



**Docket LP12-112  
Order LP12-011**

**IN THE MATTER** of an alleged  
contravention of subsection 5.(1) of the  
Prince Edward Island Lands Protection Act  
by Fulton Hamill Ltd.

**BEFORE THE COMMISSION**

On Monday, the 19th day of November, 2012

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

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# Order

**IN THE MATTER** of an alleged  
contravention of subsection 5.(1) of the Prince  
Edward Island Lands Protection Act (the Act)  
by Fulton Hamill Ltd. (the Corporation)

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# Order

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**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**, on April 19, 2012, the Corporation of Albany, Prince County filed an amendment application with the Commission to subdivide a portion of parcel #212191;

**AND WHEREAS**, by email dated April 26, 2012, the Commission advised the Corporation that Executive Council had previously approved an amendment application to allow subdivision of a parcel of land of approximately 0.5 acres from parcel #212191, subject to the subdivided parcel being consolidated with the adjacent parcel #568410 (Executive Council Order No. EC2009-324);

**AND WHEREAS** the Commission advised the Corporation that it appeared the 0.5 acre lot had been subdivided, however the consolidation with the adjacent parcel had not occurred, as required in the Executive Council Order;

**AND WHEREAS**, on June 20, 2012, by way of deed, the Corporation's legal counsel conveyed parcel #568410 from the current owner to the Corporation. Parcel #568410 and the 0.5 acre subdivided portion of parcel #212191 were then consolidated and conveyed back to the original owners of parcel #568410;

**AND WHEREAS**, by email dated June 28, 2012, the Commission advised the Corporation and the Corporation's legal counsel that a retroactive application would be required for approval of Executive Council, pursuant to Section 5 of the Act, for the acquisition of parcel #568410 which the Corporation acquired by deed on June 20, 2012;

**AND WHEREAS**, on July 6, 2012, the Corporation filed a retroactive application with the Commission to acquire approximately 0.49 acres of parcel #568410 by way of transfer;

**AND WHEREAS** Executive Council subsequently approved the acquisition on July 31, 2012 (Executive Council Order No. EC2012-431);

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

**AND WHEREAS**, on October 24, 2012, the Commission received a response to the Notice of Intention from the Corporation's legal counsel;

**AND WHEREAS** the Commission has fully considered the original application, the Notice of Intention, the Corporation's legal counsel's response to the Notice of Intention and other relevant material before it;

**THE COMMISSION HEREBY FINDS** that the Corporation contravened the Act when it acquired approximately 0.5 acres of parcel #568410 prior to receiving approval pursuant to the Act to acquire such land;

**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:**

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**Allan Rankin, Vice Chair**

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**John Broderick, Commissioner**

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**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.