



Docket **LP13-107**
Order **LP13-006**

IN THE MATTER of an
alleged contravention of sub-section 5(1) of the
Prince Edward Island Lands Protection Act

**BEFORE THE
COMMISSION**

On Friday, the 20th day of September, 2013

John Broderick, Acting Vice-Chair
Mike Campbell, Commissioner
Peter McCloskey, Commissioner

Order

IN THE MATTER of an
alleged contravention of sub-section 5(1) of the
Prince Edward Island Lands Protection Act (the **Act**)

Order

WHEREAS, pursuant to sub-section 5(1) of the **Act**,

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, on September 14, 2012, Marvyn's Garden Inc. (the Corporation) filed an application with the Commission to obtain approval to hold 1,000.00 acres of land by way of lease, pursuant to section 5.3 of the **Act**. The application reported that the Corporation was currently leasing in 757.60 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 the application was subsequently approved by Executive Council on January 15, 2013 (Executive Council Order No. EC2013-37);

AND WHEREAS, by Notice of Intention dated July 26, 2013, the Corporation was advised of the apparent contravention and provided with an opportunity to respond;

AND WHEREAS the Commission received a response to the Notice of Intention from the applicant Corporation, dated August 5, 2013;

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

THE COMMISSION HEREBY FINDS that the Corporation has contravened the **Act** when it acquired an interest in 757.60 acres by way of lease, without approval of the Lieutenant Governor in Council;

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

THE COMMISSION HEREBY FIXES October 18, 2013 as the date by which the Corporation must pay the \$50.00 penalty;

DATED at Charlottetown, Prince Edward Island, this 20th day of September, 2013.

BY THE COMMISSION:

John Broderick, Acting Vice-Chair

Mike Campbell, Commissioner

Peter McCloskey, 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;

Pursuant to Subsection 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.