

PRINCE EDWARD ISLAND, CANADA

AN OVERVIEW

THE ISLAND  
REGULATORY  
AND APPEALS  
COMMISSION





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## INTRODUCTION

The Island Regulatory and Appeals Commission (the “Commission”) was established in 1991 with the amalgamation of the Public Utilities Commission, the Land Use Commission, and the Office of the Director of Residential Rental Property (formerly, The Rentalsman).

The Commission was created as an independent quasi-judicial tribunal with appellate, regulatory, and administrative responsibilities defined in the *Island Regulatory and Appeals Commission Act* and in a number of provincial statutes.

The Commission operates at arm’s length from government, free of influence from government, industry, or any other source. Upholding the Commission’s independence is fundamental to ensuring public confidence in its objectivity, expertise, and impartiality in decision making.

All other provinces and territories have similar independent boards and tribunals with comparable regulatory and appellate mandates.

The Commission reports to the Legislative Assembly of Prince Edward Island through the Minister of Education and Lifelong Learning.

## Commissioners and Staff

The Commission has three full-time Commissioners: Chair and Chief Executive Officer, Scott MacKenzie Q.C., Vice-Chair, Doug Clow, CPA, CA, and Commissioner John Broderick.

Currently, there are two part-time Commissioners, Jean Tingley and Terry McKenna. Executive Council appoints the Commissioners and designates the Chair and Vice-Chair. The Chair is appointed for a term of up to 10 years. All other Commissioners are appointed for a term of at least three years and not more than 10 years.

The Commission has a staff of 22. A full list of staff is available on the Commission’s website.

## Budget

The Commission is self-sustaining and does not receive operating grants from the Province of Prince Edward Island. Under the Act, the Commission has the authority to charge assessments, levies, and license fees on government and the other bodies and matters it regulates. The Province is assessed for fees associated with the regulation of rental matters, planning appeals, and the *Lands Protection Act*. Regulatory assessments and license fees are paid by the petroleum industry, Maritime Electric Company, Limited, Summerside Electric, applicable water and sewerage utilities, and the automobile insurance industry. Fees are charged for applications filed by non-residents under the *Lands Protection Act*.



## Tribunal Independence

Like all other administrative tribunals in Canada, the Commission is vigilant in guarding its independence. As an administrative tribunal with responsibility for legislatively-defined administrative and appellate functions, some involving provincial government decisions, it must operate independently and at arm's length from government. The *Island Regulatory and Appeals Commission Act* provides a clear and strong legislative basis for protecting the Commission's independence. This is seen in three main features of the Act:

### Commission Independence

The Commission's role and powers are clearly defined in the Act and in other legislation where the Commission serves a role. With the authority to charge assessments, levies, license fees, and other charges on the provincial government and the bodies it regulates, the Commission is self-sustaining and financially independent.

### Commissioner Independence

While the Commissioners are appointed by Executive Council, their independence is addressed by two provisions of the Act: all Commissioner appointments are for fixed terms of at least three years, and Commissioners can only be removed from office for just cause, a high threshold intended to ensure that the Commission remains free of political influence in organizing its affairs and adjudicating matters that come before it.

## Independent Decision Making

The Commission's authority to make decisions is defined in and prescribed by the Act and other provincial legislation. The provincial government does not have a role in reviewing or overturning decisions of the Commission. That role is reserved for the courts. Most decisions of the Commission may be appealed to the Prince Edward Island Court of Appeal, or, in the case of rental appeals or decisions where the *Judicial Review Act* applies, to the Supreme Court of Prince Edward Island.

The Commission also has the authority under the Act to establish its Rules of Practice and Procedure for hearings and regulatory activities.



## ROLES AND RESPONSIBILITIES

### Appellate Responsibilities

The Commission functions as an appellate body under the following pieces of legislation: *Rental of Residential Property Act*, *Planning Act*, *Revenue Administration Act*, *Real Property Assessment Act*, *Real Property Tax Act*, *Roads Act*, *Unsightly Premises Act*, *Heritage Places Protection Act*, and *Environmental Protection Act*.

The purpose behind having these appeals heard by the Commission as opposed to the courts, is to provide access to justice, timely decisions, and effective decision making by a tribunal with specialized expertise.

In hearing appeals, the Commission usually sits as a panel of three members, one of whom must be a full-time commissioner. The Act requires a decision of the Commission to be made by at least two Commissioners, one of whom must be a full-time Commissioner.

As an administrative tribunal, the Commission must consider and decide each appeal in accordance with the relevant governing legislation. Written decisions are required for decisions which are subject to appeal to the Court. All appeals heard by the Commission are open to the public.

Most of the appeals to the Commission arise out of decisions under the *Planning Act* and the *Rental of Residential Property Act*.

Under the *Planning Act*, the Commission hears appeals of land-use decisions of the Minister of Agriculture and Land and of municipal councils. The number of appeals resolved without the need for a formal hearing continues to grow as a result of the Commission's focus on alternative dispute resolution.

Under the *Rental of Residential Property Act*, the Commission hears appeals of decisions of the Director of Residential Rental Property (the "Director").

Under the *Revenue Administration Act*, the Commission hears appeals of decisions of the Provincial Tax Commissioner relating to tax assessments under several provincial revenue statutes. No appeals have been heard under this Act since the Harmonized Sales Tax came into effect in Prince Edward Island.

Under the *Real Property Assessment Act*, the Commission hears appeals of decisions of the Provincial Tax Commissioner relating to property tax assessments. The Commission hears a limited number of appeals under this Act, as most are resolved between the property owner and Property Assessment Services.

The *Roads Act* is administered by the Department of Transportation, Infrastructure and Energy. Decisions of the Minister regarding an entrance way permit, pursuant to the *Roads Act Highway Access Regulations*, may be appealed to the Commission. In recent years, no appeals have been heard under this Act.



Under the *Unightly Premises Act*, an individual ordered by the Minister of Agriculture and Land to clean up their property may appeal the order to the Commission. To date, no appeals have been heard under this Act.

Under the *Heritage Places Protection Act*, the Minister of Economic Growth, Tourism and Culture may designate a place, a structure or an area as a designated heritage site. The owner of the property may appeal the designation to the Commission. To date, there have been no appeals filed under this Act.

The *Environmental Protection Act – Watercourse and Wetland Protection Regulations* provides a limited right of appeal to the Commission of certain decisions made by the Minister of Environment, Water and Climate Change.

## Regulatory Responsibilities

As an economic regulator, the Commission's responsibilities fall under the provisions of the *Petroleum Products Act*, the *Rental of Residential Property Act*, the *Electric Power Act*, the *Water and Sewerage Act*, the *Insurance Act*, and, to a very limited extent, the *Environmental Protection Act*.

The concept of an independent regulator, free from the direction of government, is known as the “regulatory compact or trade off.” Industries that would otherwise be free to conduct business in a democracy accept control over the rates they can charge in return for those rates to be set by an independent economic regulator.

As stated in the decision of the Supreme Court of Canada in the *Northwestern* case:

“The duty of the Board was to fix fair and reasonable rates; rates which under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested. By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to the company's enterprise.”

## Petroleum

Under the *Petroleum Products Act*, the Commission has responsibility for all matters related to petroleum including:

- Setting minimum and maximum prices for petroleum products.
- Determining the minimum and maximum markups for retailers.
- Issuing annual retail and wholesale petroleum product licenses.

The jurisdiction of the Commission extends to all types of outlets involved in the distribution and sale of petroleum products. This includes wholesalers, retailers, and wholesaler-retailer operating outlets such as retail gasoline stations, tank trucks, retail propane outlets, and furnace oil delivery. The Commission regulates licensees and the operation of their outlets.



While petroleum pricing may be the most recognized (and controversial) function of the Commission, the purpose of regulation as defined in the Act is to ensure a just and reasonable price for both consumers and licensees.

The rationale for petroleum regulation reflects strong public policy that petroleum products are essential to the lives of Islanders and must therefore be regulated to ensure reasonable availability, service, and price. Legislating equality of access and pricing throughout the province ensures that Islanders have equal access and price fairness regardless of whether they live in Tignish, Charlottetown, or North Lake.

Regulation of the petroleum industry is not unique to Prince Edward Island. Each of the four Atlantic Provinces regulate petroleum pricing. Nova Scotia, New Brunswick, and Newfoundland adjust petroleum prices weekly, compared with biweekly adjustments on Prince Edward Island.

## Pricing Methodology

The Commission adheres to a set methodology for petroleum pricing. On a daily basis, changes are monitored in both the Charlottetown rack price, which is the wholesale price offered by the refinery to licensed suppliers, and the price on the New York Mercantile Exchange. Those prices are tracked every day, and, over a two-week period, the average change in those prices becomes the indicated price change for the next pricing period. An explanation of the Commission's pricing methodology and practice follows.

The Charlottetown rack price is entered in the Commission petroleum pricing database and the petroleum computer model is updated daily. The Commission monitors daily changes in both the Charlottetown rack price and the New York Harbour price listed in \$US and converted by Commission staff to \$CDN per litre. First, the daily price for each petroleum product is calculated. Second, an average price is calculated over the prior two-week period. Third, a year-to-date weighted average price is calculated using actual volumes of petroleum product sold.

The Petroleum Panel meets biweekly to determine any changes that should be made to the price of gasoline, furnace oil, and diesel fuel, as well as changes in the price of petroleum required to meet the two-week average price and the year-to-date weighted average price for each product. In setting the final price of all three petroleum products, the Petroleum Panel uses these calculated numbers and, if appropriate, adjusts the price up or down if other qualitative factors - such as pressure on the New York price from inventory levels or supply chain interruptions - dictate that there should be an adjustment to the calculated price. However, at most price setting meetings, the price is set only by the reference to the calculated average numbers provided by the database model.



To summarize, when pricing, the Petroleum Panel first reviews all the quantitative numbers in the methodology (daily price, two-week average price and year-to-date average price based on actual volumes of petroleum sold). These numbers dictate the change to be made in the petroleum prices. The Petroleum Panel will then review any relevant qualitative factors (daily and weekly USA domestic inventory reports, Kent Marketing Report, MarketWatch and Bloomberg NYMEX prices, and commentary on petroleum prices, demand and supply, and other commentary - OPEC, global issues, refinery shut-downs, and severe weather events affecting off-shore drilling, etc.) that could affect prices.

The methodology, available on the Commission's web-site, is shown below:

#### ■ **Gasoline:**

- Charlottetown rack price in cents per litre ("cpl")
- + wholesale margin (presently 5.0 cpl)
- + federal excise tax 10.0 cpl
- + provincial gas tax 9.68 cpl
- + carbon levy 4.42 cpl
- + retail margin (presently 5.5 - 6.5 cpl self-serve and 7.5 - 10.5 cpl full-serve)
- + HST (15%)
- = retail pump price in cpl

#### ■ **Furnace Oil:**

- Charlottetown rack price in cpl
- + combined wholesale/retail margin 21.0 cpl
- + GST (5.0%)
- = maximum retail price in cpl

#### ■ **Diesel:**

- Charlottetown rack price in cpl
- + wholesale margin (presently 5.0 cpl)
- + federal excise tax 4.0 cpl
- + provincial gas tax 15.83 cpl
- + carbon levy 5.37 cpl
- + retail margin (presently 5.5 - 6.5 cpl self-serve and 7.5 - 10.5 cpl full-serve)
- + HST (15%)
- = retail pump price in cpl

## Unscheduled Price Adjustments

The Commission policy for unscheduled petroleum price adjustments is based on the current practice of daily review by staff of petroleum prices for gasoline, furnace oil, and diesel fuel. Staff advise the Chair or Vice-Chair of any changes in the price of any of the regulated products that staff determine could have a material effect on petroleum prices. The Chair or Vice-Chair will then determine if a meeting is to be held of the Petroleum Panel to consider an unscheduled price interruption. If a meeting is held, then the Petroleum Panel shall consider the pricing in accordance with the methodology and the process followed for a biweekly price setting.



The following chart is an example of what is included with each press release announcing price changes and shows the benchmark price, taxes, and levies that comprise the pump price.

RETAIL PUMP PRICES	REGULAR GAS SELF-SERVE		DIESEL SELF-SERVE	
Rack Price	72.7		79.5	
+ Wholesale Margin	5.0		5.0	
<b>= BASE PRICE</b>	<b>77.7</b>		<b>84.5</b>	
+ Federal Excise Tax	10.0		4.0	
+ Provincial Tax	9.68		15.83	
+ Carbon Levy	4.42		5.37	
<b>= SUBTOTAL</b>	<b>101.8</b>		<b>109.7</b>	
	Min	Max	Min	Max
+ Retail Margin	5.5	6.5	5.5	6.5
+ HST (15%)	16.1	16.2	17.3	17.4
<b>= PUMP PRICE</b>	<b>123.4</b>	<b>124.5</b>	<b>132.5</b>	<b>133.6</b>

FURNACE OIL	
Rack Price	74.1
+ Retail Margin	21.0
<b>= MAXIMUM PRICE</b>	<b>95.1</b>
+ Tax ( 5% )	4.8
<b>= MAXIMUM PRICE (including Tax)</b>	<b>99.9</b>

To provide more information to the public on price adjustments, both the Commission’s Order and the press release giving notice of price adjustments, are available on the Commission’s website, along with a national price comparison chart, and current and past local prices, all of which is updated regularly.

## Water and Sewerage Utilities

Regulation of water and sewerage utilities in Prince Edward Island has existed since the early 1960s. Under the *Water and Sewerage Act*, the Commission regulates 27 municipal and private water and sewerage utilities, excluding municipal utilities in Charlottetown, Summerside, Stratford, and Cornwall.

The Commission’s jurisdiction in this area is comprehensive. It approves all user rates and charges. It establishes accounting practices and requires the filing of annual reports. In addition, all operating rules and regulations, as well as capital expenditures and construction projects, are subject to the Commission’s approval. The Commission also deals with disputes between utilities and their customers.

## Waste Management

In June 2005, the *Environmental Protection Act* was amended to require approval from the Commission for any changes to existing rates and rates for new services charged by the Island Waste Management Corporation. The last rate increase was approved December 22, 2011 and came into effect January 1, 2012.

## Electricity

The *Electric Power Act* gives the Commission comprehensive regulatory authority over Maritime Electric, including the approval of electricity rates, capital expenditures, capital budget variances, changes to the operation of transmission lines, and the introduction of energy efficiency programs.



The *Electric Power Act* came into effect on January 1, 2004. Previously, agreements defining regulatory oversight existed between the province and the utility.

On December 9, 2010, the *Electric Power (Electricity-Rate Reduction) Amendment Act* was passed limiting the Commission's jurisdiction over Maritime Electric. The Act reduced electricity rates by 14% and froze rates until March 1, 2013.

The period of reduced rates was extended until February 29, 2016 with the *Electric Power (Energy Accord Continuation) Amendment Act*. The Commission resumed full regulatory responsibility on March 1, 2016.

In 2018, the Commission held a three-day public hearing to review the procedural aspects of the Open Access Transmission Tariff application filed by Maritime Electric. In the previous fiscal year, the Commission approved the issuance of first mortgage-secured bonds, the company's 2017 capital budget, as well as the 2015 capital budget variances, interim rates for LED street lights, and revisions to the interim weather normalization reserve for 2017.

This summer, the Commission will hear an application from Maritime Electric seeking approval to increase rates, tolls and charges for electric service, for the three-year period from 2019 to 2022. A complete copy of the application can be viewed on the Commission's website.

The Commission encourages public input at its hearings. With regulatory proceedings, individuals are invited to

submit written questions to seek more information on applications. The Commission's Rules of Practice and Procedure also permit applications for intervener status at Commission hearings. If approved, an applicant may be allowed to present evidence under oath or cross examine witnesses, among other things.

## Automobile Insurance

In 2003, the provincial government passed amendments to the *Insurance Act* providing the Commission with full regulatory authority to review the rates of every insurer offering automobile insurance in Prince Edward Island. Currently, Prince Edward Island drivers pay the lowest average insurance rates for private passenger vehicles in Canada, with the exception of Quebec, which operates a provincially funded program.

## Allowable Rent Increases

Under the *Rental of Residential Property Act*, the Commission is responsible for setting annual allowable rent increases. To prepare its annual report, the Commission carries out a comprehensive financial analysis using statistical data compiled by the Department of Finance, and the Consumer Price Index. It considers minimum wage, average rents, the cost of electricity, heat, water, insurance, property taxes and other housing-related costs. The Commission seeks public input and considers submissions from tenants, landlords, and the general public. This report is available on the Commission's website.



## ADMINISTRATIVE RESPONSIBILITIES

### ***Lands Protection Act***

The Commission is responsible for administering the *Lands Protection Act*. The Commission's work in this area is substantial. The Act is unique to Prince Edward Island with its focus on the control and monitoring of land holdings by non-residents and corporations.

The Act was passed in 1982 and, while it has been amended over the years, its purpose remains unchanged:

*... to provide for the regulation of property rights in Prince Edward Island, especially the amount of land that may be held by a person or corporation. This Act has been enacted in the recognition that Prince Edward Island faces singular challenges with regard to property rights as a result of several circumstances, including*

- (a) historical difficulties with absentee land owners, and the consequent problems faced by the inhabitants of Prince Edward Island in governing their own affairs, both public and private;*
- (b) the province's small land area and comparatively high population density, unique among the provinces of Canada; and*
- (c) the fragile nature of the province's ecology, environment, and lands and the resultant need for the exercise of prudent, balanced, and steadfast stewardship to ensure the protection of the province's ecology, environment, and lands*

Under the Act, the Commission has the responsibility to provide independent recommendations to Executive Council on applications by non-residents and corporations to purchase or lease land. The Commission also has the authority to monitor the holdings of large land owners to ensure compliance with the Act. A person having an aggregate land holding of more than 750 acres or a corporation having an aggregate land holding of more than 2,250 acres must file an annual land holding declaration statement with the Commission.

The objectives of the Act are achieved in a number of ways:

### **Applications by non-residents and corporations**

The Commission makes recommendations to Executive Council on applications by non-residents and corporations (both resident and non-resident) to purchase or lease land. Non-residents and corporations who have an aggregate land holding of more than five acres or shore frontage of more than 165 feet require approval from Executive Council to purchase or lease more land. An application must be filed with the Commission for review before a recommendation is forwarded to Executive Council for a final decision.

In developing its recommendation, the Commission is required by the Act to assess the best use of the land using guidelines and policies established by Executive Council, as well as considering economic, environmental, and socio-cultural factors.



## Acreage limits

Persons may not have an aggregate land holding of more than 1,000 acres and corporations may not have an aggregate land holding of more than 3,000 acres.

## Investigations

The Commission monitors the land holdings of large land owners to ensure compliance with the Act.

A person having an aggregate land holding of 750 acres or a corporation having an aggregate land holding of 2,250 acres is required to file an annual land holding declaration with the Commission. When a contravention of the Act occurs, the Commission may impose a penalty of not more than \$10,000 on a person or corporation who has contravened the Act.

## Advertising guidelines

Administrative guidelines regarding advertising land for sale were approved by Executive Council in 1998 and updated in 2010. The intent of the guidelines is to ensure that the sale of land is appropriately advertised within the local real estate market so that Islanders and Island corporations have knowledge of land sales and can compete for the purchase of land.

## Land identification

The Commission's recommendations to Executive Council on the disposition of *Lands Protection Act* applications also includes recommendations on whether land should be identified for non-development use. Special attention is paid to applications involving coastal

land, active agricultural land, speculative land transactions, and land intended for subdivision.

## Land de-identification

If an owner wants to have land de-identified, an application is filed with the Commission. The Commission processes and delivers the application to the Department of Agriculture and Land. The Commission does not make recommendations on the application, as that decision rests with the Minister.

## Information on land ownership

The Commission was recently asked by the (then) Department of Communities, Land and Environment to provide information on land ownership on PEI. The Commission provided preliminary correspondence to the (then) Minister on February 20, 2019. The Commission will continue to assist the Minister of Agriculture and Land as needed with the preparation of this report.

## ***Municipal Government Act***

Under the *Municipal Government Act*, the Commission advises the Minister of Fisheries and Communities on proposals to establish or restructure municipalities. In 2018, the Commission issued four recommendations to the (then) Minister of Communities, Land and Environment regarding proposals to establish new municipalities in Three Rivers, North Shore, and Central Prince, as well as a proposal to restructure the Town of Kensington.



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## OFFICE OF THE DIRECTOR OF RESIDENTIAL RENTAL PROPERTY

The *Rental of Residential Property Act* creates a forum, outside of the traditional court system, for the adjudication of disputes between tenants and landlords. While the Commission itself is not responsible for the administration of the Act, it houses and funds the Office of the Director of Residential Rental Property (the Rental Office) and provides administrative support. Under the Act, the Commission is responsible to appoint the Director of Residential Rental Property to oversee the Rental Office and administer the Act and its Regulations. The Rental Office is comprised of a director, two rental adjudication officers, and three intake officers.

The Rental Office advises tenants and landlords on their rights and responsibilities with respect to rental agreements. The Act establishes the rights and responsibilities of the parties and outlines procedures for their enforcement. These include the handling of security deposits, termination of rental agreements, rent owing, disposition of abandoned personal property, and allowable rent increases, among other things.

The Director hears disputes between tenants and landlords and issues written decisions called Orders. Parties dissatisfied with an Order of the Director can appeal the decision to the Commission. Parties dissatisfied with an appeal decision of the Commission can appeal to the Supreme Court of Prince Edward

Island. Rental hearings before the Director are private, while appeals to the Commission and the Court are public.

The *Act* defines the responsibilities of the Director as follows:

- Providing information to the public to promote understanding of rights and responsibilities under the Act.
- Advising landlords and tenants with respect to matters relating to rental agreements.
- Receiving and investigating allegations of violations of rental agreements, the Act, and its Regulations.
- Holding hearings, making decisions, and issuing Orders on matters relating to the rights of tenants and landlords.
- Entering and inspecting residential premises, after serving an inspection order, for the purpose of carrying out the powers or duties under the Act or Regulations.

With a current vacancy rate below one percent, the Rental Office receives a high volume of inquiries on a daily basis. In 2018, staff responded to 8,369 inquiries, an increase of 25% over the previous year. The number of inquiries received in 2019 has increased significantly over 2018.

An ongoing priority of the Rental Office is to raise awareness of the rights and responsibilities of tenants and landlords. Recent media interviews, a radio ad campaign, and public information sessions are all helping to better inform both groups of their rights and responsibilities.

The Rental Office also works in collaboration with several groups. The Director was involved in the development of the Housing Action Plan and delivered presentations to the Housing Council and the Housing Hub. The Rental Office collaborates with offices such as the Community Legal Information Association and the PEI Council of People with Disabilities to help them understand and navigate the legislation governing tenants and landlords so that they are better able to assist their stakeholders.

The Commission was asked in November 2018 by (then) Minister of Education, Early Learning and Culture to provide input to the province on the current experiences and challenges faced in administering the *Rental of Residential Property Act*, and to make recommendations for any legislative amendments that would assist the Commission in executing its mandate under the Act. The Commission is continuing this work to provide input to government.

## CONCLUSION

The Commission is currently undergoing a restructuring and organizational review which has resulted in a number of new staff. In 2018, the Commission hired a general counsel to provide legal advice and to assume the position of director of land, supervising all matters under the *Lands Protection Act*. A new senior financial officer was hired and has responsibility for the regulation of electric matters under the *Electrical Power Act* including financial and regulatory oversight of Maritime Electric. A new director was appointed for the Office of the Director of Residential Rental Property, and the Commission also hired its first communications officer to improve communications with the public and increase the public's awareness of the Commission's roles and responsibilities. With these new staff, the Commission has the proper people in place with specialized expertise in the areas regulated by the Commission.

With its wide-ranging mandate, the decisions of the Commission affect almost all Islanders. Staff are dedicated to serving the public and carrying out the various responsibilities of the Commission, while acting in the best interests of Prince Edward Islanders.

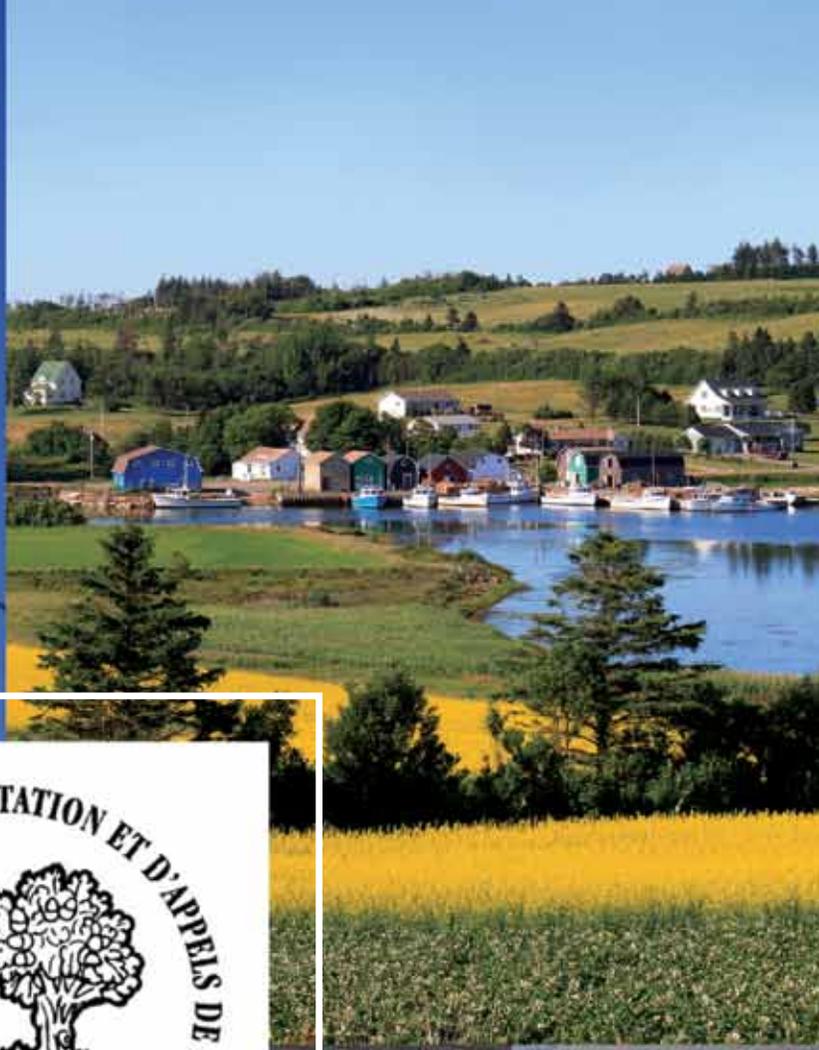
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