



Docket **LF07106**
Order **LF09-002**

IN THE MATTER of an
investigation pursuant to Section 15 of the
Prince Edward Island Lands Protection Act

**BEFORE THE
COMMISSION**

on Thursday, the 5th day of February, 2009.

Brian J. McKenna, Vice-Chair
Gordon McCarville, Commissioner
Anne Petley, Commissioner

Order

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Prince Edward Island Lands Protection Act

Order

WHEREAS by Notice of Investigation dated December 11, 2007, the Commission commenced an investigation pursuant to Section 15 of the *Prince Edward Island Lands Protection Act* (hereinafter, the "**Act**") and Commission Rule R98-1 pertaining to Frank G. Honisch (hereinafter, the "Respondent");

AND WHEREAS pursuant to Section 5 of Commission Rule R98-1, the Commission appointed Greg B. Collins as the Investigating Officer in the matter;

AND WHEREAS pursuant to Section 4 of the **Act**:
"a person who is not a resident person shall not have an aggregate land holding in excess of five acres or having a shore frontage in excess of one hundred and sixty-five feet unless he first receives permission to do so from the Lieutenant Governor in Council";

AND WHEREAS the Respondent, Frank G. Honisch (hereinafter, "Mr. Honisch"), moved to Prince Edward Island on April 14, 2002 having been prior thereto a resident of Vancouver, British Columbia;

AND WHEREAS in the Spring of 2000, Mr. Honisch travelled to Prince Edward Island and viewed a number of properties, one such property being Provincial Parcel #566935 (hereinafter, the "subject lands"), which was listed for sale;

AND WHEREAS Mr. Honisch made an offer to purchase the subject lands which was accepted by the vendors, who were residents of the United States of America;

AND WHEREAS Mr. Honisch retained legal counsel on Prince Edward Island for the purposes of acting on his behalf in purchasing the subject lands and for making the necessary application pursuant to Section 4 of the **Act**;

AND WHEREAS on July 11, 2000, Mr. Honisch, who was not a "*resident person*" as defined in the *Act*, made the requisite application for approval to acquire the subject lands from the vendors;

AND WHEREAS by Order dated August 8, 2000, the Lieutenant Governor in Council denied Mr. Honisch's application (Executive Council Order No. EC2000-492);

AND WHEREAS shortly thereafter, the listing agent for the subject lands advised Mr. Honisch that he should contact a Prince Edward Island lawyer (hereinafter "said lawyer") whom she indicated might be able to assist Mr. Honisch;

AND WHEREAS Mr. Honisch contacted said lawyer, and was advised that a number of documents could be drawn up, with the understanding that the property could be held by said listing agent on his behalf pending Mr. Honisch's move to Prince Edward Island. Mr. Honisch instructed said lawyer to prepare the necessary documents;

AND WHEREAS Mr. Honisch attended at said lawyer's office on the day he was flying from Charlottetown to Vancouver and signed a number of documents at that time, copies of which he did not retain;

AND WHEREAS on September 21, 2000, a Deed conveying the subject lands from the vendor of the subject lands to said listing agent was registered in the Queens County Registry Office (Book 1084, Page 24);

AND WHEREAS Mr. Honisch moved to Prince Edward Island on April 14, 2002, and promptly attended at said lawyer's office, at which time he signed a number of documents, though he did not keep copies;

AND WHEREAS on April 17th, 2002, a Deed conveying the subject lands from said listing agent to Frank Honisch was registered in the Queens County Registry Office (Book 1189, Page 49);

AND WHEREAS Mr. Honisch does not have in his possession any of the documents signed at said lawyer's office and whereas said lawyer has since advised that his file with regard to the subject lands has been destroyed;

AND WHEREAS Mr. Honisch has been a resident of Prince Edward Island since April 17, 2002, and has been in continuous possession of the property since that date;

AND WHEREAS a Notice of Investigation was sent to Frank G. Honisch dated December 11, 2007;

AND WHEREAS the Investigator's Report, as prepared by Investigator Greg B. Collins, was submitted to the Island Regulatory and Appeals Commission on September 19, 2008, and a copy was provided to Mr. Honisch;

AND WHEREAS Mr. Honisch presented written submissions in response, by letter dated October 3, 2008;

THE COMMISSION HEREBY FINDS that the Respondent contravened the Act by acquiring said property after his application for acquisition was denied by Executive Council while he was a non-resident of the Province as defined by subsection 1.(1)(k) of the Act.

THE COMMISSION HEREBY ORDERS that Mr. Honisch come into compliance with the Act by;

- making application pursuant to Section 4 of the Act; and
- paying the applicable non-resident application fee of \$880.00 which represents one percent of the purchase price of the land at the time of the contravention; and
- paying the penalty imposed by the Commission in this Order.

THE COMMISSION HEREBY IMPOSES, pursuant to clause 15.1(1)(b) of the Act, a penalty in the form of \$5,000.00 for acquiring Provincial Parcel #566935 in contravention of the Act — to be reduced to \$1,000.00 upon Mr. Honisch coming into compliance with the Act, on or before March 31, 2009.

THE COMMISSION FURTHER IMPOSES, pursuant to subsection 15.1(2) of the Act, a daily penalty of \$100.00,

- to commence on April 1, 2009; and
- to continue until such time as the Respondent satisfies the Commission that the requirements of the **Act** have been met;

DATED at Charlottetown, Prince Edward Island, this 5th day of February, 2009.

BY THE COMMISSION:

(Sgd.) Brian J. McKenna

Brian J. McKenna, Vice-Chair

(Sgd.) Gordon McCarville

Gordon McCarville, Commissioner

(Sgd.) Anne Petley

Anne Petley, Commissioner

TAKE NOTICE that any person or corporation that fails to comply with a demand made under Subsection 15(2) of the Act is liable to a penalty, pursuant to Subsection 15.1(1) of the Act, of not more than \$10,000, together with a per diem penalty not exceeding \$500 each day non-compliance continues.

AND FURTHER TAKE NOTICE that 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.