



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

Docket TLF07101  
Order TLF08-001

**IN THE MATTER** of alleged violations  
of the Prince Edward Island Lands Protection  
Act by Grand Forest Holdings Incorporated  
et al.

**BEFORE THE COMMISSION**  
on Wednesday, the 27th day of February,  
2008.

Maurice Rodgerson, Chair  
Ernest Arsenault, Commissioner  
Chester MacNeill, Commissioner

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# Order

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# Appearances & Witnesses

## Written Submissions Filed

1. **Special Counsel:**

Roger B. Langille, Q.C.

2. **The Respondents:**

Grand Forest Holdings Incorporated, Island Holdings Ltd.,  
Cavendish Agri-Services Limited, Simmac Packaging Ltd., J.D.  
Irving, Limited, and M.F. Schurman Company, Limited.

**Counsel:**

James C. Travers, Q.C.

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# Reasons for Order

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## 1. Introduction

[1] This is a written review conducted by a Review Panel of the Island Regulatory and Appeals Commission ("Commission") to consider the landholdings of Grand Forest Holdings Incorporated, Island Holdings Ltd., Cavendish Agri-Services Limited, Simmac Packaging Ltd., J.D. Irving, Limited, and M.F. Schurman Company, Limited (the "Respondents"), pursuant to sections 15 and 15.1 of the *Prince Edward Island Lands Protection Act* (the "**Act**") and pursuant to the procedures established under Commission Rule R98-1.

[2] Under section 15 of the **Act**, the Commission may request information and conduct an investigation for the purpose of determining whether a person or corporation has contravened the **Act** or its regulations. Section 15.1 of the **Act** provides that the Commission may impose a penalty where a person or corporation has contravened the **Act**.

[3] On April 21, 2006 the Commission issued a Notice of Investigation for the purpose of determining whether the Respondents, or any one or more of them, may have contravened the **Act**. The Commission, on April 21, 2006, appointed Derek D. Key, Q.C. as the Investigation Officer and Roger B. Langille as Special Counsel in this matter.

[4] On December 12, 2006, the Commission issued Order TLF06-01 ordering the Respondents to provide documents listed in a schedule attached to said Order. These documents were ultimately filed by the Respondents.

[5] On April 24, 2007, the Investigation Officer filed his report with the Commission.

[6] On November 16, 2007, counsel for the parties filed a letter of agreement settling various preliminary matters.

[7] On December 5, 2007, the Commission appointed a Review Panel pursuant to subsection 9(2) of Rule R98-1.

[8] On December 7, 2007, Counsel for the Respondent proposed that written submissions be filed by the parties in lieu of a formal hearing.

[9] On December 31, 2007, Counsel for the Respondent attempted to file a written submission with the Commission. However, the Commission had closed its offices at 11:00 a.m. that day due to a snow storm. Counsel for the Respondent therefore filed the written submission on January 2, 2008.

[10] On January 7, 2008, Special Counsel filed its submission on penalty.

[11] On January 8, 2008, the Commission appointed a replacement panel member for the Review Panel to replace a Commissioner whose term had expired.

[12] On January 11, 2008, Counsel for the Respondent filed a rebuttal to Special Counsel's submission on penalty.

[13] This Order deals with the determination of an appropriate penalty.

## 2. Discussion

### Position of Special Counsel

[14] In Special Counsel's January 7, 2008 submission on penalty, the following offences and recommended penalties are noted:

1. Violation (i) - Until 2004, Simmac Packaging Ltd. failed to disclose its lease from CN Railway. While it is the case that the lease by Simmac Packaging from CN Railway was entered into at a time predating the **Act**, that has no bearing on the statutory obligation of the Respondents to include this parcel in the calculation of the Respondents' aggregate land holdings. Referring to the Investigator's Report, this parcel should have been disclosed in 1999 when Executive Council Order Number EC 1999-128 was granted. Therefore, there was a violation in each of the years 1999 to 2004 inclusive.

Penalty - A penalty of not less than \$2,000 would be appropriate. It is only because the maximum penalty is \$10,000 that a \$2,000 penalty is suggested in relation to this offence.

2. Violation (ii) – Failure to obtain approval of lease of land by Cavendish Agri-Services Ltd. from John Scales. While the Respondents assert that this lease was already in place when the Respondents purchased Island Fertilizers, the purchase and lease occurred in the same year, namely 1995. There is no evidence before the Commission that in fact the lease was in place before Island Fertilizers was purchased by Cavendish Agri-Services Ltd. The Respondent Cavendish Agri-Services Ltd. was required under the **Act** to make an application pursuant to Section 5.3(1) for permission to acquire this leasehold interest. Even if the lease had already been in place when Cavendish Agri-Services purchased Island Fertilizers, the former was still obligated to make the application for permission to acquire the leasehold interest.

Penalty – Cavendish Agri-Services failed to secure approval of its lease of five acres of land and a penalty of \$2,000 is appropriate.

3. Violation (iii) – Cavendish Agri-Services’ failure to disclose the lease from John Scales. There was a second violation relating to this land and that is the failure to disclose this land holding for a period of five years from 1999 to 2004. The Respondents do not disagree that they failed to disclose this land holding. A separate violation occurred in each of the years when the Respondents’ disclosure did not include this land.

Penalty – This is a separate and distinct offence and it should receive a penalty in the amount of \$2,000.

4. Violation (iv) – Island Holdings Ltd. failed to make an application to the Commission, pursuant to subsection 5.3(1) of the **Act**, for permission to enter into new lease agreements, or to substitute new parcels of land, for leases in 2005. The Respondents are in violation of the **Act** with respect to Island Holdings Ltd. leases totaling 1,649 acres of land which were entered into without application to the Commission and without Executive Council approval. This is a major violation of the **Act**. Violations of this type undermine the entire purpose and spirit of the **Act** and go to its very heart.

Penalty – Even the maximum statutory penalty of \$10,000 is too small and does not produce a sufficient punitive effect. However, the Commission’s “hands are essentially tied” in terms of the maximum amount of the penalty. The maximum penalty of \$10,000 is therefore suggested in relation to this offence.

5. Violations (v) and (vi) have been withdrawn pursuant to the November 16, 2007 letter of agreement.
6. Violation (vii) – On May 18, 2005, the Commission wrote the Respondents acknowledging that they came into compliance and that the matter was closed. However, thereafter the Respondents acted in contravention of subsection 5.3(1) of the **Act** by re-entering lease agreements totaling 368 acres, without Executive Council approval, and which were discontinued in order to bring the Respondents into compliance from a previous breach of the very same section of the **Act**. Apart from this being a very serious violation of the **Act**, it is perhaps the most morally egregious conduct of the Respondents in this matter.

Penalty – the Respondents are in contravention of subsection 5.3(1) of the **Act** by re-entering lease agreements for lease terms commencing in 2005 without receiving Commission approval, said lease agreements having been previously terminated in order to bring the Respondents into compliance. While technically this may not constitute a separate contravention of the **Act**, it is a seriously aggravating circumstance to Violation (iv), which must be taken into account when assessing the penalty.

### Position of Respondents’ Counsel

[15] Highlights of the Respondents' submissions and rebuttal include the following:

- The Respondents acknowledge that the Simmac Packaging Lease of 0.06 acres should have been disclosed prior to the 2004 Disclosure Statement. The failure to refer to it earlier was an oversight on the part of the Respondents. This is technically a non-compliance with the **Act**. The Respondents submit that a penalty of no more than \$100 would be appropriate for this non-compliance.
- The Respondents acknowledge that the failure to disclose the John Scales Lease of approximately 5 acres in Disclosure Statements filed prior to the 2004 Disclosure Statement was a non-compliance of the **Act**. The failure to obtain approval of acquisition of the Lease occurred at a time when the Respondents did not own Island Fertilizers Limited (as it was then called). The Respondents submit that a penalty of no more than \$500 would be appropriate for this non-compliance.
- The Respondents acknowledge that no application was made by Island Holdings Ltd. to obtain approval for the acquisition of land by way of Lease in 2005, 2006 and 2007. The Respondents, in good faith, believed that Order-in-Council EC1999-128 constituted all the necessary approvals required to hold land by way of Lease, so long as the land holdings of the Respondents did not exceed the amounts stated in the Order-in-Council. The Respondents were aware that the Commission was of the position that approval to acquire land by way of Lease should be applied for pursuant to subsection 5.3(1) of the **Act**, but honestly did not agree with the Commission's position.
- The Respondents acknowledge that the communication between the Respondents and the Commission in 2004 and 2005 arising from the Notice of Finding dated May 21, 2004 gives rise to confusion as to the Respondents' actions with respect to leased land. All leases (other than the leases which were assigned to Island Oak farms Limited and Lady Slipper Farms Limited) were terminated by October 31, 2004. At that time, there was no intention to renew any of the leases that had been terminated in 2004. Due to internal miscommunication, some lands which were leased in 2004, which leases were terminated in October of 2004, were leased again in 2005 by the Respondents. There was no intention to deliberately deceive the Commission with respect to these lands. The Respondents have not concealed the lands which it leases in Prince Edward Island in the disclosure statements filed for 2004 and all subsequent years.
- All leases held by the Respondents (other than the John Scales and Simmac Packaging Ltd. leased lands) have expired or otherwise been terminated. At the present time, the Respondents have no lands under lease for 2008 (other than the John Scales and Simmac Packaging leased land).
- The Respondents submit that an appropriate penalty for non-compliance with the requirements of the **Act** to obtain approval of its leased lands is \$10,000.

- The Respondents acknowledge that an Order was issued by the Commission on December 12, 2006 in connection with the investigation. The Respondents provided information requested under the Order, and the Respondents are not aware of any further concerns the Investigator may have had with respect to the provision of information subsequent to the Order of December 12, 2006. The Respondents also point out that full disclosure of land holdings was made in the Land Disclosure Statements filed for each of the years 2003 to 2006 inclusive, in full compliance with the **Act**.

### 3. Findings

[16] The Commission has been charged with the responsibility to administer the provisions of the **Act**. The Commission considers it essential that individuals and corporations adhere to the requirements of the **Act** and that all individuals and corporations are treated fairly and consistently in the application of the law. There may be differences of opinion over the effectiveness or even the appropriateness of various provisions of the **Act**, but the fact remains the **Act** is law and the Commission must follow the law in the discharge of its responsibilities.

[17] Throughout the divestiture process the Commission has focused on achieving compliance with the **Act** rather than imposing penalties. However, the integrity of the **Act** and the principle of fairness itself demands that significant violations be handled in a manner that underscores the importance of compliance and therefore the penalty for non-compliance.

[18] The Commission has considered all the documentation on file as well as the written submissions of Special Counsel and the Respondents' Counsel. The Respondents acknowledge failures to comply with the requirements of subsection 5.3(1) of the **Act**, said subsection which reads as follows:

**5.3** (1) *Where a person or corporation intends to acquire by lease a land holding for which permission is required pursuant to section 4 or section 5, the person or corporation shall*

*(a) apply pursuant to section 4 or 5 for permission to acquire by lease that specific land holding; or*

*(b) apply for permission pursuant to this section to acquire by lease and to continue to hold a certain number of acres of land as part of the applicant's aggregate land holding.*

[19] In addition, a review of the documentation reveals that the Respondent failed to disclose two leased parcels. Section 10 of the Act reads as follows:

**10.** (1) *The Minister or the Commission may request any person or corporation believed to have an aggregate land holding*

*(a) in the case of a person, of more than 750 acres; or*



(b) *in the case of a corporation, of more than 2,250 acres,*  
*to make a land holding disclosure statement in the form prescribed in the regulations.*

(2) *Without prejudice to subsection (1), any person or corporation having an aggregate land holding in excess of the limit specified in subsection (1) shall, not later than December 31 of each year, file a disclosure statement with the Commission.*

Subsection 11(1)(a) reads as follows:

**11. (1)** *A disclosure statement shall include particulars of the following:*

*(a) the acreage of each parcel comprised in the aggregate land holding;*

[20] The Commission makes the following findings:

- The Respondent Simmac Packaging Ltd. failed to disclose its lease from CN Railway during the period 1999 to 2004 inclusive. The Commission imposes a penalty of \$1000.
- The Respondent Cavendish Agri-Services Ltd. failed to obtain approval of a lease of land from John Scales. The Commission imposes a penalty of \$2,000.
- The Respondent Cavendish Agri-Services failed to disclose the lease from John Scales for a period of five years from 1999 to 2004. The Commission acknowledges this violation as a separate matter. However, as the Respondent has been in compliance since 2004, the Commission waives the penalty for this matter.
- The Respondent Island Holdings Ltd. failed to make a subsection 5.3(1) application to the Commission in 2005, for leases totaling 1,649 acres of land. These leases were entered into without application to the Commission and without Executive Council approval. To compound the situation, the Respondents again acted in contravention of subsection 5.3(1) of the **Act** by re-entering lease agreements totaling 368 acres, without applying to the Commission. These lease agreements had been discontinued in order to bring the Respondents into compliance from an earlier breach of subsection 5.3(1) of the **Act**. The Commission finds that this conduct represents a fundamental violation of the language and spirit of the **Act**. The Respondents attempt to explain the re-entering of lease agreements as an “internal miscommunication”. Whether this was in fact a “miscommunication” or a calculated and deliberate attempt to flout the requirements of the **Act**, the Commission finds this combination of inaction (failure to apply per subsection 5.3(1)) and action (re-entering lease agreements which were previously discontinued in order to achieve compliance) warrants the imposition of the maximum penalty under the **Act**, that is to say a penalty of \$10,000.

[21] The Commission further orders the following:

- The Respondents must come into compliance by either divesting themselves of the lease of land from John Scales of approximately 5 acres or by obtaining approval for this land from Executive Council, either action which must be completed not later than July 3, 2008. If the Respondents fail to accomplish either action by July 3, 2008, the Commission shall impose the maximum daily penalty, namely \$500 per day, pursuant to subsection 15.1(2) of the **Act**.
- The Respondents shall file a landholding disclosure statement pursuant to subsection 10(1) of the **Act** in relation to land held as of July 3, 2008. This statement shall be in addition to, and not a substitution for, the annual disclosure statement required by subsection 10(2) of the **Act**.

## 4. Disposition

[22] An Order setting out the penalties and requirements imposed by the Commission will therefore issue.

**IN THE MATTER** of alleged violations  
of the Prince Edward Island Lands Protection  
Act by Grand Forest Holdings Incorporated  
et al.

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# Order

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**WHEREAS** a Review Panel of the Island Regulatory and Appeals Commission ("Commission") has considered the landholdings of Grand Forest Holdings Incorporated, Island Holdings Ltd., Cavendish Agri-Services Limited, Simmac Packaging Ltd., J.D. Irving, Limited, and M.F. Schurman Company, Limited (the "Respondents"), pursuant to sections 15 and 15.1 of the *Prince Edward Island Lands Protection Act* (the "**Act**") and pursuant to the procedures established under Commission Rule R98-1;

**AND WHEREAS** the Commission proceeded with this matter by way of a written review with the consent of the parties;

**AND WHEREAS** the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Prince Edward Island Lands Protection Act*

## IT IS ORDERED THAT

1. The Commission orders that the Respondents pay a total penalty in the amount of \$13,000 for the various contraventions of the Act identified in the Reasons for Order.
2. The total penalty of \$13,000 shall be paid to the Island Regulatory and Appeals Commission within 30 days of the issuance of this Order.
3. The Respondents must come into compliance by either divesting themselves of the lease of land from John Scales of approximately 5 acres or by obtaining approval for this land from Executive Council, either action which must be completed not later than July 3, 2008. If the Respondents fail to accomplish either action by July 3, 2008, the Commission shall impose the maximum daily penalty, namely \$500 per day, said daily penalty to commence on July 4, 2008 and continue

thereafter for as long as the Respondent remains in said contravention, pursuant to 15.1(2) of the *Act*.

4. The monthly total of the penalty ordered in clause 3 above shall be paid to the Island Regulatory and Appeals Commission on the last day of each month.
5. The Respondents shall file a landholding disclosure statement pursuant to subsection 10(1) of the *Act* in relation to land held as of July 3, 2008. This statement shall be in addition to, and not a substitution for, the annual disclosure statement required by subsection 10(2) of the *Act*.

**DATED** at Charlottetown, Prince Edward Island, this 27th day of February, 2008.

**BY THE COMMISSION:**

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Maurice Rodgerson, Chair

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Ernest Arsenault, Commissioner

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Chester MacNeill, Commissioner

## NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

*13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.*

IRAC141AA(2006/10)