DECISION **2024 NSUARB 152**
M10259 and M10261

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ASSESSMENT ACT

- and -

IN THE MATTER OF APPEALS by **THE DIRECTOR OF ASSESSMENT** from a common decision of the Nova Scotia Assessment Appeal Tribunal dated August 20, 2021, about properties owned by Evergreen Plaza Incorporated and 136 Portland Developments Inc., located in the Halifax Regional Municipality

BEFORE:	Julia E. Clark, LL.B., Member
APPLICANT:	**DIRECTOR OF ASSESSMENT** Robert W. Andrews, Senior Legal Counsel
RESPONDENT:	**EVERGREEN PLAZA INCORPORATED** **136 PORTLAND DEVELOPMENTS INC.** Gavin Giles, K.C.
HEARING DATE:	June 12, 2024
DECISION DATE:	**September 9, 2024**
DECISION:	**Appeal is dismissed.**

I INTRODUCTION

[1] Every year, as part of the annual assessment of properties for taxation purposes, the Director of Assessment, through the Property Valuation Services Corporation (PVSC) collects certain information about commercial properties in the province through a “Request for Information” process under Sections 20 and 21 of the *Assessment Act* (*Act*). If a property owner does not provide the requested information within the 30-day statutory deadline, they can face consequences, including losing their right to appeal the property tax assessment for the year the information was requested.

[2] Turner Drake and Partners Ltd. (Turner Drake) often acts on behalf of commercial property owners in commercial property tax assessment matters, including annual assessment appeals. In these appeals by the Director of Assessment, the Board was asked to determine whether the Respondent property owners lost their right to appeal the 2021 assessment of their property when they failed to respond to a request from the Director seeking information under s. 20 of the *Act.* Before the Director mailed the request, Turner Drake had given notice that correspondence about the properties and their 2020 appeals underway should be sent to the agent. The policy of the Director is that PVSC will not share confidential information with third parties until a signed letter of authorization to access information is filed. This letter was not in place for the Respondents prior to the Director’s mass mailing of the requests for information. The property owners say, in effect, that delivery of the requests was not sufficient to invoke the statutory deadline because they were not delivered to the attention and address of their agent, Turner Drake, as requested.

[3] The Nova Scotia Assessment Appeal Tribunal (NSAAT) agreed, holding that the property owners were not statute-barred from appealing the 2021 property tax assessments for their properties because the Director did not send the Requests for Information to the "last address known to the Director," as required by the legislation. The Director of Assessment appealed this "common decision" of the NSAAT, which affected multiple commercial property owners represented by Turner Drake, under similar fact scenarios. These appeals affect the property of Evergreen Plaza Incorporated at 18 Hamlet Lane in Dartmouth, Nova Scotia (AAN: 10781116), and the property of 136 Portland Developments Inc. located at 134 Portland Street, also in Dartmouth, Nova Scotia (AAN: 00748757). They involve the same issues and representatives, so were consolidated into a single process by the Board.

[4] The Director acknowledges receiving notice from Turner Drake on or about February 10, 2020, which was included with the notice of appeal for the 2020 assessment year for 18 Hamlet Lane and 134 Portland Street. The Notice stated that "All correspondence with respect to these properties and the appeals" should be directed to Turner Drake. However, the Director asked the Board to find that PVSC's decision not to provide copies of the Requests for Information to third parties, unless PVSC has received a letter of authorization to release file information, was justified. For convenience, PVSC's mailing of Requests for Information also include "PIN" access codes that allow a person to retrieve electronic records for the properties. Those records may contain confidential commercial and other financial information.

[5] The Board heard evidence from representatives of the PVSC and of Turner Drake on the evolution of the Request for Information process and other relevant aspects

of the assessment process for commercial properties. The Board agrees with the property owners that the Director had notice of their agency relationship with Turner Drake and the evidence established that the "last address known to the assessor" should have been Turner Drake's. In the Board's view, the delivery of the Request for Information would have been sufficient if Turner Drake had been copied. Failing to deliver the Request for Information to the agent meant that delivery was not perfected as provided in the *Act.*

[6] The accepted objective of the legislation is to provide a municipal property assessment scheme that "is fair and falls uniformly on all property." Providing for an accessible, fair, orderly and transparent system is consistent with that objective. The Board interprets the purpose of the mailing requirements to ensure the best possible chance that the property owner receives the request, without requiring an assessor to go to extraordinary lengths to find them. The Legislature determined that should be the last address known to the assessor. A property owner could not avoid the consequences of missing the statutory deadline for reply if it appointed an agent but did not notify the Director before the Requests for Information were delivered. The strict 30-day time limit for reply runs from the date of sufficient delivery of the request.

[7] In this case, delivery was not sufficient under s. 20(2) and s. 23 is not engaged to bar the property owners' appeals of the 2021 Notice of Assessment of their properties.

II ISSUE

[8] The principal issue the Board must decide in this appeal is whether the Respondent commercial property owners' failure to provide the required response within

30 days of the Director's Request for Information applicable to the 2021 Assessment Year means that they have lost their right to appeal the 2021 Assessment for their respective properties.

[9] To address this question, the Board also must consider whether the Requests for Information were sufficiently delivered and if it was reasonable for the Director to send them only to the property owners' commercial addresses, and not copy or otherwise notify their identified agent, Turner Drake, before receiving a signed letter of authority to release confidential file information.

[10] This decision also addresses the Respondents' request for costs.

III BACKGROUND FACTS AND LAW

[11] Each year, PVSC relies on powers in the *Assessment Act* to send Requests for Information to property owners, seeking information on income and expenses and other financial details to assist in its assessment of properties for taxation purposes in the following year.

[12] These powers are set out in ss. 20 and 21 of the *Assessment Act*, which oblige a person to provide necessary information requested by an assessor to facilitate a proper assessment and authorize the Director to deliver to a taxpayer a request for information relevant to the upcoming assessment:

> **Duty to inform assessor**
>
> **20 (1)** Every person shall give to the assessor all necessary information requested by him for the purpose of enabling him properly to assess the property of that person.
>
> **(2)** The Director may cause to be delivered to any person a request for relevant information required by him in order to make a proper

assessment of the property or occupancy assessment of the person to whom the request is delivered.

(3) Any request shall be sufficiently delivered if mailed by registered mail, postage prepaid, addressed to the person at the last known address known to the assessor.

Request for information

21 (1) Every person to whom a request referred to in Section 20 is delivered shall provide the information requested.

(2) If a form has been delivered to him, he shall answer and complete it with a true statement of the particulars thereby required, and shall sign the same and shall, within thirty days after receipt thereof, return it to the assessor so answered and completed.

In the *Act*, "person" is defined as including "a firm, company, association and corporation." There is a separate definition for "ratepayer" which is a person liable to taxation under the *Act.* There is no definition of address or other information about the manner of determining the last known address.

[13] Section 23 establishes the penalty for not providing information in response to a request for information under s. 20, which includes losing the right to appeal the assessment of the property for the relevant year for which the information was requested:

Penalty

23 Every person who

(a) knowingly provides an assessor with false information in response to a request for information whether delivered under Section 20 or otherwise; or

(b) neglects, refuses or fails to

(i) give to an assessor information reasonably required by him,

(ii) furnish any particulars required by this Act or by a form authorized thereby, or

(iii) provide information in response to a request under Section 20 or to answer, complete and return the form referred to in Section 20,

> is guilty of an offence under this Act and, whether or not he has been prosecuted or paid any fine or served any imprisonment to which he has been sentenced, he shall not be entitled to appeal from the assessment of his property for the year in respect of which the information, particulars or form were requested.

[14] The *Interpretation Act* provides additional implied definitions where a time limit is established under an enactment. These are relevant in determining the expiry of the 30-day time limit for the reply:

> **Implied provisions in enactment**
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> **19** In an enactment,
>
> …
>
> (k) where the time limited for the doing of any act expires or falls upon a Saturday or a holiday, the time so limited extends to and the act may be done on the first following day that is not a Saturday or a holiday;
>
> (l) where a period of time dating from a given day, act or event is prescribed or allowed for any purpose, the time shall be reckoned exclusively of that day or of the day of the act or event;

[15] Robert Andrews, Senior Legal Counsel with Property Valuation Services Corporation (PVSC) represented the Director of Assessment and PVSC. The Director is the public officer assigned valuation duties under the *Assessment Act,* but PVSC as an agency undertakes most associated functions. Gavin Giles, K.C. appeared as counsel for the Respondents, represented in the appeal by their agent, Giselle Kakamousias, B.Comm., DULE, MRICS, AACI, Vice-President of the Property Tax Division for Turner Drake.

[16] There is little disagreement on the facts of this case, and the facts are clear from the record before the Board.

[17] These are the two remaining appeals from an initially large number of non-compliance matters that were appealed to the Board from various NSAAT decisions of different NSAAT members and grouped under one hearing process. The appeals related

to the operation of s. 23 and whether property owners were statute-barred from bringing an appeal for failure to respond to a request for information from the Director.

[18] Turner Drake was engaged as an agent for numerous commercial property owners in respect of appeals of their 2020 Notice of Assessment. In the Notices of Appeal for 18 Hamlet Lane and 134 Portland Street (as well as many other properties represented by Turner Drake) dated February 10, 2020, Turner Drake included the instruction: "**All correspondence concerning these properties, and the appeals should be directed to ourselves."** [Exhibit E-2; Exhibit D-2, emphasis in originals].

[19] PVSC records show that the civic address 18 Hamlet Lane (Assessment Account Number 10781116) is owned by Evergreen Plaza Incorporated. It houses a multi-residential unit building. 134 Portland Street (Assessment Account Number 00748757) is also classified as a multi-unit residential building, owned by 136 Portland Developments Inc. This information is saved in PVSC's Computer Assisted Mass Appraisal System (CAMA), an electronic database updated with information from PVSC as well as the Land Registry Office.

[20] Requests for information were delivered by PVSC in February 2020 to the owners seeking information about the properties for the year ending in December 2019. The information is gathered to support the valuation of properties for the 2021 Notices of Assessment. These proceedings do not impact any appeals of 2020 Notices of Assessment, which are only referenced because the timing of Turner Drake's filing of appeals for the Respondents with Ms. Kakamousias's letter of February 10, 2020.

[21] All other associated matters were withdrawn by the respective appellant – some by the Director, and others that had been filed by Turner Drake on behalf of property

owners. These remaining two matters were subject to the “common decision” of the Nova Scotia Assessment Appeals Tribunal (NSAAT) dated August 23, 2021, for hearings held July 8, 2021, Docket #070821A [Exhibit E-2].

[22] Charlene MacNeil, AACI, P. App., MIMA, Assistant Director of Commercial Valuation and Defence at PVSC testified for the Director. Though Ms. MacNeil has previously been qualified by the Board as an expert in valuation, in this case, she provided pertinent factual evidence based on her knowledge and experience as a long-term employee of PVSC with a 35-year background in assessment. After moving to Nova Scotia in 2004 and spending the next several years as an assessor, in 2015 she took over management of income valuation, with oversight of the associated Request for Information process. She maintains responsibility for those processes.

[23] The Director relies on the authority in s. 20 and 21 of the *Act* to send Requests for Information to property owners seeking to obtain information necessary for the annual valuation of commercial properties. Around February of each year, PVSC sends an “income and expense” questionnaire about the previous year (in this case the year ending December 2019) to owners of approximately 7,500 properties, which is its largest mailout of this type. It does a second mailout in June to golf courses in the province, seeking some different, golf-course-specific information. In August, PVSC sends a permit mailout seeking information about new construction or properties undertaking other capital improvements.

[24] The Director uses an established form to request the property information, including building particulars, revenue details broken down by category, income losses, and other financial information depending on the property. The information is used to

establish capitalization rates to assess the value of commercial properties for the following year, including the properties represented by Turner Drake that are the subjects of this appeal. The requests are sent by registered signature service mail and directed to the “last known address” which is the requirement in the *Act.* The address comes from the mailing address on file for the property owner in the PVSC database.

[25] In a letter dated February 18, 2020, the Director wrote to the property owners seeking income and expense information about their respective properties. This was the “Request for Information” sought under s. 20 of the *Act*. The record shows that the letters were sent by registered mail and delivered to Evergreen Plaza Inc. at the mailing address of 19 Hamlet Lane, Dartmouth and to Unit 4, 35 Portland Street, Dartmouth, the mailing address on file for 136 Portland Developments. Each letter was signed for on February 19, 2020. The 30-day period from the date of signature would have expired on March 20, 2020. PVSC received the Letter of Authorization for records access from Evergreen Plaza Inc. on February 27, 2020, and received a response to the Request for Information on April 1, 2020. As of the date of the hearing, PVSC had not received a response to the Request for Information from 136 Portland Developments. A Letter of Authorization for Records Access was signed on March 31, 2020.

[26] Before 2011-2012, PVSC sent its requests for information under s. 20 and 21 only to the last known address in the Director’s files. At that time there was a series of appeal decisions from the NSAAT, known as “the Trask Decisions.” These involved questions of adequate delivery of requests for information where a person was represented by an agent and are addressed in the Director’s submissions and evidence. The guidance outlined by Member Trask resulted in PVSC changing its practice to send

copies of requests for information for a property to an agent like Turner Drake, where the Director had been asked to direct correspondence to that agent. This was based on the NSAAT's finding that given the notice from Turner Drake about their representation the "last known address" had changed.

[27] Subsequently, PVSC reviewed their existing processes and record-keeping practices. The system now tracks any authorizations to access information or additional addresses on file for the purpose of each step of the assessment process, including the starting or end date and in some cases multiple authorizations. Ms. MacNeil explained there is a new double-check for new letters of authorization before sending the bulk income and expense mailout:

> Also, more recently … we doublecheck that because there is a time lag between when we start the process of the mailout to the day the letter goes out. We will double-check everything the day of the mailout the ensure that the – any new LOAs have been received recently, we will make sure to identify those and copy those agents as well on the letters … so that we can be as up-to-date as possible based on the day that we conduct the mailout.
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> [Transcript, p. 31]

[28] She also explained that a key piece of information on the requests for information as well as on the Notice of Assessment is the PIN access code which allows a person who owns property to go to pvsc.ca to access confidential information about the valuation of their property. This is the only information that is of real concern to the Director from a confidentiality perspective because it allows access to financial and sometimes commercial information about the properties. A new PIN is issued each year and after each transfer of property. During the "double-check" before the mailout, PVSC looks to see if a new PIN must be issued on a property that was transferred in the interim between preparing the letters and the date of mailing. [Transcript, pp. 54-55]

[29] Ms. MacNeil addressed the challenges of managing the scope of the valuation process for over 640,000 properties in the province each year. She indicated that delaying the mailout of the request for information documents to wait for outstanding letters of authorization to be filed would result in months of delay. Generally, letters of authorization are only requested for properties that have an open appeal, but PVSC requires them in any circumstance where access to the confidential file information is required.

[30] Ms. Kakamousias testified as to Turner Drake's involvement in the current appeals, as well as her experience over the evolution of the Request for Information process. The parties acknowledged that some of her testimony, related to the intent and actions of property owners, included some hearsay. In the circumstances, there were no objections, and her testimony was not challenged in any of these areas. There was no real disagreement between Ms. Kakamousias' and Ms. MacNeil's evidence about the history and process that led to the current appeals. Both addressed the tight timelines facing the assessment cycle in Nova Scotia, and the challenges on both sides related to the large number of properties that are valued within that timeframe.

[31] The Respondents acknowledged that the questionnaire for Evergreen was returned after the expiry of the 30 days outlined in the letter. Turner Drake acknowledged that the questionnaire for Portland Developments had not been returned as of the date of the hearing. Ms. Kakamousias testified to her clients' understanding that Turner Drake would deal with any assessment matters as their agent.

[32] The February 18, 2020, RFI letters were not copied to Ms. Kakamousias, and there was no notation of a carbon copy or second address on the letter. Neither the

property owner nor Turner Drake requested an extension to the deadline for filing the responses. No information was included on the letter of authorization requirement.

[33] Ms. MacNeil clarified the Director does not require a letter of authorization to be on file for an agent to file an appeal of an annual Notice of Assessment, at least until the agent requires access to PVSC's valuation information. When an appeal is received, staff will advise that one is required to permit PVSC to share account information. The database tracks properties that have an agent on file and also tracks whether the property owner has signed a letter of authorization indicating that an agent or other third party has the right to access the property assessment file information. She said that PVSC does not provide requests for information, which include mailing addresses and PIN access codes for the assessment file, to persons other than the owner if an authorization has not been filed.

[34] At the hearing, Ms. MacNeil and Mr. Andrews, on behalf of the Director, indicated that there was no reason to doubt that an agency relationship existed between Turner Drake and the Respondents, as set out in the letter. However, the Director maintains that it would be problematic from an administrative perspective to "hold back" the mass mailout of the Requests for Information to ensure that letters of authorization were submitted, even when an agency relationship is otherwise established.

IV ANALYSIS AND FINDINGS

1. The Board's Jurisdiction

[35] The parties agreed that the Board had jurisdiction to hear these appeals and to consider the principal issue of whether the appeals were statute-barred under s. 23

of the *Act*. As explained in *APL Properties Limited*, 2007 NSUARB 99, para. 22*,* the Court of Appeal dealt with this question in *Nova Scotia (Director of Assessment v. Homburg L.P. Management Inc.,* 2006 NSCA 110, effectively reversing a past decision of the Board (in *Sobeys Capital Inc.* 2004 NSUARB 86) that the Regional Assessment Appeal Tribunal (predecessor to the NSSAT), and therefore the Board, did not have this jurisdiction. In *Homburg,* in paragraphs 30-32, the Court of Appeal determined that the Board's power to hear an appeal "includes the power to determine preliminary jurisdictional issues related to whether an appeal should proceed", including questions involving s. 23.

[36] The burden of proof in an appeal such as this is on the appellant: *Director of Assessment (N.S.) v. Wandlyn Inns Limited et al* [1996] 150 N.S.R. (2d) 177. The standard of proof is the balance of probabilities. Section 85(1) of the *Assessment Act* gives an aggrieved party (in this case the Director) the right to appeal an NSAAT decision to the Board. Respondents' counsel, Mr. Giles, seemed to suggest in some of his submissions that the Board should ultimately give consideration or deference to the previous NSAAT decisions, even if it is "not legally and strictly obligated to do so."

[37] Keeping in mind the appeal related to a discretionary procedural issue, not a substantive assessment determination, the previous cases in *APL* and *Homburg* do not address the question of what, if any, deference is due to a lower tribunal. However, there is only one appeal process to the Board under the *Assessment Act* and s. 87(1) makes clear that the process is a *de novo* hearing. The Board is empowered to hear from witnesses and has all of the powers of the NSAAT under s. 87(2). While I did review and consider the NSAAT common decision, which provides context and the Tribunal's

reasoning for its direction, this *de novo* process is not a search for errors in that NSAAT decision.

[38] The Board is a statutory tribunal and can only exercise the authority granted to it in legislation. In appeals under the *Act,* the Board is limited to the provisions of the *Act* and has no inherent jurisdiction (see: *Re: Port Hood Sunset Beach Resort and Spa Inc.,* 2018 NSUARB 167, para. 25).

[39] The state of the law with respect to a failure to comply with a request for information delivered under s. 20 is generally settled, as long as the evidence shows that the request letter was delivered in accordance with the *Act.* The Board decision in the matter of *APL Properties,* cited in many Board decisions after it, sets out the Board's approach to the analysis of the operation of ss. 20-23 of the *Act:*

> [53] The relevant provisions of Nova Scotia's Act - whether one agrees with them as a matter of policy or not - communicate a clear message: they prescribe 30 days to provide the information requested under s. 20 and make no provision whatever for exceptions. For example, the statute does not say (or even just imply) that the normal period will be 30 days, but extensions sometimes may be granted in circumstances in which it may be reasonable to permit a longer period.
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> [54] With respect to the specific provisions relevant to the present proceeding, the Board has uniformly held that it has no jurisdiction to grant an extension: see, for example, *County Realty Ltd. v. Nova Scotia (Director of Assessment)*, [2001] N.S.U.R.B.D. No. 78 (Q.L.); see also *MacFarlane v. Director of Assessment (Nova Scotia)*, [2005] N.S.U.R.B.D. No. 44 (Q.L.), 2005 NSUARB 48 (CanLII).
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> [55] The Board considers such fixed periods, with no exceptions, to be a common theme in the Assessment Act. It is, in the view of the Board, a statute which has been repeatedly held to contain time limits which are, to all intents and purposes, absolute. Moreover, where the statute does permit an extension, that extension is often strictly limited. For example, the Act does permit, under certain restricted circumstances, an extension of time for filing an assessment appeal with the R.A.A.C. - but the Act does not permit an extension for filing an appeal of an R.A.A.C. decision with the Board: see, for example, references in *Hinspergers Poly Industries Ltd. v. Nova Scotia (Director of Assessment),* [2003] N.S.U.R.B.D. No. 81 (Q.L.), 2003 NSUARB 83 (CanLII), paragraph 15; *Hinspergers Poly Industries Ltd. v. Nova Scotia (Director of Assessment)*, [2004] N.S.J. No. 27 (C.A.).

[40] The Board has also had to review, in numerous decisions, whether it has any discretion to extend the time period set out in s. 86(1) of the *Act* for filing an appeal to the Board. It consistently held that it does not. The Board considered that question in previous cases (see *Re 3014242 Nova Scotia Ltd.*, *2002 NSUARB 29*; *Re Smyth, 2012 NSUARB 40*; *Re 3224963 Nova Scotia Ltd., 2014 NSUARB 74*; and, *Re Port Hood Sunset Resort & Spa Inc., 2018 NSUARB 167*). These decisions carefully canvass the applicable law and conclude that the Board has no power to extend the time in which an appeal can be filed. It has declined to do so in some difficult circumstances where the interest of "fairness" would seem, to an outside reader, to weigh in favour of some lenience for appellants whose documents were filed beyond the deadline.

[41] As explained in *APL Properties,* the Board does not have the same powers as a Court to consider issues of procedural fairness or any inherent jurisdiction to extend time limits. The *Limitation of Actions Act*, for example, expressly confers on the Supreme Court of Nova Scotia (but not the Board), a discretion to extend the time for commencing a civil action. Although the Court of Appeal has directed that the Board is the appropriate tribunal to consider preliminary jurisdiction questions under the *Act*, there has been no suggestion that it could exercise any of the inherent powers of a Court beyond what is set out in the legislation.

2. Were the Requests to Information sufficiently delivered, as required, to the "last address known to the assessor"

[42] As Member DiPersio of the Nova Scotia Assessment Appeal Tribunal found, I conclude that the Requests for Information were not sufficiently delivered as stipulated in s. 20(3) of the *Act*: "addressed to the person at the last address known to the assessor."

[43] The parties did not dispute whether the respective principals for Evergreen Plaza and 136 Portland Developments received the Requests for Information relevant to the 2021 Assessment on or around February 19, 2020. The letters were signed for at their mailing addresses. Ms. Kakamousias testified to her understanding that upon that receipt, the owners presumed that any further communication would be between PVSC and Turner Drake, who had taken carriage of their assessment matters and notified PVSC. The owners took no further action to file responses to the requests.

[44] The Respondents say that delivery was not perfected because the Requests for Information were not delivered to Turner Drake, in the face of clear notice from Ms. Kakamousias, as agent, that her address was to be used for further communications with the property owners about the properties. As Ms. MacNeil testified, PVSC deliberately did not take the administrative step of delaying or modifying its mailing procedure for properties that did not have a letter on file authorizing PVSC to share confidential information. Ms. MacNeil said her understanding is that a PVSC staff member did communicate with Ms. Kakamousias about which properties were missing the authorizations, but Ms. Kakamousias did not receive copies or any other communication about the outstanding Requests for Information for these clients. The Director says the Respondents should have communicated with their agent (or vice versa) to ensure they were meeting their statutory obligations, given the clear direction in the letter.

[45] Ms. MacNeil and Mr. Andrews confirmed at the hearing that the Director was not denying that an agency relationship could be established before a letter of authorization was filed. The Director accepted Ms. Kakamousias' representations that she was the agent for the owners. It was also agreed that the Director could meet the

intent of legislation by relying on the address of a purported agent of a property owner to send a request for information, or to receive information related to an appeal or response to PVSC's requests. The key issue was whether the Director was obliged to copy the agent on the requests before the taxpayer had signed and filed the additional letter of authorization documentation required by the Director's policy.

[46] Nevertheless, the principles of agency are relevant to this matter insofar as the purpose of an agency relationship is to allow an agent to stand in the shoes of the principal, and to exercise such actual or ostensible authority as the principal has delegated. The Respondents pointed me to the definition of agency in Fridman Gerald, *Canadian Agency Law*, 3rd ed (Toronto: LexisNexis Canada Inc. 2017), accepted by the Nova Scotia Court of Appeal in *Globex Foreign Exchange v. Launt* (2011), 306 N.S.R.(2d) 96 in holding that the establishment of an agency relationship is a question of fact:

> … the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position by the making of contracts or the disposition of property.

[47] The Respondents say that if the Director accepts an agent for the purpose of filing and providing information related to an assessment appeal, it would be "bizarre" to not accept that relationship for all related processes including receiving all relevant information, including confidential information, included with the request for information. They argue that once the Director received notice from their agent that all further correspondence about the parties was to be sent to Turner Drake's addresses, it was incumbent on the Director to respect the agency relationship and to change the address for delivery of documents for the purposes set out in the letter.

[48] I accept as fact that Turner Drake was, at all material times, acting as agent for the Respondent commercial property owners. By the end of the hearing this question appeared not to be in dispute. However, this finding did not settle the issue of sufficient delivery of the Requests for Information.

[49] As discussed, I approached my analysis from the perspective of interpreting what the statute says and applying the context. The Board accepts that legislation must be interpreted in a liberal and purposive manner. However, where the language is clear and can be given its ordinary meaning, the Board will do so.

[50] In *APL Properties Limited*, the appellants argued that strict adherence to the technical language in the *Act* would lead to a finding that deprives the appellant of the right to appeal "on a technicality." The Board, in *Port Hood* 2018 NSUARB 167, agreed with and quoted *APL Properties*, which stated in this regard:

> [58] The result of the Board's decision in this matter (unless it is successfully appealed to the Court of Appeal) will be that APL loses its right of appeal in relation to the 2004 assessment. In *St. John's*, the Newfoundland Court of Appeal commented that:
>
> > …The right to appeal is a fundamental constituent of fairness and justice…
>
> The Board agrees. Decisions of the type made by the Board in the present proceeding (i.e., dismissing the taxpayer's appeal without a hearing on the merits) mean that taxpayers do not get the opportunity to argue their case before the Board; they are, instead, stopped from doing so by a mere procedural requirement.
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> [59] In plain words, the taxpayer is beaten by a technicality. Accordingly, the Board does not take lightly its finding in the present proceeding, or in earlier ones, that the intent of the *Assessment Act,* is often precisely that: the *Act* sets time limits for certain tasks (such as filing of appeals to the Board, or provision of requested information to the Director) which must be strictly complied with, and failure to do so is fatal to an appeal.
>
> [60] While the Board has decided that APL cannot proceed with its appeal of the 2004 assessments, this decision has no negative effect upon APL's right to appeal the assessments of the same properties in subsequent years. In other words, the denial of the present appeals relates only to the 2004 assessments, and not to the 2005 assessments, or any subsequent year. In contrast, under some other legislation administered by the Board, the Board sometimes sees itself

> as obliged to enforce strict appeal periods which lead to the loss of a right of appeal forever, never to be regained. For example, under the *Victims' Rights and Services Act*, the Board has repeatedly held that Nova Scotia legislation prohibits it from extending certain appeal periods: see, for example, *K.G. v. Nova Scotia (Director of Victim Services),* [2004] N.S.U.R.B.D. No. 43 (Q.L.), 2004 NSUARB 48 (CanLII).

[51] Every enactment, including taxation statutes, is deemed to be remedial and must be interpreted to ensure the attainment of its objects (*Quebec (communaute urbaine) c. Notre-Dame de Bonsecours (Corp.)* [1994] 3 S.C.R. 3 and *Nova Scotia (Attorney General) v. Emscote Ltd.* 2001 NSCA (N.S.C.A.). In *Romad Developments Ltd. v. Nova Scotia (Director of Assessment)* 2008 NSSC 260, Justice Warner of the Nova Scotia Supreme Court applied these principles of statutory interpretation when considering the meaning of s. 21(2) in respect of what "return it to the assessor" within 30 days meant. In that case, the owner had filled out a request for information form and mailed it through regular post, but the assessor did not receive it. In paragraphs 33-26, the Court described the approach to interpretation of taxation statutes as follows:

> [33] Any ambiguity as to whether taxation statutes are to be interpreted as all other statutes - that is, remedially or purposively, was resolved by *Quebec v. Notre-Dame de Bonsecours*.
>
> [34] After reviewing Supreme Court decisions that reflected the change in the Court's interpretative policy for taxation statutes from that of strict construction against the government, except where it "relates only to the clarity of the wording of tax legislation" (¶ 28), to a purposive approach, the Court effectively adopted Elmer A. Driedger's formulation of the modern approach to statute interpretation.
>
> [35] In a more recent decision, *Bell ExpressVu Limited Partnership v. Rex* 2002 SCC 42, the Court held that:
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> > a) this approach recognizes the important role that context must play in construing the words of a statute (¶ 27);
> >
> > b) other principles, such as strict construction of penal statutes and "Charter value" approaches, only enter the picture where an ambiguity exists (¶¶ 28 and 53-67);
> >
> > c) by necessity, an ambiguity only arises if, after consideration of the entire context of a provision, it is reasonably capable of multiple

> interpretations. An ambiguity must be real and the words reasonably capable of more than one meaning (¶ 29); and,
>
> d) the interpretative factors laid out by Driedger need not be canvassed separately in every case, and are closely related and interdependent (¶ 31).
>
> [36] For the Court, Iacobucci, J., grouped his analysis of the interpretative factors in that case into two headings: first, interpretation of the grammatical and ordinary sense of the words of the provision; and, second, interpretation within the context of the broad legislative scheme, the rest of the statute, and related legislation.

[52] The Nova Scotia Court of Appeal summarized the modern principle of statutory interpretation in *Sparks v. Holland*, 2019 NSCA 3, where Justice Farrar stated:

> [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 CanLII 837 (SCC), [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.
>
> [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:
>
> 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?
>
> (Sullivan, pp. 9-10)

[53] Sections 9(1) and 9(5) of the *Interpretation Act* also guide the Board's analysis and are consistent with, and complementary to, the modern principle set out in the case law:

Interpretation of words and generally

9 (5) Every enactment shall be deemed remedial and interpreted to ensure attainment of its 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."

[54] The Nova Scotia Supreme Court has discussed the objects of the *Assessment Act.* In *Northwoodcare Inc. v. Nova Scotia (Assessment),* 2014 NSCC 167, the Court heard evidence and undertook an analysis of the legislative history of the *Act* and the Hansard record of the debates around 2012 amendments, which the Court found of assistance in assessing legislative intent for the assessment appeal process. In paragraph 57, the Court, quoting from *Romad Developments,* said that:

> The objective of providing flexibility, fairness, accessibility and transparency is consistent with the view expressed by the Court in ***Romad**,* at paragraph 45, that "the object of the *Act* is to provide a scheme for the classification, valuation and exemption of property for municipal taxation that is fair and falls uniformly upon all such property."

Considering the object of the *Act*, the Court reviewed whether the result of applying a particular interpretation would promote the objective of "providing flexibility, fairness and accessibility in the assessment appeal process." In my review of the parties' arguments on how I should interpret ss. 20 through 23, I looked through the lens of these objectives.

[55] Foreclosing the right of appeal in an assessment matter is a serious consequence, but in past cases, the Court of Appeal and the Board have been clear that the Assessment Act sets rigid requirements that must be strictly complied with. On the time limits, this Act gives little or no leeway for compassionate or exceptional

circumstances. When its requirements are not met, the right to appeal in a given year can be lost on what seems like a technicality.

[56] In this case, the taxpayers did not meet the 30-day timeline set out in the legislation. This is not in dispute. However, the NSAAT found (as do I) that since the Director did not perfect the delivery requirement, the foundation required to apply s. 23 to bar the appeals was not established. As in the cases about the *Act*'s rigid requirements for notice, the Board finds the statutory wording provides little leeway to address the Director's administrative concerns.

[57] A review of the legislation shows multiple references to "last address known" when notice to a person is required in the assessment process. Most of these provisions, like s. 20, refer to the last address known "to the assessor". Two sections, related to delivery of an amended notice of assessment after an error in an assessment or classification, refer to the "last address known to the Director." I note that the definition of "assessor" in s. 2(b) indicates that "assessor" includes the Director. The parties did not address this point, and I do not find an obvious distinction or draw any inference from these different references in the interpretation of s. 20.

[58] The Director's position is that the reference to "last address known" must be considered to refer to a singular address, to be used by the Director for every purpose under the legislative provisions. The Director found it was unlikely that the intent of the Trask Decisions was the result of a permanent change in the address of the property owner to that of the agent, particularly as involves receiving the Notice of Assessment. In particular, the Director's submissions point out s. 53(2) which sets out the technical requirements for service of the Notice of Assessment on the person assessed.

Notice of assessment

53 (1) …

…

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

[59] The provision is drafted much more specifically than s. 20. It gives multiple options for the service or delivery of the Notice of Assessment. There is also a "catch-all" provision that excuses a failure to serve the notice where the last or usual place of residence or business is not known to the assessor. Section 53(2) refers to the address of the "last or usual place residence or business" specific to the assessed person, while s. 20 uses the more general "last address". These differences would support an interpretation that an "alternate" address, other than exclusively the residence or business address of the owner, may be contemplated under s. 20.

[60] There is no direction whatsoever on how a person's mailing address for the purpose of the "last address known" is to be determined or communicated to the Director. There is no definition or other past treatment of the phrase outside of the analysis canvassed in past decisions of the NSAAT. Looking at the phrase in its grammatical and ordinary sense is straightforward. An assessor must "know" about the address for the owner to argue that a request under s. 20 should be sent there. I interpret "last" according to its ordinary definition - to mean "most recent", occurring or coming after all others in time, order or place, before the delivery. If the assessor has information on a more current address than what may be on file, that is the last address known.

[61] The uses of this concept elsewhere in the legislation, and the context of the assessment scheme overall, lead me to conclude that the purpose of determining the last known address is to ensure that an assessed person is informed and has the ability to participate in the assessment process, which has important financial and other impacts on their interests. This is balanced with the need for some limits on how far an assessor must go to track down a taxpayer to relay the information.

[62] The Director acknowledged that the direction from Member Dipersio of NSAAT could have been interpreted to mean that the primary mailing address in the Director's records should have been changed in all cases to Turner Drake's. However, the Director looked at the issue from a practical perspective and changed their process to copy both the owner and the agent on its communication, as long as the authorization is in place. Mr. Andrews suggested that it was not reasonable, nor was it the agent's intent, to change the property owner's address for every communication from the PVSC. In particular, it would not be reasonable for the agent to be the sole recipient of the Notice of Assessment for a property. Ms. Kakamousias essentially agreed. She testified that she intended to change the last known address "for the purposes of communications regarding appeals" as set out in the letter. She did not intend to be the exclusive conduit for information from PVSC to the property owner.

[63] Ms. Kakamousias sent her letter indicating Turner Drake was agent and requesting all correspondence about the properties and the appeals on February 10, at least a week before the Director sent out the mass mailing of requests for income and expense information to commercial property owners. This advisory did not identify or list specific correspondence that should be sent, or whether the property owner should be

copied on further correspondence, or otherwise. However, the Director acknowledged that assessment staff knew about this notice. The Director acknowledged the agency relationship and PVSC's usual practice to seek a letter of authorization and copy an agent on future requests for information and other appeal-related material. However, the lack of time between its delivery and the mass mailing of the requests meant that the Director did not collect the letters of authorization for all of Turner Drake's clients or otherwise take steps to deliver the requests for information to the agent with or without redactions. PVSC sent the requests to the owners' addresses that were already, previously, attached to the assessment file.

[64] Significantly, s. 23 of the *Assessment Act* makes it an offence, punishable by fine or imprisonment, to neglect, refuse or fail to return the form requested in s. 20, in addition to the denial of the right to appeal the assessment. The standard of clarity for a statutory provision that creates an offence is higher than when no offence is created. Any procedure developed for the convenience of the PVSC or other actors in the assessment process must be considered secondary to the statutory language. For the purposes set out in Ms. Kakamousias's letter, I find that the last address known to the assessor was Turner Drake's, and the delivery of the income and expense requests for information should have been delivered to that address in order to be sufficient under s. 20(3).

3. Is it reasonable for PVSC to require a signed authorization before releasing information from a file record or correspondence to an agent and what effect can the requirement have on the statutory timeline?

[65] There is no obligation on the Director to insist upon an explicit letter of authorization from a person to share information with an agent (or other third party) about their property. The Director says that filing the letter of authorization is not about the "appointment of an agent". Instead, the Director says it is a procedural requirement

ensuring that access to sensitive commercial and financial information is protected from unauthorized disclosure. The Director says that an agent is not impeded from advocating for an owner in the appeal process, but says it is impractical to do so until PVSC has the person's approval to release information allowing it to address the contents of a file and "speak meaningfully about the merits of the appeal" [Transcript, p. 164].

[66] The Director and PVSC, interchangeably, are a public body that collects confidential information from property owners under a statutory mandate. The Director says PVSC has a corresponding mandate under "municipal protection of privacy and access to information legislation" (Reply Submissions, para 19) to protect that information. Therefore, the Director must balance competing obligations of dealing with and providing disclosure to an agent on an appeal, or otherwise, with protecting the confidential information of property owners that the agency collects. In the Director's view, the requirement for a signed letter of authorization from the owner of confidential information before releasing that information is a reasonable measure that should not be controversial.

[67] Turner Drake was aware of the requirement for letters of authorization, and the Director says it was within their control to make sure that a signed document was on file for all clients prior to the mailout of requests for information. Mr. Andrews says that the Director has no role in the agency relationship, and it is between the agent and principal to ensure that the requirements are in place. Turner Drake says that the Director knew of the appointment of Turner Drake as agent for all matters relative to their assessment and appeals and properties, which were not subject to any expressed

limitation or condition. Whether or not a letter of authorization was on file was immaterial to the statutory direction to send the Request for Information to Turner Drake.

[68] Ms. MacNeil confirmed that the only confidential information included in the Request for Information is the PIN code needed to access the web portal and electronic file information related to the property. It is a matter of administrative convenience to have that information included in the same document as the request so that property owners do not have to keep track of the access information separately. Mr. Andrews described it as “an integral part of the notice because it provides access in order to submit the information.” An agent for a property owner receives copies of requests for information just like other general non-confidential correspondence when a letter of authorization is in place.

[69] PVSC sends out thousands of Notices of Assessment and Requests for Information annually. I accept there may be negative consequences for the efficiency of the process if PVSC were obliged to delay its processes to send additional notification or wait for a taxpayer to file a letter of authorization before releasing documents, like the Requests for Information, to an agent like Turner Drake, where it includes confidential information.

[70] Both parties argue, to some extent, that matters of procedural convenience should sway my decision in their favour. The Director points to its policy decision to prioritize protection of sensitive commercial information to require that the letter of authorization be in place before it accepts the “change of address” from the property owners’ to the agent’s. Turner Drake argues that the principal should be absolved of

further responsibility to make enquiries about procedural requirements once it, as agent, communicates with the Director about its preferences.

[71] There is no requirement in the legislation for a letter of authorization. Section 87A includes certain restrictions on access to personal information (within the meaning of the *Freedom of Information and Protection of Privacy Act)* by a party to an appeal that does not appear to be applicable to sensitive commercial information (see recent Board decision of *Nova Scotia (Director of Assessment) (Rank)* 2023 NSUARB 110) or these circumstances, though there was no argument on this point. There is no requirement for any specific content in a request from the Director referred to in ss. 20 through 23. Further, the form of a request for information is under the control of the Director. Mr. Andrews argued that requiring an authorization prior to PVSC copying a representative on a request for information containing a PIN code was not onerous. However, Ms. MacNeil admitted that the electronic link and PIN need not be included in a request for information. It was primarily for the convenience of the taxpayer. The PIN information could be sent in a separate document, but it was included so that the taxpayer does not have to keep track of additional documents. It was acknowledged it could be redacted in correspondence with agents where a letter of authorization is not yet on file.

[72] The Respondents argued that an object of the legislation (and the principles of agency) would be frustrated if taxpayers lost their right of appeal because the Director fails to ensure delivery of requests for information to an agent, despite the taxpayer's legitimate expectation, after giving notice. Their legal submissions also refer the Board to the important administrative law principle of the "right to be heard" – see *Nova Scotia Public Service Long Term Disability Plan Trust Fund v. Hyson*, 2017 NSCA 46, where the

Court of Appeal held that an administrative Board's decision was not flawed by its reference to extraneous reference material; however, the Board should have allowed the parties to address those materials before relying on them to support a finding against their interests. The Court undertook a procedural fairness analysis – essentially, whether a claimant has a legitimate expectation that an administrative decision-maker will comply with a certain procedure (or result) in the context, and if the failure to comply was a substantial deviation from the authority's representation. In *Hyson*, the judge found that whether or not the extraneous material was or was not determinative for the Board, the breach of a fundamental principle of natural justice was the only "harm" required to render that decision void.

[73] While this Board is certainly bound to follow the principles of natural justice procedural fairness highlighted by counsel for the Respondents, it does not have the power of judicial review. The Court of Appeal has been clear that the Board's authority on an assessment appeal does not include conducting a procedural fairness analysis when the legislation does not provide for it. My review is focused on the interpretation of the statutory scheme and applying it to the facts before me.

[74] Although I did not delve into a fairness analysis, I recognize that the *Assessment Act* sets up a comprehensive appeals process. The right to appeal, including the right for an appellant to "be heard" in the process, is absolutely a principal element of the property valuation scheme set up by the legislation. The *Act* provides an opportunity for multiple levels of appeal on certain assessment matters with participation from affected persons at all stages. It includes procedural obligations and safeguards for the

Director, as well as some strict procedural rules for exercising the right to appeal including the rigid time limits, as discussed earlier.

[75] Like the Board, the Director is an administrative decision-maker and is similarly restricted by the limits of the legislation and binding case law. The Director articulated reasonable arguments about the administrative challenges associated with ensuring the efficient delivery and compilation of responses from the request for information process within the tight timelines of an annual assessment process. I note there is no adverse consequence to the Director if the requests for information are not received by a taxpayer in a timely way– the *Act* does not impose a loss of appeal or additional obligations on the Director. PVSC is authorized (under s. 22) to proceed with its assessment for the relevant year without the information from a property owner. Nevertheless, I cannot conclude that the objects of the legislation, in this case, support a flexible interpretation of s. 20(2) favouring the efficiency of the Director's chosen process. I find that failure of an assessor's Request for Information to reach the taxpayer in a timely fashion according to the standard in s. 20(2) may also frustrate the objects of ensuring a fair and rational distribution of the property tax burden as well as the orderly, fair and uniform system of valuation under the *Act.* Particularly in light of the serious potential consequences to commercial taxpayers, including the threat of administrative offences, I find that the requirements for a sufficient delivery under s. 23 should be applied strictly. It is within the control of the Director, and not an unreasonable burden, for PVSC to further finetune the "doublecheck" process to ensure that requests for information are sent to the requested representatives when the Director has notice of a more recent address for

delivery. It is up to the Director how this is accomplished, as long as it aligns with the legislation.

[76] There was some intimation in the Respondent's argument that the Director had contrived, possibly in an act of bad faith, an administrative requirement to foreclose the owner's rights of appeal for the PVSC's own convenience or to further restrict appeals. I feel it should be said that this speculation was not supported by the evidence. I find from the testimony of both witnesses that Turner Drake and PVSC staff generally have a high level of cooperation and good communication. Managing the procedural requirements of the request for information and assessment process generally has been a matter of trial and error, and discussions with "heavy users" like Turner Drake. Past decisions of the NSAAT led the PVSC to change their processes in an attempt to carry out the spirit of those decisions in a pragmatic manner.

[77] On one hand, the Director appears to have reasonably developed and applied a policy requirement that helps safeguard confidential information in its care and control. To the extent that I am authorized to consider the Director's confidentiality obligations in a matter like this, in my view, asking for a letter of authorization to be filed prior releasing confidential information to a person other than the owner is a reasonable precaution. I also was not persuaded that the requirement somehow denies the existence of an agency relationship. The relationship exists between the agent and principal whether or not the document is filed. The real question is whether the Director can rely on the policy to support its position that he need not accept an agent's address for service of a request for information until the authorization is filed. And if the authorization is filed

after the requests are otherwise delivered, from when does the time limit for response run?

[78] The Director has identified the administrative conveniences of a coordinated bulk mail-out process where the Requests for Information forms include confidential information that helps to facilitate a person's access to the electronic system. However, there are serious quasi-penal and financial consequences that may flow from a taxpayer's preferred representative not receiving a request at all, if they have not already submitted the authorization, and then miss the window for reply.

[79] If the Director must double-up on communication for an agent and owner, or delay processing requests for a subset of property owners, it could result in administrative inconvenience. The negative impacts on a property owner can include losing their right of appeal and the consequences of an actual administrative offence. Weighing these consequences and considering the overall scheme of the legislation, I find there is insufficient flexibility for it to be reasonable for the Director to insist on having a letter of authorization on file prior to accepting Turner Drake's address for sufficient delivery of the Requests for Information. Notice of the agency relationship and the latest address for delivery were on record before the documents were sent.

[80] The *Act* says any request "shall be sufficiently delivered" if mailed by registered mail, postage prepaid, addressed to the person at the last address known to the assessor." The *Interpretation Act* indicates that the use of the word "shall" in an enactment in the province is imperative. If Turner Drake's notice had arrived late and the "last address(es) known" prior to mailing the requests on February 18, 2020, were the Evergreen Terrace and 136 Portland Developments corporate addresses, there would be

no question that the delivery was sufficient. The Respondents would then be bound to respond within 30 days of that delivery or face losing their right to appeal. In this case, however, for the purposes of s. 20 the delivery should have gone to Turner Drake and s. 23 is not engaged.

4. Costs

[81] The Respondents' pre-hearing brief requested dismissal of the Director's appeals with "substantial costs." In closing oral submissions, the parties did not address the issue of costs. The *Costs Rules* permit the Board to exercise its discretion in awarding costs. While the Board sometimes considers costs in assessment appeals, it is not the normal practice.

[82] In this case, I decline to award costs. This matter took some time to conclude given the initial large number of associated appeals and instructing clients. There were scheduling challenges given the immense workload of the PVSC, Mr. Andrews, and Ms. Kakamousias, at various times during the assessment year. However, both parties worked cooperatively in the pre-hearing phase to narrow the issues and limit the oral evidence required. This was a new issue for the Board. I find no fault or capriciousness in the Director's pursuit of the appeals, which sought additional certainty on the agency's policies and the Board's interpretation of the statutory requirements.

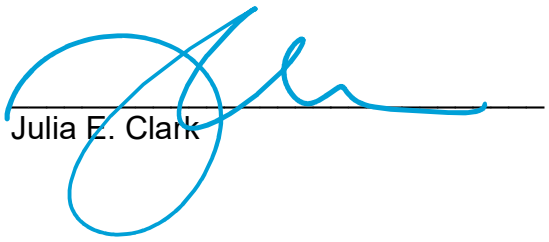
V CONCLUSION

[83] On the facts of this matter, I find that the Requests for Information sent by the Director to Evergreen Plaza Incorporated and 136 Portland Developments Inc. were not sufficiently delivered in accordance with s. 20 of the *Assessment Act*. As such, the

property owners have not lost the right to appeal their respective 2021 Notice of Assessments, as applicable.

[84] The Board dismisses the Director's appeals. An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 9th day of September, 2024.



Julia E. Clark