

September 25, 2025

[REDACTED]

Jennifer Eaton

[REDACTED]

Dear Ms. Eaton:

M12298 – Nova Scotia Power Inc. – Complaint by Jennifer Eaton – Access to Property Issue

On May 27, 2025, you filed a complaint with the Nova Scotia Energy Board about NS Power accessing your property for a line extension to service your neighbour. It is your position that Nova Scotia Power did not have permission from you or an easement to do so. NS Power responded to your complaint on June 18, 2025.

Our review of this matter included the following documentation:

- The complaint dated May 27, 2025;
- The utility's response to your complaint dated June 18, 2025;
- Your reply dated July 8, 2025.

The Board understands that many years ago the property adjacent to yours, the Walker Property, had power connected to their residence. According to NS Power, the Walker Property was originally connected to NS Power's infrastructure in 1990, which included the installation of a meter. Service was disconnected in 2009.

In April 2025, NS Power accessed your property to restore power to your neighbour's residence. You state that you did not give permission to NS Power to access your property, nor does it have an easement.

Upon learning from your neighbour that he was interested in having power restored to his property, you called NS Power to express your concern about the company accessing your property to do so. You indicate you were advised by NS Power that they could not access your property without an easement. However, several days later, NS Power cut trees on your property and a "line was run" to your neighbour's property.

In your complaint, you ask that NS Power fix the problem and that you are considering legal action. NS Power, in its response, noted that it replaced the outdated "Green Can" transformer which was required for the continuation and reliability of your service, and the

reconnection of electric service to your neighbour. NS Power also stated it replaced some of the existing wires, which required minimal branch trimming. You say there were no existing wires leading to your neighbour's property.

NS Power takes the position that the work was conducted within the bounds of an easement based on a prescriptive right. It further asserts that it has no record of more extensive clearing activities having been conducted on your property by NS Power or its subcontractors.

You ask that NS Power fix the problem. However, it's not clear to the Board what course of action you would like NS Power to take.

NS Power claims its equipment has been present on your neighbour's property for at least 35 years, which is "well beyond the 20-year period required to establish prescriptive rights." NS Power goes on to state that "given the longstanding and continuous presence of this infrastructure, NS Power's position is that it has sufficient evidence to assert a right to a prescriptive easement on Ms. Eaton's property."

Whether and how a prescriptive easement can be established and enforced depends on if your property has been migrated under the *Land Registration Act*. If it has, the determination is made based on a mixture of common law adverse possession principles and statutory provisions. If it has not, the common law is used to determine the issue.

There are certain criteria which must exist before a claim to an easement will be accepted as a prescriptive easement. An easement ordinarily includes ancillary rights that are reasonably necessary for the exercise and enjoyment of that easement. The interpretation of those rights is an interpretation of common law property rights as they pertain to both the easement and the property over which the easement runs, as well as interpretation of the *Land Registration Act*.

The Board has many of the same powers as courts in Nova Scotia. These include the power to compel the attendance of witnesses under oath, the power to order document disclosure, the power to conduct hearings and the power to adjudicate disputes between the parties before it. However, the Board only has jurisdiction to do so in the proceedings properly before the Board under the *Energy and Regulatory Boards Act*. While the Board has the power to interpret legislation, it does not have the power to issue injunctions or award general damages. A process before the courts would generally be required to obtain this type of common law remedy.

The Board also does not have the same powers a court has to make determinations and provide remedies about easements under the *Land Registration Act*. Section 74 of the *Land Registration Act* sets out a process whereby a court can determine the existence of an easement. The Board notes s.73(1) of the *Land Registration Act* preserves certain unrecorded utility interests in certain situations. The *Land Registration Act* defines "court" as the Supreme Court of Nova Scotia. The Board is not a 'court' for the purpose of determining whether a prescriptive easement exists under the *Land Registration Act*. *Grant v. Halifax Water Commission* 2021 NSCA 22 is an example where the courts were called upon to determine whether the Halifax Regional Water Commission had a prescriptive easement related to old water pipes under the *Land Registration Act*.

Based on this, the Board finds it has no authority to determine whether a prescriptive easement exists pursuant to s. 73(1)(d) or s. 74 of the *Land Registration Act* and, perhaps more importantly, to provide a remedy under that legislation. You should seek



independent legal advice if you wish to determine if there are other legal avenues that you can pursue to have your concerns addressed.

Yours very truly,



Richard Melanson, LL.B.
Member



Darlene Willcott, LL.B.
Member

