



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

**Citation:** *Churchill v. Eastern Newfoundland Regional Appeal Board*,  
2026 NLSC 12

**Date:** February 6, 2026

**Docket:** 202401G6092

BETWEEN:

**GARY CHURCHILL**

APPELLANT

AND :

**EASTERN NEWFOUNDLAND  
REGIONAL APPEAL BOARD**

FIRST RESPONDENT

AND :

**TOWN OF WITLESS BAY**

SECOND RESPONDENT

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**Before:** Justice David G. Conway  
**Edited Transcript of Oral Reasons for Judgment**

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**On Appeal From:** A Decision of Eastern Newfoundland Regional Appeal Board dated October 11, 2024.

**Place of Hearing:** St. John's, Newfoundland and Labrador

**Date of Hearing:** May 5, 2025

**Supplemental Written Submissions:** May 14, 20 and 23, 2025

**Date of Oral Judgment:** October 27, 2025

**Summary:**

The Appellant seeks to vacate the Decision of the First Respondent. The Decision concluded that the Second Respondent, a municipality, had the discretion to rescind a previous motion because that motion had been made in error.

Held: the Appeal is allowed. The Decision erred in concluding that the municipality had the discretion to rescind its previous motion. The Decision is vacated and this matter is referred back to the First Respondent to be redecided.

**Appearances:**

Gary Churchill	Appearing on his own behalf
Jonathan D. Dale	Appearing on behalf of the Second Respondent

**Authorities Cited:**

**CASES CONSIDERED:** *Churchill v. Eastern Newfoundland Regional Appeal Board*, 2024 NLSC 66; *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

**STATUTES CONSIDERED:** *Urban and Rural Planning Act, 2000*, S.N.L. 2000, c. U-8; *Town of Witless Bay Development Regulations*, online: Municipal and Community Affairs <<https://www.gov.nl.ca/mca/files/registry-community-witless-bay-files-dr.pdf>>

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

## **JUDGMENT**

**CONWAY, J.:**

### **INTRODUCTION**

[1] The Appellant, Gary Churchill (“Mr. Churchill”), filed a Notice of Appeal with the Court on October 30, 2024. Mr. Churchill appeals a decision of an adjudicator with the First Respondent, the Eastern Newfoundland Regional Appeal Board, dated October 11, 2024 (“Decision”).

[2] The Decision involved a council motion of the Second Respondent, the Town of Witless Bay (“Town”), that rescinded a previous council motion of the Town involving Mr. Churchill.

[3] The Decision found that the Town had the discretion to rescind its previous motion because that motion had been made in error.

### **THE ISSUE**

[4] The issue to be decided is whether the Decision should be upheld on Appeal.

### **BACKGROUND**

[5] The background facts in the Appeal are largely not in dispute.

[6] This matter has already been the subject of an appeal to the Court that was heard and decided by Justice MacDonald in *Churchill v. Eastern Newfoundland Regional Appeal Board*, 2024 NLSC 66. *Churchill* is dated April 12, 2024.

[7] Justice MacDonald summarized the background facts in paragraphs 2-13 of *Churchill*:

Gary Churchill owns oceanfront property at 0 Mallowney's Lane, in the Town of Witness Bay. Everyone agrees that Gary Churchill built this property with the proper Town permits. While it may have the outward appearance of a cabin, the property does not have kitchen or bathroom facilities.

On August 8, 2021, Gary Churchill made a development application to the Town. He described the "proposed development" for his property as, "approval to consult with Service NL to design/develop environmental septic system."

He described in a section of the development application called, "other buildings already on the lot," a 34m<sup>2</sup> recreational building. The parties refer to this at various times as either a Gazebo or a leisure property.

He said under "Other Details" of the development application that he was, "seeking approval for well and septic system for appropriate waste disposal + environmental stewardship as recommended by Service NL."

At a meeting on August 17, 2021, the Town said that "the Council has been asked to approve a septic system and well for existing development at 0 Mallowney's Lane." This existing development is the gazebo.

The Council, then approved motion number 2021 — 267 that said, "Moved by Councilor Paul, seconded by Councilor Swain, to support the application and refer back to Service NL for final system approval." I will call this the Approval Motion.

On August 31, 2021, Patrick Curran under the Town letterhead wrote "to whom it may concern" and said, "Re Mallowney's Lane. At its August 17, 2021, Public Meeting, Council provided approval for installation of a septic system at 0 Mallowney's Lane, conditional on approval of septic system design from Service NL."

Everyone agrees that Patrick Curran was the Town's the Chief Administrative Officer or its CAO. The Town said, however, that he ended his job on August 13,

2021. He was no longer the CAO when he sent the letter. Gary Churchill says he was still acting in that role because the Town had not hired anyone to replace him.

On October 14, 2021, Service NL approved "the construction and installation of a sewage system/water supply to service a premises with three bedrooms at 0 Mallowney's Lane...." It said, "The sewerage/water supply must be installed precisely as indicated on the Approved Designer's drawings ..."

Service NL also said, "This Certificate of Approval does not release the applicant from the obligation to obtain appropriate approvals from other concerned provincial, federal and municipal agencies..."

On November 9, 2021, Council rescinded the approval motion by Rescission Motion #2021-372.

Gary Churchill appealed the Rescission Motion to the Board. The Board heard the appeal and then said, "In accordance with Section 42 of the [Act] the Board has determined it has no jurisdiction to hear this Appeal. The matter being appealed does not involve an application to undertake development or a decision to allow/approve development."

[8] I will refer to the Town's initial council motion as the "Original Motion" and the council motion of the Town to rescind as the "Recission Motion."

[9] Following the decision in *Churchill* this matter was referred back to the First Respondent.

[10] A hearing was held before an adjudicator with the First Respondent in September 2024. This resulted in the Decision, which, again, is dated October 11, 2024. The Decision confirmed the Recission Motion.

[11] Mr. Churchill and the Town have each provided background and context for the Appeal based upon the record and their respective viewpoints.

## LEGISLATION

[12] The *Urban and Rural Planning Act, 2000*, S.N.L. 2000, c. U-8 (“*Act*”) is the applicable legislation. There are also development regulations of the Town made in accordance with section 35 of the *Act*, the *Town of Witless Bay Development Regulations*<sup>1</sup> (“*Development Regulations*”). The *Act* states, in part, that:

46. Development may not proceed

46(1) Where an appeal is made under section 41, the development with respect to the appeal, work related to that development or an order that is under appeal shall not proceed or be carried out pending a decision of the adjudicator.

(2) Where, on appeal, a permit to develop is confirmed or ordered to be issued, a council, regional authority or authorized administrator shall issue the permit as confirmed or ordered.

## ANALYSIS

### Statutory Appeal

[13] The Town has properly pointed out that this matter is a statutory appeal, not a judicial review.

[14] Section 46 of the *Act* permits an appeal in these circumstances, but only on a question of law or jurisdiction.

[15] In theory, and given that there is a limited right of appeal under the *Act*, Mr. Churchill could also have sought a judicial review of the Decision. That would

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<sup>1</sup> *Town of Witless Bay Development Regulations*, online: Municipal and Community Affairs <<https://www.gov.nl.ca/mca/files/registry-community-witless-bay-files-dr.pdf>>

have been in accordance with the Supreme Court of Canada decision in *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8.

[16] As it is, Mr. Churchill filed a Notice of Appeal and not an application for judicial review. It is not appropriate under the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D or otherwise to treat the Notice of Appeal as an application for judicial review. Nor is it appropriate to treat the Notice of Appeal as both a Notice of Appeal and an application for judicial review.

### **Standard of Review**

[17] I agree with the Town that the standard of review in this Appeal is correctness, given that this Appeal under the *Act* can only be made based upon a question of law or jurisdiction.

[18] In this Appeal, I will be assessing the Decision based upon the principles outlined in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, to determine whether the Decision should be upheld.

[19] Again, the appellate standard of review of correctness is applicable to the Decision in this Appeal.

[20] The correctness standard of appellate review speaks for itself. The Court gives no deference to a decision maker on questions of law or jurisdiction when dealing with the correctness standard of appellate review.

### **Potential Remedies**

[21] The remedial power of the Court in this Appeal is limited by section 46 of the *Act*. Briefly stated, I can either confirm or revoke the Decision.

[22] If the Decision is revoked, I must refer the matter back to the adjudicator with the opinion of the Court as to the error of law or jurisdiction. The adjudicator must then deal with the matter in accordance with the opinion of the Court.

### **Issues Raised by Mr. Churchill**

[23] Mr. Churchill has framed this Appeal as involving at least four issues. Those issues are listed in his written submissions filed with the Court on February 14, 2025.

[24] The first three issues listed by Mr. Churchill all essentially relate to the key issue to be determined. That is, whether the Decision erred in deciding that the Town had the ability to rescind the Original Motion.

[25] The fourth issue raised by Mr. Churchill concerns procedural fairness. Mr. Churchill submits that the Town was permitted to present additional materials at the hearing in the Decision. Mr. Churchill states that those additional materials had not been included in the Town's initial submissions or provided to him in advance of that hearing, in breach of the duty of procedural fairness.

### **Analysis of the Decision**

[26] I will now assess the Decision in accordance with the preceding.

[27] I would note in advance that the Decision made findings other than its key finding concerning the Recission Motion.

[28] The Decision found that Mr. Churchill was not given proper notice of the Recission Motion by the Town but that this failure did not invalidate the Recission Motion.

[29] Mr. Churchill and the Town have not raised these aspects of the Decision on appeal, and I see no reason to interfere with these parts of the Decision. These aspects of the Decision involve questions of mixed fact and law that are not subject to appeal to this Court under the *Act*.

[30] The Decision also found the adjudicator had no ability to reconsider the validity of the Original Motion as not being a valid decision of the Town.

[31] Again, neither Mr. Churchill nor the Town have raised this issue on appeal, and I see no reason to interfere with this part of the Decision. The Decision correctly found that the adjudicator had no ability or jurisdiction, legally speaking, to reconsider the validity of the Original Motion. I adopt and rely upon the reasons in the Decision in making this finding.

[32] Turning to the main issue in the Appeal, the Decision found that the Town had the discretion to revoke the application permit issued in the Original Motion.

[33] The Decision starts by noting the decision of Justice MacDonald that the Original Motion concerned a “development” as contemplated by section 2(g) of the *Act*. As such, and as found by Justice MacDonald, the Original Motion granted a development permit to Mr. Churchill.

[34] The Decision, citing the *Development Regulations*, states that if the Town issued the permit pursuant to an “error” or on “the basis of incorrect information,” the Town had the discretion to revoke the Original Motion.

[35] The Decision finds that the reference to “three bedrooms” in the Service NL Certificate of Approval was not information that would justify revocation of the permit.

[36] The Decision notes that the onus is on the Town to prove that there was an “error” or “incorrect information” underlying the permit approval in the Original Motion.

[37] The Decision then cites the contemporaneous Minutes of the Town pertaining to the Recission Motion. Those Minutes state that the application by Mr. Churchill was to “consult” with Service NL and that applicants do not need approval from the Town to consult with Service NL. Those Minutes go on to state that the Town requires “a development application to be completed in full before approving development applications and forwarding to Service NL.”

[38] The key reasoning in the Decision for the finding of an “error” by the Town in the Original Motion is as follows:

It is clear from these minutes that Council viewed the Original Motion as having been made in error – namely, that the Original Motion had been unnecessary, since approval was not required for consultation with Service NL. Further, it is clear from these minutes that Council viewed the Original Motion as inappropriate and premature, since development applications are required before septic systems are to be approved. Clearly Council believed that the application submitted by Mr. Churchill did not meet its ordinary requirements for a development application pertaining to a septic/water system.

The Authority's concern that the Original Motion had been made in error is likewise reflected in the *Churchill* decision. Para. 20 of that decision confirms that the Authority's position was that, in the Original Motion, it "only agreed that the Town would support Gary Churchill's application to Service NL" and had simply made a "gratuitous statement of support."

It is clear Council viewed the Original Motion as having been made in error, since it did not follow Council's normal process for approval of a septic system.

I appreciate that Justice MacDonald ruled that the Original Motion constituted an approval of a development, pursuant to the *Act*, and that the application submitted by Mr. Churchill seeking this approval constituted a development application. However, this finding does not mean that the Authority did not make an error when it passed the Original Motion. The findings of Justice MacDonald relate to the legal consequences of the Authority's actions in relation to the Original Motion as opposed to why those actions were taken and on what basis. Nor do these findings concern the reason underlying the Rescission Motion.

I therefore find that the [Town] had the discretion under section 21(6) to revoke the permit issued pursuant to the Original Motion.

[39] The Original Motion, 2021-267, was "to support [the application] and refer back to Service NL for final system approval."

[40] The Rescission Motion was that "Council rescind Motion 2021-267 – a motion ... 'to support and refer back to Service NL for final system approval,' regarding septic system application..."

[41] The basis for the Rescission Motion and the "error", as outlined in the Decision, is the assertion that the Original Motion was just a motion to support consultation with Service NL, and not a motion to approve a development application.

[42] I would note that the Town's letter to Mr. Churchill dated November 10, 2021, states that Mr. Churchill's initial application was not a development application.

[43] The problem with this basis for the Recission Motion is that it has been legally determined, through the decision of Justice MacDonald, that the Original Motion was a motion to approve a development permit. This is stated in paragraphs 22, 24 and 30 of *Churchill*.

[44] Justice MacDonald's decision was rendered after the date of the Recission Motion.

[45] The Recission Motion presupposes that the Original Motion was just a motion of support for Mr. Churchill to apply to Service NL, not a motion of the Town approving a development permit.

[46] The Town has submitted that the Decision's finding that the Recission Motion was within the Town's discretion is a question of fact or a question of mixed fact and law. I disagree.

[47] The Town's Recission Motion is based upon the conclusion that the Original Motion was just a motion to support an application to Service NL, not a motion by the Town approving a development permit.

[48] In the Recission Motion the Town is not saying that it thought that it was just showing support in the Original Motion and didn't realize that it was approving a development permit. The Recission Motion presumes that the Original Motion was not an application for a development permit, which is legally incorrect based upon the subsequent decision of Justice MacDonald.

[49] It was an error of law for the Decision to have concluded that the Recission Motion was valid, given that the Recission Motion presumed or concluded that the Original Motion was not an approval of a permit for a development application.

[50] The Town does not dispute that the Original Motion constituted a development approval, as per paragraph 4 of their supplemental submissions filed on May 14, 2025.

[51] The basis for the Recission Motion, however, is that the Original Motion did not constitute a development approval but was merely an “expression” of support.

[52] In these circumstances, I find that the Decision contains an error of law. The Decision was not legally correct, based upon the subsequent decision of MacDonald J., in allowing the Town to maintain that the Original Motion was not a motion that approved a development permit.

## **REMEDY**

[53] Mr. Churchill has asked that the Decision concerning the validity of the Recission Motion be revoked. I agree. The Decision is revoked with respect to its finding that the Recission Motion was a valid exercise of the Town’s discretion to revoke the Original Motion based upon an error.

[54] Mr. Churchill has also asked that the Recission Motion be vacated by the Court or returned to the First Respondent with direction to vacate the Recission Motion.

[55] It is not the role of the Court to direct that a motion of a town council be vacated. I can only confirm or revoke a Decision of an adjudicator with the First Respondent.

[56] Here, I have vacated the Decision of the adjudicator, in part. In accordance with the *Act*, I am remitting this matter to the First Respondent to be decided in accordance with the opinion of the Court. What follows from this remittance based upon the circumstances is a decision that must be made by an adjudicator.

[57] Given this outcome, it is not necessary for me to decide Mr. Churchill's argument that the Decision was not made in accordance with procedural fairness.

## **COSTS**

[58] The parties have each sought their costs. Given the result, Mr. Churchill is entitled to costs.

[59] Similar to Justice MacDonald, and for the same reasons, I award costs to Mr. Churchill on a Column 2 basis under the *Rules*. I will also fix those costs in the same amount and using the same headings as Justice MacDonald. That is:

a) Preparation of Notice of Appeal	\$150
b) Preparation of Brief	\$150
c) One Case Management Meeting	\$300
d) Application Counsel Fee ½ day	<u>\$500</u>
<b>Total</b>	<b><u>\$1,100</u></b>

## **CONCLUSION**

[60] The Appeal is allowed. I revoke the Decision, in part, and refer the matter back to the First Respondent with the foregoing opinion of the Court. The Town shall pay Mr. Churchill fixed costs in the amount of \$1,100.00.

[61] Judgment accordingly.

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**DAVID G. CONWAY**  
Justice