

Via email: jclements@irac.pe.ca

June 5, 2018

File No.: 22563-001dk

Island Regulatory and Appeals Commission
National Bank Tower, 5th Floor
134 Kent Street
Charlottetown, PE C1A 8R8.

**Attention: Jonah Clements,
General Counsel and Director of Land**

Dear Mr. Clements: 

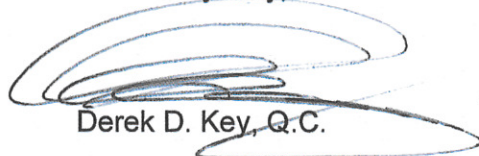
Re: Three Rivers Annexation / Mediation

Further to our discussion in late May, I can confirm that we met with our clients today and are interested in learning more about how you propose to address the upcoming Three Rivers mediation in light of the Minister's comments in the Legislature.

Our client agreed to assist IRAC in determining a mailing address for each individual who filed an objection to the proposal. We ask that you provide us with a list of names of all those who filed objections so that we may provide that assistance to you.

We look forward to receiving the list of objectors as well as your proposal for including unincorporated areas in the mediation process. I remain,

Yours very truly,



Derek D. Key, Q.C.

DDK/imm



Via email: jclements@irac.pe.ca

July 10, 2018

File No.: 22563-001dk

Island Regulatory and Appeals Commission
National Bank Tower, 5th Floor
134 Kent Street
Charlottetown, PE C1A 8R8.

**Attention: Jonah Clements,
General Counsel and Director of Land**

Dear Mr. Clements:

Re: Three Rivers Annexation / Mediation

Further to our recent telephone discussion with respect to the creation of a new municipality initiated by some of the municipalities in the Three Rivers area, I have been authorized to reply as follows:

As counsel for the Rural Coalition of P.E.I. I had been instructed to canvass the *Municipal Government Act* to make a determination as to the rights of residents not located within an incorporated municipality, but who are directly affected by the proposed amalgamation/annexation.

As we have discussed, the appointment of a mediator in that circumstance where one or more municipalities objects to the proposal necessarily triggers a series of steps where input is limited to the incorporated municipalities. This process specifically excludes all of those residents who reside in unincorporated areas within the affected parameters. As you can appreciate, the Rural Coalition views this as highly discriminatory insofar as it treats one class of Islanders entirely different from another class of Islanders, providing one with a voice in the established statutory process, and one with no voice whatsoever.

In that circumstance where the mediator cannot resolve the objections as raised by August 21, 2018 then I understand by virtue of S. 17(12) of the Act the Minister will hold a public hearing.

While comforted by the Minister's assurance that a public hearing will be held even if the incorporated municipalities resolve their objections, the authority of that public hearing is somewhat in doubt, and does nothing to address the inequity of lack of meaningful participation in the mediation. In light of your invitation to make an Application for Intervention, we have considered the overall authority of the Island Regulatory and Appeals Commission to allow interventions while being cognizant of the restrictive provisions set out within the *Municipal Government Act*.

Given these concerns, are you in a position to provide assurance to the Rural Coalition that an intervenor in a matter undertaken within the authority of the *Municipal Government Act* will have the same status, standing and authority with all of the inherent rights attached thereto, as an incorporated municipality as contemplated under S. 17 of the Act?

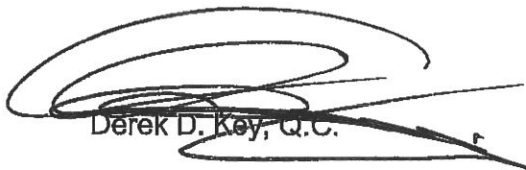
While the Rural Coalition is anxious to have its views heard by the Commission, it is sensitive to the reality that S. 7 and 15 of the Charter of Rights and Freedoms offer perhaps a clearer route to an establishment – without equivocation – of the rights and freedoms as guaranteed by the Charter.

Because we are reasonably satisfied that you cannot provide the assurances requested, it would be our position that S. 17(6) of the Act is unconstitutional and of no force and effect under S. 52 of the *Constitution Act*. While the Commission may give an opportunity for participation as intervenors in this matter, the Commission does not have the authority to override the specific provisions of the Legislation that was only recently passed in the Legislature. As such, without the assurances as requested, Islanders residing in unincorporated communities will have to rely upon the commitment of the Minister, that there will be a public hearing so that those who have filed objections as individuals, can be appropriately heard.

Given the clear deficiencies within the *Municipal Government Act*, coupled with the decision of the Minister to ignore the vote already taken in the area, perhaps it would be appropriate for IRAC to consider if it is within its mandate to propose that the Government direct Elections PEI to hold a vote on the issue so that residents of the area would truly have an opportunity – in the most effective way possible – to express their point of view as regards the proposal as filed. An initiative along this direction would provide great service to the people of the affected areas.

Thank you for your consideration. I remain,

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Derek D. Key', with a large, sweeping flourish extending to the right.

DDK/akm

c.c.: Rural Coalition of PEI



Jonah R.K. Clements.
General Counsel
Direct Line: 902.368.7851
Email: jclements@irac.pe.ca

July 17, 2018

Derek D. Key, Q.C.
Key Murray Law
494 Granville Street, P.O. Box 1570
Summerside, PE C1N 4K4

Dear Mr. Key:

Re: Three Rivers Amalgamation Proposal

Thank you for your letter dated July 10, 2018 and for participating in our telephone conversation on June 26, 2018. You will recall that, on June 26, 2018, I asked you to provide the following information to the Island Regulatory and Appeals Commission ("Commission"):

- (1) the identity of your client(s);
- (2) a description of how your client(s) is/are affected by the proposal;
- (3) the position of your client(s) on the proposal; and
- (4) a submission regarding the subject of standing for participation by your client(s).

Unfortunately, your letter dated July 10, 2018 did not clarify these subjects. The nature of your representation and the desire of your client(s) to participate in the process remain unclear to the Commission. By way of example, what is the Rural Coalition of P.E.I., who are the members, shareholders, directors, and/or officers of the Rural Coalition of P.E.I. and where do they live, how is the Rural Coalition of P.E.I. affected by the proposal, and what is the position of the Rural Coalition of P.E.I. in relation to the proposal. If the Rural Coalition of P.E.I. wishes to participate in the process, the Commission invites this information and a submission on the subject of standing and/or intervention.

As I indicated previously, the Commission cannot make any decision on standing or intervention until the Commission receives a request from your client(s) and the necessary underlying information. You may find the objections filed by Georgetown and Montague – both of which are available on our website – to be helpful precedents. As an advisor to the Minister in this

process, the Commission welcomes input from members of the public, including those forming part of the Rural Coalition of P.E.I.

It also appears from your letter that the Rural Coalition of P.E.I. believes s. 17(6) of the *Municipal Government Act* violates ss. 7 and 15 of the *Charter* and is therefore unconstitutional. As you know, legislation is presumed to be constitutional until demonstrated otherwise. To date, the Commission is not aware of any successful challenge to the constitutionality of the *Municipal Government Act*. However, given that the Commission will be providing advice to the Minister in relation to this proposal, the Commission is interested in your views on this subject. If you do decide to seek standing and intervene in this process, the Commission invites you and the Rural Coalition of P.E.I. to also clarify the following as part of your submissions:

- (5) how is life, liberty and security of the person engaged for your client(s) under s. 7 of the *Charter*?
- (6) what enumerated or analogous ground(s) of discrimination is/are engaged under s. 15 of the *Charter*?
- (7) what bases, if any, exist for justification by the Government under s. 1 of the *Charter*?

We look forward to reviewing this information if the Rural Coalition of P.E.I. decides to participate in the process.

Your letter also suggests that the Commission recommend to the Government that Elections PEI be directed to hold a vote regarding the proposal. The *Municipal Government Act* does not appear on its face to provide for those things, but you may know of some legislative basis for that direction and voting process. If so, the Commission would welcome you to submit that information together with the information enumerated above and seek standing to intervene in the process.

We look forward to reviewing your submissions on these matters. Thank you again for your letter.

Yours truly,



Jonah R.K. Clements
General Counsel
Island Regulatory & Appeals Commission

National Bank Tower, Suite 501, 134 Kent St. PO Box 577, Charlottetown, PE, Canada, C1A 7L1
Tel 902-892-3501 Toll-free 1-800-501-6268 Fax 902-566-4076 Website: www.irac.pe.ca



Jonah R.K. Clements.
General Counsel
Direct Line: 902.368.7851
Email: jclements@irac.pe.ca

July 30, 2018

Derek D. Key, Q.C.
Key Murray Law
494 Granville Street, P.O. Box 1570
Summerside, PE C1N 4K4

Dear Mr. Key:

Re: Greater Three Rivers Area - Municipal Government Act Proposal

The Commission requests a response to its correspondence of July 17, 2018 with respect to the above-noted matter on or before August 3, 2018.

Yours truly,

Jonah R.K. Clements
General Counsel
Island Regulatory & Appeals Commission



Jonah R.K. Clements.

General Counsel

Direct Line: 902.368.7851

Email: jclements@irac.pe.ca

August 3, 2018

Derek D. Key, Q.C.
Key Murray Law
494 Granville Street, P.O. Box 1570
Summerside, PE C1N 4K4

Dear Mr. Key:

Re: Greater Three Rivers Area - Municipal Government Act Proposal

The Commission has not received a reply from you to its correspondence of July 17, 2018 or July 30, 2018. As such, the Commission can only conclude that your client(s) do not wish to participate.

As a courtesy, the Commission notes that any notice of public hearing will be published online and in local newspapers.

As always, the Commission appreciates your co-operation.

Yours truly,

Jonah R.K. Clements
General Counsel