



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *YBC Development Limited v. Torbay (Town)*, 2024 NLSC 43

Date: March 19, 2024

Docket: 202301G6182

BETWEEN:

YBC DEVELOPMENT LIMITED

APPLICANT

AND:

TOWN OF TORBAY

RESPONDENT

Before: Justice Garrett A. Handrigan

Place of Hearing:

St. John's, Newfoundland and Labrador

Dates of Hearing:

March 11, 2024

Summary:

YBC Development Limited appealed an adjudicator's decision upholding approvals in principle the Town of Torbay granted to developers for properties in the Town. YBC filed its notice of appeal in this Court outside the time limit provided in the *Urban and Rural Planning Act, 2000* for filing the notice of appeal. The Town applied to strike the notice of appeal.

The Court allowed the application and struck the notice of appeal. It found that YBC filed its notice of appeal late and that the Court had no jurisdiction to extend the time to allow YBC to file it later than permitted by statute. It made no order for costs, other than they are in the cause.

Appearances:

F. Richard Gosse	Appearing on behalf of the Appellant
Jonathan D. Dale	Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *BP Exploration Canada Limited v. Hagerman and Farm Credit Corporation*, [1978] A.J. No. 573, [1978] 2 A.C.W.S. 216 (Dist. Ct.); *Komant v. Enbridge Pipelines (Woodland) Inc.*, 2016 ABQB 631; *Conception Bay South (Town) v. Newfoundland (Public Utilities Board)* (1991), 92 Nfld. & P.E.I.R. 167, 25 A.C.W.S. (3d) 1013 (Nfld. C.A.); *Eastern Regional Integrated Health Authority v. Assn. of Registered Nurses of Newfoundland and Labrador*, 2016 NLTD(G) 182; *Campbell v. North West River (Town)*, 2021 NLSC 47; *Law Society of Newfoundland and Labrador v. Wentzell*, 2020 NLSC 141; *Barnes v. Canada Life Assurance Co.* (1994), 127 Nfld. & P.E.I.R. 228, 51 A.C.W.S. (3d) 1332 (Nfld. S.C.(T.D.)); *Atkinson v. Dominion of Canada Guarantee and Accident Co.* (1908), 16 O.L.R. 216; *Newfoundland and Labrador (Minister of Justice) v. Critch*, 2003 NLSCTD 170; *Ottawa & New York Railway v. Cornwall (Township) (1916)*, 52 S.C.R. 466, 30 D.L.R. 664 (S.C.C.)

STATUTES CONSIDERED: *Urban and Rural Planning Act, 2000*, S.N.L. 2000, c. U-8; *Surface Rights Act, 1972 (Alta.)*, c. 91; *Registered Nurses Act, 2008*, S.N.L. 2008, c. R-9.1; *Interpretation Act*, R.S.N.L. 1990, c. I-19; *Public Utilities Act, 1989*, S.N. 1989, c. 37; *Judicature Act*, R.S.N.L. 1990, c. J-4; *Statutes and Subordinate Legislation Act*, R.S.N.L. 1990, c. S-27; *Human Rights Code*, R.S.N.L. 1990, c. H-14; *Small Claims Act*, R.S.N.L. 1990, c. S-16

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Schedule D

REASONS FOR JUDGMENT

HANDRIGAN, J.:

INTRODUCTION

[1] On November 21, 2021, the Town of Torbay (“the Town”) granted approvals in principle to two parties to develop properties within the Town. YBC Development Limited (“YBC”) was concerned about the approvals, since it also wants to develop a property in the Town and feels that the approved developments may compromise the supply of residential water. On November 26, 2021, YBC appealed the Town’s approvals to the Eastern Newfoundland Regional Appeal Board (“the Board”), established under the *Urban and Rural Planning Act, 2000*, S.N.L. 2000, c. U-8.

[2] On September 15, 2023, the Board gave notice that an adjudicator appointed under the *Urban and Rural Planning Act, 2000*, would hear YBC’s appeals on November 24, 2023; which the adjudicator did, dismissing the appeals by a written decision she filed on December 5, 2023. In its turn, YBC appealed the arbitrator’s decision to this Court in a notice of appeal that it filed on December 19, 2023. YBC relies on section 46.1 (1) of the *Urban and Rural Planning Act, 2000* as its authority to appeal the adjudicator’s decision.

[3] Meanwhile, on February 1, 2024, the Town filed an interlocutory application to strike YBC’s notice of appeal. The Town claims that the notice of appeal is out of time, that YBC filed it “...later than [the] 10 days after receiving a decision of an adjudicator” that YBC had under section 46.1 (1) of the *Urban and Rural Planning Act, 2000*, to do so. I heard the Town’s application on March 11, 2024, and reserved my ruling until now.

THE ISSUES

[4] The Town's application raises three issues:

1. Did YBC file its notice of appeal late?
2. Does the Court have jurisdiction to extend the time for filing the notice of appeal?
3. If not, should I strike the notice of appeal?

THE LAW

Statutory – *Interpretation Act*, R.S.N.L. 1990, c. I-19

27 (l) "holiday" means
(i) every Sunday,

...

22. In an *Act* or regulation,

(j) where the time limited for the doing of anything expires or falls upon a holiday, the time so limited shall be extended to and the thing may be done on the following day that is not a holiday;

(k) where a number of days not expressed to be "clear days" is prescribed the days shall be counted exclusively of the 1st day and inclusively of the last and where the days are expressed to be "clear days" or where the term "at least" is used both the 1st day and the last shall be excluded;

Case Law – Calculation of Time

[5] In *BP Exploration Canada Limited v. Hagerman and Farm Credit Corporation*, [1978] A.J. No. 573, [1978] 2 A.C.W.S. 216 (Dist. Ct.), the appellant, BP Exploration Canada, appealed an order made by the Surface Rights Board fixing the compensation that BP would pay to the Respondent Hagerman for BP's right of

entry on his land. BP was required by s. 24(2) of the *Surface Rights Act, 1972 (Alta.)*, c. 91 to serve the Board and the other parties to the compensation order with a copy of its notice of appeal, not later than 10 days after filing its notice of appeal. BP did not serve the copy of the notice of appeal as required and the Respondents applied to strike the appeal.

[6] Legg, D.C.J. agreed with the Respondents:

Section 24(4)(b) [of the *Surface Rights Act*] provides that the appellant must serve the board and other parties “not later than 10 days after the filing of the notice of appeal”.

There is no definition of “not later than ... days” in the *Interpretation Act, R.S.C. 1970, c. I-23*, nor any formula for the computation of time using this phrase.

In my view it seems reasonable, in computing the ten-day period referred to, to disregard the day of filing of the notice of appeal but to include the tenth day.

In the event the tenth day would be 6th February 1978, and the notice of appeal was not served on the board in accordance with s. 24(4)(b) and that is “not later than 10 days after the filing of the notice of appeal” [on January 27, 1978]. (paras. 16-19) [underlining added]

[7] Apropos of this matter are other comments that Legg, D.C.J. made about the court’s jurisdiction to extend filing timelines on statutory appeals:

What I am faced with here is not an omission or a mistake in the record of an action but an omission of an act required by statute, and nowhere can I find any inherent power in a court to correct a default of that nature regardless of what injustice may seem to follow.

There is no provision in the *Surface Rights Act* which permits a judge to abridge any of the times set out in the *Act*.

I therefore arrive at the conclusion that, the appellant not having complied with s. 24(4)(b), the appeal was not properly launched and the court has no jurisdiction to entertain it. (paras. 26-28) [underlining added]

[8] Gill, J. of the Alberta Court of Queen’s Bench, interpreted the same legislation similarly in *Komant v. Enbridge Pipelines (Woodland) Inc.*, 2016 ABQB 631; and added this observation:

I note also that the phrase “not later than” suggest a more restricted time frame for an action to be taken. Whereas the phrases used in ss. 22(3) [of the *Interpretation Act*, R.S.A. 2000, c. I-8] (“clear days”, “at least” or “not less than”) suggest a more expanded time frame (para. 22). [underlining added]

Statutory – *Urban and Rural Planning Act, 2000*

[9] Section 46.1 (1) of the *Urban and Rural Planning Act, 2000* authorizes an appeal from an adjudicator’s decision to this Court. It provides:

46.1 (1) A person or group of persons who brought an appeal or a council, regional authority or authorized administrator may, not later than 10 days after receiving a decision of an adjudicator, appeal that decision to the court on a question of law or jurisdiction. [underlining added]

Statutory - *Rules of the Supreme Court, 1986*

[10] Subrule 58.12 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Schedule D allows this Court to strike a notice of appeal. It provides:

58.12 (1) At any time before or at the hearing of the appeal, a party to an appeal may apply for an order striking out the Notice of Appeal or dismissing the appeal on one or more of the following grounds:

- (a) no appeal lies to the Court;
- (b) the appeal is frivolous, vexatious, or without merit;
- (c) the appellant has unduly delayed the preparation of the appeal; or
- (d) the appellant has failed to apply to have the appeal set down for hearing.

[11] Rule 58 provides generally for the procedure on civil appeals and Subrule 58.02 states the priorities that this Court must observe when dealing with an appeal, as YBC has taken in this matter:

58.02 (1) This rule governs the procedure for making an appeal in the Supreme Court.

(2) Despite subrule (1), where an applicable statute provides a procedure different from that set out in this rule, the statute governs.

(3) Where an issue respecting practice or procedure arises which is not covered by this rule or by an applicable statute, any of rules 1 to 4 or the rules in Part I may be applied as required, with any necessary modifications.

(4) This rule does not apply to appeals in the Court of Appeal. [underlining added]

[12] Rule 58.03 (3) notes that “...rules 1 to 4 or the rules in Part I [of the *Rules of the Supreme Court, 1986*] may be applied as required, with any necessary modifications”, if an issue arises that Rule 58 does not cover. Rule 3.01 (c), as will appear later in this ruling, is relevant to this application, as is Rule 3.03 (1). Rule 3.01 (c) and Rule 3.03 (1) read respectively:

3.01. Unless the contrary otherwise appears, the computation of time under these rules or any order of the Court is governed by the following provisions:

...

(c) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and included the day on which the second event happens. [underlining added]

...

3.03 (1). The Court may, on such terms as it thinks just, extend, or abridge the period within which a person is required or authorized by these rules, or by any order, to do or abstain from doing any act in a proceeding. [underlining added]

[13] Finally, I note the former Rule 57 which set the procedure for civil appeals to this Court until Rule 58 replaced it in December 2017. Rule 57 is relevant to this

application for several reasons: first, some of the most influential decisions from this Court and our Court of Appeal on the issues I address in this application were based on Rule 57 and are still useful authorities to consider; and it is also helpful to compare the wording of relevant portions of the two Rules for the analysis that I will perform in addressing those issues.

[14] The relevant portions of the former Rule 57 are:

57.02 (1) Unless a statute otherwise provides, an appeal other than a tribunal appeal, shall be by way of rehearing and shall be brought by filing a notice of appeal with the Registrar,

(a) in the case of an appeal from an interlocutory order, within ten days; and

(b) in the case of an appeal from any other order or decision, within thirty days from the date of the filing of the order or decision appealed from as provided for in Rule 49.03.

...

57.03 (1) If a statute authorizing a tribunal appeal prescribes how the appeal shall be brought or when, how and to whom any notice of appeal may be delivered, the prescriptions shall be observed.

...

57.05 The time limited for filing of a notice of application for leave to appeal under Rule 57.02 or a notice of appeal under rule 57.03 or 57.04 may be extended before or after the expiration of the time limited where, in the opinion of the Court, refusal to do so would create an injustice. [underlining added]

CASE LAW

[15] In *Conception Bay South (Town) v. Newfoundland (Public Utilities Board)* (1991), 92 Nfld. & P.E.I.R. 167, 25 A.C.W.S. (3d) 1013 (Nfld. C.A.), Goodridge, C.J.N. considered whether the applicants should receive "...an order extending the time in which an application for leave to appeal from an order of the Public Utilities

Board...may be made” (para. 1). The learned Chief Justice considered then Rules 57.02 (1), 57.03 (1) and 57.29 (3) and refused the applicant’s request:

A right of appeal is created or brought into existence pursuant to a statute and does not otherwise exist. It must be brought strictly in accordance with or pursuant to the terms of the enabling statute. Where there is a conflict between the rules of court and a statute, the statute prevails.

In this case, an appeal from a decision of the Board may only be brought with leave of a judge of the court. The application for leave must be brought within 15 days of the filing of the order. There is no statutory power in the court to extend the time limited for bringing an application for leave to appeal.

Any provision in the *Rules* providing for the extension of time has no application to a time period limited by statute unless there is statutory authority to extend the time. There is none in this case.

Apart from that, rule 57.03(1) expressly preserves the prescriptions of the statute. (paras. 10-13)

[16] I also note that Goodridge, C.J.N. declined an argument from the applicants that the 15-day time limit should not start until they became aware of the board’s decision:

Argument was presented that the time should not begin to run until the applicants were aware of the decision of the Board. There might be argument to support this position if the applicants were parties to the proceeding before the Board. They were not.

The time to apply for leave to appeal cannot be artificially extended to run from the time when a non-party learns of the decision. To do so would be for practical purposes to remove the time period altogether and to leave every order of the Board in a state of uncertainty (para. 14).

[17] *Conception Bay South (Town)* has been cited repeatedly in this province for strictly enforcing the time limits stated in statutes that create rights of appeal. For example, Butler, J. (as she then was) relied on it in *Eastern Regional Integrated Health Authority v. Assn. of Registered Nurses of Newfoundland and Labrador*, 2016

NLTD(G) 182 when she refused to extend the time for filing a notice of appeal under section 23 (8) of the *Registered Nurses Act, 2008*, S.N.L. 2008, c. R-9.1:

In contrast, an appeal period is a time period in which an intended appellant may bring their appeal. It creates a window in which the appellant may exercise a right which they would not have but for the statute creating the right of appeal. It must be remembered that, “[a] right of appeal is created or brought into existence pursuant to a statute and does not otherwise exist” and that an appeal “must be brought strictly in accordance with or pursuant to the terms of the enabling statute” (*Conception Bay South (Town) v. Newfoundland (Public Utilities Board)* Because of this, where an appeal is not brought within an appeal period, the Court will lack jurisdiction to hear the appeal (para. 27).

[18] Because Butler, J. introduces this statement with the phrase “in contrast”, it is also useful to consider the *context* of her statement and, in particular, to what she was “contrasting” time limits for statutory appeals. Let me explain.

[19] Counsel for the *Assn. of Registered Nurses* cited several cases that she felt enabled the Court to draw *parallels* between how it dealt with limitation periods and appeal periods and Butler, J. drew a clear distinction between them:

The distinction I would draw is between an appeal period and a limitation period and related questions of proper pleading versus jurisdiction.

Limitation periods extinguish a person’s right to bring an action which they would otherwise have at law. A limitation defence is an affirmative defence which must be specifically pleaded in a defence or subsequent pleading under Rule 14.13(c), if it applies. By not pleading a limitation defence, a defendant may, in effect, consent to the maintenance of an action brought against him or her. (paras. 25 & 26) [underlining added]

[20] What followed from that, of course, was Butler, J.’s finding that “... where an appeal is not brought within an appeal period, the Court will lack jurisdiction to hear the appeal” [underlining added]. I will come back to that statement later in this ruling

when I consider some of the alternative arguments that YBC has brought to this discussion.

[21] Knickle, J. (as she then was) took up Butler, J.’s “lack of jurisdiction” theme in *Campbell v. North West River (Town)*, 2021 NLSC 47 and offered *Conception Bay South (Town)* as authority for this statement:

Appeals are creatures of statute. This means that the powers or rights available on appeal are governed by the legislation that creates the right. This is a principle that is strictly applied and includes whether or not the Court has the authority to extend the time to file an appeal where the limitation date has expired. Put another way, the ability to extend the time limit to file an appeal must be found in the governing legislation. As stated by Goodridge, C.J.N. in *Conception Bay South (Town) v. Newfoundland (Public Utilities Board)* ... at paragraph 12:

A right of appeal is created or brought into existence pursuant to a statute and does not otherwise exist. It must be brought strictly in accordance with or pursuant to the terms of the enabling statute. Where there is a conflict between the rules of court and a statute, the statute prevails.

In *Conception Bay South*, Goodridge, C.J.N. found there was no jurisdiction of the court to extend the time to file an appeal; notwithstanding that the Rules permitted an extension of time. The Rules were clear they could not apply if they were in conflict with the statute. As the statute provided for the particular time limitation, and stated nothing regarding an extension of time, or the applicability of the Rules, to apply the extension of time available on the Rules would be in conflict with the governing statute (paras. 23-24) [underlining added]

[22] In *Law Society of Newfoundland and Labrador v. Wentzell*, 2020 NLSC 141, Boone, J. (as he too, then was) held the same opinion as Knickle, J. about both the cogency and the currency of Goodridge, C.J.N.’s finding in *Conception Bay South (Town)*. The learned justice stated:

This Court does not have jurisdiction to extend the time for filing a statutory appeal when that time is set out expressly in the statute: *Conception Bay South (Town)*... (para. 59).

[23] Boone, J. noted that Goodridge, C.J.N. cited Rule 57.03 (1) in *Conception Bay South (Town)* and commented thus about the relevance of the Rule:

There is no equivalent to Rule 57.03 (1) in the current Rule 58. Nevertheless, the primary rationale for the holding in *Conception Bay South* is not affected. That reasoning has been applied by this Court since the Rules were changed to deny applications to extend the time for filing statutory appeals (*Eastern Regional Integrated Health Authority v. Assn. of Registered Nurses of Newfoundland and Labrador*, 2016 NLTD(G) 182; *Institute of Chartered Accountants of Newfoundland and Labrador v. Cole*, 2017 NLTD(G) 73) (para. 62).

[24] I discern these general principles from those cases:

- Statutory appeals must be brought strictly in accordance with the terms of the enabling statute.
- In particular, appeals must be brought within the times limited by statute.
- Absent a statutory power in the court to extend the time, none exists.
- Provisions in the *Rules of the Supreme Court, 1986* purporting to allow the Court to extend the time, do not apply if the enabling statute does not engage the *Rules*.
- If an appeal is not brought within an appeal period, the Court lacks jurisdiction to hear it.
- Statutory rights of appeal are governed by the legislation that creates them.
- If the Rules of Court and statutes clash over the procedure on civil appeals, the statutes prevail.

[25] There may be some overlap in these principles but it is important to note the nuances in statements other justices have employed in the past to express the general principle that is expressed in the first bulleted item.

[26] This is the law I will apply to the issues I stated above. I turn now to analyze those issues, starting with the background to them.

ANALYSIS

Background

[27] The adjudicator appointed to hear YBC’s appeals from the approvals in principle the Town issued to other developers gave her decision December 5, 2023. YBC received the decision on December 7, 2023. It filed its notice of appeal in this Court on December 19, 2023. Neither the date that YBC received the adjudicator’s decision – December 7, 2023 – nor the date that it filed its notice of appeal – December 19, 2023 – is in dispute. As the Town submits in the Memorandum of Fact and Law it filed on this application, “...both dates com[e] directly from YBC’s Notice of Appeal” (para. 9).

[28] In its Memorandum, the Town also submitted a table which purports to show that YBC’s notice of appeal is out of time. I replicate the table here, as I will do shortly for a similar table that YBC included in its Memorandum of Fact and Law.

[29] The Town’s Table:

Dec. 7	Dec. 8	Dec. 9	Dec. 10	Dec. 11	Dec. 12	Dec. 13	Dec. 14	Dec. 15	Dec. 16	Dec. 17	Dec. 18	Dec. 19
Thurs.	Fri.	Sat.	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	Mon.	Tue.
YBC receives decision	1 day after	2 days after	3 days after	4 days after	5 days after	6 days after	7 days after	8 days after	9 days after	10 days after <small>(ordinary deadline)</small>	Deadline after the “holiday” extension per <i>Interpretation Act</i>	YBC files Notice of Appeal

[30] The Town submits that it followed these provisions of the *Interpretation Act* and the *Urban and Rural Planning Act, 2000* when it input the data into its table:

- Section 22 (k) of the *Interpretation Act*: where a number of days not expressed to be "clear days" is prescribed the days shall be counted exclusively of the 1st day and inclusively of the last and where the days are expressed to be "clear days" or where the term "at least" is used, both the 1st day and the last shall be excluded;
- Section 46.1 (1) of the *Urban and Rural Planning Act, 2000*: A person or group of persons who brought an appeal or a council, regional authority or authorized administrator may, not later than 10 days after receiving a decision of an adjudicator, appeal that decision to the court on a question of law or jurisdiction;
- Section 46.1 (1) does not use the terms "clear days" or "at least" so the first day is included and the last day is excluded: i.e., December 7 is excluded and December 17 would ordinarily be the last day;
- Section 22 (j) of the *Interpretation Act*: where the time limited for the doing of anything expires or falls upon a holiday, the time so limited shall be extended to and the thing may be done on the following day that is not a holiday;
- 27 (1) of the *Interpretation Act*: "holiday" means (i) every Sunday; so that time is extended from December 17 to December 18; and
- December 18 is day 10, in effect, and YBC filed its notice of appeal on December 19, on day 11 or one day beyond the time specified in section 46.1 (1) of the *Urban and Rural Planning Act, 2000*.

[31] YBC's Table:

Monday	Tuesday	Wednesday	Dec. 7 Decision delivered to YBC's counsel	Dec. 8 1 day after
Dec. 11 2 days after	Dec. 12 3 days after	Dec. 13 4 days after	Dec. 14 5 days after	Dec. 15. 6 days after
Dec. 18	Dec. 19	Dec. 20		

7 days after	Notice of Appeal filed			
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[32] YBC submits that it also followed the *Interpretation Act* and the *Urban and Rural Planning Act, 2000* when it input its data into its table. More particularly, YBC says it relies on these sections from that legislation:

- Section 22 (k) of the *Interpretation Act* requires that when the phrases “clear days” or “at least” are used, the first and last days are excluded in counting time;
- Sections 27 (1) (q) & (ii) of the *Interpretation Act*: “month” means “calendar month” and “year” means “calendar year”; so that it is reasonable to infer that “day” (which the *Act* does not define) does not mean “calendar day” but “weekday” because those are the only days when business can be transacted in Court, excluding Saturdays and Sundays;
- Section 46.1 (1) of the *Urban and Rural Planning Act, 2000* uses the phrase “not later than” so it is reasonable to infer that the legislature intended something different than “ordinary” days, and perhaps more analogous to the phrases “clear days” or “at least” so that the first and last days are excluded in counting the 10 days the section provides; and
- Thus, Saturday, December 9, Sunday, December 10, Saturday, December 16, and Sunday, December 17, are excluded from counting and YBC had until December 21, 2023 to file its notice of appeal; and when it did file the notice of appeal on December 19, 2023, it was well within time.

[33] YBC also disputes the Town’s claim that this Court cannot rely on the *Rules of the Supreme Court* to extend the time to file its notice of appeal. To that effect, YBC says that both it and the Town have attorned to and implicitly accepted the jurisdiction of the Court over this matter. As YBC says in the Memorandum of Fact and Law it filed on this application:

30. As the Court has effectively case managed this Appeal, to address the issue of stay pending appeal, to preserve a date for the Appeal hearing, and to

bring the Application to Strike, the jurisdiction of this Court to control the procedures necessary for appeal has to date been undisputed.

[34] As well, YBC distinguishes the cases on which the Town relies, most of which I have summarized above. It notes that the Courts which decided them were, for the most part, following the former Rule 57 and not the current Rule 58.02. It also stated the distinctions between the two Rules in its Memorandum of Fact and Law:

35. Whether the procedure under the statute or the *Rules of the Supreme Court, 1986* would be applicable depended on different criteria than the current Rule 58.02: under Rule 57 deference was given to a statute if it prescribed "...how the appeal shall be brought or when..." as opposed to the current deference given to Rule 58 unless the "applicable statute provides a procedure different from that set out in this rule... (emphasis added)".

[35] YBC then notes that the former *Public Utilities Act, 1989*, S.N. 1989, c. 37, which applied to several of those cases, provided more robust procedural criteria so that the Court was required to defer to the *Act*, not the *Rules* as Rule 57 directed. The *Urban and Rural Planning Act, 2000* is noticeably short on process ("[the appellant] ...may, not later than 10 days after receiving a decision of an adjudicator, appeal that decision to the court on a question of law or jurisdiction") so that the Court may turn to Rule 58 for the appropriate process on this application.

[36] Finally, YBC notes the wording of Rule 58.02 (2): "Despite subrule (1), where an applicable statute provides a procedure different from that set out in this rule, the statute governs"; and it says that the "applicable statute" (the *Urban and Rural Planning Act, 2000*) offers no "procedure different from that set out in the rule", so that the *Rules* not the *Act* apply (underlining added).

[37] For its part, the Town offers a more simplified path through this application. In the first instance, it says that YBC simply filed its notice of appeal beyond the 10-day statutory timeline, albeit by one day; and that this Court has no discretion to extend the deadline for filing beyond that timeline:

76. The Rules themselves are drafted in respect of their status as subordinate legislation, with the timelines under Rule 58 confirming that any appeal procedures prescribed by statute shall govern over the Rules, and also with Rule 3.03 only speaking to the discretionary ability to extend timelines required by the Rules, with no purported ability to allow an extension of statutory timelines. (Town’s Memorandum of Fact and Law)

[38] Rule 3.03 (1), as I noted earlier, allows the Court to “...extend or abridge the period within which a person is required or authorized by these rules...”. In paragraph 76 of its Memorandum, the Town alludes to what Knickle, J. said in *Campbell v. North West River* about the discretion that Rule 3.03 (1) confers on the Court:

The strictness with which the courts interpreted the applicability of the procedures under the former Rule 57 has been equally applied to the newer Rule 58; notwithstanding the application of Rule 3.03. For example, in *Law Society of Newfoundland and Labrador v. Wentzell*, 2020 NLSC 141, Boone, J. applied the principles as stated in decisions such as *Conception Bay South*, *Stacy*, and *Eastern Regional Health Authority*, to the determination of an the availability of an extension of time to file a cross-appeal the *Law Society Act, 1999*, S.N.L. c. L-9.1, and found no ability to extend time to appeal given the explicit wording of the statute (see paragraph 59) (para. 35). [underlining added]

[39] This is the background to this matter. I turn now to discuss the issues that I stated earlier, against this background.

Discussion

1. Did YBC file its notice of appeal late?

[40] The adjudicator appointed under the *Urban and Rural Planning Act, 2000* to hear YBC’s appeal of the approvals in principle the Town granted to two other developers in the Town, other than YBC, heard YBC’s appeal on November 24,

2023. She filed her written decision on December 5, 2023 and provided a copy of her decision to YBC on December 7, 2023.

[41] YBC had 10 days from when it received the adjudicator’s decision to appeal it to this Court. YBC received the adjudicator’s decision on December 7, 2023 and filed its notice of appeal on December 19, 2023. YBC claims that it filed the notice of appeal in time, but the Town disagrees and says that YBC was late, even if only by one day. The Town is right. Let me explain.

[42] Section 46.1 (1) of the *Urban and Rural Planning Act, 2000* names those who may appeal Council decisions and says that they “...may, not later than 10 days after receiving a decision of an adjudicator appeal that decision to the court on a question of law or jurisdiction”. The *Urban and Rural Planning Act, 2000* does not define either of the terms “day” or “not later than”, nor does the *Interpretation Act*.

[43] While the *Interpretation Act* does not actually define “clear days” it says of it, “where the days are expressed to be ‘clear days’ ...both the 1st day and the last shall be excluded” when counting them. It says the same thing for counting them if the phrase “at least” accompanies the number of days.

[44] As to “days” where “clear” is not offered to describe or limit them, it says “...the days shall be counted exclusively of the 1st day and inclusively of the last”; but offers nothing for the effect of omitting “at least”, as a descriptor or limiter (Section 22 (k)). So, on its face, the term “days” as it appears in section 46.1 (1) of the *Urban and Rural Planning Act, 2000*, falls into the general grouping of those days where they shall be “counted exclusively of the 1st day and inclusively of the last”.

[45] Now, while neither “clear” nor “at least” accompany “days” in section 46.1 (1) of the *Urban and Rural Planning Act, 2000* it does carry this qualifier: “not later than”. That phrase is not defined in either the *Interpretation Act* or the *Urban and Rural Planning Act, 2000*. When I contemplate “not later than” as it is used in section

46.1 (1), I find it instructive to extend the phrase somewhat to put in better profile what it contemplates.

[46] For that effect, I restate the relevant portion of section 46.1 (1) so that the goal which the section contemplates becomes more evident, to this effect in this case:

... may, not later than 10 days [after December 7, 2023] appeal that decision to the court, or by December 17, 2023 (without allowing for it as a “holiday”).

[47] In that restatement, of course, the counting starts on December 8, 2023 (the day “after” December 7) and reaches 10 days on December 17, 2023 and is pushed over to December 18, 2023 because the 10th day was a holiday. YBC filed its notice of appeal on December 19, 2023, or on the 11th day, and outside the time limited for its right to do so.

[48] This interpretation of section 46.1 (1) achieves these objectives:

- It accords with section 22 (k) of the *Interpretation Act* since the “days” in the section 46.1 (1) are not described or delimited by the words “clear” or “at least”.
- Because the term, “days” is not described or delimited as such, it follows the directive in section 22 (k) to exclude the first day for counting (December 7) and include the last day (December 17 or 18, as may be).
- It also respects the directive that the time to file the notice of appeal is “not later than”, which section 46.1 (1) directs.

[49] YBC proposes an alternative interpretation of “10 days” in its submission, so that “days” means “weekdays”, removing Saturdays and Sundays from counting. It does this by noting the “rounding” effect of phrases like “calendar month” and “calendar year” in the *Interpretation Act* and says that the rounding effect should be

applied similarly to “days”. As well, it suggests that the legislature could not possibly have contemplated including Saturdays and Sundays as filing days because the Court is not open for business on those days.

[50] I reject YBC’s position. First, I fail to see how the term “days” is analogous to “calendar month” or “calendar year” and even if it was, how comparing them would clarify its meaning. Furthermore, YBC’s position misses the simple logic of treating “not more than 10 days” as neither “clear” days nor those limited by “at least”, respecting the directive in section 22 (k) of the *Interpretation Act*.

[51] But YBC’s fails for another reason: It defies the “reasonableness” that Legg, D.C.J. attributed to the interpretation of “not later than 10 days” in *BP Exploration Canada*; or, as he said: “In my view it seems reasonable, in computing the ten-day period referred to, to disregard the day of filing of the notice of appeal but to include the tenth day (para. 18), [underlining added].

[52] There is yet another reason why I reject YBC’s position: The words “not later than” signify a more restrictive interpretation, than an expansive one. So, saying that “not later than” is more restrictive is consistent with including the first day and excluding the last one when counting time (not as restrictive, of course, as “clear days” or “at least” would). On the other hand, saying that “days” as used in section 46.1 (1) of the *Urban and Rural Planning Act, 2000* denotes only weekdays expands the timeline significantly, as is apparent from YBC’s table, allowing YBC until at least December 20, 2023, to file its notice of appeal, or almost two weeks.

[53] To this end, Gill, J.’s comment on the “restrictiveness” of “not later than” in *Komant v. Enbridge Pipelines* pertains:

I note also that the phrase “not later than” suggest (sic) a more restricted time frame for an action to be taken. Whereas the phrases used in ss. 22(3) [of the *Interpretation Act*, R.S.A. 2000, c. I-8] (“clear days”, “at least” or “not less than”) suggest a more expanded time frame. [underling added]

[54] For these reasons, I reject YBC’s claim that it filed its notice of appeal in time, by at least one day. I turn now to the next issue.

2. Does the Court have jurisdiction to extend the time for filing the notice of appeal?

[55] In *Barnes v. Canada Life Assurance Co.* (1994), 127 Nfld. & P.E.I.R. 228, 51 A.C.W.S. (3d) 1332 (Nfld. S.C.(T.D.)), Halley, J. of this Court declined a request to extend the time to file an application for leave to appeal on questions of fact and mixed fact and law. In effect, the Court found there was no statutory authority to extend the time and cited this excerpt from Meredith, C.J.’s judgment in *Atkinson v. Dominion of Canada Guarantee and Accident Co.* (1908), 16 O.L.R. 216 in support of its finding: “Authority is not needed for the proposition that where the time is fixed by statute and the statute confers no power on the court to extend it, the rules as to enlarging time can have no application” (quoted in para. 14 of *Barnes v. Canada Life*).

[56] More than a century after he made it, Meredith, C.J.’s statement still holds true. Without statutory authority, the Court has no jurisdiction hear applications to extend time for filing notices of appeal or applications for leave to appeal. Applicants are not able to invoke the *Rules*, as YBC attempts to do here, because the *Rules* do not provide jurisdiction and operate only when the jurisdiction to apply them comes from an enabling statute.

[57] So, for example, in this case, section 46.1 (1) of the *Urban and Rural Planning Act, 2000* gave YBC the right to appeal the adjudicator’s decision to this Court by filing its notice of appeal not later than 10 days after it received the decision. Had YBC filed its notice of appeal in time, it would have engaged the jurisdiction of the Court to hear its appeal and both it and the Town would then follow the *Rules* to process the appeal. But that did not happen and there is nothing in the enabling statute, the *Urban and Rural Planning Act, 2000*, to permit this Court to extend the time for YBC to file its notice of appeal and confer jurisdiction on the Court to hear its appeal.

[58] It is trite law to say that the *Rules of the Supreme Court, 1986* are subordinate legislation. Section 55 (1) of the *Judicature Act*, R.S.N.L. 1990, c. J-4 authorizes the “rules committee” to make rules dealing with the eleven subject areas in sections 55 (1) (a) – (h); and section 55(4) says the “[r]ules made under this section are subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act*”. In so many words, it is clear that the *Rules* have no standalone legislative authority, other than as they may draw from the *Judicature Act* or an enabling statute.

[59] Goodridge, C.J.N. stated the legislative deficit of the *Rules* this way in *Conception Bay South (Town)*:

Any provision in the *Rules* providing for the extension of time has no application to a time period limited by statute unless there is statutory authority to extend the time. There is none in this case (para. 12).

[60] The want of jurisdiction in this Court to act is the main obstacle that YBC faces in this application and its problem is insoluble. I noted earlier when reviewing the case law in this area that each of the justices who dealt with similar applications to this one focused on the Court’s lack of jurisdiction to act. These examples relate:

- In *Eastern Regional Integrated Health Authority*, Butler, J. expressed it this way: “...where an appeal is not brought within an appeal period, the Court will lack jurisdiction to hear the appeal” (para. 27).
- In *Law Society of Newfoundland and Labrador v. Wentzell*, Boone, J. used practically the same language: “This Court does not have jurisdiction to extend the time for filing a statutory appeal when that time is set out expressly in the statute” (para. 59).
- In *Newfoundland and Labrador (Minister of Justice) v. Critch*, 2003 NLSCTD 170, Halley, J. was just as definitive as the other justices about the want of jurisdiction, absent statutory authority to extend the time for filing: “The *Rules* are subordinate legislation which are made under Section 55 of the *Judicature Act*, R.S.N.L., 1990, c. J-4. As subordinate legislation, the *Rules* cannot alter, amend, or vary the provisions of a statute. Therefore,

this court has no jurisdiction to grant an extension of time beyond the statutory thirty day limit” (para. 16).

- In *Barnes v. Canada Life*, Halley, J. was equally clear about the want of jurisdiction to extend the filing deadline: “The... [*Human Rights Code*, R.S.N.L. 1990, c. H-14] does not provide for an extension of the thirty-day time limit for making an application for leave to appeal. Neither the *Rules* nor the inherent power of this court can empower this court to order an extension of the time limit for such an application” (para. 16).
- In *Campbell v. North West River (Town)*, Knickle, J. acknowledged the findings that the Courts in *Eastern Regional Integrated Health Authority, Law Society of Newfoundland and Labrador v. Wentzell* and *Conception Bay South (Town)* made of want of jurisdiction to extend filing timelines but distinguished *Campbell* because she found authority in section 14 (3) of the *Small Claims Act*, R.S.N.L. 1990, c. S-16 to grant the relief that applicant was seeking: “The circumstances here are distinguishable from the circumstances where courts have found that the Rules could not provide the necessary authority to extend the time to appeal;” (para. 36).

[61] In the result, I find no authority to extend the timeline for YBC to file its notice of appeal to ensure that when it filed late on December 19, 2023, it was still within time. Critical to my finding are the following factors:

- Section 46.1 (1) of the *Urban and Rural Planning Act, 2000*, required that YBC file its notice of appeal not later than 10 days after receiving the decision of the adjudicator.
- There is no authority in the *Act* for extending the time beyond the 10 days.
- Rule 58.02 of the *Rules of the Supreme Court, 1986* governs the procedure on statutory appeals.
- Rule 58.02 (2) provides that “...where an applicable statute provides a procedure different from that set out in this rule, the statute governs”. Two things flow from this:

- i. The applicable statute – the *Urban and Rural Planning Act, 2000* – provides a “procedure different” than the *Rules*, in that it sets a strict timeline for YBC of “not later than 10 days after receiving a decision of an arbitrator”.
- ii. The *Rules* do not apply to YBC’s appeal.

[62] There is a final point about YBC’s claim to extend the time for filing its notice of appeal: it contends that it and the Town yielded to the process set out in the *Rules* and have foregone the filing strictures of the *Urban and Rural Planning Act, 2000* in the result. The short answer to this claim is that this Court has no jurisdiction to consider YBC’s application and the parties cannot confer jurisdiction by consent, whether explicitly or implicitly.

[63] Duff, J.’s statement of the law on jurisdiction by consent from *Ottawa & New York Railway v. Cornwall (Township)* (1916), 52 S.C.R. 466, 30 D.L.R. 664 (S.C.C.), has also withstood the test of time and definitively rebuts YBC’s claim that it and the Town could confer jurisdiction on this Court over YBC’s appeal:

Consent can give jurisdiction when it consists only in waiver of a condition which the law permits to be waived, otherwise it cannot. Where want of jurisdiction touches the subject matter of the controversy or where the proceeding is of a kind which by law or custom has been appropriated to another tribunal then mere consent of the parties is inoperative.

[64] In the result, I find that this Court does not have jurisdiction to extend the time for YBC to file its notice of appeal.

3. If not, should I strike the notice of appeal?

[65] Yes, I allow the Town's application and strike the notice of appeal from the decision of the adjudicator that YBC filed late on December 19, 2023; as this Court has no jurisdiction to accept and act on it.

COSTS

[66] The Town did not ask for costs in its interlocutory application and given that this is an interim proceeding I would not be inclined to order them if it had. Thus, costs shall remain in the cause of these proceedings, as they may unfold hereafter.

SUMMARY AND DISPOSITION

[67] YBC Development Limited appealed an adjudicator's decision upholding approvals in principle the Town of Torbay granted to developers for properties in the Town. YBC filed its notice of appeal in this Court outside the time limit provided in the *Urban and Rural Planning Act, 2000* for filing the notice of appeal. The Town applied to strike the notice of appeal.

[68] The Court allowed the application and struck the notice of appeal. It found that YBC filed its notice of appeal late and that the Court had no jurisdiction to extend the time to allow YBC to file it later than permitted by statute. It made no order for costs, other than they are in the cause.

ORDER

[69] In the result, I order that:

1. The notice of appeal YBC filed on December 19, 2023 is struck.
2. Costs are in the cause.

GARRETT A. HANDRIGAN
Justice