

IN THE COURT OF KING’S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

**TIMOTHY HAWKINS**

- and -

**HIS MAJESTY THE KING IN RIGHT  
THE PROVINCE OF NEW BRUNSWICK,  
as represented by the Minister of  
Transportation and Infrastructure, and the  
Minister of Housing, and THE CITY OF  
FREDERICTON, and NEW BRUNSWICK  
HOUSING CORPORATION**

**RULING ON MOTION**

**Injunction/Standing/Affidavit Evidence**

Date of Hearing: December 5, 2025  
Date of Ruling: December 5, 2025  
Before: Justice E. Thomas Christie

Counsel of Record:

Mr. Steven Barnett, KC and Mr. Weston McArthur for:	Mr. Hawkins
Mr. James Mockler, K.C. for:	His Majesty and the New Brunswick Housing Corporation
Ms. Chantal Gauthier for:	City of Fredericton

*Christie, J. (Orally)*

[1] In this Motion, the Applicant, Timothy Hawkins, seeks an injunction to stop further work towards the development of a project to provide transitional housing for those who are homeless, on a parcel of land located within the Respondent, City of Fredericton, and owned by the Respondents, Province of New Brunswick and developed under the direction of the Minister of Housing/New Brunswick Housing Corporation and Minister of Transportation and Infrastructure. In these reasons, I will refer to the Ministers and the Housing Corporation as PNB. This development is located in a residential area known as Skyline Acres within the City of Fredericton. The Motion was filed coincident with a corresponding Notice of Application.

[2] The City was named as a party Respondent, although it had no involvement in the decision by PNB to develop the site which PNB owns. The intended use is in conformity with the current zoning. As the City's Development Officer deposes at paras. 9-12:

9. Given the classification of the use by NB Housing, and that assisted living is a permitted use in the I-2 zone, the *Community Planning Act*, SNB 2017, c.19 ("CPA") was not triggered. As such, there was no requirement upon the City to commence public notification processes as per the *CPA*.

10. The City is aware that site work has taken place on the Property. There is no permit required to conduct site work under the *CPA*.

11. Regarding the Development, no process requiring the City to act under its by-laws, the *CPA* or the *Local Governance Act*, SNB 2017, c. 18 has been initiated.

12. The City does not own or have any interest in the property. The City is not the proponent for the Development and is not the developer.

[3] Mr. Hawkins accepts that Mr. Forrest's statements are accurate. Moreover, there is no identified 'decision' of the City's at issue. Therefore, I find the City is not a proper party to this proceeding. As requested by the City, it is to be removed as a Respondent.

[4] At the crux of Mr. Hawkins' claim is that he had a common law right to be consulted before the Province moves forward with establishing the project. He claims the right is based on his residency within Skyline Acres. The evidence does not indicate the distance of his home from the proposed site of the units to be installed. Not that the question of distance could be determinative since it may be impossible to set an outer limit as to where any common law right to procedural fairness begins or ends. Nor is there any evidence of the geographic size of Skyline Acres.

[5] There was no Motion by Mr. Hawkins to seek standing to proceed. Standing to bring such an Application may be necessary where the personal or direct interest of the Applicant is not clear. The City raises standing as an issue that I will address later. In this Motion, and the underlying Application, Mr. Hawkins does not assert that he has a direct legal interest in the project. He is a concerned resident.

[6] Prior to filing the present proceeding, Mr. Hawkins had filed a Notice of Preliminary Motion seeking, in substance, the same relief. That Motion was accompanied by an affidavit of Mr. Hawkins sworn to on November 4, 2025. That matter was assigned court file number FC-418-2025. That Preliminary Motion and the supporting affidavit, was reviewed by another judge of this court, and counsel for Mr. Hawkins was advised by the Clerk of a deficiency based on the degree of hearsay contained therein, specifically with respect to para. 6. That proceeding named two respondents, His Majesty the King as represented by the Minister of Transportation and Infrastructure and the City of Fredericton. Counsel withdrew that Preliminary Motion and, in due course, proceeded to file the present Application and Motion.

[7] In support of the present matter, Mr. Hawkins filed an affidavit sworn to on November 19<sup>th</sup>, 2025. In addition, the present Record contains what appears in all respects to be the same affidavit of Mr. Hawkins sworn to on November 4<sup>th</sup>, but this time, the style and cause included two additional respondents not identified on the style and cause at the time that it was sworn. In other words, it appears that there was some degree of 'cutting and pasting' done on an affidavit, after it was sworn. Mr. Hawkins' counsel has acknowledged that that was done.

[8] The Court cannot sanction that approach to the use of sworn affidavit evidence. Once a deponent has, as in this case, sworn to the contents of an affidavit, it should be an elementary proposition that modifications or ‘up-dating’ of any kind would be considered inappropriate. In my view, that this has occurred, is of such a concern that striking in full the affidavit of Mr. Hawkins of November 4<sup>th</sup> would ordinarily be appropriate. If updating of a sworn affidavit is required, Mr. Hawkins should have executed a new affidavit. Moreover, given that the contents of the original affidavit were of such a concern to the judge who initially reviewed the previous file, it is difficult to understand why it made its way into the present proceedings at all. As it turns out, the Respondents had been unaware that this had occurred.

[9] Counsel for PNB has advised that he was abandoning an argument that PNB had not been provided proper notice by Mr. Hawkins pursuant to s. 15(1) of the *Proceedings Against the Crown Act*, RSNB 1973, c P-18 (*PACA*). The review of the file indicates there to have been correspondence that Mr. Hawkins was attempting to provide the required notice on the assumption that it may have been necessary. Prior to this hearing Mr. Mockler, K.C. advised that he was withdrawing this preliminary objection. Nevertheless, the issue of the necessity of notice was canvassed in the briefs. Despite it being now abandoned, it may be worthwhile to identify why it was prudent of Mr. Mockler to remove this issue. The relevant sections of *PACA* provide that:

Notice of Action

15(1) No action shall be brought against the Crown unless two months previous notice in writing thereof has been served on the Attorney General, or on the corporation, in which notice the name and residence of the proposed plaintiff, cause of action, and the court in which it is to be brought shall be explicitly stated.

Application of Act

21. No proceeding may be brought against the Crown except as provided by the Act.

[10] At the outset, it is clear in the heading of s. 15(1), upon which PNB originally relied, and in the body of the section itself, that s. 15(1) is contemplating a Notice of Action and references a

proposed ‘plaintiff’. In the underlying matter we are dealing with a Notice of Application for Judicial Review involving an ‘applicant’ and ‘respondent’. In my view, dealing with an application for judicial review does not engage s. 15(1) of the *Act*. A Notice of Application is not a ‘cause of action’. Here, Mr. Hawkins, in his Application relies on *Rule 69* – a different process completely. Such a process is intended to engage what were formerly understood to represent the ancient prerogative writs. It is not an action for which damages are typically asserted.

## STANDING

[11] In the present proceeding, Mr. Hawkins did not bring a Motion seeking to assert some form of standing. That leaves him with the onus of identifying some personal legal interest in the proceeding. He has not asserted any such interest. At best, he conveys his personal concern over the safety of those in Skyline Acres. His sincerity in this regard is not in doubt. But that is not a legally recognized interest that, without more, would open the door for his present challenge. Mr. Hawkins expresses a general sense of community unease with the planned development which could be advanced by seeking some form of public interest standing, for which there is a specific legal test. In my view, it was necessary for Mr. Hawkins to seek and establish standing in the absence of a more clearly defined legal interest.

[12] In a series of cases involving the Canadian Civil Liberties Association and PNB involving what was known as Policy 713, the CCLA filed their application for judicial review along with a Motion to establish the basis upon which they could proceed with the Application. Established standing was required. In *CCLA v. New Brunswick (Education and Early Childhood Development)*, 2024 NBKB 92, Justice Petrie summarized the proceedings that had led to his consideration of whether to allow additional intervenors. He wrote:

## BACKGROUND

4. On September 6, 2023, the Applicant, Canadian Civil Liberties Association (“CCLA”) filed an Application for Judicial Review and Declaratory relief seeking to challenge a decision by the Minister of Education and Early Childhood Development (Minister), to implement certain amendments or modifications to the Department of Education’s policy 713 on Sexual Orientation and Gender Diversity (“the proceeding”).

5. The CCLA also brought a motion seeking “public interest standing” in order to pursue the proceeding.

6. The Minister did not oppose the CCLA’s motion. My colleague, Justice Dysart, rendered a written decision on December 21, 2023, confirming the CCLA’s public interest standing.

[emphasis added]

[13] Moreover, presently, the City cites *Dignam et al v. NB Liquor*, 2014 NBQB 109, as an example where the court refused to recognize standing based on personal concern. In that case, two individuals were objecting to the issuance of a license to sell liquor in a particular convenience store. George Dignam and Gayla McIntosh filed a Notice of Application to quash that decision to grant the agency store license. The case involved two separate Applications for judicial review. As Justice Garnett noted at para. 1:

There are two applications. In the first, George Dignam and Gayla McIntosh who are residents of Hanwell ask the Court to quash the decision of the New Brunswick Liquor Corporation (N.B. Liquor) to award an agency to Power Plus Technology Inc. (Power Plus).

[14] NB Liquor objected to the participation of Dignam and McIntosh. Justice Garnett wrote, beginning at para. 16:

Preliminary Matters

16 In preliminary motions, N.B. Liquor argued that George Dignam and Gayla McIntosh lacked standing to challenge the decision under review and argued that Power Plus should not be permitted to intervene. At the request of the parties, the second issue was determined previous to arguments on the merits of the judicial review. As stated above, Power Plus was granted leave. Dignam and McIntosh were given the opportunity to have the question of their

standing determined at the same time but they declined the opportunity.

17 Dignam and McIntosh are citizens of Hanwell and were part of an informal group of citizens who objected to the appointment of Power Plus as agent. They participated in all three hearings in this matter. N.B. Liquor points out that Dignam and McIntosh do not object to “the presence of an ... agency store in Hanwell” but rather they object to the decision as to who should operate it.

18 A party may have status or standing in a dispute in two ways. If he is directly impacted by the decision he is said to have private interest standing and, in some circumstances, Courts will grant what has been labeled “public interest standing” to groups or individuals.

#### Private Interest Standing

19 In *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607 (S.C.C.), the Supreme Court of Canada found that an individual who received social assistance from the Province of Manitoba did not have sufficient interest in a cost-sharing arrangements (*sic*) with the federal government to seek an injunction. Justice LeDain quoted with approval from *Australian Conservation Foundation Inc. v. Australia* (1980), 28 A.L.R. 257 (Australia H.C.):

A person is not interested ... unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer from disadvantage, other than a sense of grievance or a debt for costs, if his action fails.

20 In *Coates v. Mount Allison University*, 2011 NBQB 277 (N.B. Q.B.), Justice Rideout held that a group of alumni lacked standing to seek an injunction to prevent the university from demolishing a building. He quotes from the text *The Law of Declaratory Judgements*, 3rd Edition, by Lazar Sarna at paragraph 17:

Locus standi refers to the right of a party to appear or plead before the court on a question which is deemed to be of interest to that party. Standing or interest confers upon an applicant the right to be heard as distinct from the right to succeed in an action or proceeding for relief [...] Although the categories of “plaintiff” and “petitioner” are often statutorily applied to parties who have instituted proceedings,

whether or not they have a right to do so, it is apparent that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical, or no interest.

21 In this case, neither Dignam nor McIntosh has an interest in the outcome of the Application. Neither will gain an advantage or suffer a disadvantage. They do not have private interest standing.

[15] And, at para. 25 and 27, Justice Garnett writes, in part:

25 ... Having said that, the other Applicant, Scholten's, has a direct private interest in that issue while Dignam and McIntosh do not. They do not have a real stake in the outcome ...

27 I find that George Dignam and Gayla McIntosh do not have standing to make their application and order them to pay \$1,200 in costs to N.B. Liquor.  
[emphasis]

[16] While Justice Garnett goes on to consider public interest standing in the case before her, I will not comment further, as Mr. Hawkins has not sought public interest standing. As the City asserts, and I agree, Mr. Hawkins has not sought, nor on this Record could he be afforded, any standing.

#### RIGHT TO HAVE BEEN CONSULTED

[17] Mr. Hawkins' primary goal seems to be to assert that there was a common-law right of consultation to which he was entitled – a consultation that might have made the Respondents re-think the plan and give greater attention to the public safety risks he asserts will result.

[18] Mr. Hawkins deposes, at para. 5 of his November 19<sup>th</sup> affidavit,

To my knowledge and belief, there was no consultation or notice with the residents of Skyline Acres about the Government's decision before it was made. I also do not believe, nor have I sent (*sic*) any proof of there being any study of the impact of the development of land on the nearby school and residents.

[19] In my view, it is not possible to support an argument to a common-law right to be consulted, in the absence of establishing a discernable legal interest at issue. Otherwise, and taken to the extreme, that theory could lead to establishing a common law duty on PNB to consult every citizen, on any issue. Courts have long recognized that genuine concern by and for those in the community is insufficient to create a substantive right or interest to be consulted.

#### AVAILABILITY OF AN INJUNCTION AGAINST PNB

[20] PNB has asserted that, even if successful in meeting the test for an injunction, that form of relief is not available against the Province. PNB relies on s. 14(2) of *PACA*:

14(2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may, in lieu thereof, make an order declaratory of the rights of the parties.

[21] Counsel for Mr. Hawkins and PNB note that there are limited and extraordinary exceptions and both point to the reasons of Justice Petrie in *Julmac Contracting Limited v. New Brunswick*, 2025 NBKB 73. Petrie, J. concluded in the matter before him that:

[80.] I have determined that injunctive relief is not available to Julmac as against PNB or DTI. PNB generally has an absolute immunity from such relief pursuant to s. 14(2) of *PACA* and it does in these circumstances.

[22] However, before I opine on whether I agree with Justice Petrie, I first have to be satisfied that there is a basis to grant an injunction – in other words, has the test for an injunction in *RJR MacDonald Inc., v. Canada (AG)*, [1994] 1 SCR 311, been met. That test contains three parts which, I summarize as follows:

1. Is there a serious issue to be tried;
2. Will the applicant suffer irreparable harm;
3. What is the balance of convenience.

[23] It is generally accepted that the first step, identifying a serious issue to be tried, is not an onerous test to meet. Often, respondents will accept that such exists, and argument focuses on parts two and three. There is no such concession here. In this case, given the inability to identify a right or legal interest of Mr Hawkins' at play, logic would dictate that there is no issue, serious or otherwise, at play.

[24] As to the second part, the existence of irreparable harm, it is the nature of that harm that must be considered. Here, the harm that is asserted by Mr. Hawkins is based completely on speculation. Mr. Hawkins is concerned about the welfare of those in Skyline Acres and noted the proximity of the proposed supportive housing project to a school. Mr. Forrest deposed that the project will be comprised of sleeping units, an administration unit, a kitchenette, and a washroom/laundry unit. It will be gated and fenced in. Mr. Forrest goes further and deposes at para. 3 that:

Next to the property is a privately owned communal housing development and other uses. Forest Hill Elementary School, housing and commercial uses are also located nearby.

[25] But in the present Record, I have nothing but speculation of the harm that the project could create, and nothing to suggest Mr. Hawkins will suffer irreparable harm.

[26] With respect to the third step, the balance of convenience, I accept that PNB is embarked upon a project of transitional housing and support for the homeless and assist those having addiction issues. As I say, the harm asserted by Mr. Hawkins is speculative. The harm that befalls the homeless is not. The question of where best to locate such services is never easy to answer - near a school, in a neighbourhood, in the downtown core, on the outskirts of town? I have no concern with concluding that the balance of convenience favours the Respondents.

[27] With that having been said, there is no need to address whether an injunction is available to Mr. Hawkins. The within Motion is dismissed for the reasons set out above. The Respondents PNB are entitled to a joint set of costs from Mr. Hawkins in the amount of \$1,500 plus applicable HST. The City is entitled to a separate cost award in the amount of \$1,500 plus HST payable by Mr. Hawkins.

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Justice E. Thomas Christie  
Court of King's Bench of  
New Brunswick, Trial  
Division