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Via Electronic Mail (mwalshdoucette@irac.pe.ca)

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

Dear Ms. Walsh-Doucette:

Re: LA25-011 Louise Aalders v. City of Charlottetown

We write on behalf of the applicant for Development Permit 214-BLD-25, Pan American Properties Inc. (the "Developer"), which was issued in respect of property located at 15 Haviland Street, Charlottetown (the "Property").

Louise Aalders (the "Appellant"), in both the Notice of Appeal and Appellant's Response, has failed to satisfy the threshold question of whether she is an "aggrieved person" under the *Planning Act.* The Appellant bears this onus.[1]

Qualification as an "aggrieved person" requires that she be "an individual who in good faith believes the decision will adversely affect the reasonable enjoyment of the individual's property or property occupied by the individual."[2] This is a higher standard than the "dissatisfied person" threshold under the prior iteration of the *Planning Act*.

Aggrieved person status requires more than good faith belief. It requires a good faith belief that the decision under appeal will adversely affect the reasonable enjoyment of the Appellant's property, i.e. a harm arising from the issuance of Development Permit 214-BLD-25 (the "Permit"), that could objectively have an adverse impact on the enjoyment of her rental unit.

Instead, the Appellant has relied upon generalized and speculative impacts that do not flow from the decision to issue the Permit, a permit that is limited to site mobilization and construction hoarding. The alleged impacts fall into four general categories:

1. Allegations of activities conducted in the provincial buffer zone, which are not the subject of the decision under appeal and for which the Minister of Environment, Energy and

[1] Sarah Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis Canada, 2022) at §2.16 [scheduled to submissions].

[2] *Planning Act*, RSPEI 1988, c P-8, s 27.1.

Climate Action has authority to prosecute under the *Environmental Protection Act* and *Watercourse and Wetland Protection Regulations*;

2. Concerns relating to the construction of a hypothetical building on the Property that is not the subject of the decision under appeal;

3. Concerns relating to the use of a boardwalk on the Property for which the Appellant (or the public at large) has no license, easement or right of way;

4. Concerns relating to environmental risks that:

   (a) Ignore the conditions attaching to the Permit requiring the Developer to control surface water runoff and the drainage and flow of water from the Property generally; and

   (b) Rely on the absence of documented contamination at the Property to suggest that the soil at the Property has "unknown characteristics", contrary to clear statements from City of Charlottetown planning officials confirming that the Department of Environment, Energy and Climate Action did not view the Property as warranting either an Environmental Site Assessment or Environmental Impact Assessment.[3]

All of these concerns are generalized, speculative ones that do not flow from the decision to issue the Permit and do not pose an impact on the reasonable enjoyment of the Appellant's property.

Conclusion

We submit that the *Planning Act* requires more than generalized and speculative impacts to establish standing to appeal. We further submit that the "aggrieved person" analysis is inconsistent with the Appellant's submission that "planning appeals need to be appealed at the first possible stage".[4]

Accepting the Appellant's incorrect views will lead to a litany of issues – invite appellants to test, refine and recast their grounds of appeal on subsequent appeals of permits relating to the same project, waste limited resources of both decision-makers and the Commission, and delay development projects and increase their cost.

We ask the Commission to conduct a preliminary assessment of the Appellant's record to determine if she qualifies as an "aggrieved person" under the *Planning Act*, and failing which, dismiss the appeal in its entirety.

We thank the Commission for the opportunity to provide these brief submissions. We will await directions from the Commission on the next steps in this appeal.

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[3] Appellant's Response – October 29, 2025, 8 of 13.

[4] Appellant's Response – October 29, 2025, 9 of 13.

Yours truly,

Stewart McKelvey

Donald JA Cameron

c. Louise Aalders – aalderslouise@gmail.com
Melanie McKenna – mmckenna@coxandpalmer.com
Tim Banks - tim@apm.ca

§2.16 PROOF

Administrative Law in Canada, 7th Ed.

Sara Blake

Administrative Law in Canada, 7th ed. (Blake) > Part I Proceedings Before the Tribunal > Chapter 2 Tribunal Procedure

PART I PROCEEDINGS BEFORE THE TRIBUNAL

Chapter 2 TRIBUNAL PROCEDURE

§2.16 PROOF

1.

Onus of Proof

Which party presents their case first? The statute might prescribe which party has the burden of proof.[1] If not, the order of presentation does not matter, provided the parties are accorded a fair hearing.[2] Onus of proof is concerned with who bears the risk of a gap in the evidence. A party who advocates a particular position bears the onus of producing the evidence in support.[3] An applicant has the onus of proving entitlement to the permit or other relief claimed.[4] Entitlement to an exemption must be proven by the party who claims it.[5]

In proceedings concerning allegations of professional misconduct or violations of human rights, the onus of proof is on the complainant[6] or on counsel employed or retained by tribunals to present the case. Legally the burden of proof never shifts to the respondent. However, if the complainant establishes a *prima facie* case that the alleged conduct was committed, a respondent would be wise to adduce evidence to rebut that case.[7]

In court trials, a party with the burden of proof may not split its case by holding back evidence to be presented after other parties have presented their evidence. This rule is not mandatory in tribunal hearings but the procedure is considered orderly. If new evidence is presented, responding parties should have an opportunity to respond, except to evidence tendered solely to rebut evidence presented by them.[8]

In inquisitorial proceedings, there may be an onus on the tribunal to obtain relevant evidence.[9]

2.

Non-Suit

If the party with the burden of proof fails to lead sufficient evidence to prove the case, it may be dismissed without the other parties being called upon to respond. The other parties may bring a “motion for non-suit”. The motion should be granted only if a *prima facie* case has not been made out. This is a lower standard than the balance of probabilities applied when finally deciding whether the burden of proof has been met. If there is some evidence, however weak and viewed in a light most favourable to the party with the burden of proof, a *prima facie* case has been made out. Credibility of witnesses and weight of evidence is not considered at this stage. Evidence omitted through inadvertence may be admitted before the motion is decided. A party moving for dismissal is usually required to elect to call no evidence before the motion will be considered by the tribunal.[10]

3.

Standard of Proof

When are facts proven? In tribunal proceedings, the standard of proof is the balance of probabilities. If on all the reliable evidence it has been proven that the alleged events probably occurred, they have been proven.[11] This standard is less onerous than the standard imposed in criminal cases where, to succeed, the Crown must prove that an offence was committed “beyond a reasonable doubt”. This lower standard applies even in disciplinary proceedings concerning allegations of criminal conduct.[12] Regardless how serious the allegations are, the standard of proof does not change. It remains a single standard — a simple balance of probabilities.[13] Similarly, the high standard of scientific certainty need not be met even if the question to be decided is scientific in nature.[14]

The quality of evidence required to establish a fact on a balance of probabilities depends on the circumstances, including the nature of the facts to be proven. An unlikely fact may require more reliable evidence than does a likely fact.[15] More reliable evidence may be required to prove serious allegations of wrongdoing than other types of facts.[16] A statutory test requiring proof of future risk is met by proof of past and present circumstances from which future risk may be inferred. Predictions based on such evidence may not be dismissed as speculative.[17]

A statutory standard of “reasonable grounds” is lower than the standard of balance of probabilities.[18] A statutory standard of “clear and convincing evidence” is higher than the balance of probabilities.[19]

A lower standard of proof may be prescribed for an interim order to protect the public interest pending a full evidentiary hearing. *Prima facie* evidence of a risk of harm may be enough.[20]

Standards of proof are concerned with establishing what happened. They do not apply to policy questions such as those that require the balancing of factors to determine what is in the public interest.[21]

Footnote(s)

1 *Lemieux v. British Columbia (Superintendent of Motor Vehicles)*, [2019] B.C.J. No 1153 (B.C.C.A.), leave to appeal refused [2019] S.C.C.A. No. 373.

2 *Denby v. Agriculture, Food and Rural Affairs Appeal Tribunal*, [2006] O.J. No. 1968 at para. 45 (Ont. Div. Ct.).

3 *Braile v. Calgary (City) Police Service*, [2018] A.J. No. 333 (Alta. C.A.); *Chopra v. Canada (Attorney General)*, [2007] F.C.J. No. 1134 at para. 42 (F.C.A.); *R. v. Peckham*, [1994] O.J. No. 1995 at para. 26 (Ont. C.A.); *Nova Scotia (Director of Assessment) v. Knickle*, [2007] N.S.J. No. 449 (N.S.C.A.).

4 *Law Society of Upper Canada v. Evans*, [2008] O.J. No. 2729 (Ont. Div. Ct.).

5 *Koressis v. Turner*, [1986] O.J. No. 287 (Ont. Div. Ct.).

6 *Floris v. Nova Scotia (Director of Livestock Services)*, [1986] N.S.J. No. 399 (N.S.T.D.); *Ontario (Liquor Control Board) v. Ontario (Human Rights Commission)*, [1988] O.J. No. 167 (Ont. Div. Ct.).

7 *Base-Fort Patrol Ltd. v. Alberta (Human Rights Commission)*, [1982] A.J. No. 687 (Alta. Q.B.); *UAJAPPI Local 488 v. Alberta (Industrial Relations Board)*, [1976] A.J. No. 355 at 97 (Alta. C.A.).

8 *Sood v. Council of the College of Physicians and Surgeons of Saskatchewan*,[1995] S.J. No. 721 (Sask. Q.B.).

9 *R. v. LePage*, [2006] O.J. No. 4486 (Ont. C.A.).

10 *Merchant v. Law Society of Saskatchewan*, [2002] S.J. No. 288 (Sask. C.A.); *Ontario v. Ontario Public Service Employees Union (OPSEU)*, [1990] O.J. No. 635 (Ont. Div. Ct.); *International Brotherhood of Electrical Workers, Local*

348 v. AGT Ltd., [1997] A.J. No. 1004 (Alta. Q.B.); *Northern Lights Health Region v. United Nurses of Alberta, Local 124*, [2007] A.J. No. 366 (Alta. Q.B.); *Filgueira v. Garfield Container Transport Inc.*, [2006] F.C.J. No. 1005 (F.C.).

11 *Newfoundland and Labrador (Mineral Claims Recorder) v. Vinland Resources Ltd.*, [2008] N.J. No. 48 (N.L.C.A.).

12 *Stetler v. Agriculture, Food and Rural Affairs Appeal Tribunal*, [2005] O.J. No. 2817 (Ont. C.A.), leave to appeal refused [2005] S.C.C.A. No. 428; *Beaini v. Assn. of Professional Engineers of Nova Scotia*, [2003] N.S.J. No. 229 (N.S.S.C.), affd [2004] N.S.J. No. 383 (N.S.C.A.); *Rak v. British Columbia (Superintendent of Brokers)*, [1990] B.C.J. No. 2383 (B.C.C.A.); *Cambie Hotel (Nanaimo) Ltd. (c.o.b. Cambie Hotel) v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2006] B.C.J. No. 501 (B.C.C.A.).

13 *V. (K.) v. College of Physicians and Surgeons of the Province of Alberta*, [1999] A.J. No. 440 (Alta. C.A.), leave to appeal refused [1999] S.C.C.A. No. 331; *Shalala v. Law Society of New Brunswick*,[1994] N.B.J. No. 473 (N.B.C.A.); *Bradley Air Services Ltd. (First Air) v. Landry*, [1995] F.C.J. No. 343 (F.C.T.D.), affd [1996] F.C.J. No. 818 (F.C.A.).

14 *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, [2016] S.C.J. No. 25.

15 *Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 399 (F.C.A.).

16 *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees, Local 6206*, [2006] N.J. No. 380 (N.L.T.D.).

17 *Martin v. Canada (Attorney General)*, [2005] F.C.J. No. 752 (F.C.A.); *MacDonnell v. Canada (Attorney General)*, [2013] F.C.J. No. 799 (F.C.).

18 *Ontario (Alcohol and Gaming Commission, Registrar) v. 751809 Ontario Inc. (c.o.b. Famous Flesh Gordon's)*, [2013] O.J. No. 1139 (Ont. C.A.), leave to appeal refused [2013] S.C.C.A. No. 259; *Farwaha v. Canada (Minister of Transport, Infrastructure and Communities)*, [2014] F.C.J. No. 227 (F.C.A.); *Mendoza v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 1204 at para. 25 (F.C.); *Ospina v. Canada (Minister of Citizenship and Immigration)*, [2011] F.C.J. No. 887 (F.C.).

19 *Ottawa (City) Police Service v. Ottawa (City) Police Service*, [2016] O.J. No. 2431 (Ont. C.A.), leave to appeal refused [2016] S.C.C.A. No. 324.

20 *Durham (Regional Municipality) Police Service v. Ontario Civilian Police Commission*, [2020] O.J. No. 1490 (Ont. Div. Ct.); *Scott v. College of Massage Therapists of British Columbia*,[2016] B.C.J. No. 814 (B.C.C.A.).

21 *R. v. Peckham*, [1994] O.J. No. 1995 (Ont. C.A.).

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