NOVA SCOTIA COURT OF APPEAL

Citation: *Halifax (Regional Municipality) v. Rehberg*, 2019 NSCA 65

Date: 20190731
Docket: CA 478279
Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

Roger Glengary Rehberg

Respondent

Judge:	The Honourable Justice Duncan R. Beveridge
Appeal Heard:	March 28, 2019, in Halifax, Nova Scotia
Subject:	Administrative law: standard of review
Summary:	The Appeals Standing Committee of HRM found the respondent's premises to be dangerous or unsightly on March 12, 2015 and ordered demolition within 120 days. The respondent did not try to appeal or challenge the decision. The respondent did work on the premises. On February 18, 2016, he asked the Committee to reconsider its order by asking for a four-month extension. The Committee refused. A judicial review judge inferred that the Committee had made an unreasonable decision that the premises remained dangerous or unsightly or in the alternative by refusing the four-month extension. He quashed the Committee's decision and ordered reconsideration. HRM appealed.
Issues:	Did the judicial review judge ask himself the right questions and properly apply the appropriate standard of review?
Result:	The judicial review judge asked himself the wrong questions. The Committee was never asked to decide whether the premises remained dangerous or unsightly as of February 18, 2016.

Furthermore, although the judicial review judge correctly selected the reasonableness standard of review, he failed to apply it. The Committee gave no reasons for its discretionary decision to refuse the requested four-month extension. The judicial review judge did not examine the record, including submissions before the Committee and on judicial review, to assess the reasonableness of the outcome. The Record provided ample justification for the Committee's decision to refuse the four-month extension.

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Roger Glengary Rehberg

Respondent

Judges:	Beveridge, Farrar and Bryson, JJ.A.
Appeal Heard:	March 28, 2019, in Halifax, Nova Scotia
Held:	Appeal allowed with costs, per reasons for judgment of Beveridge, J.A.; Farrar and Bryson, JJ.A. concurring
Counsel:	Randolph Kinghorne, for the appellant Matthew J. D. Moir, for the respondent

INTRODUCTION

[1] This case is about the proper scope of judicial review.

[2] On March 12, 2015, the Appeals Standing Committee of Halifax Regional Municipality Council found a home dangerous or unsightly. It issued a Demolition Order to be carried out within 120 days. The homeowner did work on the home. He hoped his efforts would preclude demolition.

[3] Eventually, HRM took steps to engage a contractor to carry out the demolition. This led the homeowner to ask the Appeals Standing Committee (the Committee) for more time to carry out renovations. On February 18, 2016, the Committee agreed to consider the request, but ultimately rejected it.

[4] The homeowner sought to quash the Committee's decision on judicial review in the Nova Scotia Supreme Court. The Honourable Justice Peter Rosinski heard the application. He concluded that the Committee was wrong to find that the home was dangerous or unsightly as of February 18, 2016, and in the alternative, it unreasonably refused to grant a four-month extension. He ordered the Committee to reconsider its decision (2018 NSSC 142).

[5] HRM appealed. We heard the appeal on March 28, 2019. At the conclusion of the hearing, we announced our unanimous decision that the appeal was allowed with reasons to follow. With respect, the judicial review judge asked himself the wrong questions and failed to properly defer to the Committee's discretionary decision. The reasons that follow explain.

FACTUAL MATRIX

[6] It is apparent that the record does not disclose the whole story of what seems to be a bizarre saga. What is known is this. A substantial home at 3 Mercury Avenue is owned by the respondent, Mr. Roger Rehberg. The home suffered a fire in January 2013. HRM By-Law Compliance concluded that it was unsafe and posed an immediate danger to public safety. It had no electricity, no safe heat source, and other significant defects. An order to vacate and to secure the home against unauthorized access ensued.

[7] The respondent repeatedly promised to remedy the numerous and serious defects. Compliance orders issued. They were not fulfilled. A year-and-a-half later on September 22, 2014, HRM issued a Notice of Violation to the respondent

that the home was dangerous or unsightly. The requested remedy was demolition. HRM's Appeals Standing Committee was scheduled to hear the request on January 8, 2015.

[8] The Committee can find a property dangerous or unsightly and order repair, removal or demolition:

> **Order to remedy condition**
>
> 356 (1) Where a property is dangerous or unsightly, the Council may order the owner to remedy the condition by removal, demolition or repair, specifying in the order what is required to be done.
>
> (2) An owner may appeal an order of the Administrator to the Council or to the committee to which the Council has delegated its authority within seven days after the order is made.

[9] There are other provisions in the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 and related subordinate legislation that could arguably permit a homeowner to appeal, ask for reconsideration, or rescission. It is unnecessary to explore any of these.

[10] The respondent attended before the Committee on January 8, 2015 and requested the Committee defer for two months. The Committee agreed on the condition that the respondent: properly secure the property; commence renovations and repairs; and, prepare a renovation plan.

[11] On March 12, 2015, the Committee heard the HRM staff request for a Demolition Order. The original motion fixed 30 days to demolish the house. The respondent did not dispute the property was dangerous or unsightly. He wanted more time to carry out work and develop a renovation plan. A further deferral was rejected, but the Committee passed a resolution declaring the property dangerous or unsightly and ordered the house demolished within 120 days.

[12] The respondent did not appeal the order, nor challenge it by way of judicial review.

[13] In the months that followed, various inspections revealed no substantial change to the property. The respondent did engage a structural engineer and undertook work to make the property structurally sound.

[14] The respondent engaged counsel. He wrote on November 27, 2015 to request the Committee to review and reconsider the Demolition Order in light of

the respondent's efforts. HRM staff pointed out that there was no right to a review or to even request a review. In their view, he needed to have the Committee pass a resolution to hear his request.

[15] The Committee met on February 18, 2016. I will later set out in more detail the record of what happened and what was decided as it will be relevant to the judicial review judge's reasons. For now, it is sufficient to say that the Committee passed a motion to put the reconsideration request on the Committee's agenda. But the Committee defeated the motion to grant a four-month extension to the Demolition Order.

[16] The respondent engaged new counsel. On March 30, 2016, the respondent filed an application for judicial review. Originally, he sought to challenge the Demolition Order of March 12, 2015. That request was abandoned. What remained was the suggestion that the property was no longer dangerous or unsightly as of February 18, 2016, and therefore the Committee's confirmation of the Demolition Order was the product of a misapplication of the *Act*. HRM agreed not to proceed with the Demolition Order pending the outcome of the judicial review proceedings.

JUDICIAL REVIEW PROCEEDINGS

[17] HRM produced the record which included a CD of the February 18, 2016 proceedings before the Committee. Briefs were filed. The parties made oral submissions on June 5, 2018 before the judicial review judge.

[18] The respondent argued that the Committee was required to determine whether the property remained dangerous or unsightly as of February 18, 2016, viewed through the lens of a house under renovation. Furthermore, it committed a reviewable error to maintain the Demolition Order instead of ordering repair. On both issues, he suggested the Committee must be correct. Even if the standard of review was reasonableness, the Committee's decisions were unreasonable.

[19] The judicial review judge found that the standard of review whether the premises remained dangerous or unsightly was one of correctness in connection with the "citation and interpretation of the law", but for the application of the law to the facts, and in connection with the choice of remedy, the standard of review was one of reasonableness:

> [27] I am persuaded that the proper standard of review regarding the Committee's decision whether the premises remained "dangerous or unsightly" is one of correctness, insofar as its citation and interpretation of the law is concerned.
>
> [28] In relation to the Committee's application of the law to the facts it finds, and its exercise of discretion insofar as the remedy it imposes after finding premises "dangerous or unsightly", these are both subject to a reasonableness standard of review.

[20] The judicial review judge inferred that the Committee knew it must be satisfied the premises remained dangerous or unsightly and, when it made that determination, it properly interpreted and applied the law before it considered if it should grant a four-month extension. The judge then posed the questions he was to determine:

> Was the Committee's finding reasonable, that the premises remained "dangerous or unsightly" on February 18, 2016, and if so, was its decision not to extend for 4 months the opportunity for Mr. Rehberg to remediate the premises reasonable?

[21] The judicial review judge reviewed the record that underpinned the original March 12, 2015 determination that the property was dangerous or unsightly. He then looked at the record that demonstrated the respondent's efforts to ensure structural soundness, secure the building against trespassers, and remediate the property.

[22] The judicial review judge reasoned that because the home was boarded up, it was no longer dangerous or unsightly, and the Committee's decision otherwise was unreasonable, as was its refusal to grant a four-month extension. He wrote as follows:

> [65] No unauthorized person was reasonably anticipated to be inside the building until it was remediated. No one would therefore have been reasonably anticipated to be unknowingly exposed to any dangerous or unhealthy conditions that existed therein even *if* those conditions were present.
>
> [66] Thus, based on the facts before the Committee on February 18, 2016, was their decision to immediately allow the demolition to proceed reasonable?
>
> [67] I find that it was not. It was not reasonable to conclude that the property had, objectively assessed, demonstrable conditions of "dangerousness" or "unhealthy" status, given its circumstances: that the property was not inhabited, nor intended to be inhabited in near future.

> [68] On or about February 18, 2016, the arguably dangerous or unhealthy conditions in the building included: *"visible black growth on a significant amount of painted white trim, including: casings, baseboards and door slabs"*.
>
> [69] A more complete comparison of the condition of the property by HRM staff before the February 18, 2016 Committee hearing follows:
>
> > [November 21, 2014: "there is substantial water damage and subsequent black growth throughout the building; there are multiple signs of animal infestation"]
> >
> > versus
> >
> > [October 13, 2015: "there is visible black growth on a significant amount of painted white trim, including: casing, baseboards and door slabs; most signs of animal infestation have been remedied, although there remain some window openings in which they could enter; the interior finishes of the pool area were being removed at time of inspection; approximately six new windows have recently been installed. Many of the existing windows remaining have one of their two panes broken"]
>
> [70] Alternatively, for similar reasons, I conclude that the Committee decision not to grant a four-month extension was unreasonable.
>
> [Emphasis in original]

[23] The judicial review judge ordered the February 18, 2016 decision of the Committee not to suspend demolition quashed and remitted the respondent's request for an extension back to the Committee for reconsideration.

[24] HRM advanced nine grounds of appeal, which were recast in its factum as:

- Did the trial Judge make a palpable and overriding finding of fact by inferring that the Committee made a new decision that the House was DOU
- Did the trial Judge err in law in his interpretation of the DOU provisions of the HRM Charter
- Did the trial Judge err in law by finding that the inferred decision of the Committee that the House was DOU was unreasonable
- Did the trial Judge err in law by finding that the decision of the Committee to not provide additional time for compliance was unreasonable.
- Did the trial Judge err in granting discretionary equitable relief to Rehberg.

[25] HRM also complained that the judicial review judge made a comment that it fears will be interpreted as a requirement for HRM to prepare transcripts at its expense for all judicial reviews.

[26] The respondent characterized the issues on appeal somewhat differently:

> a. Did the Learned Hearing Judge err in inferring that the Committee had made a finding the premises remained DOU?
>
> b. Did the Learned Hearing Judge err in finding the Committee's finding was unreasonable?
>
> c. Did the Learned Hearing Judge err in determining that the Committee's decision not to extend further time was unreasonable?
>
> d. Did the Learned Hearing Judge err in the exercise of his discretion to hear the judicial review?
>
> e. Did the Learned Hearing Judge err in remitting the matter back to the Committee?
>
> f. Did the Learned Hearing Judge err in ordering the municipality to prepare Committee transcripts in future judicial reviews?

[27] I need not address most of these issues. Both parties suggested that the appropriate standard of review on questions of law was correctness; on mixed questions of fact and law, palpable and overriding error.

[28] With respect, this is not the appropriate standard of review. A proper understanding of the standard of review on appeal, while always important, brings a welcome focus to this appeal. It is to that I turn.

STANDARD OF REVIEW

[29] On an appeal from judicial review, this Court must decide if the judicial review judge identified the appropriate standard of review and applied it correctly. This was recently reaffirmed in *Taylor v. Nova Scotia (Health and Wellness)*, 2018 NSCA 57, as follows:

> [23] On appeal from a judicial review proceeding this Court typically asks whether the court below identified the appropriate standard of review and applied it properly (see *Nova Scotia (Agriculture) v. Rocky Top Farm*, 2017 NSCA 2, ¶41 and *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, ¶46). In operation, the standard requires this Court to "step into the shoes" of the reviewing judge and focus on the administrative decision. …

[30] References to palpable and overriding error are misplaced in the administrative law context, which is concerned with the application of the standards of correctness and reasonableness to the administrative law decision.

[31] Saunders J.A., in *Nova Scotia (Agriculture) v. Rocky Top Farm*, 2017 NSCA 2, explained:

> [36] It is easy to confuse and conflate the standards of correctness or palpable and overriding error that are triggered in a judicial context, with the standards of correctness or reasonableness that arise in the administrative law context. It is this "interplay" Justice LeBel sought to clarify in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36. Writing for a unanimous Court, he said:
>
> > [45] The first issue in this appeal concerns the standard of review applicable to the Minister's decision. But, before I discuss the appropriate standard of review, it will be helpful to consider once more the interplay between (1) the appellate standards of correctness and palpable and overriding error and (2) the administrative law standards of correctness and reasonableness. These standards should not be confused with one another in an appeal to a court of appeal from a judgment of a superior court on an application for judicial review of an administrative decision. The proper approach to this issue was set out by the Federal Court of Appeal in *Telfer v. Canada Revenue Agency*, 2009 FCA 23, 386 N.R. 212, at para. 18:
> >
> > > Despite some earlier confusion, there is now ample authority for the proposition that, on an appeal from a decision disposing of an application for judicial review, the question for the appellate court to decide is simply whether the court below identified the appropriate standard of review and applied it correctly. The appellate court is not restricted to asking whether the first-level court committed a palpable and overriding error in its application of the appropriate standard.
> >
> > [46] In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, at para. 247, Deschamps J. aptly described this process as "'step[ping] into the shoes' of the lower court" such that the "appellate court's focus is, in effect, on the administrative decision" (emphasis deleted).
> >
> > [47] The issue for our consideration can thus be summarized as follows: Did the application judge choose the correct standard of review and apply it properly?
> >
> > [Emphasis by Saunders J.A.]

[32] In the context of that case, this meant:

> [39] Then upon subsequent judicial review of the Minister's decision, the reviewing judge must undertake the requisite legal analysis in order to decide the appropriate standard of review, and having done so, correctly apply that standard when judging either the reasonableness, or the correctness (as the case may be) of that administrative decision. (See for example, *Dunsmuir*; *McLean*; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp and Paper Ltd.*, 2013 SCC 34).
>
> [40] On further appeal to this Court, we are not confined to simply asking whether Moir, J. committed some palpable and overriding error in his application of the standard. The question for us is whether Moir, J. identified the appropriate standard of review and applied it correctly when he considered the administrative decision of the Deputy Minister.

[33] In this case, ordinarily we would therefore simply ask, did the judicial review judge select the appropriate standard of review and apply it correctly? However, it is first necessary to consider exactly what the Committee decided on February 18, 2016.

ANALYSIS

What did the Committee decide?

[34] The Committee decided it would not grant a four-month extension to the March 12, 2015 Demolition Order. With respect, the judicial review judge erred when he concluded that the Committee had decided on February 18, 2016 the property "remained" dangerous or unsightly.

[35] The judicial review judge recognized that the Committee was not asked to determine this question:

> [31] One must infer their reasoning, **because only the motion whether to defer the demolition for another four months was put to the Committee, and defeated. They were not expressly asked to determine whether they collectively concluded the premises remained DOU.**
>
> [Emphasis added]

[36] The Committee had already decided on March 12, 2015 that the premises were dangerous or unsightly. As a remedy, it ordered the home demolished within

120 days. The respondent did not appeal the decision pursuant to s. 356 (2) of the *Halifax Regional Municipality Charter*. He did not challenge it by judicial review.

[37] The parties made no submissions about the jurisdiction of the Committee to "reconsider", "reopen", "rescind" or "vary" the Demolition Order. On February 18, 2016, HRM appeared to accept that the Committee had a discretion to change the Order. In the absence of submissions, I will assume, as did the judicial review judge, that the Committee could do so.

[38] The respondent did not ask the Committee, before or at the February 18, 2016 meeting, to reconsider its determination that the property was dangerous or unsightly. The respondent's letter to HRM asked the Committee to: "review and reconsider its Order in light of his efforts over the past several months…to remedy conditions"; and, "In light of the foregoing we ask that a review and re-consideration of the Demolition Order be put on the agenda for the Appeals Standing Committee…"

[39] On February 18, 2016, counsel for the respondent did not ask the Committee to reconsider if the property was dangerous or unsightly or order remediation in lieu of demolition. No submissions were made on these issues. The transcript of the meeting demonstrates that no one even uttered the words "dangerous or unsightly".

[40] The only remedy sought was an extension of time. Respondent's counsel asked for an additional four months:

> Deputy Mayor Whitman: Okay. So let us know what he's asking for.
>
> Mr. Tovey: Essentially we would ask for another four months to complete the work that's outstanding on the project. In order to have the property completed by late spring.
>
> Deputy Mayor Whitman: Okay. So, Councillor McCluskey, a move for a four-month extension.

[41] After debate, the motion was defeated. The decision to refuse a four-month extension was the only decision to be considered on the judicial review.

[42] With respect, the judicial review judge erred by asking the wrong questions. It started with:

> [1] When is a residential building sufficiently "*dangerous* unsightly or *unhealthy*", as defined in the HRM Charter, **to permit a court to conclude that**

> **the decision of the HRM Appeals Standing Committee to demolish it, is justifiable in law and fact?** Much depends on the risks created by the premises being in that condition, to persons anticipated to be present thereon.
>
> [Bold added]

[43] As already pointed out, on March 12, 2015, the Committee found the house to be dangerous or unsightly and ordered it demolished within 120 days. That decision was not under review. The respondent simply asked for a four-month extension, perhaps in the hope that whatever the legal niceties, HRM might grant him a reprieve.

[44] The judicial review judge seemed to accept that he could not grant any relief with respect to the March 12, 2015 decision and Demolition Order. Instead, he created a decision to review—that is, whether the premises were dangerous or unsightly as of February 18, 2106. In the alternative, he considered the refusal to grant an extension.

[45] His introductory paragraphs summarize his flawed approach:

> [5] When on February 18, 2016, the Committee made its decision not to grant any further extension to Mr. Rehberg to remedy the "*dangerous* or unsightly" premises, arising from its March 12, 2015 Order**, it had to turn its mind to whether, at that time, the premises remained "*dangerous* or unsightly".**
>
> [6] Mr. Rehberg's lawyer at the time, explained at the February 18, 2016 Committee meeting that the case should be re-opened because extensive work had been done on the property. He also confirmed that his client did not have the funds available at that time, to complete the electrical work, but that once that work was completed, for which he gave no deadline, all subsequent remaining work to be done could also be completed.
>
> [7] That the Committee refused to grant any further extension, suggests that it was satisfied the premises remained "*dangerous* or unsightly". It also suggests that the Committee was not satisfied that Mr. Rehberg was in a position to remedy in a timely manner those matters that needed to be addressed to bring the property out of the state of being "*dangerous* or unsightly" ("DOU").
>
> [8] **I am satisfied that the Committee's decision to conclude the premises remained DOU, was not reasonable, and even if I am wrong about that, alternatively their decision not to grant at least, a four-month extension to complete the required work, was unreasonable, given the progress that had been made, and expenses incurred by Mr. Rehberg**.
>
> [9] **Therefore, I quash the February 18, 2016 decision taken by the Committee, and remit the matter back to the Committee for reconsideration**

> **-- i.e. whether *at present* the premises are "dangerous or unsightly" as per ss. 3(q) and 356 of the Halifax Charter, and if so, to consider the appropriate remedy.**
>
> [Bold added]

[46] The only question he should have asked was, what is the appropriate standard of review with respect to the committee's refusal to grant a four-month extension, and then applied it correctly.

Standard of review and its application

[47] The parties agree that the judicial review judge was to apply reasonableness as the appropriate standard of review. The judicial review judge said that was what he would apply. I agree that a deferential standard of review was appropriate, but with respect, the judicial review judge failed to properly apply it.

[48] Nowhere does the judicial review judge set out what the reasonable standard of review meant to him and how he was going to apply it.

[49] The Committee gave no reasons for its decision to refuse the requested four-month extension. There is no reasoning path to examine. I interject that the respondent has never suggested he was denied procedural fairness in any aspect of the proceedings, including the absence of reasons by the Committee.

[50] Where there are no reasons, the reviewing court must consider what reasons could be offered in support of the administrative decision. This entitles the reviewing court to examine the record, including submissions before the tribunal and on judicial review for the purpose of assessing the reasonableness of the outcome.

[51] This was most recently affirmed in *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, where the majority wrote:

> [29] Reasonableness review requires "a respectful attention to the reasons offered or *which could be offered* in support of a decision" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (S.C.C.), at para. 48 (emphasis added); see also *Newfoundland and Labrador Nurses' Union. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 (S.C.C.), at para. 11). Reviewing courts "may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome" (*Agraira v. Canada*

> *(Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 (S.C.C.), at para. 52, quoting *Newfoundland Nurses*, at para. 15). …
>
> [Emphasis in original]

[52] Cromwell J. reviewed what is meant by reasonableness in *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10. He explained that reasonableness must be considered and applied in the context of the administrative decision under review:

> [44] Reasonableness as a standard of review reflects the appropriate deference to the administrative decision maker. It recognizes that certain questions that come before administrative tribunals do not lend themselves to a single result; administrative decision makers have "a margin of appreciation within the range of acceptable and rational solutions": *Dunsmuir*, at para. 47 (emphasis added). Reasonableness is a concept that must be applied in the particular context under review. The range of acceptable and rational solutions depends on the context of the particular type of decision making involved and all relevant factors: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at paras. 17-18 and 23. As was said in *Khosa*, reasonableness is a single concept that "takes its colour" from the particular context (para. 59). In this case, both the nature of the Commission's role in deciding to move to a board of inquiry and the place of that decision in the Commission's process are important aspects of that context and must be taken into account in applying the reasonableness standard.
>
> [Emphasis in original]

[53] In *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, the appellant challenged the Human Rights Commission's decision to appoint a board of inquiry. This was a discretionary decision by the Commission. There were no reasons to consider. The Commission had a discretion to refer a complaint to a board of inquiry. It did so. In those circumstances, a reasonableness standard of review translated into an inquiry as to whether there was any reasonable basis on the law or the evidence for the Commission to refer the complaint to a board of inquiry:

> [45] In my view, the reviewing court should ask whether there was any reasonable basis on the law or the evidence for the Commission's decision to refer the complaint to a board of inquiry. This formulation seems to me to bring together the two aspects of the jurisprudence to ensure that both the decision and the process are treated with appropriate judicial deference.

[54] I will continue to assume that the Committee had the discretionary power to "reconsider" the March 12, 2015 Demolition Order. The discretionary relief sought by the respondent was a four-month extension. The Committee said no.

[55] Assuming no concerns about procedural fairness, the reviewing court should have asked whether there was any reasonable basis on the law or the evidence to refuse the four-month extension.

[56] With respect, the judicial review judge failed to apply a deferential standard to the Committee's decision. Instead, he substituted his choice of outcome, influenced by his view that the property was not dangerous or unsightly and immediate demolition was unfair to the respondent.

[57] The judicial review judge's complete reasons are found in two places. I have already referred to them. For convenience, I will quote them again.

[58] The judicial review judge wrote:

> [8] I am satisfied that the Committee's decision to conclude the premises remained DOU, was not reasonable, and even if I am wrong about that, alternatively their decision not to grant at least, a four-month extension to complete the required work, was unreasonable, **given the progress that had been made, and expenses incurred by Mr. Rehberg.**
>
> [Emphasis added]

[59] Later, he appeared to tie his conclusion that the extension refusal was unreasonable to his determination that the Committee had made an unreasonable finding that the premises were dangerous or unsightly:

> [65] No unauthorized person was reasonably anticipated to be inside the building until it was remediated. No one would therefore have been reasonably anticipated to be unknowingly exposed to any dangerous or unhealthy conditions that existed therein even *if* those conditions were present.
>
> [66] Thus, based on the facts before the Committee on February 18, 2016, was their decision to immediately allow the demolition to proceed reasonable?
>
> [67] I find that it was not. **It was not reasonable to conclude that the property had, objectively assessed, demonstrable conditions of "dangerousness" or "unhealthy" status, given its circumstances: that the property was not inhabited, nor intended to be inhabited in near future.**

> [68] On or about February 18, 2016, the arguably dangerous or unhealthy conditions in the building included: "*visible black growth on a significant amount of painted white trim, including: casings, baseboards and door slabs*".
>
> …
>
> [70] Alternatively, for similar reasons, I conclude that the Committee decision not to grant a four-month extension was unreasonable.
>
> [Emphasis in original]
>
> [Bold added]

[60] First, there was no "required work" to be completed to remediate the property. The Committee had already rejected repair on March 12, 2015 as the appropriate remedy. It had agreed with the staff recommendation that demolition was appropriate. It issued the Demolition Order which required the respondent to demolish the house within 120 days.

[61] The Record provides ample justification for the Committee's decision to refuse a four-month extension.

[62] As of March 12, 2015, the respondent had told the Committee that; "he needs about a year to continue to make repairs and renovations"; and, "he would replace the bad insulation, replace flooring, have an electrician install a new electrical panel, and install heat pumps and gyproc". There were also issues of structural soundness.

[63] The respondent chose to continue to try to make repairs to the property. By February 18, 2016, the respondent had made the house structurally sound, and appeared to have finally secured the house against unauthorized entry. However, renovation plans had been repeatedly requested, but not provided. Staff provided an update.

[64] The Committee heard uncontested evidence that staff had to again evict a tenant from this uninhabitable house in the summer of 2015. The electrical panel had not been completed. The house had no power. The plumbing work had not yet been completed. Heat pumps had not been installed, nor was there any other heat source. There was still no renovation plan. Little of the necessary exterior work had been done.

[65] Counsel for the respondent told the Committee that the respondent was working to try to obtain the funds to complete the work on the electrical panel.

There was no information as to when the respondent was expected to have the necessary funds even for that step.

[66] The Committee members were well aware of the existence of outstanding repair orders for over three years. Some spoke of the many extensions already given. They also spoke of the other residents in the area impacted by the condition of the respondent's property. Nonetheless, at least one Committee member supported the motion for an extension.

[67] When the motion was called for a vote, it was defeated. There was ample evidence to support the Committee's majority decision not to grant the requested four-month extension. It was therefore not unreasonable. The judicial review judge erred by simply substituting his assessment of the appropriate outcome.

[68] As to the judicial review judge's second rationale, it seems axiomatic that if the Committee committed reviewable error to find the property dangerous or unsightly as of February 18, 2016, it would be unreasonable for the Committee to order immediate demolition by a refusal of a four-month extension.

[69] However, for reasons already set out, the judicial review judge was wrong to infer that the Committee had made such a decision and then find its decision was unreasonable.

[70] The decision and consequent order of the judicial review judge are quashed. The order for the appellant to pay the respondent $500.00 in costs is reversed in favour of the appellant. The respondent is ordered to pay to the appellant $1,000.00 costs on the appeal, inclusive of disbursements.

[71] This leaves one peripheral issue: the judicial review judge's suggestion that for all future judicial reviews, a transcript of the proceedings must be prepared by a certified transcription service at the expense of the party responsible for the Record preparation.

[72] In this Court, the respondent took no position. It does not appear that the judicial review judge sought submissions. He made no order.

[73] The appellant's fear stems from the judicial review judge's comment in a footnote about the audio-recordings of the February 18, 2016 Committee meeting. The comment in the footnote is:

> Of which there is no transcription; as a matter of civil procedure, in my opinion, while the best evidence are the audio discs, in all cases hereafter, on judicial reviews these *must* be transcribed by a certified transcription service/person at the expense of the party preparing the Record.
>
> [Emphasis in original]

[74] There are detailed provisions in the *Nova Scotia Civil Procedure Rules* that provide discretion to a judge to give directions to organize a judicial review (*Rule* 7.10), which includes settling what will constitute the record and responsibility to prepare and file it. Later, *Rule* 7.26 directs that the applicant for judicial review must pay for transcriptions and duplications provided in the record.

[75] Given the circumstances, it is not necessary or desirable to weigh in on whether the judicial review judge's suggestion is appropriate or in accord with the *Nova Scotia Civil Procedure Rules*. It certainly does not bind a judge or the parties on any future applications for judicial review.

Beveridge, J.A.

Concurred in:

Farrar, J.A.

Bryson, J.A.