



**Docket LP12-113  
Order LP12-012**

**IN THE MATTER** of an alleged  
contravention of subsection 5.(1) of the  
Prince Edward Island Lands Protection Act  
by D.S. Ellis Inc.

**BEFORE THE COMMISSION**  
On Monday, 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 D.S. Ellis Inc. (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 May 24, 2012, the Corporation of O’Leary, Prince County, filed a Notice of Termination with the Commission. The Notice of Termination included a deed, dated April 23, 2008, which stated that the Corporation had acquired parcel #58206 by way of transfer;

**AND WHEREAS**, by email dated May 28, 2012, the Commission advised the Corporation’s legal counsel that it appeared that the Corporation had acquired the parcel in 2008 prior to making application to Executive Council for approval pursuant to the Act to acquire such land;

**AND WHEREAS**, on June 8, 2012, the Corporation’s legal counsel filed a retroactive application to acquire, by way of transfer, parcel #58206;

**AND WHEREAS** Executive Council subsequently approved the acquisition on June 26, 2012 (Executive Council Order No. EC2012-359);

**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 current legal counsel;

**AND WHEREAS**, on October 24, 2012, the Commission received a response to the Notice of Intention from the Corporation's legal counsel at the time of acquisition of parcel #58206 in 2008;

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

**THE COMMISSION HEREBY FINDS** that the Corporation contravened the Act when it acquired parcel #58206 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.