



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

**Docket LP12-110
Order LP12-009**

IN THE MATTER of an alleged
contravention of subsection 5.(1) of the
Prince Edward Island Lands Protection Act
by Brookfield Gardens Inc. and Red Soil
Organics

BEFORE THE COMMISSION
On Wednesday, the 19th day of November, 2012

Allan Rankin, Vice-Chair
John Broderick, Commissioner
Jean Tingley, Commissioner

Order

IN THE MATTER of an alleged contravention of subsection 5.(1) of the Prince Edward Island Lands Protection Act (the Act) by Brookfield Gardens Inc. and Red Soil Organics (the deemed Corporation).

Order

WHEREAS subsection 5.(1) of the Act reads as follows:

A corporation 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 it first receives permission to do so from the Lieutenant Governor in Council.

AND WHEREAS subsection 5.3(1) of the Act reads as follows:

(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.

AND WHEREAS in accordance with clause 1(1)(d) of the Act, Brookfield Gardens Inc. and Red Soil Organics are deemed to be one corporation because they are controlled by the same group;

AND WHEREAS, on March 26, 2012, Brookfield Gardens Inc. of North Wiltshire, Queens County filed an application with the Commission to obtain approval to hold 900.00 acres of land, by way of lease, pursuant to section 5.3 of the Act;

AND WHEREAS the application reported that Brookfield Gardens Inc. was presently leasing in 214.00 acres; however, there was no record of the Corporation making application to Executive Council for approval pursuant to the Act to lease such land;

AND WHEREAS, on March 26, 2012, Red Soil Organics of North Wiltshire, Queens County filed an application with the Commission to obtain approval to hold 438.00 acres of land, by way of lease, pursuant to section 5.3 of the Act;

AND WHEREAS the application reported that Red Soil Organics was presently leasing in 140.00 acres; however, there was no record of the Corporation making application to Executive Council for approval pursuant to the Act to lease such land;

AND WHEREAS, on May 29, 2012, Executive Council approved the application for Brookfield Gardens Inc. to lease up to 900.00 acres of land (Executive Council Order No. EC2012-301 and the application for Red Soil Organics to lease up to 214.00 acres of land (Executive Council Order No. EC2012-302);

AND WHEREAS, by Notice of Intention dated September 28, 2012, the deemed Corporation was advised of the apparent contravention and provided with an opportunity to respond;

AND WHEREAS the Commission received no further response from the deemed Corporation;

AND WHEREAS the Commission has fully considered the original application, the Notice of Intention and other relevant material before it;

THE COMMISSION HEREBY FINDS that the deemed Corporation has contravened the Act by leasing in land prior to receiving Executive Council approval pursuant to the Act;

THE COMMISSION HEREBY IMPOSES, pursuant to clause 15.1(1)(a) of the Act, a penalty in the amount of \$50.00 for the aforementioned contravention of the Act;

THE COMMISSION HEREBY FIXES January 4, 2013 as the date by which the Corporation must pay the \$50.00 penalty.

DATED at Charlottetown, Prince Edward Island, this 19th day of November, 2012.

BY THE COMMISSION:

Allan Rankin, Vice- Chair

John Broderick, Commissioner

Jean Tingley, Commissioner

TAKE NOTICE that any person or corporation that has contravened section 2, 4, 5, 5.3, 6.1 or 6.2 is liable to a penalty, pursuant to subsection 15.1(1) of the Act, of not more than \$10,000;

Subsection 15.1(3) reads as follows:

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 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.