



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Exploits Discovery Corp. v. Newfoundland and Labrador (Mineral Claims Recorder)*, 2026 NLSC 62

Date: May 13, 2026

Docket: 202301G4322

BETWEEN:

**EXPLOITS DISCOVERY CORP.
CREST RESOURCES INC. AND
NICHOLAS RODWAY**

APPELLANTS

AND:

**MINERAL CLAIMS RECORDER FOR
NEWFOUNDLAND AND LABRADOR**

FIRST RESPONDENT

AND:

**MINISTER OF INDUSTRY, ENERGY,
AND TECHNOLOGY FOR
NEWFOUNDLAND AND LABRADOR**

SECOND RESPONDENT

Before: Justice Irene S. Muzychka

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

June 10, 2025

Summary:

The Appellants successfully staked three parcels of land using the Government of Newfoundland and Labrador's online mineral staking system,

MinLAP. Although their applications were initially accepted through the system, they were later rejected on the basis that they had not been completed in a manner satisfactory to the Mineral Recorder. The Appellants grieved the Recorder's decision to the Mineral Rights Adjudication Board, which upheld the Recorder's decision.

The Board found that the Appellants had complied with the requirements of the Mineral Act and Regulations in all respects except section 21(1)(a) of the Act, which states that "an application shall not be accepted by the recorder unless it is completed in a manner satisfactory to the recorder."

The Board further determined that the Recorder retained the authority to assess whether the applications were satisfactorily completed, notwithstanding the issuance of electronic confirmation letters through MinLAP acknowledging acceptance of the applications. While the Board concluded that the Appellants' use of scripts was permissible and that preloading shopping carts was an option available to all applicants, it nonetheless upheld the Recorder's exercise of discretion in rejecting the applications, citing the Act's objective of maintaining a level playing field among applicants.

On appeal, the Court upheld the Board's finding that the Recorder retained authority to approve applications for mineral licences. However, the Court allowed the appeal on the basis that the Board erred in concluding that the Recorder had exercised his discretion reasonably.

The Court ordered the Mineral Recorder to issue the mineral licences to the Appellants.

Appearances:

Colm St. R. Seviour, K.C.	Appearing on behalf of the Appellants
Suzanne M. Orsborn	Appearing on behalf of the Respondents

Authorities Cited:

CASES CONSIDERED: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235

STATUTES CONSIDERED: *Mineral Act*, R.S.N.L. 1990, c. M-12; *Mineral Regulations*, 1996, NLR 114/96

RULES CONSIDERED: *Rules of the Supreme Court*, 1986, S.N.L. 1986, c. 42, Sch. D

TEXTS CONSIDERED: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014)

REASONS FOR JUDGMENT

MUZYCHKA, J.:

INTRODUCTION

[1] This is an appeal from a decision of the Mineral Rights Adjudication Board (MRAB) dated August 21, 2023, affirming the Mineral Recorder’s rejection of the Appellants’ applications for mineral exploration licences 31452M, 31453M, and 31454M.

[2] The Appeal is pursuant to s. 40 of the *Mineral Act*, R.S.N.L. 1990, c. M-12, which provides for an appeal from a decision of the MRAB upon a point of law raised during the hearing of the appeal before the Board.

[3] The Appellants also seek additional or alternative relief in the form of an application for judicial review. The request arises from the Respondents’ contention that certain of the grounds of appeal listed in the Notice of Appeal are not within the scope of the right of appeal conferred by s. 40(1) of the *Act*. More particularly, the Respondents contend that s. 40(1) does not apply to the Board’s findings of mixed

fact and law (unless the legal principle is readily extricable) or to the Board's findings of fact and are more properly the subject of judicial review.

BACKGROUND

[4] The Mineral Lands Administrative Portal (MinLAP) is the Government of Newfoundland and Labrador's online mineral license staking program. It is the only authorized method for staking, with some exceptions, replacing a system used since early 2005. Before that, mineral license staking was performed through ground staking, a paper-based process where applicants physically marked the land with paint or pegs before submitting their applications.

[5] On October 20, 2020, the Appellants (also called Applicants or Grievors in this decision) successfully staked the lands (mineral exploration licenses 31452M, 31453M, and 31454M) using MinLAP, which has been active since early 2020.

[6] The Mineral Recorder notified the Appellants by a letter dated October 20, 2020, which letter was automatically generated by MinLAP, confirming that their applications had been accepted. Licenses would be issued within 30 days of the Recorder's acceptance of the applications. The letters of acceptance were signed by the Recorder and issued according to the Recorder's duties under s. 21(2) of the *Act* and s. 10(3) of the *Mineral Regulations*, 1996, NLR 114/96.

[7] Despite having received a letter of acceptance, the Appellants were later informed on May 10, 2021, that their applications had been rejected because they were not completed in a manner acceptable to the Recorder.

[8] In a letter dated May 10, 2021, the Recorder informed the Appellants that their applications were being rejected on the basis that they had bypassed part of the established MinLAP submission process. An investigation by the province's Office of the Chief Information Officer (OCIO) concluded that the Appellants had

preloaded the staked lands into their cart by manipulating the HTML code prior to the claim staking session opening at 9:00 a.m.

[9] The Appellants grieved, and the matter was heard by the MRAB, which affirmed the Recorder's decision.

ISSUES

[10] The issues in this appeal are:

1. What is the applicable standard of review?
2. Did the MRAB err in finding that the Recorder retained his discretion after accepting the licence applications to subsequently revoke the computer-generated acceptance?
3. If so, did the Recorder exercise his discretion appropriately in the circumstances?

EVIDENCE

[11] According to the Recorder, MinLAP is the Department's online staking program. It is the exclusive means of staking except for some older held mineral tenures.

[12] Since 2020, mineral licence applications have exclusively been submitted through the MinLAP system, which complies with the *Act* and *Regulations*. Applications are completed electronically through a step-by-step process, ending with payment, after which a receipt and a provisional acceptance letter are issued.

[13] MinLAP replaced the previous program called MIRIAD, which had been in place since 2005. MIRIAD was created to eliminate the paper process for a map staked licence so that the steps to obtain a licence would take place electronically.

[14] During high-demand “staking rushes” in 2020, MinLAP users experienced technical issues, including system overloads, which prevented users from successfully staking their desired claims.

[15] The Appellants had experienced such difficulties and were unsuccessful in staking all their desired claims during a staking rush in April 2020. Consequently, in anticipation of a high-demand staking rush slated for October 20, 2020, the Appellants engaged the services of a software engineer to assist in optimizing their chances of a successful staking application and avoid a system crash.

[16] On October 20, 2020, the Appellants submitted their applications for three mineral exploration licences via MinLAP and received confirmation of acceptance.

[17] However, following complaints from unsuccessful applicants, an internal investigation was conducted, leading the Department to conclude that the successful applicants had gained an unfair advantage by bypassing part of the normal process. It was alleged that the Appellants had preloaded their applications before the official start time, possibly by manipulating the system, allowing them to complete submissions faster than others. As a result, the Recorder rejected the applications and refunded fees.

[18] The Appellants disputed this, arguing they did not break any rules. Evidence showed that the software engineer created a script to automate parts of the staking process and improve speed, but the script followed normal system steps and did not manipulate the system’s code.

[19] The Appellants maintained that the rules did not prohibit such methods. The software engineer’s approach to executing the steps in the MinLAP program

involved developing a script to load the website and identify the map parcel ID during the mapping phase, followed by a manual entry to complete the application by making the payment.

[20] The script required pre-loading the shopping cart and did not involve HTML manipulation of the MinLAP portal to do so. No screen in the process was skipped in completing the applications.

[21] The Appellants grieved the Recorder's decision to reject their applications, and the matter was heard before the MRAB (Board) on June 1 and 2, 2023. The Board's decision was released on August 21, 2023.

[22] The Appellants argued at the MRAB hearing that nothing in the *2020 Terms of Use* addressed how license applications were to be completed. Specifically, nothing in the *2020 Terms of Use* restricted or prohibited a person from staking maps, pre-loading their cart, or running a script.

MRAB's decision

[23] The MRAB made the following factual findings:

On September 18, 2020, the Recorder published a notice listing 30 mineral licences that had reverted to the Crown.

The notice stated the lands would reopen for staking at 9:00 a.m. on October 20, 2020 (the 32nd clear day after publication).

A staking rush was widely expected because mineral licences are issued on a first-come, first-served basis, creating a race to submit applications.

Map staking that day was performed using the Department's MIRIAD and MinLap systems.

On October 20, 2020, the Grievors successfully map-staked three licences.

Records obtained by OCIO show the Grievors had put the gazetted lands in their digital “shopping cart” before 9:00 a.m. that morning.

After the staking rush, an unsuccessful staker, Buchans Mineral Corporation, requested an audit of the MinLAP system failure, including a review of successful stakers and their IP addresses, to determine whether anyone using provincial government systems or computers had an unfair advantage.

The OCIO conducted the investigation with forensic advisors EWA Canada (Intertek).

The review found that the MinLAP system was overloaded on the morning of October 20, 2020, generating many “505 Gateway Timeout” errors.

Intertek concluded that the surge in traffic at 9:00 a.m. overwhelmed the web server’s connection pool, disrupting communications and causing database requests to terminate or time out.

Multiple computer systems and automated login tools (bots) might have caused the overload.

The root cause of the performance issues was ultimately identified as problems with the web server.

Records obtained by OCIO show that the Grievors placed the Gazetted land in their digital “shopping cart” before 9:00 a.m., on October 20, 2020, as follows:

31452M - 8:55:15 a.m.;

31453M - 8:50:55 a.m.;

31454M - 8:50:20 a.m.

The Grievors paid for their three applications in under a minute, between 9:00:01 and 9:00:56. According to the evidence of Mr. O’Neill [the software engineer], the script was executed at 9:00 a.m.

Buchans Mineral Corporation, an unsuccessful staker, requested an audit of MinLAP’s failure, including an assessment of those who successfully staked and their IP addresses. It asked for this review to verify that no advantage was gained by those with access through the Provincial Government’s system/computers.

The investigation conducted by OCIO, which involved forensic advisors from EWA Canada (“Intertek”), concluded that the MinLAP system was overloaded on the morning of October 20, 2020. Intertek noted the high number of “505 errors,” which are “Gateway Timeout Errors.”

Nick Rodway had previous experience indicating that the MinLAP system could crash. He also knew that MinLAP was accessible before 9:00 a.m. on October 20,

2020. They planned their map-staking by first identifying the relevant parcels of land, **which was easily possible at this time using MinLAP.** (emphasis added)
The Applicants prepared a script, as outlined in the evidence of Aiden O'Neill, to stake the areas of the Licences. In executing the script, the Applicants selected their parcel numbers, chose the staking option, entered payment details, and paid.

The map-staking script was designed to reduce their risk of the site “crashing” or their staking being terminated due to MinLAP server limitations.

OCIO acknowledged the use by MinLAP users of form fillers, scripts and macros in the staking process. (emphasis added)

[24] The MRAB found that once the Applicants’ staking was completed, the Licences were “recorded” in the Applicants’ names, with payment of the Recording Fee and Deposit Amount confirmed, consistent with the Licence Status categories. The licence applications were not rejected on October 20, 2020. The legislation provides that, once licence staking is completed, the Recorder shall “as soon as practicable issue the licence,” subject only to a 30-day waiting period.

[25] Six months later, on May 10, 2021, the Recorder notified Appellants that he was rejecting their licences.

[26] MRAB found at paragraph 109 of the decision that:

When a user uses MinLAP to apply for a map staked licence, they are completing and submitting an application in a form that has been approved by the Minister, as required by section 10(1) of the *Regulations*. The reference in subsection 21(1) of the *Mineral Act* to “an application for a licence in a form which the Minister may approve” is properly understood as referring to the use of the process of making an application through MinLAP to obtain a map-staked claim. This interpretation is consistent with principles of statutory interpretation, including that:

When words appear in a statute, it must be assumed that they have some relevant purpose and meaning to the overall scheme;

When substantial legislative revisions were previously made in 2008, the wording of subsection 21(1) was not changed; and

Statutes are considered paramount over delegated legislation *i.e.* the *Regulations*.

[27] The MRAB therefore rejected the Appellants' submissions that s. 21(1) of the *Act* must be read down to conform with s.10 of the *Regulations* to be read conjunctively. It also rejected the Appellants' argument that no s. 21 Minister-approved licence application form existed – that the form and process are the MinLAP system.

[28] The MRAB identified the Recorder's review process as being through the MinLAP system itself and the *Terms of Use*. It stated that "when applicants proceed through the MinLAP steps in compliance with the *Terms of Use*, applications are automatically accepted through the MinLAP operation process, which has been prescribed by regulation 10(1)."

[29] The MRAB found that s. 21 of the *Act* provides that the Recorder shall not accept an application unless certain requirements are met. The provisions at issue are subsections 21(1)(a), 21(1)(c), and 21(1)(h).

[30] The MRAB found that subsection 21(1)(c), which requires that the applicant comply with all the provisions of the *Regulations* respecting the procedures to be followed, was met.

[31] The MRAB also found that subsection 21(1)(h), which requires that the applicant comply in all respects with the *Act* and *Regulations*, was met.

[32] However, subsection 21(1)(a), which provides that the Recorder shall not accept an application unless it is completed in a "manner satisfactory" to the Recorder, was not met. The MRAB stated: "That discretionary decision of the Recorder is a mandatory requirement that must be met by a claimant in order for the Recorder to accept an application. It is not perfunctory but is a critical part of assessing the entirety of the section 21 approval process."

[33] The MRAB notes in the decision that the Recorder viewed it as improper for the Appellants to have ‘pre-loaded their shopping cart’ before it was available to all other users for staking at 9:00 a.m.

[34] The MRAB acknowledged that the Grievors successfully submitted their application through the MinLAP process and that a letter was automatically generated stating that the “application appears to be in order.” However, the Board found that s. 21(1)(a) provided the Recorder with discretion in approving an application, and that this discretion is retained notwithstanding the acceptance of the application by the MinLAP system, as the provision specifically requires that acceptance be in a “manner satisfactory” to the Recorder.

[35] The MRAB rejected the Grievors’ position that the computer-generated acceptance of the licences crystallized the Grievors’ entitlement to the Licences and that the Recorder’s discretion with respect to the applications ended with the acceptance letter.

[36] Consequently, the MRAB ruled that s. 21(1)(a) permitted the Recorder to consider the fact that the Grievors had placed the gazetted lands in their “shopping cart” prior to 9:00 a.m., which, in the Recorder’s assessment, gave them what he considered to be an unfair advantage over other users. The MRAB found that “this was a discretion that, in the Board’s view, he was entitled to exercise.”

[37] The MRAB further stated that it accepted that “there was nothing under the *Terms of Use, Regulations* or the *Act* that prohibited the Applicants from doing what they did (i.e., the scripting of the MinLAP staking steps and the pre-loading of the carts) to ensure that they staked their desired lands. However, for the reasons stated, the acceptance of an application is in the sole discretion of the Recorder who can determine whether it [was] completed in a manner satisfactory to him or her.”

PARTIES POSITIONS

Appellants' Position

[38] The Appellants argue that the Recorder's discretionary authority is expressly limited (s. 21(1)(a)) to the process of reviewing and then accepting or rejecting an application for a licence. The Appellants submit that once acceptance is confirmed in accordance with the *Act* and *Regulations*, the Recorder's discretionary authority is spent. The only duty left is for the Recorder to notify the successful applicant (s. 21(2)) and issue the accepted licence (s. 22(1) and 22(2)).

[39] They assert that there is no lawful basis for the MRAB to sustain the Recorder's purported post-acceptance rejection of the Applications.

[40] Further, they argue that the MRAB made a palpable and overriding error in affirming the Recorder's rejection decision based on the Appellants' preloading of their "shopping cart". The Appellants state further that the MRAB's finding the preloading of their carts in the MinLAP staking process was clearly untenable and inconsistent with the MRAB's finding that it was permissible for an applicant to pre-load their cart on the day of the staking rush.

[41] The Appellants maintain that their approach was fair and did not create any advantage, asserting that the playing field was equal for all. The Recorder acknowledged the established use of form fillers, scripts, and macros in the staking process, noting in testimony that "anyone could have followed this same process".

[42] The basis for the Mineral Recorder's decision to reject the Appellants' applications was demonstrated to be erroneous.

[43] In fact, the evidence at the MRAB hearing confirmed that the Appellants' script progressed through each screen at a speed far exceeding what a person could achieve manually. Consequently, the Appellants submit that they did not violate any of the requirements of the map staking process under MinLAP.

[44] In addition, the Appellants argue that once the acceptance letter was generated following successful completion of the applications, the Recorder's discretion ended and he had no authority to reject a licence application which had been accepted. In other words, the Recorder was *functus officio*.

[45] The Appellants submit that the MRAB erred in finding that their script completed all the MinLAP staking steps, while at the same time upholding the Recorder's discretionary decision that placing the lands in the shopping cart before 9:00 a.m. constituted an unfair advantage over other users (who were equally capable of doing so). They argue that the record does not support the finding that preloading shopping carts was an unfair practice.

Respondents' Position

[46] The Respondents deny that once the Recorder accepted the Applications for licences, he was *functus officio*. They assert that there was no "acceptance" as described in s. 21 of the *Act*, in the first instance.

[47] The Respondents state that the Court must determine whether the automated confirmation sent to the Appellants constituted a confirmation that the Application was completed in a *manner satisfactory* to the Recorder pursuant to s. 21(1)(a) of the *Act*.

[48] The Respondent claims there is a distinction between the technical requirements of the *Act* and the discretion of the Recorder. Further, the MRAB correctly distinguished between the procedural requirements and the discretion of the Recorder under s. 21(1)(a), which was not met by the Appellants.

[49] The Respondent maintains that the Recorder is given broad discretion under s. 21(1)(a) to determine whether an application has been submitted in a manner satisfactory to the Recorder, including the ability to investigate after the Appellants received confirmation of their successful applications.

ANALYSIS

ISSUE # 1 Standard of Review

[50] Where the *Act* provides a statutory appeal process, the presumption of reasonableness set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, is rebutted (at para. 17).

[51] Where the legislature has provided for an appeal from an administrative decision to a court, as in this case, limited to a question of law (s. 40(1) of the *Act*), *Vavilov* directs that a court, hearing such an appeal, is to apply the appellate standards of review to the decision. This means that for questions of law, including questions of statutory interpretation, the standard of review is *correctness*. (*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235).

[52] As this matter involves issues of fact or mixed fact and law, the legislative appeal process does not apply to those issues, being limited to questions of law only. Consequently, the parties would also have to avail themselves of judicial review related to issues of fact or mixed fact and law. In that case, the standard of review is reasonableness.

[53] The Supreme Court of Canada in *Vavilov* directs that when an administrative decision maker provides written reasons, those reasons are the primary means of explaining their rationale. A proper reasonableness review begins by carefully examining those reasons with respectful attention, seeking to understand the decision maker's reasoning process.

[54] *Vavilov* requires courts to defer to the specialized expertise of administrative tribunals and to focus on reviewing the decision-maker's reasoning—not substituting their own conclusions. A reviewing court should not reweigh evidence and may interfere with factual findings only in exceptional circumstances. The decision need not be perfect; reasons must be read in context, in light of the record and the administrative setting, and a reasonableness review is not a line-by-line treasure hunt for error.

[55] The burden lies with the party challenging the decision to demonstrate unreasonableness, and only significant or central errors will justify intervention. Ultimately, the reviewing court is to consider whether the reasons show a rational chain of analysis that addresses the key issues and leads logically to the conclusion, intervening only when necessary to protect legality, rationality, and fairness.

[56] I will apply these two standards of review to each issue as applicable.

ISSUE #2 –Did the Board commit a reversible error in sustaining the Recorder's purported exercise of discretion under s. 21(1)(a) to reject the applications? Was the Recorder *Functus Officio* following the acceptance of the staked applications?

[57] I will begin by reviewing the decision on whether the Board was *functus officio*, given that the MinLAP system issued a letter of acceptance acknowledging that the applications appeared to be in order.

[58] This is a question of law and involves a mixed fact-and-law issue from which the question of law is extricable. Therefore, the appropriate standard of review is correctness.

[59] MRAB noted the applicable provisions of the *Act* – namely ss. 21(1) and (2) which I reproduce below:

Application for licence; acceptance

21. (1) An application for a licence in a form which the minister may approve shall be submitted to the recorder, but an application shall not be accepted by the recorder unless

- (a) it is completed in a manner satisfactory to the recorder;
- (b) it is accompanied by documentation and licence fees that may be prescribed by the minister;
- (c) the applicant has complied with all the provisions of the regulations respecting
 - (i) the accompanying security deposit, and
 - (ii) the procedures to be followed when submitting applications;
- (d) [Rep. by 2008 c53 s7]
- (e) another application has not been accepted for the same land;
- (f) another licence or lease is not in force under this Act with respect to the land;
- (g) the land that has been applied for is not the subject of a grievance filed under section 39; and
- (h) the applicant has complied in all respects with this Act and the regulations.

(2) Upon acceptance of an application for a map staked licence, the recorder shall provide confirmation of acceptance to the applicant.

[60] Sections 8 and 10 of the *Regulations* also set out the requirements for map-staked licences:

Application fee and deposit

8. Applications for map-staked licences shall not be accepted unless

- (a) they are in a form approved by the minister; and
- (b) they are accompanied by
 - (i) the fee prescribed by the minister, and
 - (ii) a deposit in the amount and in a form set by the minister.

Applications for map staked licence

10. (1) An application for a map staked licence shall be submitted electronically in the manner provided by the recorder.

- (2) The recorder shall maintain a computer storage and retrieval system to receive and accept electronic applications.
- (3) The order of acceptance of applications for map staked licences shall be governed by the system referred to in subsection (2) and an application is not accepted unless confirmation is transmitted electronically to the applicant.
- (4) If access to the system referred to in subsection (2) is not available for any reason, the minister may authorize the recorder to accept applications in a format approved by the minister.
- (5) When access to the system referred to in subsection (2) is restored, the recorder shall enter the accepted applications in the system before permitting any other applications.
- (6) Where an application is withdrawn by the applicant after acceptance but before a licence is issued, the fee and the deposit referred to in paragraph 8(b) shall be forfeited to the minister.
- (7) The recorder is not liable for loss or damage suffered by a person because of the failure of the system referred to in subsection (2) to accept an application or to correctly accept an application.

[61] MRAB found that the process referred to in s. 21(1) of the *Act* –an application for a licence in a form the Minister may approve is properly understood as the process of making an application through MinLAP to obtain a map-staked claim.

[62] MRAB found that s. 21 provides that the Recorder shall not accept an application for a map-staked licence unless certain elements are met. These elements are set out in subsection 21(1)(a), 21(1)(c) and 21(1)(h):

- (a) it is completed in a manner satisfactory to the recorder;
- (c) the applicant has complied with all the provisions of the regulations respecting
 - (i) the accompanying security deposit, and
 - (ii) the procedures to be followed when submitting applications;to the land;

(h) the applicant has complied in all respects with this Act and the regulations.

[63] The Board confirmed that the provisions of s. 21(1)(c) were met, namely that the applicant complied with the regulations governing the procedures to be followed when submitting applications.

[64] The Board also found that subsection 21(1)(h) was satisfied because the applicant had complied with the *Act* and the *Regulations* in all respects. However, the Board concluded that compliance with these provisions alone was insufficient to vest the staked claims in the Grievors/Appellants.

[65] The Board focused on the wording of s. 21(1)(a), which provides that “an application shall not be accepted by the recorder unless it is completed in a manner satisfactory to the Recorder.”

[66] It determined that the Recorder’s discretionary decision is a mandatory requirement that a claimant must satisfy for the Recorder to accept an application, stating: “It is not perfunctory but is a critical part of assessing the entirety of the Section 21 approval process.”

[67] The Board emphasized that the automatically generated acceptance letter stated that the application “appears to be in order,” and that, when read alongside the requirement for a 30-day waiting period before licences could be issued, this indicated that the Recorder retained discretion to approve the licences even after the system had accepted the application.

[68] The Board found that the use of the word “manner” goes beyond limiting the Recorder to an assessment of whether the Applications proceeded through the MinLAP steps. It enables and requires a broader assessment by the Recorder, including the Recorder’s consideration of the Applicants’ placing the gazetted lands in the shopping cart before 9 am. The Board held that this was a discretion the Recorder was entitled to exercise.

[69] Having considered the MRAB's reasons and its analysis, and applying the provisions of the *Act* and *Regulations*, I agree that the wording of s. 21(1), which provides that the Recorder may approve an application as completed in a manner satisfactory to him, reserves the Recorder's discretion, notwithstanding the confirmation letter sent electronically upon receipt of an application, stating that it appears to be in order.

[70] Following the rules of statutory interpretation, I find no error in MRAB's finding that clear language is required to disengage the Recorder from his authority to determine whether the application was submitted satisfactorily.

[71] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014) at page 211, states that a governing principle in statutory interpretation is that "it is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain." This is described as the "presumption against tautology", or in other words, the presumption against repetition or redundancy.

[72] It is presumed that every word and provision found in a statute is supposed to have a meaning and a function. Consequently, courts should avoid adopting an interpretation that would render any portion of the statute meaningless, pointless, or redundant (*Sullivan*, page 211).

[73] Interpreting the statute must occur in the context of the *Act* itself. The *Act* was amended in 2008 to implement an electronic process to obtain a mineral exploration license, replacing ground staking. Yet the language in s. 21(1), which provides for the Recorder's discretion to approve an application, remained unchanged.

[74] The Appellants' interpretation of the *Act* and *Regulations* is inconsistent with the principles of statutory interpretation, considering the context of the *Act*. I find no error on the part of MRAB, applying the standard of correctness, in relation to their finding in this regard.

ISSUE #3 – Was the MRAB’s finding that the Recorder’s decision to reject the applications because of the Appellants having pre-loaded their carts prior to 9 a.m. reasonable?

[75] Having determined that the MRAB did not err in finding that the Mineral Recorder was not *functus officio* when the confirmation letter was sent to the Appellants following their successful applications on October 20, 2020, I will now examine the issue of whether the discretion retained by the Recorder was appropriately exercised, applying the standard of reasonableness.

[76] The Recorder’s decision to reject the Appellants’ applications was based on the erroneous belief that the Appellants had “skipped over the screens” and manipulated the HTML to preload their carts. These assertions led the Recorder to conclude that the applications had not been made in a manner acceptable to him. This conclusion formed the basis for the Appellants’ grievance to the MRAB.

[77] Yet the evidence at the hearing showed that the method used by the Appellants did not involve skipping screens nor required HTML manipulation. Rather, the Appellants used a script that allowed them to complete their applications at a speed much faster than could be done by hand. There was no prohibition on the use of scripts.

[78] The Board found that the Recorder’s discretion was consistent with the legislative intent of the *Act*, which permits competitive prospecting in a “first past the post” scenario. The Board also found that the Appellants’ “hybrid method,” which involved pre-loading the carts and using a script, gave the Appellants an advantage over other users, even though the evidence showed that any user could have easily opted to pre-load their carts as well. It was not disputed that other applicants used bots and scripts to enhance the application process, and that such use was acceptable.

[79] The Board acknowledged this at paragraph 120 of their decision, where they stated that:

The Board accepts that there was nothing under the *Terms of Use, Regulations*, nor the *Act* that prohibited the Applicants from doing what they did) (i.e. the scripting of MinLAP staking steps and the pre-loading of the carts) to ensure that their desired lands were staked by them.

[80] Regardless, the Board, in finding that the Recorder retained his discretion to determine whether the applications were completed in a manner satisfactory to him, found that his exercise of discretion was consistent with the legislative intent of the *Act*, which is to allow for a competitive process.

[81] The evidence confirmed, and the Board found that this “hybrid” application process was not prohibited. Nevertheless, the Board concluded that the Recorder retained discretion to reject the applications on the basis that the hybrid process “uniquely allowed [the Appellants] to gain an advantage over other users by pre-loading their shopping cart.” In the Recorder’s view, this was inconsistent with the open and fair process contemplated by the legislation when the lands became available for staking.

[82] The evidence established that pre-loading shopping carts did not confer an unfair advantage because the same opportunity was readily available to all users. There was no restriction on pre-loading carts in the MinLAP system before 9:00 a.m., nor was it identified as a prohibited activity in the *Terms of Use* at that time.

[83] The legislature intended to ensure equal opportunity among prospective applicants to stake their desired lands. It introduced an electronic application system that eliminated the need for physical staking—an advantage previously held by more physically capable prospectors. Unfortunately, by most accounts, the electronic system could not handle the volume of applications during a high-demand staking rush and was vulnerable to more resourceful applicants gaining an advantage.

[84] In fact, OCIO confirmed this in its report to the Recorder after its investigation:

Based on the commercial value of these parcels, and the technology and resources users of this system have available to them in 2020, it is unlikely that any web-based system based on a “rush to the wicket” system can be truly fair. The logs of October 20, 2020, appear to show some organizations dedicating large numbers of computers and automated bots to attempt to flood the system and ensure that they are the first to purchase land. ...(page 1265 of the Hearing Record)

That said, the logs indicate that only one user knew of the exploit that allowed them to place land in their cart prior to it being available. ...

Best recommendation is to consider moving away from a “rush to the wicket” system and to a lottery or other system that would provide the fairness to the users and not allowing those who have significant financial and technical resources an unfair advantage. (page 1263 of the Hearing Record)

[85] The Board determined that the use of scripts and bots was permissible and that preloading shopping carts was an option readily available to all applicants. However, when considering the *Act*’s objective of ensuring a level playing field, the Board nonetheless upheld the Recorder’s exercise of discretion—an outcome that appears inconsistent with its own findings regarding how the Appellants submitted their applications.

[86] Considering the Supreme Court’s decision in *Vavilov*, I conclude that the Board’s reasons affirming the Recorder’s decision fail to set out a rational chain of analysis that meaningfully engages with the central issues or leads logically to its conclusion.

[87] The evidence proved that other applicants that day used bots and scripts to streamline the application process, and dedicated significant resources to their applications, which was not contrary to the fair and open process contemplated by the legislation. A true level playing field could only be achieved with a lottery system, where the success of any competing application would be determined by chance.

[88] The Recorder retained discretion to determine whether an application was completed in a satisfactory manner. However, this discretion is not unfettered. It

must be exercised reasonably, having regard to the legislative context, the intrinsic weaknesses in a web-based system, and the merits of the individual case.

[89] In the circumstances, the Board's decision to affirm the Recorder's decision to reject the applications does not fall within the range of acceptable outcomes, having found that the Appellants utilized the system in a permissible manner.

[90] I therefore conclude that the Recorder exceeded his discretion in rejecting the Appellants' applications based on a presumed unfair advantage. The Board's finding upholding the Recorder's decision is unreasonable.

[91] The Appellants' appeal is allowed and the decision of the MRAB confirming the Recorder's decision to reject the Appellants' applications for mining licences is overturned.

[92] The Mineral Recorder shall issue the subject mineral licenses to the Appellants.

[93] The Appellants are entitled to their costs based on column 3, Rule 57, *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

[94] Order accordingly.

IRENE S. MUZYCHKA
Justice