N O V A S C O T I A
COUNTY OF HALIFAX C.H. 43332

I N T H E C O U N T Y C O U R T
OF DISTRICT NUMBER ONE

BETWEEN:

GREENLAND INVESTMENTS LIMITED,

Appellant

- and -

PAUL MILLINGTON,

Respondent

Paul Thomas, Esq., solicitor for the appellant.
Mark S. Rosen, Esq., solicitor for the respondent.

1984, January 10, O Hearn, J.C.C. (Orally):- This proceeding was started by a Notice of Appeal and there are several problems with that. One for example is that it was headed in the County Court of Nova Scotia, which is not an entity that exists: there are seven county courts in Nova Scotia and each is designated by a name specified in the Act. That's a matter which is merely on the surface and can be corrected quite easily. But the nature of the application I think was also misconceived on the basis that the Board acting in this case, the Residential Tenancies Board, was in a position analogous to other summary-procedure tribunals and courts, such as the Small Claims Court and the old City Courts and the Municipal Courts, where an appeal was granted as of right to the county court in the district involved, and in those days it involved having a trial *de novo*.

I think that the amendments made to Sections 10 to 10D of the Residential Tenancies Act bring in an entirely different concept, somewhat the same as was adopted by the Supreme Court in the rules dealing with revision of divorce decrees of ailimony and maintenance which are reviewable by Family Court judges as what you might call 'regular' referees. This is provided by a standing rule of court and the finding and recommendation of the Family Court judge will become the rule of the court unless

measures are taken to object to it and to deal with it.

This is in line with the traditional concept of a referee. I take it that the sections were introduced to avoid the conclusions that the Supreme Court of Canada came to in the case of the *Residential Tenancies Reference* in Ontario. Since that time we have had a decision of our own court in *Burke v. Arab*, and that is on appeal in the Supreme Court of Canada, I believe, and there is recent decision of the Supreme Court of Canada dealing with a very large scheme based on a code of law dealing with Residential Tenancies in Quebec. The only name I can recall from the reference is that of Régie du logement de la Province de Québec, and some other person. (I think, it was a private firm) because it had the curious instance in this case of the Attorney General of Canada joining forces with the Attorney General of Quebec to uphold the legislation, which was upheld.

Now, that doesn't change the picture as far as this is concerned; the idea that the decision of the Board comes to this court in the form of a recommendation means that it's not final unless this court approves it in some way. Section 10C(5) outlines in a general way what the county court does on the reception of the report. As I've mentioned in the course of the argument I think that subsection (5) has to be construed according to the ordinary procedures of the court and what is done generally in the way of default proceedings and ex parte proceedings and proceedings inter partes. If there is no objection filed within the time, the court obviously has the power in subsection (5) to confirm the report and issue an order on that basis; but I think the subsection also contemplates that the court may find the report insufficient even in a default situation and refer it for reformation, or may vary or reverse it if it's something that's fairly obvious, such as a failure to add up the figures correctly and things of that kind. But it should be construed as an ordinary default judgment of the court in that case.

Where a notice of objection is filed then of course there has to be a hearing, although the Act doesn't say so. But I think the principles of fundamental justice require a hearing in that case, and if the objections are brought forward the court can deal with it very much in the way that it would deal with an ordinary report on a reference, subject to the fact however that the statute prohibits the recording of any evidence at the hearing before the Board. I take it that that implies that the county court is limited to considering the reports on its merits and to considering the proceedings that took place. Now, this court has granted a review and has either varied the report or sent it back for re-hearing in several different classes of cases, one of which is very common; that is, where one of the parties didn't show up for the hearing before the Board. If they can satisfy the court, the judge, that there was some adequate reason for that, very often the matter is sent back, unless you can hear the parties in Chambers and bring them to some conclusion. That happens too, because they often show up without lawyers and after pointing out the law involved you can usually arrive at some common ground. There is also a possibility again of correcting clerical mistakes; or you can go deeper and if the objector can show that, for example, admissible evidence was rejected by the Board or even that totally inadmissible evidence was taken in—although the Board has been given rather a large power of hearing evidence under subsection (2) of 10B. But still, there are certain principles even there that have to be observed.

So, that's the kind of thing that can be done with an objection. Now, what can be done with a default order? I take it that the provisions of the Supreme Court Rules apply in this case which is constituted by the Residential Tenancies Act as a reference, a statutory reference, from this court and the dealing with a report. Under any default judgment of the court, and that's what would be the case where there's no notice of objection

filed, normally, any default judgment of this court can be the subject of a motion to reopen. And I'm prepared to take the initial Notice of Appeal here as a notice of motion to reopen. And of course if this court refuses to reopen or revokes the order and reopens the matter, a further appeal lies to the Court of Appeal from that decision of this court on the basis of a misconception of discretion. That is, that the discretion was not exercised according to proper legal principles. It rather restricts the matter of course to a question of law. But that's a matter for the Court of Appeal.

Professor Thomas has cited Section 85 of the County Court Act, but the wording in that is not really apt to this kind of case: 'Every judge of a County Court in any action at the trial of which he has presided...'; I think it contemplates an actual hearing before this court. And we all know, for example, that the practice of setting aside a jury verdict has been much limited by the Supreme Court of Canada in civil actions in this province.

Now, even if the Notice of Appeal can be construed as a Notice of Motion to reopen, it, I think, must be supported by the ordinary kind of documentation and proof that you would require on any other default judgment. In this case I would think there should be an affidavit explaining why the notice of objection was not put in in a timely fashion, and also some supporting material to indicate that the notice of objection has some substantial basis. But I am prepared to decide the present question on that basis.

A Judge of the County Court of
District Number One