

Building Accessibility Appeal Tribunal  
Service NL

Appeal Hearing  
Monday, June 9<sup>th</sup>, 2014

Residential Tenancies Hearing Room  
Motor Registration Building  
Mount Pearl, NL

Section 40(1)

Appellant:

[REDACTED]  
Karwood Contracting and Design Group

Respondent:

Mr. Dennis Eastman, P. Eng.  
Director of Engineering & Inspection Services  
Service NL

Accompanied by:

Mr. David Rodgers  
Dept of Justice  
Government of Newfoundland & Labrador  
St. John's, NL

**DECISION NOTICE**

1. The appeal is granted.
2. The decisions made by the Department of Engineering & Inspection Services, Service NL are set aside.
3. The Appeal Tribunal, which consisted of Mr. John Hearn, as Chairman; Ms. Patsy Yetman, Vice-Chair; Mr. Leon Mills; Ms. Amanda Lush; and, Ms. Carrie-Ann Bugden; was unanimous in its decision.

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4. The Appellant, [REDACTED] contacted the Respondent, Mr. Eastman, via email on April 23<sup>rd</sup>, 2014, requesting an Appeal under Section 17 of the *Buildings Accessibility Act* relative to the Respondent's interpretation of Section 4 of the *Buildings Accessibility Regulations* in respect to an affordable housing project Karwood Contracting is developing on Municipal Avenue, in partnership, with the City of Mount Pearl. The project includes two buildings having two stories each. One building contains 18 units and the other contains 8 units. In his email, Mr. Ford stated:
  - *In the Regulations, under the heading Building Requirements, Section 4(2) reads; "An apartment type building that contains 15 or more residential units shall.....(c) have at least one residential unit which is accessible to persons with disabilities...." and Section (3) reads; "An apartment type building that contains more than 4 and less than 15 residential units shall have at least one residential unit in which all rooms are on the same level or which are connected by a ramp." It is our opinion that the text in this section is clear and unequivocal...the intent is that buildings with 15 or more units require at least one fully*

*accessible unit and that buildings from 5-14 units have a less stringent requirement of providing a unit with level floors or ramps. This is both logical and reasonable. Our smaller building design complies with this requirement.*

5. Mr. Dennis Eastman responded formally on April 30<sup>th</sup>, 2014 via email regarding Service NL's interpretation of Section 4(3) of the Building Accessibility Regulations. In his letter Mr. Eastman stated:

- *Section 4(3) of the Regulations requires that at least one residential unit in an apartment-type building that contains more than 4 and less than 15 residential units have all rooms on the same level or connected by a ramp. The only rationale for this requirement is for the unit to be accessible to persons with disabilities.*

6. The Appellant wrote Ms. Donna Kelland, Assistant Deputy Minister, Service NL on May 23<sup>rd</sup>, 2014 appealing the decision made by the Director of Engineering & Inspection Services, requesting consideration of the appeal by the Building Accessibility Appeal Tribunal.

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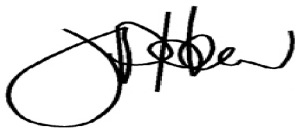
7. The tribunal first heard submissions from the Appellant [REDACTED] followed by submissions from the Respondent, Mr. Dennis Eastman. Mr. Rodgers of the Department of Justice, accompanying the Respondent, also made a submission. [REDACTED] and Mr. Eastman reiterated in detail their interpretations of the Act, previously submitted in writing. Mr. Rodgers referenced Chapter 1-19 of an *Act Representing the Statutes* and cited point 16, page 6, referencing "liberal....interpretation of an Act." Mr. Rodgers also referenced a Court of Appeal Ruling between Archean Resources Ltd and the Government of Newfoundland and Labrador citing again, a reference to a liberal interpretation of an Act.

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8. The Building Accessibility Appeal Tribunal came to a consensus in granting the Appellant, the appeal. The Appeal Tribunal members felt that the Building Accessibility Act was very clear in its wording and intent regarding accessible units for varying apartment building sizes. It is reasonable that the Appellant apply strict interpretation of the wording of the Act. Government Acts and Regulations are put in place as guidelines for people and businesses to follow. Strict interpretation of the wording is clearly the intent of this Act so as to ensure accessibility is met. There is no grey area. It is reasonable that a liberal interpretation not be applied in this case given that the ratio of units to accessible units is clearly identified. Accordingly, the Accessibility Tribunal reached a unanimous conclusion in favour of the Appellant [REDACTED] representing Karwood Contracting & Design Group.

Respectfully submitted,

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John Hearn, MNLAA, MRAIC  
Chairman  
Building Accessibility Appeal Tribunal