



## Prince Edward Island

Justice and  
Public Safety

*Legal Services*  
PO Box 2000  
Charlottetown PE  
Canada C1A 7N8

## Île-du-Prince-Édouard

Justice et  
Sécurité publique

*Services légaux*  
C.P. 2000  
Charlottetown PE  
Canada C1A 7N8

February 19, 2026

**VIA EMAIL – [mwalshdoucette@irac.pe.ca](mailto:mwalshdoucette@irac.pe.ca)**

Michelle Walsh-Doucette  
Commission Clerk  
Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501  
134 Kent Street, Charlottetown PE C1A 7L1

**Re: Appeal Docket #LA26001  
Tracy Belsher v. Minister of Land and Environment  
Our File: LS 28127**

---

1. We represent the Minister of Land and Environment (formerly the Minister of Housing, Land and Communities) (the “Minister”) in relation to the above noted appeal filed by Tracy Belsher (the “Appellant”) on January 22, 2026 (the “Appeal”). The Appeal arises from the Minister denying the Appellant’s application to establish a Commercial (vintage store) Use on an existing Residential (Single Unit Dwelling) Use lot on PID 215517 in Queens County, North Tryon, PE (the “Subject Property”) (the “Application”). The Subject Property’s sole access is via Route 1/Trans-Canada Highway.
2. The Minister’s position is that the Subject Property cannot receive legal access, directly or indirectly, from Route 1 for the proposed change of use. As such, the Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap P-8 (the “Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”).

### **Background and Decision**

3. On June 14, 2025, the Minister received the Application. The Appellants paid the required fees for the Application on July 21, 2025.
4. The Application sought a change of use of the Subject Property from Residential (Single Unit Dwelling) to Residential/Commercial or Home-Based Business. The proposed use of the Subject Property would be to operate a small seasonal art gallery, bookstore and vintage shop in the accessory building presently located on the Subject Property.

5. On completing a preliminary review of the Application, the Minister identified that the Subject Property is accessed via an arterial highway and, therefore, requires an entrance way permit in order to change the use of Subject Property. As a result, the Minister requested further information from the Department of Transportation, Infrastructure and Energy (“Department of Transportation”).
6. The Minister also identified that properties cannot be approved as mixed use (Residential/Commercial). Therefore, the Minister proceeded to consider the Application as an application for a home-based business.
7. On January 8, 2026, pursuant to clause 20(1)(a) of the *Highway Access Regulations*, PEI Reg EC580/95, the Department of Transportation confirmed that an entrance way permit for the proposed change of use cannot be granted. Consequently, the Subject Property cannot obtain legal access from Route 1 for the proposed change of use.
8. On January 9, 2026, the Minister denied the application pursuant to subsection 6(c) of the Act and subsections 3(1)(a), 5(d) and 25(2) of the Regulations (the “Decision”). As outlined in the Decision, the denial occurred as the Subject Property requires the Department of Transportation to provide legal access for the proposed use given its location on Route 1. As the Department of Transportation indicated such legal access could not be provided, the Application was denied.
9. Notwithstanding the Minister’s express reliance on subsections 3(1)(a) and 25(2) of the Regulations in the Decision, the Minister confirms through these submissions that sections 3(2)(a), 3(4) and 31 of the Regulations were likewise applied in the denial. Collectively, these sections provide a comprehensive statutory basis supporting the Minister’s denial of the Application.
10. In light of the additional sections now identified, the Minister welcomes any further response or submissions the Appellant may wish to provide.

### **Appeal**

11. The Appeal is pursuant to section 28 of the Act.
12. The Appellant seeks the following relief from the Commission:

*We are asking for fair and equal opportunities to the other shops/upicks, etc on TCH. If changes are needed to expand our lane, we will do so. Can this decision please be overturned? Perhaps we could shift to a home-based business? Many tourists and Islanders shopped with us this summer and we would love to continue to feature local Island talent and culture. We are also in discussions with a film production company for a TV series featuring the history of items in the shop & Island talent.*

- 13. The Minister is providing the Record of the Decision to the Appellant and filing same with the Commission on the same date as the within submissions are dated.
- 14. The Minister’s response to the Appellant’s appeal is outlined below. Should the Appellant expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, the Minister reserves the right to provide a further reply thereto.

**Legislation**

- 15. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
- 16. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in North Tryon, which is an area where land use and development are not regulated by a local official plan or zoning by-law. Therefore, the land use and development of the Subject Property is regulated by the Act and the Regulations.
- 17. Subsections 1(b), 1(d), 1(g) and 1(j.01) of the Regulations defines arterial highway, change of use, development and home-based business, respectively, as follows:

*1. Definitions*

*In these regulations*

...

*(b) “arterial highway” means any highway that has been designated as an arterial highway under the provisions of the Roads Act Highway Access Regulations;*

...

*(d) “change of use” means*  
*(i) altering the class of use of a parcel of land from one class to another,*  
*recognizing as standard classes residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional uses, or*  
*(ii) a material increase in the intensity of the use of a building, within a specific class of use as described in subclause (i), including an increase in the number of dwelling units within a building;*

...

*(g) “development” means*  
*(i) site alteration, including but not limited to*  
*(A) altering the grade of the land,*  
*(B) removing vegetation from the land,*  
*(C) excavating the land,*

*(D) depositing or stockpiling soil or other material on the land,  
and*

*(E) establishing a parking lot,*

*(ii) locating, placing, erecting, constructing, altering, repairing,  
removing, relocating, replacing, adding to or demolishing structures  
or buildings in, under, on or over the land,*

*(iii) placing temporary or permanent mobile uses or structures in,  
under, on or over the land, or*

***(iv) changing the use or intensity of use of a parcel of land or  
the use, intensity of use or size of a structure or building;***

...

*(j.01) "home-based business" means a business or service use that is  
located in a dwelling unit that is used or occupied as a home, or an  
accessory structure to the dwelling unit;*

[emphasis added]

18. Pursuant to subsections 31(1)(d) and 31(3) of the Regulations, which are reproduced below, prior to changing the use of a building, structure or land, including for the purposes of a home-based business, a development permit must be obtained from the Minister.

*31(1) No person shall, without first obtaining a development permit from  
the Minister,*

*(d) change the use of a building, structure or land or part of any of them;*

*31(3) No person shall, without first obtaining a development permit from  
the Minister,*

*(a) renovate an existing dwelling unit for the purpose of accommodating  
a home-based business;*

*(b) change the use of an existing dwelling unit to a home-based  
business; or*

*(c) use an accessory structure for the home-based business.*

19. Subsections 3(1)(a) and 3(2)(a) of the Regulations provide:

*3(1) No person shall be permitted to subdivide land where the proposed  
subdivision would*

*(a) not conform to these regulations or any other regulations made  
pursuant to the Act;*

*3(2) No development permit shall be issued where a proposed building,  
structure, or its alteration, repair, location, or use or change of use would*

*(a) not conform to these regulations or any other regulations made  
pursuant to the Act;*

20. In other words, the Minister **must deny** an application that contravenes the Regulations.
21. The Application contravenes sections 3(4), 5(d), 25(2) and 31(7) of the Regulations, which state:

*3(4) Notwithstanding any other provisions of these regulations, no development permit shall be issued in respect of a development involving the change of use of an entrance way or the creation of an entrance way to any highway where an entrance way permit is required unless an entrance way permit has first been granted by the Minister of Transportation and Public Works.*

...

*5 Other approvals required*

*No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:*

*(d) where, pursuant to the Roads Act, an entrance way permit or approval is required, the required permit or approval has been obtained;*

...

*25(2) No person shall subdivide a parcel of land that abuts, and requires access to, an arterial highway unless an entrance way permit, where required, has been issued by the Minister responsible for the Roads Act Highway Access Regulations.*

...

*31(7) Where a person's home-based business requires new access to a highway, or a change to an existing entrance way to a highway, the person shall obtain the required permit in accordance with the Roads Act Highway Access Regulations prior to making an application for a development permit under this section.*

## **Test**

22. In Order LA17-06 ("*Stringer*")<sup>1</sup>, the Commission established the applicable test for Ministerial decisions made under the Act and Regulation. This test was further clarified in Order LA25-02 ("*Aftab*") being described as a two-part guideline in exercising appellate authority:
- i. whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and*

---

<sup>1</sup> *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52.

- ii. *whether the Minister's decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.*<sup>2</sup>

### **Test Application**

23. In this matter, the Minister followed the proper process as set out by law, applied sound planning principles, and, therefore, the Decision requires deference.

#### *Step 1: Processing of the Application*

24. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, and the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
25. Subsection 5(d) of the Regulations states that, where an entrance way permit or approval is required, no approval shall be given until it has been obtained under the *Roads Act*, RSPEI 1988, Cap R-15.
26. Further, sections 3(4), 25(2) and 31(7), respectively, provide that the Minister of Transportation must first grant an entrance way permit, where required, before the Minister may grant (i) development permits involving the change of use of an entrance way to any highway; (ii) subdivision approval of a parcel of land that abutting, and requiring access to, an arterial highway; and (iii) home-based business development permit involving the change to an existing entrance way to a highway
27. As the Subject Property is located on Route 1, which is an arterial highway, and requires an entrance way permit for the proposed use, Senior Development Officer, Sarah MacVarish, sent the details of the Application to the Department of Transportation for comment regarding whether such an entrance way permit would be granted.
28. On January 8, 2026, the Department of Transportation advised the Minister, pursuant to the definition of "home occupation" in the *Highway Access Regulations*<sup>3</sup>, that the proposed use of the Subject Property would not meet the definition of home occupation. As a result, the Application would be considered as a change of use to a commercial operation by the Department of Transportation.

---

<sup>2</sup> *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, Order LA25-02 at para 27.

<sup>3</sup> *Highway Access Regulations*, PEI Reg EC580/95, s 1(1)(j).

29. Home occupation is defined at clause 1(1)(j) of the *Highway Access Regulations* as:

1(1)(j) “home occupation” means a business within a single family residential dwelling where at least fifty percent (50%) of the employees live within the dwelling on a permanent basis, the total area occupied by the business is no more than the greater of twenty-five percent (25%) of the total floor area of the dwelling or sixty-five square metres (65 m<sup>2</sup>) and the business would be consistent with any applicable zoning regulations or bylaws;

30. Pursuant to clause 20(1)(a) of the *Highway Access Regulations*, the entrance way permit cannot be granted as no entrance way permit shall be issued to establish a commercial operation. Clause 20(1)(a) states:

**20. Issue of permit outside an infilling area**

(1) The Minister may issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way, to a portion of an arterial highway outside of an area that has been designated for infilling in Schedule A-3, except no entrance way permit shall be issued (a) to establish a commercial operation, other than a home occupation, or an institutional operation on a parcel of land where there is no existing commercial operation or institutional operation respectively;

31. The Department of Transportation indicated that the only exception to section 20(1)(a) of the *Highway Access Regulations* applies if the Subject Property was being used for commercial purposes on February 3, 1979, the date on which this portion of Route 1 was first designated as an arterial highway. Based on the information available to the Minister, this exception does not apply to the Subject Property.

32. For greater certainty, the Subject Property is located on a portion of an arterial highway outside of an area that has been designated for infilling in Schedule A-3.

33. While this is not an appeal of a *Roads Act* decision under section 12 of the *Highway Access Regulations*, it was reasonable for the Senior Development Officer to rely on the Department of Transportation’s determination that legal access cannot be provided in denying the Application.

34. Based on the foregoing, the Senior Development Officer denied the Application having properly considered subsection 5(d) of the Regulations given the Department of Transportation’s position that the required entrance way permit would not be obtained.

*Step 2: Sound Planning Principles*

35. The Minister also met the second part of the test as the Decision is supported by objective and reliable evidence, and is based on the Act, the Regulations and sound planning principles. The Commission states in *Stringer* that “*sound planning principles require regulatory compliance*”.<sup>4</sup>
36. Given the Application’s lack of regulatory compliance, the Decision satisfies both steps in the test.

**Conclusion**

37. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
38. The Minister encourages the Appellant to contact the Department of Transportation to discuss and obtain more information regarding an entrance way permit to the Subject Property for the proposed use.
39. The Minister acknowledges receipt of several letters and emails submitted by individuals on behalf of the Appellant and in support of the Appeal. The Minister understands that none of these individuals have, to date, applied for intervener status in accordance with the Rules of Practice and Procedure. Accordingly, they do not possess the rights or standing afforded to interveners under those Rules.
40. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact us.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Yours truly,



Christiana Tweedy  
Lawyer for the Minister of  
Land and Environment

---

<sup>4</sup> *Stringer* at para 64.