SUPREME COURT OF NOVA SCOTIA
Citation: *Annapolis (Municipality) v. Pereira*, 2025 NSSC 340

Date: 20251027
Docket: *Ann*, No. 530300
Registry: Annapolis

Between:

Municipality of the County of Annapolis

Applicant

v.

Gary Remigio Pereira

Respondent

Judge:	The Honourable Justice Muise
Heard:	March 12, 2025 and April 30, 2025 in Digby, Nova Scotia
Final Written Submissions:	Final Written Submissions received June 10, 2025
Counsel:	Dillon Trider, for the Applicant Gary Pereira, Self-represented, Respondent

By the Court:

DECISION FOLLOWING APPLICATION IN CHAMBERS

Introduction / Background

[1] The Applicant Municipality commenced an application in chambers against Gary Pereira pursuant to s. 20 of the *Building Code Act*, R.S.N.S. 1989, c. 46 ("Act"). It alleges violations of sections 8(a) and 19(1)(b) of the Act, relating to construction of a building on his property in Annapolis County without a building permit. It seeks an order requiring him to, within 30 days, obtain a building permit, and if he fails to do so, removal or demolition of the building.

[2] S. 20(2) gives this Court discretion to make the order requested "where a contravention of or failure to comply with this Act, the regulations or an order made pursuant to this Act has been established".

[3] S. 8(a) of the Act prohibits a person from constructing a building to which the Act applies unless a permit has been issued for the construction by a building official and the permit is in force.

[4] The parties agree that pursuant to s. 9(2) of the Nova Scotia *Building Code Regulations* ("Regulations") "accessory buildings" not greater than 20 square metres in area do not require a building permit, "unless a municipality otherwise requires by by-law or regulations under another statute require". They also agree that there is no evidence the building in question exceeded 20 square metres.

[5] There is also no dispute that, at the relevant time, no main building was required for the building in question to be an accessory building, as it is in the MX Zone.

[6] They dispute whether it is an accessory building exempt of building permit requirements.

[7] "Accessory building" is not defined in the Act, the Regulations or the National Building Code ("Code"). The Act adopts the Code. Article 1.4.1.1(1) of the Code states that "words and phrases used in this Code that are not included in the list of definitions in Article 1.4.1.2 shall have the meanings that are commonly assigned to them in the context in which they are used, taking into account the

specialized use of terms by the various trades and professions to which the terminology applies".

[8] Erin Schurman-Kolb, Building Official with the Municipality ("Ms. Kolb"), deposed that:

> "The Municipality uses the following meaning for 'accessory building' based on how that term is commonly understood in the building industry:
>
> > A building that is secondary and incidental to the principal building on the property, attached or detached from the main building. Accessory structures must be on the same property as the building or use to which they are accessory, and not used for human habitation. Accessory structures are buildings such as garages, sheds, playhouses, storage buildings, garden structures, greenhouses, boathouses, pool houses, cabanas, and other similar buildings."
>
> [Emphasis by underlining added.]

[9] The parties dispute whether the Municipality has established that the building in question was used for human habitation, and that is the central issue in this application.

[10] They agree that, since the land use by-law in force on October 3, 2022, when the construction was discovered, did not require that the main building be already built, the fact that there is no main building for the building in question to be accessory to is not relevant to this application.

[11] S. 19(1)(b) makes it a summary conviction offence to fail to comply with "any order, direction or other requirement made pursuant to this Act or the regulations" which includes by-laws.

[12] In cross-examination, the Respondent, Mr. Pereira, acknowledged that Ms. Kolb directed him to stop construction, apply for a building permit, and not occupy the building in question. He also acknowledged that he did not comply with any of those directions. He agreed that he: continued construction; did not apply for a building permit; and occupied the structure within the meaning of occupancy set out in the Code, being "the use or intended use of a building or part thereof for the shelter or support of persons, animals or property". He clarified that he used the building for his animals, tools and musical instruments, and that he had a studio and a computer in there.

[13] However, he argues that he did not need to comply with any orders or directions from Ms. Kolb because she did not find any contravention of any provision of the Act or Code and section 12(1) of the Act requires that she do so before she can give him an order directing him to comply with any such provision. His position is that, since it has not been established that he required a building permit, he cannot be directed to obtain one nor to stop construction or occupancy of his building until he acquires one.

[14] If a building permit was required for the building in question the orders were clearly valid and a failure to comply with them contravenes s. 19(1)(b). The orders would also be valid if Ms. Kolb had information showing the building required a building permit, irrespective of whether that information is admissible for its truth in this application.

[15] However, the circumstances of the case at hand are such that, to establish a contravention of s. 8(a), there must be evidence admissible for its truth establishing that the building in question was used for human habitation.

Issues

[16] Therefore, the first and central issue I will determine in this application is whether the Municipality has established that a building permit was required for the building in question because the building in question was used or intended for human habitation.

[17] If the Municipality has not established that, I will go on to determine whether they have nevertheless established that the orders issued by Ms. Kolb were valid and had to be followed.

Best Evidence

[18] Prior to determining these issues, I will address the “best evidence” argument advanced by Mr. Pereira.

[19] He submits the photos of his property and the impugned building, which were disclosed to him and presented into evidence, were not the originals as the electronic version did not contain the metadata, and at least one is but a cropped version of another photo. He argues they violate the best evidence rule.

[20] However, as argued by the Municipality, modern technology enabling accurate copies to be made has resulted in Courts now viewing the traditional best evidence rule as not being strictly applied as it was historically, before the advent of technology such as photocopiers, or as being obsolete, and in the use of a copy (as opposed to the original) now going only to weight (as opposed to admissibility): *R. v. Betterrest Vinyl Manufacturing Ltd.*, 1989 CarswellBC 685 (C.A.); and, *ITV Technologies Inc. v. WIC Television Ltd.*, 2003 CarswellNat 4812 (F.C).

[21] Copies of photos can be admitted into evidence if a witness can authenticate them, the accuracy and fairness of what they depict, and the absence of intent to mislead; and, the weight to be attached to them depends on the degree to which the integrity of the photos can be established: *Al-Sajee v. Tawfic*, 2019 ONSC 3857.

[22] There was evidence from Linda Bent that the photos on Ms. Kolb's phone were downloaded to the Municipality's server and simply copied and printed to be disclosed and submitted into evidence. Ms. Kolb herself authenticated them as being photos she took.

[23] I also note that Mr. Pereira did not dispute that they were a fair and accurate representation of what they depict. In fact, he used the photos himself to make or support various points.

[24] Therefore, they are admissible.

[25] One of his complaints about the photos that were disclosed and put in evidence is that they did not contain the metadata which would show the times the photos were taken. He wanted the times of the taking of the photos to show the order in which they were taken, so that he could prove conclusively that Ms. Kolb took the photo of the stop work order before she called 911 and, therefore, contrary to her evidence, she was not on her way to her vehicle to get her phone from her vehicle when she made physical contact with him, purportedly because he was blocking her path to her vehicle.

[26] However, in light of the evidence submitted at the hearing, access to the metadata is not needed to establish that point. There was significant inconsistency in Ms. Kolb's evidence regarding the timing or order of the taking of the photos. Ultimately, she testified she could not remember the exact order.

[27] Mr. Pereira testified, and I accept, that he did not block Ms. Kolb from going to her vehicle. The video of the event clearly shows both he and the person he identified in his evidence as his girlfriend, Chantal Pillon, repeatedly directing her to leave "their" property. It does not make sense he would try to prevent her from going to her vehicle as that is how she could be expected to leave the property.

[28] However, the video also shows they were attempting to stand in the way of Ms. Kolb inspecting the property. Ms. Kolb testified that Mr. Pereira stood in her path three times and that Ms. Pillon struck her arm when she was taking a photo, resulting in it being skewed. Mr. Pereira told her to get a warrant. She responded, correctly, that she did not need a warrant to enter upon the property in question. As she was attending to ensure compliance with the provisions in the Act dealing with building permits, s. 10 of the Act provides that no warrant is required if entry is effected during a reasonable time. Ms. Kolb entered in the daytime during regular work hours, thus at a reasonable time. Therefore, she did not need a warrant and was lawfully inspecting the property without one.

[29] Certain of her authority to enter and inspect, she continued her work in the face of repeated demands that she leave the property. Those emanating from Ms. Pillon, and captured in the video, were very aggressive and accompanied by foul language. Ms. Kolb testified, and I accept, that she had never encountered as difficult a situation before. Instead of leaving and getting reinforcement, she held steadfast in fulfilling the reasons she came on the property, herself asserting her authority and at least presenting as if she was unphased or undeterred by their actions. That included smiling or laughing, refusing to give Mr. Pereira her name because she had already done so, and, at the end, as she was leaving telling them they were crazy and making what appeared to be a peace sign, but which she explained was her waiving goodbye.

[30] Ms. Kolb also testified that Mr. Pereira had just blocked her path, she was afraid for her safety, she called 911, and she left at that point. Therefore, she likely would not have gone back and taken a photo of the Stop Work Order she had left in the handle of a camper onsite.

[31] In those circumstances, the physical contact Ms. Kolb made with Mr. Pereira, and possibly with Ms. Pilllon, was more likely than not, in response to them standing in the way of her fulfilling her duties.

[32] There is no indication that the metadata for the photos would assist in refuting that.

[33] Further, Mr. Pereira has deliberately not raised any contravention of the Canadian *Charter of Rights and Freedoms* which might make such physical contact relevant to determining the within application.

[34] Therefore, the paper copies of the photos which were printed from an electronic copy are not to be excluded under the best evidence rule and are admissible.

Disclosure

[35] Mr. Pereira also complained that he did not believe he had received all the photos that had been downloaded given Ms. Kolb's evidence that she had taken many more photos than what was disclosed and submitted in evidence.

[36] Linda Bent, Director of Planning and Inspection Services for the Municipality, testified that when building inspectors, such as Ms. Kolb, take photos on their iPhones they are downloaded to the Municipality's server in Jpeg format and deleted from the iPhones because of the lack of storage space on the iPhones.

[37] She had reviewed the photos that were disclosed to Mr. Pereira and they were consistent with what was on the Municipality's server. They were taken from the server and sent to Mr. Pereira. She was not aware of any of the photos having been edited.

[38] She agreed that there were not many more photos than what had been attached to Ms. Kolb's affidavit and that there appeared to be a photo that was attached to that affidavit but appeared to be missing in the latest disclosure email. The explanation she offered was that there might be another file folder on the server. However, as we were part way through the last day of the hearing, that possibility was not explored further.

[39] Nevertheless, there is no indication that any such additional photos which might exist would shed light on whether a building permit was required. As Ms. Kolb did not enter the structure in question, more likely than not, they would not have.

[40] Further, Mr. Pereira had full access to the building in question and the opportunity to take photos and submit them in evidence.

[41] Given these circumstances, the disclosure made by the Municipality was reasonably complete and, to the extent it may have been incomplete, was of no consequence to the material issues in this proceeding.

[42] He also alleges that the Municipality tampered with the photos that were disclosed to him because their resolution is much lower than it should be, resulting in image loss. In support he presents documentation printed from a ChatGPT query and his own expert opinion, both of which are inadmissible. Even if they were admissible, they would not satisfy me that there has been deliberate tampering, as opposed to resolution reduction resulting from copying and electronic transmission.

[43] In addition, the resolution of the photographs provided was sufficient for the purposes for which they were to be used, and were used, in the hearing of the Application. It has not been shown that higher resolution photos would have made it possible to establish any material point in issue that could not be established using the photos that were provided.

[44] Therefore, the tampering allegations are of no consequence in this matter.

Whether the Building was Used for Human Habitation

[45] The Municipality submits this Court should reject Mr. Pereira's assertion that the building is not used for human habitation because:

- his description of the building on cross-examination was inconsistent with the description in his brief in support of his motion to dismiss for lack of merit and is consistent with use for human habitation; and,
- this Court should draw, from the fact Mr. Pereira has not presented any photos of the interior of the building, despite it having been within his control to do so, the adverse inference that the building is for human habitation.

[46] It also points to a comment Mr. Pereira or Ms. Pillon made to Ms. Kolb onsite indicating that the building was for human habitation.

[47] The brief in question represents that the building lacks, among other things, proper insulation, kitchen facilities, a water closet and electricity.

[48] On cross-examination, Mr. Pereira testified to the following in relation to the building:

- It was then insulated.
- It had a sink.
- The plumbing was set up to have water brought in.
- It had a bathroom with the waste being collected in a bucket and used for making soil.
- It had a tub for the dog which drained into a barrel and went into the compost after being filtered though rocks.
- Electricity to it was supplied by a generator and solar panels.
- It had a couch for animals.
- The loft, which he used as a studio, had a desk, two computers and a few laptops.
- The furniture in it was his mother's antiques.
- It had a woodstove.

[49] It is noteworthy that the brief was filed January 20, 2025, and Mr. Pereira was cross-examined on April 30, 2025. Mr. Pereira conceded he had continued construction on the building. The changes to the building could have occurred between the preparation of the brief and the cross-examination of Mr. Pereira. Therefore, the differences noted do not necessarily establish inconsistencies that would detract from the credibility and reliability of his evidence.

[50] In addition, the description on cross-examination could be equally consistent with use as an office or studio combined with use for animals. However, no explanation was given as to why the couch was only for animals, nor for what kind of animals it was for. Absent a reasonable explanation, it does not appear to make sense that the couch would only be for animals. That is indicative that Mr. Pereira may be hiding something.

[51] In relation to the submission that I should draw an adverse inference from Mr. Pereira's failure to produce photos of the inside of the building I note the following evidence:

- When his failure to do so was put to him on cross-examination he readily agreed and pointed out that the onus was on the Municipality to prove its case.
- He also stated that he did not want people to know what was there and have it stolen.
- In response to questioning regarding his refusal to allow building inspectors to see the inside of the building in question he correctly pointed out that it was his right to refuse and insist on them following the due course of law, which I took to mean obtaining an order from this Court authorizing entry pursuant to s. 10(3) of the Act.
- When asked if he agreed that building officials could enter upon his property during the day without a warrant to inspect the property, he responded that he believed it was unconstitutional and, for added emphasis, stated he believed it was constitutionally repugnant.
- He also maintained that the building officials were trespassing on his private property.

[52] This evidence, as well as his evidence and submissions throughout the proceedings, including the multiple pre-application motions, clearly demonstrate that Mr. Pereira holds strong beliefs that he can do what he wants on his property, or at least ought to be able to, and that he has no obligation to justify, explain or show it to any authority. They also demonstrate that he vehemently guards his privacy.

[53] In these circumstances, an inference that he did not provide photos for these reasons related to independence, sovereignty or privacy, is at least as reasonable as that he did not do so to conceal the actual use of the building.

[54] Therefore, I cannot draw the adverse inference argued by the Municipality.

[55] Mr. Pereira correctly points out that, since Ms. Pillon is not a party to the within application and she did not testify at the hearing, her comments to Ms. Kolb related to use of the building for human habitation are hearsay.

[56] Ms. Kolb initially testified that both Mr. Pereira and Ms. Pillon informed her that they lived in the building. She later testified that it could have been just one of them, but she was not sure which. She ultimately testified that it was probably Ms. Pillon.

[57] According to the evidence of Ms. Kolb, the words spoken to her were: "What the f***ck do you want us to do … live in our trailer?".

[58] In the video evidence presented, Mr. Pereira was persistent in his repeated directions to Ms. Kolb to leave the property. Though he did so with firmness, conviction, and argumentative comments emanating from his perceived private property rights, he did not use foul language.

[59] Ms. Pillon, on the other hand, was more aggressive and demanding in the video, directing Ms. Kolb to leave, using the words "f***ck" and "f***cking" in doing so.

[60] Ms. Kolb did testify that, around the time of the 911 call, which is not captured on the video, Mr. Pereira was barking at her and yelling profanities in the background. However, she did not specify the words he used.

[61] Since Ms. Kolb testified it was probably Ms. Pillon who uttered the comment and the language style used was consistent with the language style used by Ms. Pillon on the video, I find that the comment was made by Ms. Pillon, not by Mr. Pereira.

[62] I also accept Ms. Kolb's evidence that Ms. Pillon did utter those words for the following reasons. It is consistent with the type of language captured on the video recording filmed and presented by Mr. Pereira. It is consistent with the portion of the order Ms. Kolb left on the property on October 3, 2022, which states: "Do not occupy the residence." It is consistent with the portion of her Note to File dated "3 October 2022" which states: "The owner / occupiers validated this structure is their residence – not an accessory building". It is a statement which can reasonably be expected to have made a sufficient impression that she would recall it.

[63] Therefore, there is a hearsay question to address.

[64] Mr. Pereira argues that I cannot consider Ms. Pillon's statement for its truth.

[65] The Municipality argues that Ms. Pillon's question regarding where they would be expected to live ought to be taken as "a reliable admission regarding the use of the structure" because it was made in an intense situation making it more likely to be reliable because the person making the statement "is overcome by the

intensity of the situation and there is little opportunity for reflection, speculation or concoction".

[66] That argument combines two exceptions to the hearsay rule, the declaration against interest by a non-party exception and the spontaneous utterance branch of the *res gestae* exception. I will address each one separately.

[67] One of the prerequisites to admissibility of a declaration against interest by a non-party is that the declarant be unavailable to testify. It has not been shown that Ms. Pillon was unavailable to testify. Therefore, the statement in question is not admissible under that exception to the exclusionary hearsay rule.

[68] Our Court of Appeal, in *R. v. Shea*, 2011 NSCA 107, at paragraph 64, articulated the key elements of the test for admissibility of a spontaneous utterance as being:

> a statement that is spontaneously declared under shock or pressure sufficient to ensure the declaration's reliability and remove any suspicion of concoction or fabrication, and made under circumstances of relative contemporaneity to the traumatic event.

[69] A video of the final portion of the interaction Ms. Kolb had with Mr. Pereira and Ms. Pillon on October 3, 2022, was attached as an exhibit to Mr. Pereira's affidavit filed July 10, 2024.

[70] It shows Ms. Pillon aggressively yelling at Ms. Kolb: "F***ck … get in your f***cking car."

[71] Then she yelled more loudly, again: "Get in your f***cking car."

[72] A few moments later, following continued and repeated demands from Mr. Pereira for Ms. Kolb to leave, she continued, yelling:

> "We have the right to be here in our land that we pay and you have to leave our private property right now."

[73] The tone of Ms. Pillon's voice clearly conveyed that she was upset and angry that Ms. Kolb was on what she considered "their" private property and attempting to force compliance with building permit requirements.

[74] More likely than not, she was similarly upset and angry when she uttered the words in question regarding where they were expected to live. That would be

enough to create a “shock or pressure sufficient to ensure the declaration’s reliability and remove any suspicion of concoction or fabrication”.

[75] The fact that the statement was also obviously against Ms. Pillon’s interest adds to the reliability of the statement in question and to the removal of suspicion of concoction or fabrication.

[76] One would not usually expect a visit from a municipal building official to monitor compliance with building permit requirements to be a traumatic event. However, Ms. Pillon’s reaction to the visit and her obvious emotional state during the video-recorded portion of the interaction reveals that the event was, at least to some extent, traumatic for her.

[77] The words in question were uttered during the event and, thus, were contemporaneous with the event.

[78] For these reasons, the words in question satisfy the key elements of the test for admissibility of spontaneous utterances as articulated in *R. v. Shea*.

[79] However, that is not the end of the analysis.

[80] The Supreme Court of Canada, in *R. v. Starr*, 2000 SCC 40, established that, even where evidence fits within a traditional exception to hearsay, such as the spontaneous utterance exception, it may be excluded if indicia of necessity and reliability are lacking, though it noted that this would only occur in “rare cases”.

[81] However, the necessity requirement is given a flexible meaning. For instance, it will be satisfied where the party advancing the spontaneous utterance in support of their case cannot expect to get evidence of similar value from the person who made the utterance.

[82] It is obvious that Ms. Pillon strongly holds the view that they can do what they want on their own private property, without interference from the Municipality’s building officials. An acknowledgement that the building in question was used or intended to be used to live in would make it such that a building permit would be required. She clearly displayed anger and vehemence in ordering Ms. Kolb to leave “their property”. Therefore, the Municipality could not reasonably be expected to obtain evidence from her acknowledging that the building in question was used or intended to be used for human habitation. That is sufficient to satisfy the necessity requirement.

[83] The reliability requirement is satisfied for the same reasons it meets the elements of the spontaneous utterance exception to hearsay. The spontaneity of the statement, which is against Ms. Pillon's interest, made during an event which she, more likely than not, saw as traumatic, while under the shock or pressure of the event, ensures the reliability of her declaration.

[84] For these reasons, the declaration in question by Ms. Pillon is admissible for the truth of its contents.

[85] In the context of a site visit by a building official seeking to monitor compliance with building permit requirements, a declaration by an irate occupant of the property in question, who is insistent upon that building official leaving their private property, stating: "What … do you want us to do … live in our trailer?", more likely than not, conveys that the building in question was used or intended to be used for human habitation.

[86] Such a building is not exempt from the building permit requirements even if it is under 20 square metres.

[87] Therefore, a building permit is required for the building in question and the orders to stop work on the property and to obtain a building permit are valid.

[88] Mr. Pereira clearly failed and refused to comply with them.

[89] Consequently, the Municipality has established that he has contravened sections 8(a) and 19(1)(b) of the Act.

Other Issues Raised by Mr. Pereira

[90] Mr. Pereira also raised other issues including abuse of process, lack of legal justification, statutory and criminal violations by municipal officials, the alleged lack of a genuine complaint, the absence of a warrant to enter and search the property, trespass, breach of privacy rights, and lack of professionalism on the part of Ms. Kolb.

[91] I once again highlight that Mr. Pereira has deliberately refrained from making any *Charter* application for any remedy that might arise from any alleged wrongdoing by municipal officials.

[92] In relation to the alleged assault by Ms. Kolb I note that which follows.

[93] Mr. Pereira described it as a push. Ms. Kolb described it as her putting her elbow out in front of her as she was walking forward and making contact with Mr. Pereira. She said Mr. Pereira pushed her in return. She did not testify to any contact with Ms. Pillon. Ms. Pillon, in the video of the last portion of the October 3, 2022, incident, declared that Ms. Kolb pushed her. There is no evidence Ms. Pillon pushed her back. She indicated her concern was with Mr. Pereira, not Ms. Pillon. She did testify that Ms. Pillon struck her arm when she was taking one of the photos, resulting in it being skewed. However, it is unclear at what point during the event that occurred.

[94] As I indicated earlier, Ms. Kolb found herself in the unanticipated circumstances of having the occupants of the property in question attempt to obstruct her ability to inspect to monitor compliance with building permit requirements and to oust her from “their” property. She described Mr. Pereira’s actions to the 911 operator as being “combative”. She testified Mr. Pereira stepped in her path three times and intimidated her. More likely than not, she made physical contact with Mr. Pereira and Ms. Pillon to overcome being obstructed in the performance of her duties.

[95] I agree with the submission of the Municipality that there is no evidence that such contact was anything other than minor contact.

[96] I agree with Mr. Peirera that it, in the circumstances, it nevertheless demonstrates some lack of professionalism on her part, as does her saying to them “you guys are crazy” and refusing to state her name simply because she had already provided it when she first arrived.

[97] However, I agree with the Municipality that, given the difficult circumstances she found herself in, Ms. Kolb maintained relative calm. She testified that they, as building officials, have a lot of combative conversations with people who are unhappy with what they are telling those people. They nevertheless continue to work their way through most of those difficult conversations in an effort to secure compliance. They may escalate and calm back down. However, in the case at hand, she felt very intimidated, and it is the first time she has had to call 911. Her handprinted notes made the day of the event state that “the situation had escalated to a place that did not feel safe”. Despite those circumstances, she did not get angry. She did not yell back. She continued to smile.

[98] She acknowledged it was “not the nicest thing to say” and was “uncalled for”. She explained it emanated from the “very contentious conversation” they had been having.

[99] In the circumstances, this lack of professionalism is not conduct which would justify refusing to grant the Municipality a remedy, nor watering down the appropriate remedy, even if Mr. Pereira had made a *Charter* application requesting such an impact.

[100] Otherwise, I refer to, and rely upon, the comments and determinations I made in relation to these and other issues during the multiple pre-application motions in this matter.

Remedy

[101] The question which remains is: What is the appropriate remedy for the violations in question?

[102] The Municipality seeks an order requiring Mr. Pereira to, within 30 days, obtain a building permit or remove the building, and if he fails to do so, authority for the Municipality to enter upon the property and remove the building.

[103] By way of sample order, it provides the order of Justice Glenn McDougall in Halifax File Number 536011. That order includes a provision that, in addition to being authorized to enter on the property and remove the construction in question, the municipality in that case was also authorized to recover the cost of removal “as a first lien on the Property”.

[104] S. 20(2) gives this Court discretion to make the order requested.

[105] As highlighted by the Municipality, the following circumstances obtain in the case at hand:

- The violations have been ongoing since October 2022.
- The requested order gives Mr. Pereira a reasonable time to get a building permit or remove the structure.
- If Mr. Pereira refuses to get a building permit or remove the building, and the Municipality is not authorized to remove the building, it risks

being viewed as Mr. Pereira having been given a free pass to continue his noncompliance.

- The requested remedy is similar to that which has been ordered in other cases where structures are built in violation of land use bylaws.

[106] Also, Mr. Pereira has been adamant throughout that he does not require a building permit and that he ought to be able to do what he wants on his own property. He has asserted rights to keep the Municipality's building officials off his property, which are rights that he does not have. As such his contraventions have been deliberate and flagrant.

[107] In these circumstances, a drastic remedy such as that suggested by the Municipality is reasonably required.

[108] It is the type of remedy that has been granted in comparable situations, such as those in *Cape Breton (County) v. Knox*, 1987 CarswellNS 556 (S.C., T.D.) and in the case of *Lunenburg (Municipality) v. Crouse et al.* referred to in *Knox*.

[109] However, Mr. Pereira has no control over whether the Municipality grants his application for a building permit.

[110] He, nevertheless, has shown an inclination to insist on municipal building officials obtaining a warrant to enter his property. As, absent the owner's consent, a warrant is required to enter a building used for human habitation, and the Municipality would need to inspect the interior of the building, it is an eventuality which should be addressed in the order emanating from the within Application.

[111] Also, obtaining a building permit and allowing inspection does not automatically mean that Mr. Pereira can occupy the building or structure. The building officials must first be satisfied that the construction complies with the building code and grant the requisite permission or permit to occupy the building or structure for human habitation.

[112] Further, the more common manner by which municipalities recover charges relating to property is to add them to taxes owing on the property. That allows them to collect the amounts owing without having to wait for the owner of the property to decide to sell it because they can, themselves, initiate a tax sale process.

[113] Therefore, a more appropriate and workable order to remedy Mr. Pereira's noncompliance would include terms requiring him to submit a fully and properly completed application for a building permit or remove the building within 30 days, failing which the Municipality shall be authorized to enter upon the property, remove or demolish the building, and recover the expense of removal or demolition from him, including by adding it to taxes owing on the property and conducting a tax sale; requiring him to allow the Municipality's building officials unimpeded access to the building to conduct any inspections that may be required; and further requiring him to abstain from occupying the building or structure for human habitation until the Municipality grants him the permission or permit to do so.

Conclusion

[114] For the foregoing reasons, I find that Mr. Pereira has contravened sections 8(a) and 19(1)(b) of the Act and order the following:

- Mr. Pereira shall, on or before the 30th calendar day following issuance of this order, either submit an application for a building permit from the Municipality for the building or structure on the property in question at Lakeview Drive, Lake La Rose, Annapolis County, Nova Scotia, bearing Property Identification ("PID") Number 05285135, which application is to be fully and properly completed in compliance with the Municipality's Building By-laws, along with any applicable fees, or remove or demolish the building or structure.
- If he fails to do so, the Municipality, its employees, agents, or servants, are authorized to enter upon the said lands at Lake La Rose bearing PID No. 05285135, with workers and equipment and remove or demolish the building or structure at Mr. Pereira's expense.
- If Mr. Pereira submits the fully and properly completed application, along with any applicable fees, by the deadline and the permit is not issued, he shall, within 30 calendar days of being notified of the refusal, either file an application for judicial review of the refusal to issue the permit or remove or demolish the said building or structure, failing which the Municipality, its employees, agents or servants, are authorized to enter upon the said lands at Lake La Rose bearing PID No. 05285135, with workers and equipment and remove or demolish the building or structure at Mr. Pereira's expense.

- If a building permit is issued, Mr. Pereira shall allow the Municipality's building officials unimpeded access to the building or structure to conduct any and all inspections which are required by the building officials. Given that at least some construction has already occurred while there was no permit and while the building officials were denied access, this may include having to remove components of the current building or structure to permit inspection of portions of the construction that are now covered or hidden.
- If any disputes arise regarding whether the building or structure complies with the Building Code, the Municipality shall apply to the Nova Scotia Building Advisory Committee for a ruling on the dispute.
- Mr. Pereira shall make any changes to the building or structure that are required to bring it into compliance with the Building Code.
- Mr. Pereira shall refrain from occupying the building or structure for human habitation and from allowing anyone else to so occupy it, until such time as he has obtained the requisite permission or permit from the Municipality to occupy it.
- The Municipality shall be permitted to recover any and all costs and expenses, associated with the removal and demolition of the building or structure, under the provisions in the *Municipal Government Act*, S.N.S. 1998, c. 18, relating to tax sales, by adding them to property taxes owing on the property such that they become a first lien on the property.

[115] I ask Counsel for the Municipality to prepare the order.

[116] If the parties cannot agree on the costs of this Application, I ask them to provide submissions in writing on the issue within 30 days of receipt of this decision.

Muise, J.