



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LT11006  
Order LT12-01**

**IN THE MATTER** of an appeal by  
Natalie MacKinnon of a decision of the  
Minister of Finance, Energy and Municipal  
Affairs regarding the 2011 assessment of  
Provincial Property Number 478719 located  
in Mermaid.

**BEFORE THE COMMISSION**  
on Thursday, the 19th day of January, 2012.

Allan Rankin, Vice-Chair  
Ferne MacPhail, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

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Appeals Administrator  
Land, Corporate and Appellate Services Division

**IN THE MATTER** of an appeal by  
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**IN THE MATTER** of an appeal by Natalie MacKinnon of a decision of the Minister of Finance, Energy and Municipal Affairs regarding the 2011 assessment of Provincial Property Number 478719 located in Mermaid.

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# Appearances & Witnesses

1. For the Appellant Natalie MacKinnon

Natalie MacKinnon  
Ivan Trainor

2. For the Respondent Minister of Finance, Energy and Municipal Affairs

Paul J. Olscamp

**IN THE MATTER** of an appeal by Natalie MacKinnon of a decision of the Minister of Finance, Energy and Municipal Affairs regarding the 2011 assessment of Provincial Property Number 478719 located in Mermaid.

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# Reasons for Order

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## 1. Introduction

[1] This is an appeal under the *Real Property Assessment Act*, R.S.P.E.I. 1988, Cap. R-4 (the *Act*), by Natalie MacKinnon (Ms. MacKinnon) of the decision of the Respondent Minister of Finance, Energy and Municipal Affairs (the Minister) with respect to the 2011 assessment of Provincial Property Number 478719 located in Mermaid (the subject property).

[2] On September 8, 2011, the Commission received a Notice of Appeal from Ms. MacKinnon. Following the filing of this appeal, the Minister further reviewed the matter and revised the appealed assessment valuation to \$143,000, retroactive to January 1, 2009.

[3] On December 14, 2011, the Commission heard the appeal. Ms. MacKinnon and her spouse, Ivan Trainor, were present. Paul J. Olscamp, Manager, Real Property Services, was present on behalf of the Minister.

## 2. Discussion & Findings

### **Ms. MacKinnon's Position**

[4] Ms. MacKinnon submitted that her property taxes have been too high for many years, perhaps going back to 2004. She submitted that she would have appealed earlier, but there was some past confusion as to whether the taxes were included in the mortgage payments. She submitted that she had visited the Minister's staff in person on or about 2008, orally advised staff that the taxes were too high, and was informed by staff that they would "look into it".

[5] In May 2011 the property was assessed at \$185,100 and she made another inquiry in June 2011, which was recorded by the Minister's staff (Exhibit E-4). She noted that the Minister had sent an appraiser out to view the property and as a result, the assessment was reduced to \$146,900. That assessment was confirmed on a referral and she then filed an appeal with the Commission, noting that an independent appraiser had valued the property at \$143,000 in August 2011.

### The Minister's Position

[6] Mr. Olscamp noted that the Minister has no record of an inquiry having been made prior to the spring of 2011. In the spring of 2011, Ms. MacKinnon made a counter inquiry and an Assessment Inquiry form was filled out and stamped June 16, 2011 (Exhibit E-4). As this inquiry was filed within the time limit for filing a referral, the Minister treated it as a referral without the need for Ms. MacKinnon to formally fill out a referral form. As a result of this process, the assessment of \$185,100 was reduced to \$146,900 and this figure was confirmed in the August 25, 2011 Referral Disposition of Assessment (Exhibit E-2). Following the filing of the appeal, the Minister's staff reviewed the matter and sought a copy of the independent appraiser's report. In the absence of a copy of the report, the Minister's staff spoke with the independent appraiser who confirmed that he had appraised the property for \$143,000. Based on this information, the Minister revised the assessment to \$143,000 as sought in the Notice of Appeal.

[7] Mr. Olscamp submits that the sole remaining issue is the issue of retroactivity. He noted that in his letter of November 24, 2011 (Exhibit E-3), the assessment of the property was revised to \$143,000 retroactive to January 1, 2009. He submitted that given that there is no record of an inquiry, a referral or an appeal prior to 2011, any retroactivity earlier than January 1, 2009 is not permitted pursuant to section 19 of the **Act** and section 4 of the Real Property Assessment Act Regulations (the Regulations).

### The Commission's Findings

[8] After giving careful and full consideration to the evidence presented in this appeal, and upon a review of the applicable law, it is the decision of the Commission to confirm the Minister's re-assessment made following the filing of the appeal, namely an assessment valuation of \$143,000 retroactive to January 1, 2009, and in all other respects deny the appeal.

[9] Section 19 of the **Act** reads as follows:

*19. If at any time prior to a date to be set by regulation, the Minister discovers that there is an error or omission in any part of the assessment roll, he shall correct the error or omission and alter the assessment roll accordingly, and upon so correcting or altering any assessment, he shall deliver or transmit to the person assessed an amended notice of assessment, and shall make the appropriate amendment to the assessment roll. R.S.P.E.I. 1974, Cap. R-5,s.17; 1987,c.60,s.2.*

[10] Section 4 of the Regulations reads as follows:

*4. For the purposes of section 19 of the Act, corrections to the assessment roll shall be made effective to January 1 of the year two years prior to the year in which the error or omission was discovered. (EC490/72; EC481/99)*

[11] The Commission notes that tax payers in the Province of Prince Edward Island have the right to seek a referral (in effect an internal review conducted by the Minister's staff) and then, if they are unsatisfied with the referral decision, they may appeal their property taxes to the Commission. However, the **Act** sets out a required process to be followed in order to pursue the right to referral and appeal. This is a formal, prescribed process and a mandatory step in order to exercise the right of appeal under the law.

[12] In the present appeal, Ms. MacKinnon or her spouse likely made an oral inquiry concerning their property taxes prior to the spring of 2011. Their oral evidence is that, as best they can recall, they made an oral inquiry in 2008. If there was a written record revealing such inquiry during that year and if the inquiry was documented within the deadline for the referral process, an argument could be made that the error should have been discovered at that time and retroactivity potentially could be extended as far back as January 1, 2006. However, unfortunately there is no written record of such inquiry. If a taxpayer does not agree with their property tax assessment it is essential that they express their concerns in writing as the **Act** requires both the referral and the appeal process to be pursued in writing. The annual Notice of Assessment sent out by the Minister to taxpayers provides information on pursuing the referral process and the Referral Disposition of Assessment includes information on pursuing the right to appeal and it also includes the Notice of Appeal form. The evidence before the Commission reveals that the error was not discovered by the Minister until 2011, swift action was then taken to reduce the assessment and the **Act** and Regulations permitted retroactivity to January 1, 2009. Neither the Minister nor the Commission has the legal authority to provide any further retroactivity that that set out in the **Act** and the Regulations.

[13] For the above reasons, other than confirming the November 24, 2011 revisions made by the Minister, the Commission denies this appeal.

### 3. Disposition

[14] An Order confirming the Minister's November 24, 2011 revisions and in all other respects denying the appeal will therefore issue.

**IN THE MATTER** of an appeal by Natalie MacKinnon of a decision of the Minister of Finance, Energy and Municipal Affairs regarding the 2011 assessment of Provincial Property Number 478719 located in Mermaid.

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# Order

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**WHEREAS** the Appellant Natalie MacKinnon has appealed the decision of the Minister of Finance, Energy and Municipal Affairs regarding the 2011 assessment of Provincial Property Number 478719 located in Mermaid;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on December 14, 2011 after suitable scheduling for the parties;

**AND WHEREAS** the Commission 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 *Real Property Assessment Act*,

## IT IS ORDERED THAT

1. The Minister's November 24, 2011 revision of the assessment valuation of parcel number 478719 to \$143,000, retroactive to January 1, 2009, is hereby confirmed.
2. In all other respects, the appeal is hereby denied.

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

**BY THE COMMISSION:**

(Sgd.) *Allan Rankin*  
Allan Rankin, Vice-Chair

(Sgd.) *Ferne MacPhail*  
Ferne MacPhail, Commissioner

(Sgd.) *Jean Tingley*  
Jean Tingley, 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 33 and 34 of the *Real Property Assessment Act* provide as follows:

33. *Notwithstanding anything in any public or private Act, an appeal lies to the Supreme Court of the province from any order, decision, or award of the Commission, if notice of the appeal is given the other parties within forty-five days after the making of the order, or decisions sought to be appealed from.*

34. *The rules and practices of the Supreme Court respecting appeals apply with the necessary changes to any appeal.*

**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.

IRAC142A(2009/11)