership of their respective properties and accepted that, as the “assessed owners” they are considered *prima facie* owners under the *Fire Safety Act*. They acknowledge their control over the operation of their businesses and activities on their respective land and premises.

[55] However, the property owners expressly rejected responsibility for the water line that supplies their sprinklers. Their witnesses testified that YAIC had always actively maintained the line supplying their fire suppression systems, and organized inspections and testing, until at least 2019 (Agreed Statement of Facts, para. 10, 11, 16, 18). Since

then, YAIC has taken steps, albeit on a “without prejudice basis” to facilitate repairs or seek solutions for the system.

[56] Ms. Crosby, a long-term employee of Warp Textiles, and Mr. Cunningham, Manager of TechPak, as well as Mr. Green of Germain Mechanical and Electrical, testified that they had no knowledge about the water system and had not been billed for or coordinated work on it. On one occasion, Mr. Cunningham acknowledged paying YAIC for an invoice for repairs to the supply line (Exhibit N-18, p. 22). Mr. Green indicated that YAIC installed a new connection for the sprinkler supply system at YAIC’s expense. He said Germain paid for repairs to a private “Domtex” fire hydrant when one of their drivers caused damage to it. When the system required maintenance or would be shut down, each witness indicated that an employee of YAIC (Kenneth Nickerson or Greg Shay) would let them know the system would be shut down.

[57] None of the deeds or written agreements between YAIC and any property owner specifically addressed the water line that supplies the sprinklers, or how that water line and fire suppression system components would be addressed in the future [Agreed Statement of Facts, para. 13]. Nevertheless, when YAIC owned the “central” portion of the facility and its land, there was tacit agreement that YAIC was exclusively responsible, financially and from a management perspective, for the fire suppression system. The property owners were kept informed, but otherwise the system was within YAIC’s control.

[58] Despite this relationship, the property owners are the assessed owners of land and premises where their businesses operate and for which water-based fire suppression systems are required to be installed and functional. They own the properties



that the line supplying those sprinkler systems is buried under, other than the portions under Water Street or Richards Lane, which belong to the Town.

[59] In the *Act*, an owner is “*prima facie* the assessed owner whose name appears on the assessment roll.” The Town urged the Board to consider the meaning of “owner” with a view to the mischief the legislature intended to remedy under the *Fire Safety Act* and the practical implications of the Board’s decision. The property owners argued that because they did not have past responsibility for the private water line and because of their understanding that it was “owned” by YAIC, they should not be considered the owners of the system for the purposes of the Order.

[60] I found no cause to divert from the usual interpretation of “*prima facie*,” meaning that it is a rebuttable presumption that the assessed owner is subject to an order otherwise lawfully made in respect of their land or premises. With no binding precedent on this terminology or provision in the context of the *Fire Safety Act*, I determined that a finding on the usual balance of probabilities standard that an assessed owner was not “the owner of land or premises” as stipulated by s. 25, would displace that presumption.

[61] The primary purpose of the *Fire Safety Act* is to prevent fires, protect human lives, and avoid unnecessary property damage. The *Act* and the *Fire Code* are structured around requirements related to land, buildings, and land uses. The *prima facie* presumption of responsibility on a person “whose name appears on the assessment roll” is intended to allow a fire official some certainty that issuing an order to that person meets the requirements of the *Act* and carries out its intent. An assessed owner is generally easily identifiable through municipal records and typically has access to land, and therefore the infrastructure, works and systems used in fire prevention and suppression.

That person must demonstrate that they are not the actual “assessed owner” and/or are not in control of the land or premises or the activities on the land or premises. Otherwise, they have a responsibility to take the necessary measures to comply with fire safety requirements that protect their property. This interpretation is pragmatic and provides certainty in the administration of the *Act*.

[62] As will be discussed further in respect of YAIC’s involvement with the property owners, I find that the Fire Inspector’s Orders were properly made against each of Novatec, Warp Textiles, Germain, Tri-Star, and Tech Pak. I am satisfied that they each meet the definition of an owner for the purpose of the *Act*. They have control of their land and premises and are controlling the commercial and other activities taking place on the property.

[63] The purpose of the private water main is to feed the water-based fire suppression systems. These systems are located on and provide fire protection to the land and premises under the control of the property owners. The property owners are obliged to comply with the *Fire Code* based on the configuration of their buildings and the nature of their land use. A working water-based fire suppression system is currently part of that compliance. If the current system fails catastrophically, those owners must find an alternative solution to allow their sprinkler system to function or to otherwise meet all applicable *Fire Code* requirements. They are not excused from compliance even if they claim another party has failed to meet that party’s obligations to them.

[64] One may consider a scenario where a commercial property owner engages a private contractor to install a fire-rated door, and the selected door does not meet *Fire Code* requirements. It remains the responsibility of that commercial property owner to

make sure the door is fixed to meet the Code, either by negotiating with the contractor for a replacement, getting someone else to do the work, suing the contractor for breach of contract or negligence, or some other solution.

[65] The current situation is more complicated than that hypothetical scenario, but the underlying principle stands. The Fire Inspector has scope and flexibility under the *Act* to consider specific circumstances when determining the required remedial actions and the timelines for accomplishing them. However, the *Act* sets clear expectations and responsibilities for property owners to achieve fire safety. For the property owners, those obligations extend to the infrastructure that allows their fire suppression systems to operate. For the purposes of this appeal, I find that the July 18, 2023, Orders of the Fire Inspector were properly made and issued to the appropriate property owners under s. 25 of the *Act*.

**c) Can there be more than one “owner” for the purpose of the *Fire Safety Act***

[66] The Town pointed out the case of *ATCO v. Calgary Power Ltd.*, [1982] 2 S.C.R. 557, where the Supreme Court of Canada interpreted the meaning of “owner of a public utility” under Alberta’s *Public Utilities Board Act*, R.S.A. 1970, c. 302. The Court gave a liberal interpretation to ownership, finding that “control”, for the purposes of that Act, was not limited to the day-to-day factual control of persons and equipment comprising the public utility system. The Court said that “control” can extend to a person, however remote, who, in the broad sense, controls that system. The Town cited paragraph 31 of that decision at p. 20 of its post-hearing brief:

31[...] control is not to be confined in its meaning to immediate ostensible control of the operation and management of a public utility. In its context [the *Public Utilities Board Act*, R.S.A. 1970, c. 302 s. 79] the word “controlling” must be accorded a more comprehensive

meaning extending to the operational realities of control for public utility purposes.  
[Emphasis added in brief.]

[67] The Court also pointed out that legal ownership may be different than “control.” The general canon of interpretation requires that each word in a statute is given some meaning. Consequently, when both terms are used, “control” must be intended to mean something distinct or different from “own”. “A person might control and not own a system, but might also own but not, on a daily basis, control, a system” (*ATCO*, page 569).

[68] While *ATCO* was decided in the specific context of a different statutory scheme, the principles enunciated in that case apply in this one and support the Board’s past decisions which indicated that a tenant or property owner may both be considered an owner under the *Act*. When the section is read purposefully, I also agree with the Town that a fire official can serve an otherwise authorized order on any entities or individuals who control the land or premises as well as those who control *activities* on the land or premises. The Town goes further to say that, given the purpose of the *Act*, the “activity” means activity associated with fire safety on the land or premises. I accept that, in a given context, it could have that meaning, but not *only* that meaning. That application in a specific context would not displace the general, pragmatic interpretation is that “activity” is intended to encompass the circumstances that give rise to the particular fire safety obligation.

[69] I find that the *Act* does not limit an order to a single owner. In the event of leased premises, a fire official could lawfully serve an order on either or both of a tenant occupying (i.e. carrying out activities) the premises, and the assessed owner.

**d) Is the YAIC an “owner” of the private water line and fire suppression systems for the purpose of s. 25 of the *Fire Safety Act*?**

[70] YAIC phrased its principal question as: “Is YAIC the owner of 234, 236, 239, 240, 242, 243 or 244 Water Street (the Domtex Properties) for the purposes of the *Act* and is YAIC the owner of any part of the asbestos cement underground fire suppression system and devices. For the following reasons the Board finds that its answer to both questions is “no.”

[71] The Town and property owners point out that, as late as 2022, after YAIC’s remaining real property interests in the relevant Domtex properties had been sold, Mr. Shay on behalf of YAIC, and Dillon Consulting, YAIC’s engineering consultant, continued to identify YAIC in written correspondence as “owning” or “responsible for” maintaining the domestic and fire flow protection to [the properties]. YAIC was also actively investigating options for abandonment and/or replacement of the system. Mr. Shay confirmed his then-belief that YAIC “owned” the system. He acknowledged that Dillon Consulting’s statements about YAIC being “responsible” were consistent with his understanding of the situation at that time. Following receipt of legal advice (which was not provided at the hearing due to solicitor-client privilege), YAIC changed its public position on ownership and began distancing itself from its past approach.

[72] Although it sold all the Domtex parcels that have a connection to the private water main, YAIC retains ownership of 252 Water Street. This lot is part of the former Domtex property but is currently vacant and is not serviced by the underground line. There is a Town of Yarmouth fire hydrant adjacent to the property that Town Staff and YAIC indicated would be used in the event of a fire. During the hearing, the Board also raised that an easement appeared to have been granted to YAIC in a 1997 deed from Dominion

Textiles, concerning pipes, wires and cables “upon, over, under, along and across a 10-foot-wide portion of Water Street...” [Exhibit N-8, p. 67]. It was not clear to the Board what the easement related to and whether it was still held by YAIC. With the consent of the other parties and the Board, YAIC submitted post-hearing evidence of a parcel description for PID 90297098 which shows Warp Textiles as the present holder of that easement. Additionally, the parties agreed that this easement was for infrastructure that was not relevant to the Appeals. There was no evidence of any remaining easement or deed tying YAIC to the infrastructure located under Water Street and Richards Lane, roadways that are the property of the Town.

[73] When it owned and managed the central Domtex facility, and throughout the demolition period, YAIC had “de facto” control over the fire suppression and alarm system. YAIC employees regularly coordinated and performed maintenance on the system, arranged inspections and testing, and YAIC shouldered the financial burden. YAIC acted with the cooperation of the Town in some instances and in all cases with the express or tacit consent of the property owners. I accept the testimony of the property owners’ witnesses that until the recent appeals they believed that YAIC owned the system and that YAIC did not require their permission to work on it. Similarly, until at least 2019-20, YAIC’s actions and correspondence demonstrate that it shared those beliefs.

[74] YAIC intended to decommission and replace the private water line at least until they obtained a legal opinion that either reassured or cautioned YAIC sufficiently to change course. Despite adopting the position that, because it divested its property interests YAIC “does not own the system”, until at least January 2023, Mr. Shay has continued to take additional steps to cooperate with the Town and communicate with

property owners on behalf of YAIC. He indicated, in his testimony, YAIC's continuing openness to finding a resolution to problems with the water line and related devices:

Q. Okay. Is the Industrial Commission willing to facilitate something?

A. We continue to remain to facilitate. Since the demolition process we've been trying to facilitate as long as it's been [dragged] out, but we still have an interest in facilitating some type of solution that involves all parties.

[Transcript, p. 153]

[75]           However, at the time Inspector Winship issued the Order against YAIC on December 6, 2023, I am not convinced YAIC was still controlling "the activities on the land or premises" including, rightly or wrongly, the "activities" of ongoing inspection, maintenance and repair of the private water main. YAIC's recent actions in at least the previous year were taken on a without-prejudice basis and while expressly rejecting its ongoing control or ownership. I find that without the consent of the property owners and its own agreement, YAIC does not own or control the land or premises under which any of the private water main lies, nor the fire suppression systems it services. It is not controlling the "activities on the land or premises" that give rise to the requirements for maintenance, inspection and testing of the private fire service main and all devices within.

[76]           Even if it had residual obligations to the property owners to undertake such activities, I do not find that this equates to "control" for the purposes of the *Act*. At the time the Order against it was issued, YAIC no longer had the requisite control over the land or premises or the activities taking place on the property. Even if I am wrong and it did have such control over the private water line, this finding alone would not displace the property owners' obligations to comply with the *Act*, *Regulations* and the *Fire Code* requirements for the fire safety of their own properties and obligations to have functioning sprinkler systems.

[77] I considered YAIC's arguments that it could not be considered an owner because, for example, a fire official could not direct YAIC to take actions such as "demolish Novatec Braids' building or to discontinue occupancy of it." While I accept YAIC could probably not be considered an "owner" for that scope of an order, the modern approach to statutory interpretation dictates that I must consider the application of the *Act* within the specific circumstances of a case and with a view to the *Act's* purpose and the outcome of a particular interpretation.

[78] In this case, the Order to Take Action against YAIC focuses on narrow actions related to a contravention of *Fire Code* requirements for the inspection, testing and maintenance of water-based fire suppression systems. As explained by Inspector Winship, from a fire safety perspective:

At the end of the day we need ownership of that line for the purposes of maintenance, inspection, testing, and any emergency repairs that need to take place.... I need someone to go to who is responsible for that. [Transcript, p. 311]

[79] The purpose of the *Fire Safety Act* and holding people accountable for contraventions of the Code is principally to "achieve fire safety" on land or in premises. The sprinkler systems provide fire protection to the active businesses and buildings at the former Domtex site. I agree with YAIC that the "water-based fire suppression system" provides fire protection to the active businesses and buildings at the former Domtex site, and it is the property owners who now benefit from the protection of the fire safety system. When the central Domtex facility was demolished, the central fire suppression system that YAIC controlled was essentially decommissioned. What is left are individual fire suppression systems at the property owners' buildings that are serviced by a common water main. YAIC continued to have access to that line because of the tacit consent of the property owners and the Town. I agree with YAIC that such tacit approval is not



ownership or control. That relationship does not displace the obligations of the property owners and I am not convinced that YAIC has the requisite control over the “water-based fire suppression system” to allow the Order to stand against YAIC individually.

[80] That said, I do not accept the implication in YAIC’s argument that there must *always* be an ownership or tenancy relationship over land or premises for a fire official’s order to be validly served on a person. For instance, a construction contractor on a site could be operating their equipment in a manner that creates an unacceptable fire risk or breach of fire regulations. I can foresee a scenario where a fire inspector could serve an order on that contractor, who has the requisite “control” over the unsafe “activity” at the relevant time of that order. The outcome would be dependent on the facts of a particular case but, in my view, the language of the *Act* does not presumptively require a Fire Inspector to issue an order only to a property owner or legal tenant. Nevertheless, the circumstances of this case do not require me to make a finding on this point and I decline to engage in further hypothetical analysis of what other scenarios could result in “ownership” or “control” where a person does not have a legal tenancy or ownership interest in a property.

**e) Limits on the Board’s jurisdiction**

[81] YAIC may have residual obligations to the property owners and the Town to maintain or potentially decommission the water main. However, such obligations do not, in this case, meet the intended application of the *Fire Safety Act* for the purpose of compelling compliance with an order under s. 25. The property owners acknowledged that the Board “does not have the jurisdiction to determine whether or not YAIC can be compelled to effect and pay for [removal and remediation]” of the private water main. [Appellants Brief, para 47]. However, they argued that the property owners relied on the

common understanding that the fire suppression system would be managed and remediated by YAIC as a common utility system. Allowing YAIC to repudiate such an obligation would be “grossly unfair and unjust.” [Property Owners’ Post-Hearing Brief, para. 53]. YAIC argued, without any concessions, that it would likely be appropriate for the property owners to raise arguments “in court” about whether YAIC’s past actions or representations created a legal responsibility to the new owners of the Domtex properties or an estoppel argument against YAIC’s position that it has no remaining responsibilities.

[82] The property owners pointed to the broad mandate of the Board allowed under s. 116(1) of the *Public Utilities Act*. However, that section is limited to the interpretation of the Board’s authorities under that legislation, related to the regulation of public utilities. In appeals under the *Fire Safety Act* the Board must look to that enabling statute as well as the *Utility and Review Board Act*. YAIC counsel rightly points out that the Board does not have the inherent jurisdiction of a court, and its consideration of questions of what ownership means and what remedies the Board can order is limited to the scope of the *Fire Safety Act*.

[83] The property owners shared an expectation that YAIC was responsible for the private water main and would continue to facilitate its repairs or its decommission and replacement. If those expectations or reliance on past actions give rise to legal rights under contract, estoppel, or otherwise, the property owners might make claims against YAIC for costs or specific performance associated with undertaking this or future work related to the private water main. However, these claims are beyond the Board’s jurisdiction to opine on or determine a remedy. The Board is obliged to look to the enabling

statute for the boundaries of its jurisdiction. Based on the guidance of *Vavilov*, the interpretive exercise the Board should undertake is clear:

[120] [...] 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. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

[121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior-albeit plausible-merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse engineer" a desired outcome. [Emphasis added]

Endorsing the Town's and the property owners' assessment of the Board's jurisdiction to enforce the obligations of the *Fire Safety Act* against YAIC would ignore *Vavilov's* warning in a quest to "reverse engineer" a different outcome.

[84] I find on a balance of probabilities that the evidence in this matter did not establish that YAIC falls within the definition of "owner of land or premises" permitting the Fire Inspector to issue that Order. The Fire Inspector acted outside of his authority under s. 25. The parties did not offer arguments nor evidence about whether or how the Order could be varied in the event the Board made such a determination. Therefore, the December 6, 2023, Order against YAIC is revoked.

##### **5. Should the July 18 Orders against the property owners be modified?**

[85] The requirement to conduct repairs of the system, in accordance with the July 18, 2023, Orders against the property owners, was satisfied before the hearing. However, the completion of other required actions to ensure inspection and testing of the system remains outstanding. The Town, on behalf of the Fire Inspector, did not take a

position on the timelines but asked that the Order be issued “as soon as conveniently possible”. The Fire Inspector’s Orders indicate that inspections are required quarterly.

[86] The Board is mindful of Inspector Winship’s testimony that if there was a problem with the water main under the ground, “It could be a catastrophic failure of the system... The sprinkler systems would be compromised in all of the buildings” [Transcript, p. 338]. The system is aging and has demonstrated weaknesses in recent years. Inspector Winship noted that the risk of freezing or issues with the system is elevated in the winter months.

[87] Inspector Winship sought the property owners’ compliance with the July 18, 2023, Orders to Take Action by August 31, 2024, a deadline 44 days from the date of his Orders. Given the Board’s findings, the property owners may wish to coordinate among themselves, and potentially the Town, to accomplish the required actions under their respective orders, which impact them collectively. The Board takes no position on who should take the lead or how that work should be accomplished, but the willingness to cooperate and flexibility shown by all parties to these proceedings will hopefully assist in coming to an arrangement. Each subject has joint and several responsibilities under the applicable Order to ensure that the work is completed and that they are otherwise meeting their obligations as an owner under the *Fire Safety Act*.

[88] Arranging the inspections may take time, particularly given the approaching holiday season and winter months. The Board will therefore allow 65 days (44 days as in the original Orders plus an additional three weeks), from the date of the Board’s Order, for compliance with the required actions. The Board notes the Fire Inspector may vary an

Order to Take Action according to their usual judgment and jurisdiction, including by extending the time for compliance beyond the date established by the Board.

## **V CONCLUSION**

[89] The *Fire Safety Act* has the laudable purpose of educating and encouraging people to “apply the principles of fire safety so as to prevent fires, preserve human life, and avoid unwarranted property loss.” The *Act* and its enforcement powers are crucial tools to promote fire safety and protect public safety. Nevertheless, it is a regulatory scheme, and the powers of the officers tasked with enforcing it are constrained by the limits established by the Legislature. The Board’s jurisdiction is similarly limited.

[90] The Board finds that the private, underground asbestos cement water line is currently an integral part of the fire suppression systems servicing the properties of the Appellant property owners. They are the assessed owners of the land and premises that are subject to the Order to Take Action issued to each of them, respectively. The Board was not persuaded that they have rebutted the presumption that they are *prima facie* owners in accordance with the *Fire Safety Act*, and the Orders were properly issued under s. 25 of the *Act*.

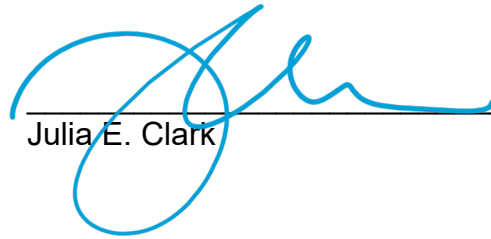
[91] The Board concludes that when the Fire Inspector’s Order was issued to YAIC, the YAIC did not meet the definition of an “owner of land or premises” of the former Domtex properties or the private asbestos cement water main, as defined for the purposes of the *Fire Safety Act*. In this case, the Board finds the Order to Take Action against YAIC dated December 5, 2023, was improperly issued. That Order is revoked.

[92] The respective Orders against Novatec Braids Limited, Germain Mechanical & Electrical Ltd., Tech Pak Canada Inc., Tri-Star Charters Inc., and Warp

Textiles ULC, are modified to change the time limit for compliance to a date 65 days from the date of the Board's Order.

[93] The Board's Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 18 day of December, 2024.



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Julia E. Clark