



Docket **LF09-101**
Order **LF10-001**

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

**BEFORE THE
COMMISSION**

On Monday, the 11th day of January, 2010.

John Broderick, Commissioner
David Holmes, Commissioner
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator

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

Order

WHEREAS, by Notice of Investigation dated March 31, 2009, the Commission commenced an investigation pursuant to Section 15 of the *Lands Protection Act* (the "*Act*") and Commission Rule R98-1 pertaining to Leslie Leroy Williams and Brenda Kathleen Williams;

AND WHEREAS, pursuant to Section 5 of Commission Rule R98-1, the Commission appointed M. Jane Ralling, Q.C., as the Investigating Officer in the matter;

AND WHEREAS, pursuant to Section 4 of the Prince Edward Island Land Protection Act (hereinafter, 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, subsection 1(4) of the Act provides that "for the purpose of calculating the aggregate landholding of any person or corporation, land held on trust shall be deemed to be in the possession of both the Trustee and the beneficiary;"

AND WHEREAS, subsection 1(4) came into force as of January 1, 1996;

AND WHEREAS, by Agreement of Purchase and Sale dated March 10, 1997, Lance Hames and Patricia Hames, both of Murray Harbour North, Kings County, Prince Edward Island, agreed to purchase 2.74 acres of land in Murray Harbour North from H. Sterling Reid (being Provincial Parcel # 846352);

AND WHEREAS, by Agreement of Purchase and Sale dated March 11, 1997, Lance Hames and Patricia Hames (noted to be of Montague, Kings County, Province of Prince Edward Island) agreed to purchase from the Government of Prince Edward Island 175 acres of land (being Provincial Parcel # 251231);

AND WHEREAS, both Lance Hames and Patricia Hames were resident persons as defined in the Act in 1997;

AND WHEREAS, by Deeds of Conveyance from the Government of Prince Edward Island dated May 21, 1997, registered May 26, 1997, Book 353, Page 16, and from H. Sterling Reid dated May 23, 1997, registered May 28, 1997, in Book 353, Page 32, Lance Hames and Patricia Hames became the registered owners of Parcel Nos. 251231 and 846352, respectively (hereinafter, the “Properties”);

AND WHEREAS, Lance Hames and Patricia Hames were represented in the transactions by Alfred K. Fraser, Q.C.;

AND WHEREAS, by Agreement dated May 23, 1997, and registered May 26, 1997 in Book 353, Page 17, Lance Hames and Patricia Hames entered into an Identification Agreement with respect to Provincial Parcel 251231;

AND WHEREAS, by Trust Agreement dated June 13, 1997, between Lance Hames and Patricia Hames of the first part, and the Respondents, Leslie Leroy Williams and Brenda Kathleen Williams, of the second part, the parties acknowledged that the “consideration price of the said properties, together with legal fees and disbursements in the total amount of \$29,224.25 was in fact the property of Williams.” The Trust Agreement further provided that “The said Hames hereby acknowledge and declare that they, their heirs, executors, administrators, and assigns will at any time hereafter upon the request, and at the cost of the said Williams, their heirs, executors, administrators, and assigns, convey the said real properties unto Williams, their heirs, executors, administrators, and assigns by a Deed of Conveyance.”

AND WHEREAS, at no time have Leslie Leroy Williams or Brenda Kathleen Williams been residents of Prince Edward Island for the purposes of the *Act*;

AND WHEREAS, by virtue of the Trust Agreement dated June 13, 1997, Leslie Leroy Williams and Brenda Kathleen Williams acquired an interest in the Properties. No application for Executive Council approval authorizing the acquisition of an interest in lands on Prince Edward Island was made by Leslie Leroy Williams and/or Brenda Kathleen Williams pursuant to Section 4 of the *Act*;

AND WHEREAS, Lance Hames and Patricia Hames caused to be registered a Notice of Termination of Identification Agreement dated June 25, 1997, registered July 23, 1997 in the Kings County Registry Office in Book 357, Page 15, as Document 1362;

AND WHEREAS, by Notice of Application to the Supreme Court of Prince Edward Island dated December 12, 2008, Patricia Lannon (aka Patricia Hames), Leslie Leroy Williams, and Brenda Kathleen Williams sought an Order for various relief, including the appointment of Patricia Lannon as sole trustee pursuant to the Trust Agreement; a Vesting Order pursuant to the *Trustee Act* vesting title to Provincial Parcels 251231 and 846352 in the name of Patricia Lannon as Trustee, in trust for Leslie Leroy Williams and Brenda Kathleen Williams; and a Vesting Order approving the transfer of the said lands from Trustee, Patricia Lannon, to Leslie Leroy Williams and Brenda Kathleen Williams.

AND WHEREAS, the Notice of Application dated December 12, 2008 provides as follows at Ground 4: “Despite the fact that the Trust Agreement does not explicitly state that the Properties are being held in trust for the Beneficiaries, each of the Trustees and each of the Beneficiaries verbally acknowledge that at the time the Trust Agreement was signed the intent of the Trust Agreement was that the Properties would be held in trust for the Beneficiaries.”

AND WHEREAS, the Notice of Application further provided at Ground 6 that “the Beneficiaries have been paying the real property taxes on the Properties.”

AND WHEREAS, the Notice of Application dated December 12, 2008 was supported by the sworn Affidavits of Patricia Lannon and Brenda Kathleen Williams and Leslie Leroy Williams;

AND WHEREAS, by Amended Order dated March 5, 2009, Justice Kenneth R. MacDonald ordered that title to the Properties be vested in Patricia Lannon as Trustee, and ordered that the Properties be conveyed and transferred to the Respondents, Leslie Leroy Williams and Brenda Kathleen Williams;

AND WHEREAS, the matter of Executive Council approval and an Application pursuant to Section 4 of the *Act* in respect of the acquisition of the Properties by Leslie Leroy Williams and Brenda Kathleen Williams was not raised at the hearing of the Application, nor do those matters appear to have been considered by Justice MacDonald;

AND WHEREAS, by Application on Form 1, received by the Island Regulatory and Appeals Commission on February 24, 2009, Leslie Leroy Williams and Brenda Kathleen Williams sought approval to acquire the Properties, and paid the requisite \$500 fee;

AND WHEREAS, the Investigator's report, as prepared by M. Jane Ralling, Q.C., was submitted to the Island Regulatory and Appeals Commission on May 26, 2009, and a copy was provided to Mr. and Mrs. Williams;

AND WHEREAS, Mr. and Mrs. Williams presented written submissions in response to the Investigator's report, by facsimile dated June 17, 2009, and received by the Island Regulatory and Appeals Commission on June 18, 2009;

AND WHEREAS, the Commission has considered the Investigator's Report, the Respondent's submission thereto, the Agreed Statement of Facts between the Respondent and Special Counsel and other relevant material before it;

THE COMMISSION HEREBY FINDS that the Respondents contravened the Act when they acquired an interest, pursuant to the Trust Agreement dated June 13, 1997, in Parcel PID #251231 and No. 846352 without approval of the Lieutenant Governor in Council, while they were non-residents of the Province as defined by subsection 1.(1)(k) of the Act.

THE COMMISSION HEREBY IMPOSES, pursuant to clause 15.1(1)(a) of the Act, a penalty in the form of \$6,000.00 for the aforementioned contravention of the Act — to be reduced to \$5,000.00 in light of the cooperation afforded by the respondents and their counsel throughout the Investigation;

THE COMMISSION HEREBY FIXES January 29, 2010 as the date by which the Respondent must pay the \$5,000.00 penalty;

DATED at Charlottetown, Prince Edward Island, this 11th day of January, 2010.

BY THE COMMISSION:

(Sgd.) John Broderick
John Broderick, Commissioner

(Sgd.) David Holmes
David Holmes, Commissioner

(Sgd.) Anne Petley
Anne Petley, Commissioner

TAKE NOTICE that pursuant to sub-section 15.1(3): If any person or corporation fails to pay any penalty imposed by the Commission within the time fixed by the Commission for the payment of the penalty, the Commission may make application, without notice to the person or corporation, to a judge of the Supreme Court for an order that judgment for the amount of the penalty or any unpaid portion of the penalty may be entered in the court against the person or corporation.

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.

IRAC140B(2005/1)