Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: April 17, 2020 **CASE NO(S).:** LC180002

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER sections 57 and 58 of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended

Complainant:	Joseph Chapman
Respondent:	Town of Northeastern Manitoulin and the Islands
Municipality:	Town of Northeastern Manitoulin and the Islands
OMB Case No.:	LC180002
OMB File No.:	LC180002
OMB Case Name:	Chapman v. Northeastern Manitoulin and the Islands (Town)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, and the Tribunal's *Rules of Practice and Procedure*

Request by:	Town of Northeastern Manitoulin and the Islands
Request for:	Motion for Directions

Heard: In writing

APPEARANCES:

Parties	**Counsel**
Town of Northeastern Manitoulin and Islands	P. Courey
Joseph Maxwell Chapman	Self-represented

DECISION DELIVERED BY C. CONTI AND ORDER OF THE TRIBUNAL

INTRODUCTION AND SUMMARY

[1] This is the decision for a motion in writing brought by the Town of Northeastern Manitoulin and the Islands ("Town") to dismiss without a hearing a Notice of Arbitration and Statement of Claim filed by Joseph Maxwell Chapman ("Claimant") for damages for injurious affection related to the Town's proposed sewage works in an unopened road allowance between Concession 9 and 10, Northeastern Manitoulin and the Islands.

[2] The Claimant owns a property and dwelling at Part 4, Plan 31R-2896, Part of Lot 5, Concession 10, former Township of Howland which is adjacent to the unopened road allowance. He filed a complaint pursuant to s. 57 of the *Ontario Water Resources Act* ("OWRA") on May 7, 2017 and filed a Notice of Arbitration and Statement of Claim pursuant to s. 57 and s. 58 of the OWRA on January 5, 2018. Section 58 of the OWRA indicates that where land is injuriously affected by the construction, operation or maintenance of sewage works the *Expropriations Act* ("Act") applies. The text of s. 57 and 58 of the OWRA is provided later in decision.

[3] The sewage works consist of construction of a storm sewer and outfall with a surface swale over municipally owned lands in the unopened road allowance. No expropriation of land is proposed in conjunction with the works.

[4] The Notice of Arbitration and Statement of Claim lists a number of issues that the Claimant contends will arise from the construction, operation and maintenance of the sewage works. They include severe reduction in the market value of his property, generation of odours, attraction of rodents and reptiles, pollution of swimming areas, destroying trees and destroying the Claimant's dock and beach area. The claim is for a total of $750,000. Through the Notice of Arbitration and Statement of Claim, the Claimant is seeking damages for injurious affection related to the above issues instead of other types of damages that might be sought under s. 57 of the OWRA.

[5] The complaint under s. 57 of the OWRA has been adjudicated by another Member of the Tribunal and through a decision issued on August 28, 2018, *Chapman v Northeastern Manitoulin and the Islands, 2018* CanLII 82015 (ON LPAT) ("*Chapman")* the complaint was dismissed. However, the decision did not specifically dispose of the claim under s. 58 of the OWRA. The Claimant contended that since s. 58 of the OWRA states that where there is injurious affection the *Expropriations Act* applies, the claim is alive and a hearing under the Act is required. He requested that the Tribunal schedule a pre-hearing conference to move the appeal forward to a hearing. The Town maintained that the claim has been dealt with in full under the previous Tribunal decision and that no further proceedings are required. Therefore, the Town has brought this motion to dismiss the appeal.

[6] The Tribunal has carefully considered the submissions of the parties. The fundamental issue for the Tribunal in this decision is to determine if the claim for injurious affection requires a hearing under the Act in view of the findings of the previous decision and submissions on the motion.

[7] In dismissing the complaint under s. 57 of the Act the Tribunal concluded that the claim was based upon speculation and not on actual damages. In paragraph 8 of the Chapman decision it states, "More importantly, as was pointed out by the Chair, Mr. Chapman's complaint and the supporting materials of his experts is consistently founded on apprehension of damage and injurious affection, and not on damages caused, as is the threshold test of s. 57 of the Act." Furthermore, in paragraphs 12 and 13 of that decision, the reasons for dismissing the complaint are summarized as follows:

> [12] Contrary to the assertions and submissions of Mr. Chapman, the Tribunal is not persuaded that the meaning and breadth of s. 57 of the Act can be construed to allow claims in anticipation or on the apprehension that damages may or even are likely to occur.
>
> [13] Damages, by their very nature are in fact that, reparation for actual, quantifiable damages incurred. The Complainant relies upon s. 58 of the Act in seeking damages for injurious affection, which in turn relies upon the *Expropriations Act*, which similarly, does not deal with prospective or speculative damages.

[8] While the previous decision did not specifically dispose of the claim for injurious affection under s. 58 of the OWRA, it is clear from the above that the Tribunal considered the claim in light of the provisions of the Act and concluded that injurious affection had not occurred. The complaint under s. 57 of the OWRA which the Tribunal dismissed involves the same damages that the Claimant maintains should be considered as injurious affection and should be subject to a hearing under the Act. Furthermore, the Notice of Arbitration and Statement of Claim had already been filed and was addressed in the submissions of the Town at that hearing. The fundamental conclusion of the Tribunal was that the damages set out in the claim were speculative and under the Act damages from injurious affection must be damages that have been incurred. The Tribunal determined that the damages identified by the Claimant related to injurious affection could not have occurred because construction had not begun. The previous decision was not reviewed or appealed and is in force and effect.

[9] According to the evidence provided with this motion, construction still has not started. The Tribunal agrees with the reasoning of the previous decision, that generally construction must occur in order for there to be damages from injurious affection, although the Tribunal recognizes that there may be circumstances where claims for injurious affection can be compensated prior to construction. However, nothing new has been raised in the submissions that affects the nature of the claim. The Tribunal concludes that under s. 58 of the OWRA construction must occur in order to consider a claim for injurious affection, barring exceptional circumstances which do not appear to apply in this case. Therefore, the Tribunal will allow the motion and dismiss the claim. More detailed reasons for coming to these conclusions are provided in the remainder of this decision.

[10] An additional point that may be relevant to this matter is that in this case there has been no acquisition or taking of land associated with the proposed sewage works. The Tribunal will comment further on this point later in this decision.

MOTION

[11] The Town set out its grounds for the motion in its Motion Record which the Tribunal has entered as Exhibit 1. The Motion Record includes the Affidavit of David Williamson, Chief Administrative Officer of the Town, and a Factum. The Town's main ground for the motion is that the claim, as set out in the Notice of Arbitration and Statement of Claim, is premature because no construction has occurred, and no damages have been suffered by the Claimant.

[12] According to the Affidavit of Mr. Williamson, the sewage works proposed for the unopened road allowance include the construction of a storm sewer and outfall with a surface swale over municipally owned lands. The Affidavit indicates that the construction only involves municipal lands and the construction of the sewage works has not begun.

[13] In its Factum, the Town noted that under the OWRA the term "sewage" includes drainage and stormwater collection, transmission, treatment and disposal. It does not refer only to waste water. The proposal only involves works that will convey stormwater. Furthermore, any changes to the surface of the land are proposed to occur only on the municipally owned unopened road allowance.

[14] The Town maintains that the proposed construction has been designed to have no effect on the Claimant's lands or cause loss of enjoyment. The Town contends that injurious affection can only occur as a result of construction and noted that the August 28, 2018 decision of the Tribunal determined that to claim damages for injurious affection before construction occurs is premature. Furthermore, the Town maintains that no evidence has been provided of any damages that have been incurred by the Claimant or that any damages will occur.

[15] The Town requested the Tribunal to dismiss the claim with costs.

[16] The Town provided a Reply to the Claimant's response to the motion.

[17] The Claimant's grounds for the response to the motion are contained in the Responding Motion Record which has been entered as Exhibit 2.

[18] The Claimant maintains that the Town's position that the claim is premature is not a proper basis for refusing the claim. He contends that the term "premature" is not recognized in expropriation law and that using it as a basis for refusing the claim has been rejected in the Supreme Court of Canada decision *Imperial Oil Ltd. v. R.,*1973 CanLII 155 (SCC), [1974] SCR 623 ("*Imperial Oil*"). The Claimant maintains that this decision dealt with similar facts as the current case where there was an intent to proceed with works, but they had not been completed. In that case, the Supreme Court ruled in favour of a party which claimed injurious affection.

[19] Furthermore, the Claimant has submitted an opinion letter which contends that the announcement of the intention to construct the works has had an immediate negative effect on market value of the Claimant's property. An expert opinion report has also been provided pursuant to s. 28 (1) and s. 28 (2) of the Act.

[20] The Claimant maintains that the *Imperial Oil* decision completely rejects the City's main argument that the construction must be complete before a claimant has standing to advance a claim for injurious affection. Furthermore, the Claimant disputes the Town's opinion that no construction has taken place. The Claimant maintains that many acts of construction have been completed including the passage of by-laws authorizing the construction, applications for approvals to the Ministry of the Environment, Conservation and Parks, cutting down trees, digging test holes and other activities.

[21] The Claimant contends that the previous decision of the Tribunal in this matter failed to identify that the issue before it was interim relief and not damages, attempted to conduct both a s. 57 OWRA hearing and a s. 58 OWRA expropriation hearing at the same time and failed to recognize the difference between the two. He maintained that construction of a public work is a judicially defined term and that the Tribunal applied a

definition that has been rejected. Also, the Claimant maintained that the Tribunal accepted the submissions of counsel as evidence and that the Town did not comply with Rule 28.08, now Rule 28.8, of the Tribunal's *Rules of Practice and Procedure* ("Rules").

[22] Furthermore, the Claimant raised procedural concerns about the motion. He contends that the motion has been brought under Part 1 of the Tribunal's Rules whereas it should have been brought under Part III of the Rules which references the *Rules of Civil Procedure*. He maintained that the Tribunal has no jurisdiction to hear the motion. He also requested to be allowed to examine Mr. Williamson and to obtain an affidavit of documents from the Town prior to the hearing of this motion.

[23] In addition, the Claimant maintained that there was improper contact between Tribunal staff and the City, and the Tribunal refused to schedule a pre-hearing conference for the matter. Also, the Tribunal is allowing this motion to proceed even though it has been brought under the wrong rules, and the Tribunal has attempted to merge the files under the OWRA and the Act without notice or an opportunity for the Claimant to address this at a hearing under the Act.

[24] The Responding Motion Record was accompanied by the Affidavit of Joseph Chapman, a Factum and a Book of Authorities.

STATUTORY CONTEXT

[25] In considering the motion the Tribunal has reviewed the provisions of the relevant legislation. The main statutory provisions that are relevant to the Tribunal's decision are provided below.

[26] The complaint and claim have been filed under s. 57 and s. 58 of the OWRA which state the following:

> **57** The Local Planning Appeal Tribunal may inquire into, hear and determine any application by or on behalf of any person complaining that any municipality constructing, maintaining or operating sewage works or having the control thereof,
>
> (a) has failed to do any act, matter or thing required to be done by any Act, by any regulation made under any Act, by any order or direction, or by any agreement entered into with the municipality; or
>
> (b) has done or is doing any such act, matter or thing improperly,
>
> and that the same is causing deterioration, loss, injury or damage to property, and the Local Planning Appeal Tribunal may make any order, award or finding in respect of any such complaint as it considers just.
>
> **58** Where land is expropriated by a municipality for sewage works or is injuriously affected by the construction, maintenance or operation of sewage works by a municipality, the *Expropriations Act* applies.

[27] The Tribunal's authority to dismiss the appeal without a hearing is provided through s. 4.6 (1) of the *Statutory Powers Procedure Act* ("SPPA") which states the following:

> (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,
>
> (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
>
> (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
>
> (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

[28] The claim is for injurious affection which is defined in s. 1 (1) of the Act as follows:

> …
>
> "injurious affection" means,
>
> (a) where a statutory authority acquires part of the land of an owner,
>
> (i) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

> (ii) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,
>
> (b) where the statutory authority does not acquire part of the land of an owner,
>
> (i) such reduction in the market value of the land of the owner, and
>
> (ii) such personal and business damages,
>
> resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,
>
> and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired
>
> …

[29] The relevant provision of the Act for making claims for injurious affection is s. 22 (1) which states the following:

> **Claim for compensation for injurious affection**
> **22** (1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to the person, and, if not so made, the right to compensation is forever barred. R.S.O. 1990, c. E.26, s. 22 (1).

ISSUES, ANALYSIS AND FINDINGS

[30] The subject claim is for injurious affection through s. 57 and 58 of the OWRA where no land is taken. The construction is to occur entirely on municipally owned lands. As noted earlier, s. 58 of the OWRA requires that where land is injuriously affected by the construction, maintenance or operation of sewage works by a municipality, the Act applies. Therefore, part (b) of the definition of injurious affection in s. 1 (1) of the Act is the relevant provision.

[31] The Tribunal notes that claims for injurious affection in relation to the Act are in

most cases made after there has been a notice of intention to expropriate filed under s. 6 of the Act and a plan of the expropriation filed under s. 9. In this case there has been no notice of the intention to expropriate and no plan of expropriation related to the Claimant's lands or any other lands. No land has been expropriated from the Claimant or from any other person for the proposed sewage works. The works are being carried out entirely on land over which the Town has ownership.

[32] It is not clear to the Tribunal if a claim for injurious affection can be considered under the provisions of the Act where there has been no notice of the intent to expropriate and plan of expropriation filed. This matter was not raised by the parties and is not addressed in the case law included in the submissions. The *Imperial Oil* case raised by the Claimant did not involve a taking of land, but it appears from the decision that the rights that Imperial Oil held over an easement in a part of Hamilton Harbour were removed. In the current case, there was no taking or any similar removal of the rights of any party or person.

[33] The Tribunal is simply raising this point as a matter of commentary since it was not addressed in the submissions and the Town did not ask for dismissal of the claim on this basis. Therefore, the Tribunal will proceed to deal with the motion put before it by the Town.

[34] In the August 28, 2018 Chapman decision, the Tribunal considered the provisions of the Act in assessing whether or not damages related to injurious affection had occurred. Part (b) of the definition in the Act states that injurious affection can include the reduction in market value and personal and business damages, "…resulting from the construction and not the use of the works by the statutory authority…." (emphasis added). In addition, s. 22 (1) of the Act states that a person can make a claim for injurious affection, "…within one year after the damage was sustained or after it became known to the person…." (emphasis added). The above definition indicates that the damages are those resulting from the construction which in the Tribunal's view, generally would be incurred after construction takes place. Furthermore, s. 22(1)

indicates that claims for injurious affection can be made after the damage was sustained or became known. In the Tribunal's view the Act is stating that claims are to be made after the construction has occurred and the damages are known. The Tribunal concludes from these provisions that injurious affection damages generally occur after construction has started.

[35] In the response to the motion, the Claimant raised the *Imperial Oil* decision where the Supreme Court determined that a claim for injurious affection could be allowed even though construction had not yet occurred. However, in that case the Hamilton Harbour Commission proposed to extend a dock over pipes that were owned by Imperial Oil. Relocation of the pipes was required in order to continue their function. There was a direct and clear cost of $95,000 (the cost to relocate the pipes) arising from the proposed construction of the dock in that case. The Supreme Court concluded that there was no doubt that injurious affection was caused by the construction of a public work and determined that compensation could be provided for injurious affection even though the construction on the dock had not begun.

[36] In view of the *Imperial Oil* decision, the Tribunal acknowledges that there may be cases where injurious affection could be experienced where construction is pending but has not begun. However, the Tribunal agrees with the submissions of the City that the circumstances described in the *Imperial Oil* decision are very different from those regarding to the subject claim. In the above decision, there was a direct impact resulting from the pending location of the dock over private infrastructure that would need to be relocated. The expenditure of $95,000 was required to relocate the pipes so that their use in the harbour could continue. In the current case, the Claimant's submissions have not established that there is any similar expenditure that the Claimant would have to undertake in order to continue the use of his property.

[37] The claim included in the Notice of Arbitration and Statement of Claim identifies damages for injurious affection calculated on the basis of the loss in real property value, the loss of enjoyment of the property, and loss in resale value. In the facts supporting

the claim included in the Notice of Arbitration and Statement of Claim, the Claimant contends that the proximity of the proposed sewage works to his home will reduce its market value, the discharge from the pipe will cause pollution of swimming areas, and the proposal will result in the destruction of the Claimant's dock and beach. Also, the Claimant contends that blasting and rock breaking for the storm sewer will damage the house foundation. In addition, the concentrated outflow from the pipe will lead to erosion and destabilization of the slope which will affect his land. The Tribunal considers these types of damages to be speculative prior to construction occurring. It is not clear from these submissions that these damages will occur, or that activities, such as blasting, will be required to construct the works. It is simply impossible at this stage to evaluate a claim for injurious affection related to the types of damages identified.

[38] The Appraisal report submitted by the Claimant lists a loss in Market Value of $160,000 for the property resulting from the proposed works (Exhibit 2, Tab C, p. 42). Presumably the other items identified in the Notice of Arbitration and Statement of Claim account for the remaining $590,000. However, a breakdown of the amounts for each item in the remainder of the claim was not provided in the submissions on the motion.

[39] None of the contended damages identified in the claim represent a definite and direct cost that must be incurred by the Claimant as a result of the proposed works. They are significantly different than the damages claimed in the *Imperial Oil* case. The Claimant simply has not raised the need for any direct expenditure he would be required to undertake to compensate for damages to his property that would necessarily be caused by the proposed construction of the sewage works.

[40] The conclusion of the previous decision on this matter was that the damages are speculative. According to the evidence and submissions, this is still the case. The Tribunal concludes that the submissions have not established that damages for injurious affection as identified in the Notice of Arbitration and Statement have occurred.

[41] In his Response to the Motion, the Claimant contended that in the Chapman

decision the Tribunal determined that construction had not begun based on the submissions of counsel for the Town, rather than evidence. However, the Affidavit of Mr. Williamson included with the Motion Record confirms that the construction of the sewage works has not begun.

[42] The Claimant has provided a letter from Hal Love of Hal Love Real Estate Advisory Services (Exhibit 2, Tab B) which states, “Although the works have not been constructed, the announcement of the intention to do so has an immediate negative affect on the market value of the Subject Property.” It appears from a review of the Tribunal’s records that this same letter and the Appraisal Report (Exhibit 2, Tab C) were included in the submissions provided at the previous hearing. Mr. Love’s letter, first of all, confirms the evidence provided by Mr. Williamson that there has been no construction. With regard to a reduction in market value of the property caused by the announcement of the proposed works, in the Tribunal’s view this is a speculative claim that is very different from the type recognized by the Supreme Court in the *Imperial Oil* case. It is not clear to the Tribunal in this case how any loss in market value of the Claimant’s property could be accurately assessed and evaluated until the works are in place and their relationship to the property is apparent.

[43] In his Factum, the Claimant referred to the Supreme Court decision *Toronto Area Transit Operating Authority v. Dell Holdings Ltd., 1997* CanLII 400 (SCC), [1997] 1 SCR 32, where the Court concluded that the Act is a remedial statute and the power of the expropriating authority should be construed in favour of those whose rights have been affected. However, the conclusion of the Tribunal through both the Chapman decision , and this motion is that the Claimant’s rights have not been affected because there have not been damages that can be attributed to the construction of the proposed works.

[44] The Tribunal is aware of cases where there have been awards for injurious affection where no land has been taken from the party receiving the award. However, these cases have all occurred within the context where there has been an expropriation of land from some party. The decision, *Antrim Truck Centre Ltd. v. Ontario*

(Transportation) 2013 S.C.C.13, [2013] 1 S.C.R. 594 (“Antrim”), was not raised in the parties’ submissions, but was a significant case for determining when damages for injurious affection may be awarded. In that case while no land was taken from the Antrim Truck Centre they were awarded damages for injurious affection resulting from the relocation of part of a provincial highway. However, there was an expropriation of land from other parties by the province in order to construct the highway. As noted earlier, in the current case there has been no land taken from any party, no notice given of the intent to expropriate, and no plan of expropriation has been filed.

[45] In view of the above conclusions, there is no basis at present to proceed with any further consideration of this matter under the Act. The Tribunal’s conclusion is that in this case a fundamental basis for the claim of injurious affection requires that there must be some construction of the works. The claim in this matter is not of the kind where injurious affection may have occurred in anticipation of construction. Based upon Mr. Williamson’s Affidavit, the Tribunal concludes that this fundamental requirement still has not been met. The Tribunal accepts Mr. Williamson’s opinion about the commencement of construction and does not find a need to delve further into the Claimant’s submissions about the definition of construction or the types of activities that might constitute construction.

[46] The Claimant contended that the motion has been brought under the wrong part of the Rules and the *Rules of Civil Procedure* should apply. However, the intent of the motion is to determine if there are any remaining matters regarding the Notice of Arbitration and Statement of Claim that require further adjudication. The wording of s. 58 of the OWRA states that, “if land …is injuriously affected the *Expropriations Act* applies….” Based upon the findings of the Chapman decision, it was not clear to the Tribunal when scheduling the motion that there was a legitimate basis for the claim of injurious affection and that any injurious affection had occurred.

[47] If the hearing were to proceed to consider the contended damages for injurious affection, the matter would proceed under the provisions of the Act, but at the time of

filing the motion that had not been determined. Therefore, it is appropriate that the motion was brought under Part 1 of the Rules.

[48] Furthermore, the *Rules of Civil Procedure* apply to a hearing under the Act, as indicated in Rule 28.13 of the Tribunal's Rules. However, the determination of the Chapman decision was that the damages in the claim did not meet the requirements for injurious affection. It is clear from that decision that the provisions of the Act were applied in reviewing the claim for injurious affection. Through this motion decision, the Tribunal has confirmed that there is no basis for the claim for damages from injurious affection. Therefore, there is no need for a hearing under the provisions of the Act where the *Rules of Civil Procedure* would be applied.

[49] It should be noted that this is a proceeding brought under s. 57 and 58 of the OWRA. Section 57 provides the Tribunal with considerable discretion where it says the"… Tribunal may inquire into, hear and determine any application…" and "…may make any order, award or finding in respect of any such complaint as it considers just." In view of this discretion and the findings of the Chapman decision, there is no obligation for the Tribunal to proceed with a hearing under the Act. While after filing the Notice of Arbitration and Statement of Claim, a land compensation (LC) file number was assigned to the matter, this should not be construed as an indication that a proceeding under the Act was commenced or is required. The complaint and claim were filed under s. 57 and 58 of the OWRA. The Tribunal in its discretion determined that the complaint should be dismissed and that damages related to injurious affection had not occurred. This decision supports and confirms the findings of the Chapman decision. There is no need to proceed with a hearing under the Act where the Rules of Civil Procedure would apply.

[50] In the submissions, the Claimant referred to the Rule 28.08, now Rule 28.8, which requires that where a Respondent denies that any compensation should be paid, the relevant facts and statutory provisions must be included in the reply. In reviewing the Town's response to the Notice of Arbitration and Statement of Claim, it appears that

this requirement has been met.

[51] With regard to the concerns raised by the Claimant about not being involved in communications between Tribunal staff and the Town, the Tribunal finds that there is nothing improper about staff having contact with the parties individually when dealing with procedural matters prior to hearing events. This is part of the normal process that is at times required to advise parties about the process for dealing with an appeal. In this case, there is no indication that any matters were discussed that would prejudice either party.

[52] Subsequent to the filing of the motion and the Town's response, the Claimant has filed a Request to Admit under Rule 51 or the *Rules of Civil Procedure* and Rule 28.1 and 28.13 of the Tribunal's Rules. The Town has filed a response to the Request to Admit. Through this decision, the Tribunal has determined that there is no need for a hearing under the Act under which the *Rules of Civil Procedure* would apply. Therefore, the Tribunal will not give further consideration to the Request to Admit or the Response.

[53] The Claimant simply has not established that damages for injurious affection have occurred. Through this decision, the Tribunal has determined that damages from injurious affection as set out in the Notice of Arbitration and Statement of Claim do not meet the requirements of the Act. This is consistent with the conclusion of the Chapman decision in dismissing the complaint.

[54] Based upon the submissions and evidence, the Tribunal concludes that s. 4.6.1(c) of the SPPA provides the authority for dismissal of the claim because the statutory requirements set out in the definition for injurious affection in s. 1(1) of the Act and the requirement for filing in s. 22 (1) of the Act have not been met. Therefore, the Tribunal will dismiss the claim as set out in the Notice of Arbitration and Statement of Claim under this provision.

[55] In consideration of all of the submissions including the authorities submitted by the Claimant, the Tribunal will allow the motion and dismiss the claim. The appropriate

order is provided below.

[56] Both parties have requested costs, but the Tribunal has concluded that further consideration of costs is not warranted regarding this motion.

ORDER

[57] The Tribunal orders that the motion is allowed, and the Notice of Arbitration and Statement of Claim filed by Joseph Maxwell Chapman is dismissed.

"C. Conti"

C. CONTI
VICE-CHAIR