

December 3, 2025

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 have reviewed the intended appellant's submissions on the issue of standing. In our view, she has failed to demonstrate that she is an "aggrieved person" as defined in section 27.1 of the *Planning Act*. For this reason, the intended appellant does not have standing to bring this appeal. The appeal should be dismissed at this stage to avoid unnecessary cost and delay to the responding parties. Brief submissions in support of this conclusion are set out below. We thank the Commission in advance for its consideration.

I. Burden of Proof

As a general rule, a party asserting a point bears the burden of proving it. Here, the intended appellant asserts that she is an aggrieved person as defined in the *Planning Act*. The intended appellant therefore bears the burden of proving this point.

II. Basis of the appellant's claim

The intended appellant asserts that she is an aggrieved person within the meaning of clause (d) of section 27.1 of the *Planning Act*. This provision provides that aggrieved person means "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."

The intended appellant asserts that she will be directly affected because she resides adjacent to the proposed development. She claims that excavation may expose contamination harmful to her health, that the development infringes buffer zone requirements, and that the absence of a setback will negatively affect daylight and the public realm. She also advances broader public interest arguments regarding environmental protection and planning principles.

III. Interpretation

Clause 27.1(d) of the *Planning Act* must be interpreted with reference to its text, context and purpose.¹ The text, moreover, must remain the focus and anchor of the interpretive exercise because it supplies the specific means by which the Legislature sought to achieve and balance the various objectives that animate the *Planning Act* as a whole and s. 27.1 specifically.²

IV. Text

Two textual cues undermine the intended appellant's argument that she is an aggrieved person within the meaning of s. 27.1(d).

Good-faith belief is required. The provision requires a good-faith belief that the decision will bring about certain consequences. This sets a clear threshold: a belief grounded in reason, rather than speculation and conjecture. The intended appellant's contamination concerns do not meet this threshold. They are framed in terms of uncertainty — what “cannot be ruled out” — rather than a belief about what will occur. Her submissions on stepback and shadow impacts suffer from the same flaw. She points to a “lack of information on shadow studies” and asks whether daylight access “would” be affected. These are conjectures and speculation, not good-faith beliefs. A statutory requirement of belief that certain effects will occur cannot be satisfied by speculation; the Legislature's choice of “will,” rather than “might” or “could”, signals an intent to exclude speculative risks.

Belief must relate to individual's property. The provision specifies that the good-faith belief must relate to the “reasonable enjoyment of the individual's property or property occupied by the individual.” This language is deliberate — it excludes generalized concerns made in the public interest. Measured against this standard, many of the intended appellant's concerns — relating to public safety, the environment generally, and cultural heritage — fall outside the scope of clause (d). These are, at their core, public-interest concerns. Even if sincerely held, they do not establish a good-faith belief that the decision will affect the intended appellant's reasonable enjoyment of her own property. The text of the provision does not accommodate such concerns.

V. Context

The legislative history confirms that the 2023 amendments were intended to narrow standing. Prior to amendment, the *Planning Act* permitted appeals by any person “dissatisfied” with a decision — a broad and subjective standard. The Legislature replaced that language with “aggrieved person,” introduced a definition, and required a good-faith belief tied to property enjoyment. This shift reflects a deliberate policy choice: to prevent planning decisions from being stalled by speculative or generalized objections. Interpreting clause (d) broadly to include public-interest arguments would undermine that legislative intent and reintroduce the uncertainty the amendments sought to eliminate.

¹ *Interpretation Act*, 1988, c I-8 RSPEI, s 11(1); *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.

² *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 (CanLII) at para 24.

VI. Purpose

Section 2 of the *Planning Act* sets out seven broad objectives, including efficient planning and public participation. The specific provisions of the Act represent the means by which the Legislature sought to achieve and balance those objectives. Clause 27.1(d) exemplifies that balancing exercise. By requiring a good-faith belief that a decision will adversely affect the reasonable enjoyment of an individual's property, the Legislature chose to prioritize certainty and efficiency in decision-making over open-ended participation based on speculation or generalized concerns.

Section 11 of the *Interpretation Act* supports rather than contradicts this conclusion. That provision directs that statutes be construed as remedial and given a fair, large and liberal interpretation that best ensures the attainment of their objects. Here, the mischief the Legislature sought to remedy was the uncertainty created by an overly broad appeal right. The 2023 amendments addressed that mischief by narrowing standing and introducing a definition tied to property enjoyment. A proper interpretation must advance that remedial purpose, not defeat it. Reading clause (d) to include speculation and generalized public-interest concerns would reintroduce the very uncertainty the Legislature intended to eliminate.

VII. Conclusion On text, context, and purpose, the intended appellant has not met her burden. While she raises certain property-based concerns—such as potential contamination and shadow impacts—those concerns are framed in terms of uncertainty and speculation, not in a good-faith belief that the decision will adversely affect the reasonable enjoyment of her property. Her remaining arguments are public-interest in nature and fall outside the scope of clause 27.1(d). For these reasons, she does not qualify as an “aggrieved person”. We respectfully request that the Commission dismiss the appeal.

Kind regards,

Stewart McKelvey



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DJAC/dr

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