



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket TLF09101  
Order TLF10-001**

**IN THE MATTER** of alleged violations  
of the Prince Edward Island Lands Protection  
Act by Melvin C. Griffin and Sylvia J. Griffin.

**BEFORE THE COMMISSION**  
on Thursday, the 18th day of February, 2010.

Maurice Rodgerson, Chair  
Chester MacNeill, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse  
\_\_\_\_\_  
Appeals Administrator

**IN THE MATTER** of alleged violations  
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# Appearances & Witnesses

1. **Special Counsel:**  
**Pamela J. Williams**
  
2. **For the Respondents Melvin C. Griffin and Sylvia J. Griffin:**  
**Melvin C. Griffin**  
**Sylvia J. Griffin**
  
3. **Counsel for the Review Panel:**  
**Paul D. Michael, Q.C.**

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# Reasons for Order

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## 1. Introduction

[1] This is a decision of a Review Panel of the Island Regulatory and Appeals Commission ("Commission") pertaining to Melvin C. Griffin and Sylvia J. Griffin (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 November 9, 2007, the Commission issued a Notice of Investigation for the purpose of determining whether the Respondents may have contravened the **Act**. On November 14, 2007 the Commission appointed E. W. Scott Dickieson as the Investigation Officer and Pamela J. Williams as Special Counsel in this matter.

[4] On July 25, 2008 the Investigation Officer filed his report with the Commission.

[5] On September 8, 2008 the Respondents filed a response to the Investigation Officer's report.

[6] On January 20, 2009, the Commission issued Order LF09-001 ordering the Respondents to provide the information and documents described in said Order to the Commission on or before 5:00 p.m. January 30, 2009.

[7] On February 5, 2009, the Commission issued Order LF09-003 and found the Respondents, pursuant to Section 15.1(f) of the **Act**, to have contravened the **Act** by failing to comply with the demands of Order LF09-001. The Commission also imposed a penalty the terms of which were set out in detail in Order LF09-003.

[8] On June 3, 2009 the Commission appointed a Review Panel pursuant to subsection 9(2) of Commission Rule 98-1.

[9] On July 10, 2009, the Supreme Court of Prince Edward Island granted the application of the Commission enabling it to enter into judgment against the Respondents in the amount of \$28,800 being the penalty outstanding from Order LF09-003 as of June 17, 2009. The Minute of Judgment was registered on July 29, 2009.

[10] On September 8, 2009, the Review Panel set the matter down for a public hearing on November 12, 2009.

[11] On the morning of November 12, 2009, Special Counsel and the Respondents filed an Agreed Statement of Facts.

[12] On the afternoon of November 12, 2009, a public hearing was held before the Review Panel. Melvin C. Griffin participated via telephone. Special Counsel formally presented the Agreed Statement of Facts to the Review Panel. Mr. Griffin consented to allowing the Agreed Statement of Facts to be entered into evidence. The Review Panel established a deadline of December 11, 2009 for the filing of written submissions on the issue of penalty.

[13] On December 11, 2009, Special Counsel requested a one week extension for filing the written submissions on the issue of penalty. The Review Panel granted that request.

[14] On December 18, 2009, Special Counsel and the Respondents filed separate written submissions on the issue of penalty.

## 2. Discussion

### Submissions of Special Counsel on the Issue of Penalty

[15] Special Counsel noted that the Respondents continue to be in breach of section 4 of the **Act**. Special Counsel noted that the Respondents were not forthcoming with their responses to requests for information, misrepresented information and provided an inaccurate response. The Respondents' requests for extensions and delayed responses were not made in good faith. Special Counsel submitted that the Respondents' actions, which continued after the Notice of Investigation was issued, results in a serious breach which ought to attract the maximum fine under section 15.1 of the **Act**. However, as a mitigating factor, Special Counsel noted that the Respondent did ultimately cooperate with an agreed Statement of Facts on November 12, 2009 and therefore the following submissions are offered on the issue of an appropriate penalty for this matter:

- A fine of \$9,000 as against the Respondents with respect to the contravention under s. 4 of the **Act**, payable within thirty days from the rendering of the penalty, at which time if not paid a judgment shall be registered with the Supreme Court of Prince Edward Island;
- The Respondents are to make an application for approval in their own names and/or in another appropriate entity as non-residents acquiring an interest to occupy, use or possess parcel number 141168 with said lands being in excess of permitted acreage to be held by a non-resident, within thirty days from the rendering of the penalty; and

- The daily accrual of \$200 in relation to the non-production order penalty to be stayed effective the date of judgment at \$28,800.

### Submissions of the Respondents on the Issue of Penalty

[16] The Respondents acknowledge that they are in contravention of section 4 of the **Act**. However, they submit that they did not knowingly contravene the **Act**. They submit that they relied on the advice of various professionals throughout the course of the transaction. They submit that they complied with the “Order to Produce Documents” as Marlin Property Development Inc. was referred to as Marlin Properties Inc. in the Order. They also distinguish the loan agreement from the development agreement and confirm there was no written loan agreement. They submit that the “significant media coverage of the original hearing caused humiliation and embarrassment which should be considered in rendering the penalty”. The Respondent offered the following submissions on the issue of an appropriate penalty for this matter:

- A fine of \$5,000 against the Respondents with respect to the contravention of section 4 of the **Act**;
- The judgment of \$28,800 with respect to the “Order to Produce” be reduced to \$3,000 “to recognize the misunderstanding”; and
- The Respondents are to make an application for approval in their own names and/or in another appropriate entity as non-residents acquiring an interest to occupy, use or possess parcel number 141168 with said lands being in excess of permitted acreage to be held by a non-resident, within ninety days from the rendering of the penalty.

## 3. Findings

[17] The Review Panel has considered all the documentation on file as well as the written submissions of Special Counsel and the Respondents with respect to the issue of penalty. From a review of the Agreed Statement of Facts, and the written submissions filed by the Respondents on the issue of penalty, it would appear that the Respondents have now conceded that they are in contravention of section 4 of the **Act**.

[18] Section 4 of the **Act** reads as follows:

*4. 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. 1982,c.16,s.4; 1988,c.37,s.1; 1995,c.22,s.2,16 {eff.} Jan. 1/96.*

[19] Land holding is defined in the **Act** as:

*1(1)(g) "land holding" means, subject to subsection (3), an interest conferring the right to use, possession or occupation of land, but does not include land or an interest in land acquired by a bank, trust company or other financial institution in the ordinary course of its business by way of security for a debt or other obligation;*

[20] A resident person is defined in the **Act** as:

*1(1)(k) "resident person" means a person who resides in the province for one hundred and eighty-three days or more a year;*

[21] The Review Panel finds that the Respondents were non-residents and remain non-residents. The Respondents had applied to purchase the lands in question on November 7, 2003 but their application was denied by Order EC 2003-689 dated December 2, 2003. The Review Panel finds that an arrangement was then contrived whereby Blair Smith, a resident, would take legal title to the lands in question but the Respondents would maintain the actual right to use or possession of the property. The Respondents then, for all practical purposes, acted as the developer of the property with the assistance of a power of attorney granted to them by Mr. Smith on July 30, 2004. Using the power of attorney, the Respondents then conveyed subdivided lots from the property to third party purchasers. The Review Panel finds that the evidence is sufficient, on the civil standard of a balance of probabilities, to find that the Respondents possessed an interest in the subject property conferring the rights to the use and possession of said property.

[22] Given the evidence on file and the Agreed Statement of Facts, the Review Panel finds that the Respondents have been in contravention of section 4 of the **Act** since December 2003.

[23] In considering what, if any monetary penalty to impose, the Review Panel has carefully examined the **Act**, and in particular the following provisions:

*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.*

...

*12. (1) Where he has reasonable and probable grounds to believe that any person or corporation has contravened section 2, 4, 5, 5.3, 6.1, or 6.2 of this Act, the Minister may issue an order requiring that person or corporation*  
*(a) to reduce his aggregate land holding to the maximum permitted by section 2;*  
*(b) to make application for and obtain any permit required by section 4 or section 5; or*

(c) *repealed by 1998,c.79,s.12.*

(2) *Where any person or corporation fails to comply with an order of the Minister under subsection (1) within three months of the date on which the order is served, the Minister may apply to a judge of the Supreme Court, who shall enforce compliance with this **Act** and may make one or more of the following orders:*

(a) *an order declaring null and void any instrument or document by which a land holding is or may be had in contravention of this **Act**;*

(b) *an order for the sale of the land holding held in contravention of this **Act** and the distribution of the proceeds from the sale to such persons as may be entitled thereto;*

(c) *an order directing the registrar to cancel the registration of a deed of conveyance or other document registered under the **Registry Act** R.S.P.E.I. 1988, Cap. R-10;*

(d) *an order to return any consideration given under an instrument or a document made in contravention of this **Act**;*

(e) *an order for possession of the land holding to be given to such persons as may be entitled thereto;*

(e.1) *an order declaring null and void a permit issued pursuant to subsection 6.1(2);*

(f) *an order respecting costs;*

(g) *such other order as may be necessary to give effect to the provisions of this **Act** or as to him seems just. 1982,c.16,s.13; 1995,c.22,s.16; 1998,c.79,s.12.*

...

15. (1) *The Minister, the Commission or any person authorized by the Minister may request information and conduct an investigation for the purpose of determining whether a person or corporation has contravened this **Act** or the regulations.*

...

15.1 (1) *Notwithstanding any other provision of the **Act**, a person or corporation that*

(a) *has contravened section 2, 4, 5, 5.3, 6.1 or 6.2 ;*

(b) *fails to comply with a divestiture schedule or any other condition of a permit issued pursuant to section 6.1;*

(c) *fails to make a land holding disclosure statement when requested to do so under subsection 10(1);*

(d) *fails to file a disclosure statement pursuant to subsection 10(2);*

(e) *fails to comply with a demand under subsection 15(2);*

(f) *fails, neglects, omits or refuses to do any act or thing required of that person or corporation by this **Act**, the regulations, any order of the Commission or any order of the Minister; or*



*(g) violates this **Act**, the regulations, any order of the Commission or any order of the Minister*

*is liable to a penalty imposed by the Commission of not more than \$10,000.*

*(2) Each day during which a prohibited activity subject to a penalty pursuant to subsection (1) is continued gives rise to a separate liability to a penalty imposed by the Commission not exceeding \$500 for each day.*

...

[24] The Review Panel believes the Respondents' contravention of the **Act** is very serious and requires a penalty that reflects this fact. Special Counsel noted that the Respondents did co-operate by participating in an Agreed Statement of Facts. While the Review Panel agrees that this co-operation does serve to mitigate the penalty, the Review Panel finds that this last minute co-operation on 'the courthouse steps' will only reduce the penalty slightly. The Respondents claim they did not knowingly contravene the **Act**. However, the Review Panel notes that the Commission made inquiries regarding a possible contravention shortly after the property was sold in December 2003 and several times prior to issuing the Notice of Investigation. The Respondents should have known, or certainly as a result of the inquiries become aware, of the contravention at least five years prior to acknowledging the fact in the Agreed Statement of Facts.

[25] The Respondents claim that they complied with Order LF09-001 because Marlin Property Development Inc. was referred to as Marlin Properties Inc. in the Order. However, such a response to Order LF09-001 suggests to the Review Panel an attempt to avoid full disclosure rather than an effort to co-operate and comply.

[26] In the Review Panel's view, the Respondents' arguments do not serve to justify the significant reduction in penalty suggested by the Respondents.

[27] The Review Panel finds that it does not have the jurisdiction to reduce a judgment ordered by the Supreme Court of Prince Edward Island.

[28] Accordingly, the Review Panel imposes the following:

- For the violation of section 4 of the **Act**, the Review Panel hereby imposes a penalty of \$9,000, payable to The Island Regulatory and Appeals Commission on or before March 31, 2010.
- The Respondents are to make an application for approval in their own names and/or in another appropriate entity as non-residents acquiring an interest to occupy, use or possess parcel number 141168 with said lands being in excess of permitted acreage to be held by a non-resident, said application to be filed not later than March 31, 2010.
- With respect to the Supreme Court judgment, the daily accrual of \$200 in relation to the penalty set out in Order LF09-003 shall be stayed, effective the date of judgment at \$28,800.

## 4. Disposition

[29] An Order setting out the penalties imposed by the Review Panel will therefore issue.

**IN THE MATTER** of alleged violations  
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# Order

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**WHEREAS** an investigation occurred into alleged violations of the Respondents, Melvin C. Griffin and Sylvia J. Griffin, as authorized under section 15 of the *Prince Edward Island Lands Protection Act*,

**AND WHEREAS** a Review Panel of the Island Regulatory and Appeals Commission considered the matter at a public hearing conducted in Charlottetown on November 12, 2009;

**AND WHEREAS** the Review Panel has found that the Respondents have contravened the *Prince Edward Island Lands Protection Act* and 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. For the violation of section 4 of the Prince Edward Island Lands Protection Act, the Review Panel hereby imposes a penalty of \$9,000 payable to the Island Regulatory and Appeals Commission on or before March 31, 2010.
2. The Respondents are to make an application for approval in their own names and/or in another appropriate entity as non-residents acquiring an interest to occupy, use or possess parcel number 141168 with said lands being in excess of permitted acreage to be held by a non-resident, said application to be filed not later than March 31, 2010.
3. With respect to the Supreme Court judgment, the daily accrual of \$200 in relation to the penalty set out in Order LF09-003 shall be stayed, effective the date of judgment at \$28,800.

**DATED** at Charlottetown, Prince Edward Island, this 18th day of February, 2010.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

\_\_\_\_\_  
(Sgd.) *Chester MacNeill*

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 Court of Appeal upon a question of law or jurisdiction.*

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

**NOTICE: IRAC File Retention**

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)