LA24-013

ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

GREENFIELD CAPITAL INC.

Appellant

AND:

RESORT MUNICIPALITY OF STANLEY BRIDGE, HOPE RIVER, BAYVIEW, CAVENDISH AND NORTH RUSTICO

Respondent

PRELIMINARY HEARING ON THE QUESTION OF JURISDICTION

WRITTEN SUBMISSIONS OF THE APPELLANT

PART I: BACKGROUND

1. The facts of this matter are set out in paragraphs 1 to 7 of the Respondent's submissions.

2. The Appellant wishes to point out that upon receipt and review of the Respondent's record, in particular the minutes of the Respondent's council meeting on May 27, 2024, the Appellant's Notice of Appeal filed on June 17, 2024, made reference to incorrect PID numbers. Respondent's counsel has correctly notated the relevant applications in its record, which would indicate that all parties are aware of the decisions being appealed. For posterity, should the Commission allow the appeal, the Appellant would request that it be permitted to amend its Notice of Appeal to correct the PID numbers as indicated below:

    A. Application to rezone PID 708255;
    B. Application to rezone PID 802124;
    C. Application to subdivide a portion of PID 708255 and consolidate it with 802132; and
    D. Application to consolidate PIDs 708255 and 802124.

(collectively, the "**Applications**").

PART II: ISSUE

3. These submissions address only one issue: does the Commission have jurisdiction to hear this appeal?

4. For the reasons set out below, the answer to this question is yes.

PART III: SUBMISSIONS

5. The Appellant shall address the Respondent's submissions as follows:

    A. The *Planning Act,* RSPEI 1988, c P-8 ("***Planning Act***") does not contemplate a distinction between interim and final decisions. The Commission's jurisdiction is not limited to hearing appeals of decisions that approve or deny an application.

    B. Even if the Commission finds that the appeals under the *Planning Act* are limited to final decisions, in the matter at hand, the decisions to defer the Applications until such a time as they can be adjudicated under a new land use planning framework not yet in effect, is effectively a denial of the Applications under the municipality's existing land use planning framework.

6. Based on the foregoing, it follows that the Commission has jurisdiction to hear this appeal.

A. The *Planning Act* does not contemplate a distinction between interim and final decisions. The Commission's jurisdiction is not limited to hearing appeals of decisions that approve or deny an application.

7. There is no dispute that the Commission is a body of statute, created under the *Island Regulatory and Appeals Commission Act*, RSPEI 1988, c I-11. As the Respondent pointed out in its submissions, the Commission has only such jurisdiction as is granted to it by the Legislature. With respect to hear appeals from a municipal council in relation to land use planning, the Commission's authority is prescribed by section 28(1.1) of the *Planning Act*, which reads as follows:

> (1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of a council of a municipality
>
> (a) that is made in respect of an application by a person under a bylaw for
> (i) a development permit
> (ii) an occupancy permit, in relation to a matter under this Act or the regulations,
> (iii) a preliminary approval of a subdivision, or
> (iv) a final approval of a subdivision.

(b) to adopt an amendment to a bylaw, including
(i) an amendment to a zoning map established in a bylaw, or
(ii) an amendment to the text of a bylaw.

[emphasis added]

8. "Decision" is not a term defined in the *Planning Act*, nor the regulations. The Commission has previously relied on Black's Law Dictionary, 6th Edition, with respect to the definition of "decision":

> A determination arrived at after consideration of facts, and, in legal context, law. A popular rather than technical or legal word; a comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character.

(see *Seawood Estates Inc. v. Resort Municipality,* LA10-05, at para 13 [**TAB 1**]).

[emphasis added]

9. In recognition that the term "decision" has no fixed, legal meaning, the Commission has stated that it shall be interpreted "in accordance with the *Interpretation Act*, the objects of the *Planning Act* and other relevant enactments" (*Seawood Estates Inc.,* supra, at para 20 [**TAB 1**]).

10. Section 11(2) of the *Interpretation Act*, RSPEI 1988, c I-8.1 [**TAB 2**] (the "*Interpretation Act*") reads as follows:

> (2) Acts and regulations shall be construed as being remedial and shall be given the fair, large and liberal interpretation that best ensures the attainment of their objects.

[emphasis added]

11. The objects of the *Planning Act* are set out at section 2:

(a) to provide for efficient planning at the provincial and municipal level;
(b) to promote sustainable and planned development;
(c) to protect the natural and built environment of the province;
(d) to encourage co-operation and co-ordination among stakeholders;
(e) to address potential conflicts regarding land use;
(f) to provide the opportunity for public participation in the planning process; and
(g) to ensure compatibility between land uses.

[emphasis added]

12. In light of the provisions above, the proper interpretation of the term "decision" in section 28 of the *Planning Act* is one that is fair, large, liberal, and provides for, *inter alia,* efficient planning, planned development, co-ordination among stakeholders, and public participation.

Using those tools as a guide for the proper interpretation, the Commission will find that it has authority to hear this appeal.

13. If the Legislature had intended to reduce the scope of appealable decisions, then restrictive language should have been used to convey same. Instead, the Legislature chose to frame the types of decisions that can be appealed under section 28(1.1)(a) as any decision "in respect of" the applicable application, or under section 28(1.1)(b) as any decision whether "to adopt an amendment".

14. Upon review of the Applications, the Respondent's council could have decided to do one of four things: approve, reject, approve with conditions, or defer. The *Planning Act* does not differentiate one's right to appeal depending on which option council chooses. Each of those decisions would constitute a decision made "in respect of" that application or a decision whether to adopt an amendment (for the purpose of rezoning). All of these decisions fall squarely within the ambit of section 28(1.1).

15. In fact, the Commission has previously found that a decision to defer an applicant's subdivision application is an appealable decision. In *Clive Pickles v. Alexandra Community Council*, LA94-15 [**TAB 3**], the Commission found that:

> According to Section 28 of the *Planning Act* any person has a right of appeal to the Commission if he or she is dissatisfied by a decision of a council. The decision of the Council was not to approve or deny the application but only to defer its decision—the specific matter of this appeal. Based on the above the Commission allows the appeal.
>
> [emphasis added]

16. While the Appellant acknowledges that the Commission's decision in *Clive Pickles* was made pursuant a previous iteration of section 28 of the *Planning Act*, the language used in the current provision does not go far enough to specifically preclude an appeal of a decision to defer an application.

17. In relation to the Respondent's concerns that a broad, expansive interpretation would "fragment and complicate the administrative process, leading to delays, added costs, and wasted resources", the Commission has already stated that its jurisdiction to hear decisions, or purported decisions, of a municipality made under the *Planning Act*, needs to be considered on a case-by-case basis (*Seawood Estates Inc.,* supra, at para 19 [**TAB 1**]).

18. In this case, requiring the Appellant to wait for an outright denial before attempting to commence an appeal would only further delay the proper adjudication of the Applications, thus contradicting the objects of the *Planning Act* (i.e. efficient planning, planned development, co-ordination among stakeholders, and public participation), not to mention resulting in added costs and wasted resources of the Commission and Appellant.

19. The appeal at bar is not a case whereby the Appellant is seeking to appeal an operational or day-to-day decision of a municipal council, but rather the consequence of four motions duly passed upon the recommendations of a planning committee, bearing the same formalities and being passed in the same manner as any other decision to approve or deny an application or amendment. Principles of natural justice and procedural fairness would suggest that the

Appellant should be afforded the same statutory right of appeal as though the decisions were made to approve or deny. Such appeal rights are necessary to safeguard the potential misuse of deferrals by a public body (see, for instance, *Evergreen Environmental Inc v. Oshawa (City)*, 2020 CarswellOnt 19349, at para 34 [**TAB 4**]).

20. The preceding paragraph also demonstrates how the appeal at bar can be differentiated from *Wheeler Re*, LA16-02, which was relied on by the Respondent in its submissions. *Wheeler Re* concerned a "decision" of a municipality to defer a request by the applicant to amend the municipality's zoning bylaw to include the use of wood on walkways. In that case, the respondent's administrator advised the applicant that his request would be considered by council during its comprehensive bylaw review. The respondent's administrator was merely advising the applicant of the procedural requirements involved in the decision-making process. The applicant's request needed to go to the planning board and then subsequently to council as part of its comprehensive bylaw review, which was already underway at the time the applicant made his request. Conversely, in our case, the Applications were submitted in accordance with the proper land use planning procedures and had been advanced to council for final adjudication on May 27, 2024.

21. The Respondent's suggestion that *Wheeler Re* limits the Commission's jurisdiction solely to hear appeals of a decision to approve an amendment to a bylaw, as opposed to even a decision to deny, contradicts the Commission's longstanding practice to hear appeals of decisions to deny rezoning applications. To read section 28(1.1)(b) in a manner that precludes an applicant from appealing a decision to reject (or defer) a rezoning application would effectively strip residents of the statutory appeal rights in cases where they need it most. This could not have been the intent of the Legislature.

B. A decision to defer the Applications until such a time as they can be adjudicated pursuant to a new land use planning framework not yet in effect, is effectively a denial of the Applications under the municipality's existing land use planning framework.

22. Even if the Commission finds that appeals are limited solely to decisions that approve or deny an application or amendment, in this case the Respondent's decision to wait and assess the Applications under its proposed new official plan and zoning bylaw (which are not in effect as of the date hereof and for which there is no timeline for the effective date) is a *de facto* denial of the Applications under its existing land use planning framework. To find that the Commission does not have jurisdiction in this instance would only serve to enable the Respondent to effectively characterize a rejection of the Applications as a deferral for the purpose of avoiding scrutiny on appeal.

23. Sections 15(1) and 17 of the *Planning Act* clearly express that a municipality's official plan and accompanying bylaws are only effective on the date of Ministerial approval:

> 15. **Procedure following Minister approval**
>
> (1) Following the approval of an official plan by the Minister
>
> (a) the plan becomes the official plan for the area
>
> […]

17. Approval of Minister
The bylaws shall be subject to the approval of the Minister and shall be effective on the date of approval by the Minister.

24. Section 10 of the *Planning Act* is specifically intended to help municipalities maneuver the transition period that may arise in the interim:

10. Interim Planning Policy
(1) A planning board may recommend to the council the adoption of an interim planning policy containing limitations, restrictions and prohibitions on land use pending the completion of an official plan.

Refusal pending adoption of bylaws
(2) The council or the Minister, as the case may be, may refuse to hear applications for subdivision approvals, development permits or building permits from the date of receipt by the council of the proposed interim planning policy until the bylaws giving effect to the policy come into force.

[emphasis added]

25. The Respondent, in this case, did not take any of the required procedural steps to implement an interim planning policy under section 10 of the *Planning Act*, and thus is required at law to adjudicate the applications under its existing land use planning bylaws. The Commission has made it clear that absent an interim planning policy, council must apply the regulatory framework in effect at the time an application is under review. For instance, in *Clive Pickles*, supra, [**TAB 3**], the Commission stated that:

> Although, it is understandable that the Community Council might want to wait until the provincial government has established the regulations regarding the "buffer zone", Council must apply the bylaw provisions in effect at the time the application is under review. In the view of the Commission it would be improper to deliberately defer an application beyond the 30 day deferral period and then apply new rules to the application.
>
> [emphasis added]

26. Without diving into the merits of the appeal at bar, the Appellant wishes to point out that the law of vested rights is well-established at common law and has been recognized at all levels of court, including the Supreme Court of Canada (see, generally, *Dikranian c. Quebec*, 2005 SCC 73 at para 37-38 [**TAB 5**]). In these particular circumstances, the Appellant had submitted four complete Applications to the Respondent's council before the municipality's new official plan and zoning bylaw come into effect. Thus, the Appellant's rights were vested in the municipality's *existing* Official Plan and its Zoning and Subdivision Control (Development) Bylaw.

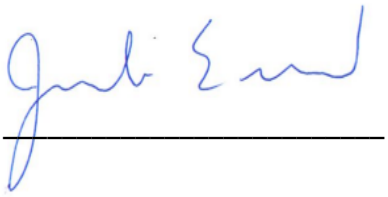
27. In that regard, the Respondent's decision to defer its adjudication of the Applications in this case has the same effect as denying the Applications and requiring the Appellant to re-submit when the new official plan and zoning bylaw are enacted. To find otherwise would be contrary

to sections 15(1) and 17 of the *Planning Act* and would conflict with the common law principle of vested rights.

PART IV: DISPOSITION

28. For the reasons set out above, the Appellant respectfully asks that the Commission allow the appeal.

ALL OF WHICH is respectfully submitted this 13th day of August 2024.



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THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Edouard
CANADA

Docket LA10002
Order LA10-05

IN THE MATTER of an appeal by Seawood Estates Inc. of a purported decision of the Resort Municipality, dated January 21, 2010.

BEFORE THE COMMISSION

on Friday, the 25th day of June, 2010.

Allan Rankin, Vice-Chair
Michael Campbell, Commissioner

Order

Contents

Written Submissions Filed

1. For the Appellant Seawood Estates Inc.

Counsel:
Derek D. Key, Q.C.

2. For the Respondent Resort Municipality

Counsel:
Perlene J. Morrison

Reasons for Order

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1. Introduction

[1] The Appellant Seawood Estates Inc. (Seawood) has filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the ***Planning Act***, R.S.P.E.I. 1988, Cap. P-8, (the ***Planning Act***). Seawood's Notice of Appeal was received on February 10, 2010.

[2] This appeal concerns a January 21, 2010 letter from the Respondent Resort Municipality (the Resort Municipality) requiring Seawood to file a change of use application in addition to a subdivision application with respect to the subdivision of parcel numbers 897942 and 987934 located in the Seawood Estates Subdivision.

[3] The Commission notes, for the record, that although Seawood filed the appeal, the record filed by the Resort Municipality indicates that application for subdivision filed with the Resort Municipality notes the present land owner as "Torus Country Lands". Elsewhere in the record, the land owner/developer is referred to as Torus Country Lands Inc.

[4] In a letter dated March 19, 2010, Commission staff identified a potential jurisdictional issue and invited written submissions from the parties or their counsel, as noted in part below:

> *Upon a review of the file, the Commission is of the view that there is a preliminary question as to whether it has the necessary jurisdiction to hear this appeal. Prima facie, Ms. MacDonald's January 21, 2010 letter to Russell Rogers neither approves nor denies the request to subdivide Lots A and B into six lots in Seawood Estates. Rather, said letter appears to set out steps that the Resort Municipality requires in order to allow the subdivision application to proceed further. The preliminary issue for the Commission is whether said letter constitutes a "decision" within the meaning of the Planning Act.*
>
> *The Commission requests written submissions (six copies of each submission) from the parties on this preliminary matter. The deadline for the initial written submissions is **April 9, 2010**. The deadline for rebuttal submissions is **April 23, 2010**. Following the latter deadline, the Commission will review the file to determine whether it has the jurisdiction to hear this appeal on its merits.*

[5] The Commission received submissions from Counsel for the Resort Municipality on April 9, 2010, submissions from Counsel for Seawood on April 13, 2010 and rebuttal submissions from Counsel for Seawood on April 21, 2010. Counsel for the Resort Municipality elected to not file a rebuttal submission.

2. Submissions

Seawood's Position

[6] A brief summary of points raised by Seawood's Counsel follow.

- Seawood's subdivision request is in an area zoned for resort accommodations since the Official Plan was approved on January 27, 2000 and the Zoning and Subdivision Control (Development Bylaw) was approved on May 27, 2000.
- The Resort Municipality advised Seawood that further steps would be required before Seawood's subdivision application could proceed further. Seawood was specifically advised to submit a change of use application for each of Lot A and Lot B.

- It is submitted that the Resort Municipality is relying on the historic zoning of Seawood, ignoring its own Official Plan and ignoring the provisions of subsection 15(1) of the ***Planning Act***.

- Seawood submits that the Resort Municipality's decision not to proceed further with Seawood's subdivision application until such time as a change of use application is also filed constitutes a decision within the meaning of section 28 of the ***Planning Act*** and therefore is subject to appeal. Section 28 of the ***Planning Act*** does not require an outright approval or denial of a subdivision application in order for it to constitute a "decision".

- It is submitted that Commission Orders LA09-13 and LA09-11, cited by Counsel for the Resort Municipality, can be distinguished from the present matter and are not applicable.

- It is submitted that the Resort Municipality's January 21, 2010 decision does not constitute a simple "operational or day-to-day decision". Rather, it is a decision made in respect to a specific application to subdivide previously filed in compliance with the current Official Plan and Bylaw.

- It is submitted that Seawood's appeal is not premature. It is submitted that the Resort Municipality's decision of January 21, 2010 is premature.

[7] Seawood requests that the Commission find that it has the jurisdiction to hear Seawood's appeal of the Resort Municipality's January 21, 2010 decision.

The Resort Municipality's Position

[10] A brief summary of points raised by Counsel for the Resort Municipality follow.

- The Commission's jurisdiction is limited to that granted by statute.

- The Resort Municipality's letter of January 21, 2010 was not a decision of Council. It was a letter from the Resort Municipality's Chief Administrative Officer that outlined the steps that Seawood must follow in order that the subdivision application is processed. No decision was made on the application itself.

- If a "decision" is not within the class of decisions governed by the ***Planning Act*** then the Commission has no jurisdiction to hear the appeal.

- The ***Planning Act*** does not provide a mechanism for appealing operational or day-to-day decisions made by a municipality, such as whether it is necessary to file a certain form or what information is required in order to process a subdivision application. Allowing such appeals to proceed would not only be inconsistent with the stated objects of the ***Planning Act***, but would frustrate the delivery of basic public services by municipalities.

- Seawood's appeal is premature. The Resort Municipality has not even been given a chance to complete the process that will enable its Council to make a decision as to whether the subdivision will be granted. Once the process is complete there may be no reason for an appeal – Seawood could very well be given permission to subdivide in accordance with its application.

- Seawood is appealing a component of the Resort Municipality's application process; it is not appealing a decision of its Council. The Commission cannot intervene since the process is not yet complete and Council has not yet rendered a decision on Seawood's application. Once Council makes a decision, Seawood will then have the right to appeal to the Commission if it is dissatisfied with the decision and if grounds of appeal exist.

[9] The Resort Municipality requests that the Commission find that it does not have the jurisdiction to hear this present appeal.

3. Findings

[10] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission that it does not have the jurisdiction to hear this appeal. The reasons for the Commission's decision follow.

[11] Subsection 28(1.1) of the ***Planning Act*** reads as follows:

> *(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality*

(a) that is made in respect of an application by the person, or any other person, under a bylaw for

(i) a building, development or occupancy permit,

(ii) a preliminary approval of a subdivision,

(iii) a final approval of a subdivision; or

(b) to adopt an amendment to a bylaw, including

(i) an amendment to a zoning map established in a bylaw, or

(ii) an amendment to the text of a bylaw,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

[12] The Commission notes that the word "decision" is not defined in the ***Planning Act***.

[13] Black's Law Dictionary, 6th Edition, offers the following:

Decision. A determination arrived at after consideration of facts, and, in legal context, law. A popular rather than technical or legal word; a comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character.

[14] In Order LA02-06 *Fran J. Whitlock-McGowan v. Community of Lower Montague*, the Commission found that a letter from the Community's Chairman providing information did not constitute a decision of Council.

[15] In Order LA05-07 *Andre J. Darville v. Town of Cornwall*, the Commission found that a letter prepared by the Town's staff was not a decision as it merely served to explain the Town's Bylaw in response to concerns outlined in a letter from Mr. Darville.

[16] In the present appeal, the Resort Municipality's January 21, 2010 letter may be characterized as a letter of procedure. It determines that Seawood "must submit a change of use application in addition to the subdivision application" and then sets out a process to be followed, which reads as follows:

The following are the steps required in order for your application to proceed any further:

1. A Change of Use Application(s) shall be submitted from you as the Developer. Upon receipt of the Developer's application to change the use of Lots A and B, notifications regarding the change of use and proposed subdivision according to Section 17.4(2) of the Bylaw must be sent to all adjacent property owners within 400'.

2. The Council will then consider comments provided by neighbouring property owners, applicable official plan provisions and applicable Bylaw provisions;

3. The Council has determined that a public meeting will be held at the developer's expense regarding the change of use in which property owners will be notified of the meeting and have a chance to voice any concerns or issues with this proposal. You, as the developer will be present at this meeting as well to provide your plans on the proposal.

The Council looks forward to hearing from you regarding this matter.

If you have any questions, please do not hesitate to contact me.

[17] Section 9 of the ***Interpretation Act*** reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

[18] Section 2 of the ***Planning Act*** reads as follows:

2. The objects of this Act are

(a) to provide for efficient planning at the provincial and municipal level;

(b) to encourage the orderly and efficient development of public services;

(c) to protect the unique environment of the province;

(d) to provide effective means for resolving conflicts respecting land use;

(e) to provide the opportunity for public participation in the planning process.
1988,c.4,s.2.

[19] The Commission's jurisdiction to hear decisions, or purported decisions, of a municipality made under the ***Planning Act***, needs to be considered on a case-by-case basis. Often jurisdiction is not at issue and all parties agree that the appeal is properly before the Commission. Where, however, a party is of the view that the Commission may not have the jurisdiction to hear an appeal, or the Commission itself has concerns about its jurisdiction, the issue of the Commission's jurisdiction must be determined after giving the parties an opportunity to address the jurisdictional issue.

[20] If the Commission finds that a letter from a municipal decision maker seeks to thwart or effectively deny a land use planning decision while not formally making such a decision, such letter may be viewed as an attempt to circumvent the appeal provisions in the ***Planning Act*** and thus deny the right of appeal. In such a scenario, the Commission will interpret the term "decision" set out in section 28 of the ***Planning Act*** in accordance with the ***Interpretation Act***, the objects of the ***Planning Act*** and other relevant enactments. Under such circumstances, the Commission would, in all likelihood, find that it had the jurisdiction to hear the appeal.

[21] In the view of the Commission, the Resort Municipality's January 21, 2010 letter could be characterized as a decision within the meaning of section 28.1 of the ***Planning Act***, if the effect of the January 21, 2010 letter was to effectively deny Seawood's subdivision application, or the intent of said letter was to deter such application. However, the Commission finds that no such mischief or ulterior motive is present in the present appeal matter. There is nothing particularly unusual in requiring notification to adjacent property owners and the holding of a public meeting to gain public input. It is appropriate for a municipal decision maker to consider comments from neighbouring property owners. It is essential for municipal decision maker to consider the applicable provisions in its official plan and bylaw.

[22] The Commission finds that the Resort Municipality has taken a cautious yet reasonable position that a change of use application is required. The Resort Municipality has set out the steps to be followed. These steps appear reasonable, are not unduly onerous, and appear to have a foundation in the Resort Municipality's Bylaw. If Seawood follows the requirements set out by the Resort Municipality and the Resort Municipality were to deny Seawood's application, Seawood will then be entitled to an appeal to the Commission so long as the requirements of section 28 of the ***Planning Act*** are met.

[23] Accordingly, the Commission finds that it does not have the jurisdiction to hear the present appeal.

4. Disposition

[2 An Order stating that the Commission has no jurisdiction to hear this appeal will be issued.

Order

WHEREAS the Appellant Seawood Estates Inc. filed an appeal of a letter from the Respondent Resort Municipality, dated January 21, 2010;

AND WHEREAS the Commission invited the Appellants and the Respondent to file written submissions on a possible jurisdictional issue identified by Commission staff;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the ***Island Regulatory and Appeals Commission Act*** and the ***Planning Act***;

IT IS ORDERED THAT

1. **The Commission does not have the jurisdiction to hear this appeal.**

DATED at Charlottetown, Prince Edward Island, this 25th day of June, 2010.

BY THE COMMISSION:

Allan Rankin, Vice-Chair

Michael Campbell, Commissioner

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

> *12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the ***Act*** provide as follows:

> *13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*
>
> *(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

INTERPRETATION ACT

PLEASE NOTE

This document, prepared by the ***Legislative Counsel Office***, is an office consolidation of this Act, current to May 13, 2021. It is intended for information and reference purposes only.

This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office
Tel: (902) 368-4292
Email: legislation@gov.pe.ca

CHAPTER I-8.1

INTERPRETATION ACT

PART 1 – PRELIMINARY MATTERS

1. Definitions

In this Act,

(a) "**Chief Legislative Counsel**" means the person designated as Chief Legislative Counsel by the Minister of Justice and Public Safety and Attorney General under section 37;

(b) "**enact**" includes issue, make, establish or prescribe;

(c) "**enactment**" means an Act or regulation or a portion of an Act or regulation;

(d) "**regulation"** means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, bylaw or other instrument enacted

(i) in execution of a power conferred under an Act, or

(ii) by or under the authority of the Lieutenant Governor in Council,

but, for certainty, does not include an order of a court or an order made by a public officer or an administrative tribunal with respect to a dispute between two or more persons;

(e) "**repeal**" includes revoke, cancel or rescind. *2021,c.10,s.1.*

2. Application

Every provision of this Act applies to every enactment, whenever enacted, unless a contrary intention appears in this Act or in the enactment. *2021,c.10,s.2.*

PART 2 – COMING INTO FORCE, REPEAL, EXPIRY

3. Coming into force of Act

(1) An Act or a portion of an Act comes into force on the date or in the manner specified in the Act.

Date of commencement of Act

(2) Where no date or manner of coming into force is specified, the Act or portion of the Act comes into force on the date the Act receives royal assent.

Commencement provision

(3) Where a provision of an Act states that the Act or a portion of the Act is to come into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council, on a specified date or in a specified manner, that provision comes into force on the date that the Act receives royal assent.

Proclamation

(4) A proclamation referred to in subsection (3)

(a) may apply to the coming into force of any provision of the Act or portion of the Act; and

(b) may be issued at different times for different provisions of the Act or portions of the Act.

Date of royal assent

(5) In this section, "the date the Act receives royal assent", in relation to an Act that has been reserved for the signification of the Governor General's pleasure, means the date of the signification by the Lieutenant Governor that the Governor General in Council assented to the Act. *2021,c.10,s.3.*

4. Content of proclamation

(1) Where a proclamation is issued pursuant to an order of the Lieutenant Governor in Council, it is not necessary to provide notice in the proclamation that it is issued pursuant to the order.

Effective date of proclamation

(2) Where the Lieutenant Governor in Council has authorized the issue of a proclamation, the proclamation may provide it has been issued on the date its issue was authorized and shall be deemed to take effect on that date.

Judicial notice of proclamation

(3) Where an Act or any portion of an Act is expressed to come into force on a day fixed by proclamation, judicial notice shall be taken of the issue of the proclamation and the day fixed by the proclamation. *2021,c.10,s.4.*

5. Coming into force of regulation

(1) A regulation or a portion of a regulation comes into force on the date or in the manner specified in the regulation.

Date of publication

(2) Where no date or manner of the coming into force is specified, the regulation or portion of the regulation comes into force on the date the regulation or portion of the regulation is published in the Gazette. *2021,c.10,s.5.*

6. Time of commencement, repeal

(1) Unless otherwise provided,

(a) an enactment comes into force at the beginning of the day on which it comes into force; and

(b) the repeal of an enactment takes effect at the beginning of the day of the repeal.

Effect of expiry, etc.

(2) An enactment that has expired, is no longer authorized or has otherwise ceased to have effect is deemed repealed for the purposes of this Act.

Cessation of enactment

(3) For the purposes of subsection (2), an enactment ceases to have effect at the beginning of the day on which it expires or otherwise ceases to have effect.

Repeal and replacement

(4) An enactment that is repealed and replaced by a new enactment ceases to have effect at the time the new enactment commences. *2021,c.10,s.6.*

7. Preliminary proceedings

A power in an enactment to enact regulations, or to do any other thing, may be exercised before the enactment comes into force but, except as is necessary to make the enactment effective when it comes into force, the regulations enacted or other thing done has no effect until the enactment comes into force. *2021,c.10,s.7.*

8. Effect of repeal

(1) The repeal of an enactment does not

(a) revive an enactment that is no longer in force, or a law that no longer exists, immediately before the time the repeal takes effect;

(b) affect the previous operation of the repealed enactment;

(c) affect a right, privilege, obligation or liability that came into existence under the repealed enactment and exists immediately before the time the repeal takes effect;

(d) affect a contravention of the repealed enactment or any penalty, fine, forfeiture or punishment incurred in connection with the contravention; or

(e) affect an investigation, proceeding or remedy in respect of

(i) a right, privilege, obligation or liability referred to in clause (c), or

(ii) a penalty, forfeiture or punishment referred to in clause (d).

Investigation, proceeding

(2) An investigation or proceeding referred to in clause (1)(e) may be commenced or continued and a remedy referred to in that clause may be enforced as if the enactment had not been repealed.

Penalty, etc., may be imposed

(3) Subject to subsection 9(5), a penalty, forfeiture or punishment referred to in clause (1)(d) may be imposed as if the enactment had not been repealed. *2021,c.10,s.8.*

9. Definitions

(1) In this section,

(a) "**former enactment**" means an enactment that has been

(i) repealed and replaced with a new enactment, or

(ii) amended in a manner that changes its application or operation;

(b) "**new enactment**" means an enactment that replaces a former enactment, and includes an amendment to a former enactment that changes the former enactment's application or operation.

Person remains authorized

(2) A person authorized to act under a former enactment may continue to act under the new enactment until another person is authorized to do so.

Proceeding may continue

(3) A proceeding commenced under a former enactment shall be continued under the new enactment in conformity with the procedures established by the new enactment, insofar as is practicable.

Procedures under new enactment

(4) Procedures established by a new enactment shall be followed, with the necessary modifications, in relation to a matter that arose under the former enactment, including, without limitation,

(a) procedures for the recovery or enforcement of penalties and forfeitures incurred under the former enactment;

(b) procedures for the enforcement of a right or privilege that exists when the new enactment comes into force; and

(c) proceedings relating to matters that arose under the former enactment that are commenced after the repeal of the former enactment.

New enactment applies to penalty, etc.

(5) Where a penalty, forfeiture or punishment authorized under a former enactment is reduced or mitigated by the new enactment, the new enactment applies to any sanction imposed after the new enactment comes into force in respect of a matter that occurred under the former enactment.

Regulations remain in force

(6) Regulations enacted under a former enactment remain in force and are deemed to have been enacted under the new enactment in so far as they are authorized by and not inconsistent with the new enactment.

Reference in other enactment

(7) A reference in an unrepealed enactment to the former enactment shall, regarding a subsequent transaction, matter or thing, be construed as a reference to the provisions of the new enactment relating to the same subject matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject matter, the former enactment shall be construed as being unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

Change in authority

(8) Where

(a) a former enactment conferred a power on a person or body to enact regulations; and

(b) the power is conferred by the new enactment on a different person or body,

the person or body referred to in clause (b) has the power to repeal, amend or replace the regulations enacted by the person or body referred to in clause (a). *2021,c.10,s.9.*

10. Power to enact includes repeal, amendment

(1) A power to enact regulations includes the power, exercisable in the same manner and subject to the same conditions, if any, to repeal or amend the regulations.

Repeal of regulations

(2) The Lieutenant Governor in Council may, by regulation, repeal regulations for which the statutory authority to make the regulations has been repealed, has expired or is spent. *2021,c.10,s.10.*

PART 3 – INTERPRETATION OF ENACTMENTS

11. Principles of interpretation

(1) The words of an Act and regulations authorized under an Act shall be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislative Assembly.

Remedial construction

(2) Acts and regulations shall be construed as being remedial and shall be given the fair, large and liberal interpretation that best ensures the attainment of their objects. *2021,c.10,s.11.*

12. Enactment always speaking

Where a provision in an enactment is expressed in the present tense, the enactment shall be construed as applying to circumstances as they arise. *2021,c.10,s.12.*

13. "Domestic enactment", defined

(1) In this section, "**domestic enactment**" means an enactment of Prince Edward Island, Canada, or another province or territory of Canada.

Reference to domestic enactment

(2) A reference in an enactment to a domestic enactment is a reference to the domestic enactment as amended or to the domestic enactment that replaced it.

Application

(3) Subsection (2) applies whether the domestic enactment is amended or replaced before or after the coming into force of the enactment in which the reference to the domestic enactment appears.

Repealed domestic enactment

(4) A reference in an enactment to a domestic enactment that has been repealed and not replaced is a reference to the domestic enactment as it read immediately before its repeal. *2021,c.10,s.13.*

14. "Foreign enactment", defined

(1) In this section, "**foreign enactment**" means an enactment of a jurisdiction outside Canada.

Reference to foreign enactment

(2) A reference in an enactment to a foreign enactment is a reference to the foreign enactment as it read on the date on which the enactment containing the reference was enacted. *2021,c.10,s.14.*

15. Amending enactment

An amending enactment shall be construed as part of the enactment that it amends. *2021,c.10,s.15.*

16. Effect of repeal, etc.

(1) The repeal of an enactment, the repeal and replacement of an enactment or the amendment of an enactment shall not be construed to be or to involve

(a) a declaration that the enactment was or was considered by the Legislature or other body or person by whom it was enacted to have been previously in force; or

(b) a declaration as to the previous state of the law.

Amendment does not imply change in law

(2) The amendment of an enactment shall not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to be different from the law under the enactment as amended.

Judicial construction not adopted

(3) A re-enactment in the same words, revision, consolidation or amendment of an enactment shall not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language. *2021,c.10,s.16.*

17. Reference to regulations

(1) A reference in an enactment to regulations is a reference to regulations made under the enactment.

Reference to Act

(2) A reference in regulations to the Act is a reference to the Act under which the regulations are made. *2021,c.10,s.17.*

18. Common names

Where the name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing is used in an enactment, that name means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, even though that name is not the formal or extended designation of it. *2021,c.10,s.18.*

19. "Section heading", defined

(1) In this section, "**section heading**" means a heading that appears in an enactment immediately above or beside a section or a provision of a section.

Preamble, etc., part of enactment

(2) The following are part of an enactment:

(a) a preamble;

(b) headings other than section headings.

Reference aids not part of enactment

(3) The following are not part of an enactment and are to be considered to have been included editorially and for convenience of reference only:

(a) section headings;

(b) tables of contents. *2021,c.10,s.19.*

20. Government bound

(1) Every Act and every regulation made under it is binding on the Government unless the Act specifically provides otherwise.

Application

(2) This section applies to Acts enacted on or after December 31, 1988. *2021,c.10,s.20.*

21. Demise of the Crown

(1) A change of reigning sovereign does not affect anything done or begun under the previous reigning sovereign and all matters continue as if no succession had occurred.

References to "the King", etc.

(2) Where the reigning sovereign is a Queen, a reference in an enactment to "the King", "the King's", "His Majesty" or "His Majesty's", unless the context requires otherwise, shall be interpreted to mean respectively "the Queen", "the Queen's", "Her Majesty" or "Her Majesty's".

References to "the Queen", etc.

(3) Where the reigning sovereign is a King, a reference in an enactment to "the Queen", "the Queen's", "Her Majesty" or "Her Majesty's", unless the context requires otherwise, shall be interpreted to mean respectively "the King", "the King's", "His Majesty" or "His Majesty's". *2021,c.10,s.21.*

22. Authority to appoint

(1) Authority under an enactment to appoint a person to an office includes the authority to

(a) appoint the person either for a fixed term or during pleasure;

(b) provide for the appointee's remuneration;

(c) provide for payment of the appointee's expenses;

(d) remove or suspend the appointee;

(e) reappoint or reinstate the person as appointee;

(f) appoint a deputy who has the same powers as the appointee

(i) subject to the conditions, or

(ii) with the limitation of powers specified in the appointment; and

(g) appoint another person to act temporarily in the office where

(i) the office is vacant,

(ii) the appointee is absent or unable to act for any reason, including, without limitation, illness or incapacity or a conflict of interest in respect of a matter, or

(iii) the appointee gives prior notice of a temporary absence or resignation.

Appointment at pleasure

(2) A person who is appointed to a public office holds office during pleasure unless the contrary intention is expressed

(a) in the enactment under which the person is appointed; or

(b) in the instrument by which the person is appointed.

Revocation of appointment

(3) An appointment during pleasure may be revoked at any time without cause or notice.

Effective time of appointment

(4) An appointment is effective at the beginning of the day on which the appointment is to take effect.

Effective time of expiry, etc.

(5) Subject to subsection (6), an appointment for a term that is to conclude or expire on a specified day includes that day.

Effective time of revocation, etc.

(6) An appointment that is terminated, revoked or rescinded effective on a specified day is terminated, revoked or rescinded, as the case may be, with effect at the beginning of the specified day. *2021,c.10,s.22.*

23. Corporate rights and powers

(1) An enactment establishing or continuing a corporation shall be construed as vesting in the corporation the authority to

(a) have perpetual succession;

(b) sue and be sued in its corporate name;

(c) contract and be contracted with in its corporate name;

(d) have a common seal and alter or change it;

(e) acquire, hold and dispose of real and personal property for its purposes; and

(f) in the case of a corporation that has a name consisting of an English and a French form or a combined English and French form, the power to use either the English or French form of its name or both forms and to show on its seal both the English and French forms of its name or to have two seals, one showing the English and other showing the French form of its name.

Effect on members

(2) An enactment establishing or continuing a corporation shall be construed as

(a) vesting in the majority of its members the ability to bind the others; and

(b) exempting its individual members from personal liability for the corporation's debts, obligations or acts where the members have not contravened the enactment. *2021,c.10,s.23.*

24. Ancillary powers

(1) Where an enactment confers a power, all the powers that are necessary to exercise the power are also conferred.

Power, duty, from time to time

(2) Where in an enactment a power is conferred or a duty imposed, the power shall be exercised and the duty shall be performed from time to time as the occasion requires.

Included powers

(3) Where in an enactment the performance of an authorized action is dependent on the Lieutenant Governor in Council or a person performing another action, the Lieutenant Governor in Council or the person has the power to perform that other action.

Powers on inspection

(4) Where in an enactment power is given to a person to inspect or to require the production of records, the power includes power to make copies or extracts of those records. *2021,c.10,s.24.*

25. Gender

In an enactment, gender-specific words refer to any gender and include corporations. *2021,c.10,s.25.*

26. Number

In an enactment, words in the singular include the plural and words in the plural include the singular. *2021,c.10,s.26.*

27. Effect of delegation

(1) Where an enactment authorizes the holder of an office or position to delegate a power granted or a duty imposed on the office or position by the enactment, the holder, despite any delegation made, may exercise the power or perform the duty.

Duration of delegation

(2) A delegation made under the authority of an enactment remains valid and in effect until the delegation is revoked or expires unless

(a) the enactment providing the delegated power or duty is repealed or is amended in a manner that changes the application or operation of the delegated power or duty; or

(b) the enactment authorizing the delegation is repealed or amended so that the delegation is no longer authorized.

Power to make regulations not included

(3) An authority conferred by an Act to delegate a power or duty does not include the power to delegate a power to make regulations unless specifically authorized. *2021,c.10,s.27.*

28. Power to act for Minister

(1) Words in an enactment directing or empowering a Minister include

(a) a Minister acting for the Minister; and

(b) the Minister's deputy.

Power to act for office holder

(2) Words in an enactment directing or empowering the holder of a position or an office, other than a judicial office, referred to in the enactment include

(a) a person appointed to act for the holder; and

(b) the holder's deputy.

Exception - delegation

(3) For certainty, if a power or duty referred to in subsection (1) or (2) is delegated under a statutory power of delegation, those subsections do not apply in respect of the power or duty.

Vacancy not determinative

(4) Subsections (1) and (2) apply whether or not the office or position is vacant.

Does not apply to regulation-making power

(5) Despite this section, a power to make regulations conferred by an Act may be exercised only by the Minister or other person upon whom the power is conferred by the Act. *2021,c.10,s.28.*

29. Power to make regulations

(1) A power conferred by an Act to make regulations includes the power to make regulations that

(a) are general or particular in application;

(b) are different for different classes; and

(c) establish classes for the purposes of clause (b).

Included powers

(2) The power conferred by an Act to make regulations includes the power to make regulations

(a) to provide for administrative and procedural matters for which no express, or only partial, provision has been made in the Act;

(b) to limit the application of regulations as to time or place or both;

(c) to prescribe the amount of any fee authorized by the enactment, including the power to make regulations setting out the manner of calculating or otherwise determining those fees;

(d) to provide, with respect to any provision of regulations made or approved by the Lieutenant Governor in Council, that its contravention constitutes an offence; and

(e) to provide that a person who is guilty of an offence for contravening a provision of regulations made pursuant to clause (d) is liable to a penalty specified in the regulations. *2021,c.10,s.29.*

30. Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

(a) the deviations do not affect the substance;

(b) the deviations are not likely to mislead; and

(c) the form used is organized in the same way or substantially the same way as the form the use of which is required. *2021,c.10,s.30.*

31. Parts of speech, grammatical forms

Where a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings. *2021,c.10,s.31.*

32. Application to regulations

A word or expression used in regulations has the same meaning as in the Act authorizing the regulations, whether or not the word or expression is defined in the authorizing Act. *2021,c.10,s.32.*

33. Time excludes specified day

(1) A period of time expressed in days and described as beginning on, at or with a specified day excludes the specified day.

Time includes specified day

(2) A period of time expressed in days and described as ending on, at or with a specified day includes the specified day.

Time excludes specified day

(3) A period of time expressed in days and described as beginning before, after or from a specified day excludes the specified day.

Days between events

(4) A period of time described by reference to a number of days between two events excludes the day on which the first event happens and the day on which the second event happens.

Application

(5) Subsections (1) to (4) apply even where the period is expressed as "at least" or "not less than" a number of days or as requiring clear days.

Holiday

(6) A time limit for the doing of anything that falls or expires on a holiday is extended to include the next day that is not a holiday.

Business offices

(7) A time limit for registering or filing documents or for doing anything else that falls or expires on a day on which the place for doing so is not open during its regular hours of business is extended to include the next day the place is open during its regular hours of business.

Consecutive months

(8) A period of time expressed as one or more consecutive months beginning or ending on, at, with, before, after or from a specified day, is counted to the date numerically corresponding to the date of the specified day in the last or first month of the period, as the case requires.

Consecutive years

(9) A period of time expressed as one or more consecutive years beginning or ending on, at, with, before, after or from a specified day, is counted to the same date as the specified day in the last or first year of the period, as the case requires.

No corresponding date

(10) Where a period of time would end on a date in a month that has no date numerically corresponding to the first date in the period, the period ends on the last day of that month.

Atlantic Standard Time

(11) A specified time of day is a reference to Atlantic Standard Time, or four hours behind Greenwich Mean Time, unless Daylight Saving Time is being observed on that day pursuant to section 2 of the *Time Uniformity Act* R.S.P.E.I. 1988, Cap. T-3.01.

Attainment of particular age

(12) A person reaches a particular age expressed in years at the beginning of the relevant anniversary of the person's birth date. *2021,c.10,s.33.*

34. Applicable definitions

In an enactment, a word or expression defined in the Schedule to this Act has the meaning assigned to it. *2021,c.10,s.34.*

PART 4 – REFERENCES AND CITATIONS

35. Citation of Acts

(1) In an enactment or document, an Act of Prince Edward Island, Canada, or another province or territory may be cited by reference to

(a) its title or its short title, with or without reference to its chapter number;

(b) the number of the chapter of the Revised Statutes, or of the Statutes for the calendar year in which the Act was passed; or

(c) its chapter number in the continuing office consolidation of the statutes authorized under section 37.

Citation of regulations

(2) In an enactment or document, regulations of Prince Edward Island, Canada, or another province or territory may be cited by reference to

(a) the title of the regulations; or

(b) the number or designation assigned to the regulations by Executive Council and published in the Gazette.

Citation includes amendments

(3) In an enactment, a citation of or reference to another statutory provision of Prince Edward Island, Canada, or another province or territory is a citation of or reference to the other statutory provision as amended from time to time. *2021,c.10,s.35.*

36. References inclusive

(1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series shall be construed as including the number or letter first mentioned and the number or letter last mentioned.

Internal references

(2) A reference in an enactment to a part, division, section, schedule, appendix or form shall be construed as a reference to a part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

Other internal references

(3) A reference in an enactment to a subsection, clause, subclause, paragraph or subparagraph shall be construed as a reference to a subsection, clause, subclause, paragraph or subparagraph of the section, subsection, clause, subclause or paragraph, as the case may be, in which the reference occurs.

Reference to regulations

(4) A reference in an enactment to regulations shall be construed as a reference to regulations made under the enactment in which the reference occurs.

Printed by authority

(5) A reference in an enactment by number or letter to any section, subsection, clause, subclause, paragraph or subparagraph or other division of an enactment shall be construed as a reference to the section, subsection, clause, subclause, paragraph or subparagraph or other division of the other enactment as printed by authority of the *King's Printer Act* R.S.P.E.I. 1988, Cap. K-1. *2021,c.10,s.36; 2022,c.80,s.7.*

37. Designation of Chief Legislative Counsel

(1) The Minister of Justice and Public Safety and Attorney General may designate an employee of the Department of Justice and Public Safety as the Chief Legislative Counsel.

Continuing office consolidation

(2) The Chief Legislative Counsel shall maintain a continuing office consolidation of the public Acts of Prince Edward Island in the form the Minister of Justice and Public Safety considers appropriate.

Updating consolidation

(3) The Chief Legislative Counsel shall ensure that the continuing office consolidation includes all amendments to the public Acts and all new public Acts passed by the Legislature as soon as practicable after they come into force, with the exception of those Acts that are spent or have otherwise ceased to have effect.

Exclusion - not in force

(4) The Chief Legislative Counsel may exclude from the continuing office consolidation any Act or provision of an Act which has not come into force.

Assignment of chapter number

(5) Where a new Act is added to the continuing office consolidation, the Chief Legislative Counsel may assign a chapter number to the new Act that is different from the chapter number assigned to it in the annual volume of statutes.

Form of chapter number

(6) The chapter number assigned to a new Act under subsection (5) shall be in the same form as the chapter numbering in the Revised Statutes of Prince Edward Island 1988, and shall reflect the alphabetic position of the first substantive word of the title in the list of public Acts included in the continuing office consolidation. *2021,c.10,s.37.*

PART 5 – OTHER MATTERS

38. Effect of private Act

No provision in a private Act affects the rights of any person, except as provided in the private Act with respect to a person mentioned or referred to in that Act. *2021,c.10,s.38.*

39. Majority may act

(1) Where in an enactment an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

"Association", defined

(2) In subsections (3) to (6), "association" means a board, commission or other body established by an enactment and consisting of three or more members.

Quorum - fixed number

(3) Where the number of members of the association provided for by the enactment under which it is established is a fixed number, at least one-half of that number constitutes quorum at a meeting of the association.

Quorum - variable number

(4) Where the number of members of the association provided for by the enactment under which it is established is not a fixed number, at least one-half of the number of members in office constitutes quorum at a meeting of the association, where the number of members complies with the maximum or minimum number, if any, permitted or required by the enactment.

Effect of quorum

(5) An act or thing done by a majority of the members of an association present at a meeting, where the members present constitute a quorum, shall be deemed to have been done by the association.

Effect of vacancy

(6) A vacancy in the membership of an association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum. *2021,c.10,s.39.*

40. Continuation after expiry

(1) Where the term of office of a member of a board, commission or other body established by an enactment has expired, the member may continue to act as, and shall be deemed to continue to be, a member of the board, commission or other body until the member's reappointment or the appointment of the member's successor takes effect.

No retroactive appointment

(2) Notwithstanding the continuation of a member's appointment pursuant to subsection (1), the member's reappointment, or the appointment of the member's successor, to the board, commission or other body shall not be given an effective date that is earlier than the date on which the reappointment or appointment, as the case may be, is made.

Exception

(3) For greater certainty, subsection (1) does not apply where the member does not act as a member of the board, commission or other body after the date that the member's term of office expires. *2021,c.10,s.40.*

41. Judges, court officers

Where an enactment gives judicial or quasi-judicial powers to a judge or officer of a court, the judge or officer in exercising the powers given by the enactment does so in the judge's or officer's official capacity and representing the court. *2021,c.10,s.41.*

42. Appeals

Where under an enactment an appeal is given from a decision of a person, board, commission or other body to a court or judge, the court or judge shall proceed by way of rehearing and the provisions of the Rules of Civil Procedure shall apply with any necessary changes. *2021,c.10,s.42.*

43. Application of other enactment

Where an enactment provides that another enactment applies, it applies with the necessary changes and so far as it is applicable. *2021,c.10,s.43.*

44. Solemn affirmation, etc.

Where an enactment requires or provides for an oath to be sworn, the person to be sworn may substitute for the oath a solemn affirmation or declaration in the same form as the oath with the necessary changes. *2021,c.10,s.44.*

45. Personal Property Security Act

A reference in an enactment to any interest in personal property to secure the payment or performance of an obligation, including a charge, lien, mortgage or pledge shall, unless the context requires otherwise, include a security interest as defined in the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1. *2021,c.10,s.45.*

46. Documentary evidence

Where an enactment provides that a document is evidence or proof of a fact without anything in the context to indicate that the document is conclusive proof,

(a) the document is admissible in evidence in a judicial proceeding; and

(b) the fact shall be deemed to be established in the absence of evidence to the contrary. *2021,c.10,s.46.*

PART 6 – CONSEQUENTIAL AMENDMENTS, REPEALS AND COMMENCEMENT

Sections 47 to 63 make consequential amendments to other Acts. The amendments have been incorporated into those Acts.

64. Schedule adopted

The Schedule to this Act is adopted and forms part of this Act. *2021,c.10,s.64.*

65. Repeal

The *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8, is repealed. *2021,c.10,s.65.*

SCHEDULE

DEFINED TERMS

1. In an enactment,

(a) "**Act**" means an Act of the Legislature;

(b) "**act**", in relation to an offence or a civil wrong, includes

(i) a series of acts, and

(ii) an omission or series of omissions;

(c) "**affidavit**" includes an affirmation, a statutory declaration or a solemn declaration made under the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11, or the *Canada Evidence Act*;

(d) "**Auditor General**" means the person appointed under the *Audit Act* to hold the office of Auditor General of Prince Edward Island;

(e) "**bank**" or "**chartered bank**" means "**bank**" as defined in the *Bank Act* (Canada);

(f) "**barrister**" or "**barrister, solicitor and attorney**" means a person entitled to practise under the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1;

(g) "**commencement**", when used with reference to an enactment, means the date on which the enactment comes into force;

(h) "**court**" means the Supreme Court, unless the context requires otherwise;

(i) "**Court of Appeal**" means the Prince Edward Island Court of Appeal;

(j) "**Criminal Code**" means the *Criminal Code* (Canada);

(k) "**deliver**", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's place of residence or place of business;

(l) "**Executive Council**" means the Executive Council of Prince Edward Island;

(m) "**functions**" includes powers and duties;

(n) "**Gazette**" means the Royal Gazette published by the Queen's Printer;

(o) "**Government**" or "**Government of Prince Edward Island**" means His Majesty in right of Prince Edward Island;

(p) "**Government of Canada**" means His Majesty in right of Canada;

(q) "**Governor**", "**Governor of Canada**" or "**Governor General**" means the Governor General of Canada and includes the Administrator of Canada;

(r) "**Governor in Council**" or "**Governor General in Council**" means the Governor General of Canada acting on the advice and with the consent of the King's Privy Council for Canada;

(s) "**Great Seal**" means the Great Seal of Prince Edward Island;

(t) "**Her Majesty**", "**His Majesty**", "**the Queen**", "**the King**", "**the Crown**" or "**the Sovereign**" means the Sovereign of the United Kingdom, Canada and the Sovereign's other realms and territories, and Head of the Commonwealth;

(u) "**hereafter**" shall be construed as referring to the time after the commencement of the enactment containing the word;

(v) "**herein**", used in a section or part of an enactment, shall be construed as referring to the whole enactment and not only to that section or part;

(w) "**holiday**" means

(i) Sunday, Christmas Day, Good Friday and Easter Monday,

(ii) New Year's Day, Victoria Day, Canada Day, Labour Day, Remembrance Day and Boxing Day, and

(iii) a day fixed by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed

(A) as a day of general prayer or mourning,

(B) as a day of public rejoicing or thanksgiving,

(C) as a day for celebrating the birth of the reigning Sovereign, or

(D) as a public holiday;

(x) "**judge**" means a judge of the Supreme Court, unless the context requires otherwise;

(y) "**justice**" means a justice of the peace;

(z) "**land**" includes land covered by water and any building erected on land, and any estate, interest, right or easement in or over any land or building;

(aa) "**Legislative Assembly**" means the Legislative Assembly of Prince Edward Island;

(bb) "**Legislature**" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

(cc) "**Lieutenant Governor**" means the Lieutenant Governor of Prince Edward Island and includes the Administrator of Prince Edward Island;

(dd) "**Lieutenant Governor in Council**" means the Lieutenant Governor acting on the advice and with the consent of the Executive Council;

(ee) "**may**" is to be construed as permissive and empowering;

(ff) "**medical practitioner**" means a person entitled under an enactment to practise medicine in the province;

(gg) "**Minister**" means the member of Executive Council charged by Order of the Lieutenant Governor in Council with the administration of an enactment;

(hh) "**minor**" means an individual who has not attained 18 years of age;

(ii) "**month**" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month;

(jj) "**municipality**" means, in accordance with the context, either an area incorporated as a municipality as defined in the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1, or the corporation into which the residents of the area have been incorporated as a municipality;

(kk) "**now**" shall be construed as referring to the time of commencement of the enactment containing the word;

(ll) "**oath**" includes a solemn affirmation or declaration and, where a person makes a solemn affirmation or declaration, "sworn" includes the expressions "affirmed" or "declared";

(mm) "**obligation**" includes duty and liability;

(nn) "**Operating Fund**" means the Operating Fund as defined in clause 1(p) of the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9;

(oo) "**peace officer**" includes

(i) a mayor, sheriff and sheriff's officer,

(ii) a warden, correctional officer, and any other officer or permanent employee of a penitentiary, prison or correctional centre, and

(iii) a police officer, a security police officer as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1, or other person employed for the preservation and maintenance of the public peace;

(pp) "**person**" includes a corporation;

(qq) "**personal representative**" means a personal representative as defined in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21;

(rr) "**police officer**" means a police officer as defined in subsection 15(1) of the *Police Act*;

(ss) "**prescribed**" means prescribed by regulation;

(tt) "**proclamation**" means a proclamation of the Lieutenant Governor issued under the Great Seal by order of the Lieutenant Governor in Council;

(uu) "**property**" includes any right, title, interest, estate or claim to or in property;

(vv) "**Prothonotary**" means the Prothonotary as defined in the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;

(ww) "**province**", unless the context requires otherwise, means the Province of Prince Edward Island and when used as meaning a province of Canada other than Prince Edward Island includes the Northwest Territories, Yukon Territory and Nunavut Territory;

(xx) "**provincial court**" means the Provincial Court of Prince Edward Island;

(yy) "**provision of law**" means any provision of law which has effect for the time being in the Province, including any statutory provision, any provision of the common law and any right or power which may be exercised by virtue of the Royal Prerogative;

(zz) "**public officer**" includes any person in the public service of the Province

(i) who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or

(ii) upon whom a duty is imposed by or under an enactment;

(aaa) "**record**" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means, whether graphic, electronic, mechanical or otherwise;

(bbb) "**registered mail**" means a mail or private courier service which requires a written acknowledgment of receipt upon delivery of an item mailed or couriered;

(ccc) "**Revised Statutes**" means the Revised Statutes of Prince Edward Island 1988;

(ddd) "**Revised Regulations**" means the Revised Regulations of Prince Edward Island and includes the continuing office consolidation of the Revised Regulations;

(eee) "**right**" includes power, authority, privilege and license;

(fff) "**rules of court**" or "**Rules of Civil Procedure**" means the rules of court made by the Rules Committee continued under subsection 34(1) of the *Judicature Act*;

(ggg) "**savings institution**" means a bank, credit union, or a trust company;

(hhh) "**shall**" is to be construed as imperative;

(iii) "**spouse**" means a spouse as defined in clause 29(1)(b) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1;

(jjj) "**statutory declaration**" or "**solemn declaration**" means a sworn declaration made under the *Evidence Act* or the *Canada Evidence Act*;

(kkk) "**Supreme Court**" means the Supreme Court of Prince Edward Island;

(lll) "**sureties**" means sufficient sureties, and "**security**" means sufficient security, and where these words are used one person shall be sufficient for the purpose unless otherwise expressly required;

(mmm) "**swear**" includes solemnly affirm or declare;

(nnn) "**will**" means a will as defined in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21;

(ooo) "**words**" includes figures, punctuation marks, and typographical, monetary and mathematical symbols;

(ppp) "**writing**" includes words printed or otherwise represented or reproduced in visible form;

(qqq) "**year**" means any period of 12 consecutive months, "**calendar year**" means a period of 12 consecutive months commencing on January 1, and a reference to a dominical year means a period of 12 consecutive months commencing on January 1 of that dominical year. *2022,c.80,s.7.*

THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Edouard
CANADA

DOCKET LA94015
ORDER LA94-15

IN THE MATTER of the ***Planning Act***, R.S.P.E.I. 1988, Cap. P-8;

and

IN THE MATTER of appeal, under Section 28 of the ***Planning Act***, by Clive Pickles (the Appellant) against a decision whereby the Alexandra Community Council (the Council) deferred approval of a subdivision application for Provincial Property Number 279661 at Alexandra, P.E.I.

DATED the 4th day of November, 1994.

John L. Blakney, Vice-Chairman
Myrtle Jenkins-Smith, Commissioner
Anne McPhee, Commissioner

Order

Appearances & Witnesses

1. For the Appellant

Clive Pickles the Appellant

Catherine M. Parkman Legal Counsel for the Appellant

2. For the Community

Glen Beaton Councillor

Sheila White Administrator

Reasons for Order

I. BACKGROUND

In accordance with the ***Planning Act***, the ***Alexandra Official Plan*** and ***Alexandra Development Bylaw***, the Community Council of Alexandra has the authority to approve applications to subdivide land. Pursuant to Section 3 of the Bylaw:

> *Subject to the provisions of this bylaw, Council shall apply the requirements of Parts I to VIII of the **Planning Act** Regulations in respect of any development in the Community of Alexandra.*

Therefore, Section 24.(1) of the ***Planning Act*** Regulations applies within the municipal boundaries of the Community of Alexandra and provides that:

> *No person shall subdivide one or more lots in any area until he has submitted a certified plan of survey thereof to the Minister and has received a certificate of approval therefor from the Minister.*

Furthermore, Section 6.(1) of the Bylaw provides that:

> *No development is permitted except in conformity with this Bylaw and upon the issue of a building permit, subdivision approval or other approval by the Council of an application.* (Exhibit C28)

On June 3, 1994, Clive Pickles completed an application for approval to subdivide parcel number 279661 for single family dwelling use. (Exhibit C3)

The Community Council held a public meeting on June 6, 1994, to discuss the application.

On June 7, 1994, the Community advised Mr. Pickles by letter that *"a decision has been deferred on this lot for the present time"*. (Exhibit C1)

On June 20, 1994, Catherine M. Parkman appealed the Community's decision on behalf of Mr. Pickles. (Exhibit B1)

The Commission heard the appeal on October 4, 1994, in Charlottetown.

II. PRELIMINARY MATTERS

Prior to hearing arguments, a preliminary matter was raised regarding the subject of this appeal. The letter of June 7, 1994, to Mr. Pickles from Sheila White states Council's decision was to *"defer"* its decision regarding the application to subdivide. However, the Appellant's notice of appeal refers to Council's decision to *"deny"* the application.

Catherine Parkman clarified that the appeal was against the decision of the Community to "*defer"* its decision on the subdivision application.

III. EVIDENCE AND ARGUMENTS

A. Appellant

Catherine Parkman argued that pursuant to the provisions of Policy 2, outlined under the Community Improvement Committee Responsibilities in the ***Alexandra Official Plan***, the Community exceeded the 30 day period required to reach a decision.

> *Policy 2*
>
> *The Community Improvement Committee shall advise the applicant, in writing, within thirty (30) days from receipt of the application, whether it is approved, approved with conditions, deferred for a period not exceeding (30) days, or refused.*

Ms. Parkman submitted that Council has effectively postponed further consideration of the subdivision application indefinitely. Her reasons for this submission are: the wording of Council's letter referring to "for

the present time" and the fact that there has been no recent decision of Council to approve or deny the subdivision, subsequent to deferring the matter.

The Appellant is seeking to have Council's decision of deferral overturned and requests the Commission to direct Council to make a decision regarding the application to subdivide with guidelines for the decision.

B. Community Council

Sheila White argued that Council deferred its decision on this matter in order to address the concerns as stated in the letter to Mr. Pickles dated June 7, 1994. These concerns include:

1. *The views and opinions expressed by the residents of the community at the above noted public meeting;*
2. *The fact that this proposal constitutes a subdivision greater than 5 lots (a major development);*
3. *The Alexandra Community Council is currently in consultation with the Provincial Government regarding the proposed "buffer zone" in conjunction with legislation to amalgamate surrounding communities. The proposed "buffer zone" will affect the community of Alexandra, and the community will continue to consult with the Provincial Government to determine what impact this will have. (Exhibit C1)*

The Community argued that subsequent to Council making a decision to defer the matter, Mr. Pickles appealed the Community's decision to the Commission. As a result, the Council believed that the filing of the appeal had the affect to suspend any further action by the Council on the application.

Council believed that its decision to defer the matter was justified.

IV. DECISION

After consideration of the evidence and arguments, the Commission believes that it must consider two specific questions: (1) Did the Council have the authority to defer its decision on the application to subdivide and was it a correct decision? (2) If the Council was correct in its decision to defer the matter of the subdivision, did the Council have the right to defer its decision longer than 30 days?

(1) Did the Council have the authority to defer its decision on the application to subdivide and was it a correct decision?

Based on the evidence presented, the Commission understands that the Appellant submitted an application on June 3, 1994. The Community notified the Appellant on June 7 that the decision was deferred. The Commission finds that pursuant to the provisions of Section 11.(1) of the Development Bylaw, the Community's decision to defer the matter was made in accordance with the provisions of the Bylaw.

> *Section 11.(1) The Council may:*
>
> *(a) approve;*
>
> *(b) approve with conditions;*
>
> ***(c) defer for 30 days**; or*
>
> *(d) refuse*
>
> *an application and shall advise the applicant in writing of its decision within 30 days of receipt of the application. (Emphasis added)*

The Commission finds that Council had the right to defer its decision provided it had adequate and legitimate reasons to do so. According to the evidence and arguments the Commission can find nothing to indicate that the Council made an incorrect decision or that it acted in a discriminatory manner or in bad faith.

In the result, the Commission finds that the appeal cannot be allowed on the basis that Council did not have the authority to defer or that it reached an incorrect decision.

(2) If the Council was correct in its decision to defer the matter of the subdivision, did the Council have the right to defer its decision longer than 30 days?

In regard to the argument raised by the Appellant that the Community has exceeded the thirty day period within which to make a decision and should be ordered to make such a decision, the Commission does find merit in this argument.

The Commission can find no authority which supports Council's position that it has a right to suspend further consideration of the application to subdivide until the Commission issues an order with respect to this appeal. The Commission finds that despite the appeal the Council is required to proceed to make a decision on the application within the time period prescribed by bylaw.

The Commission believes that Council does not have the authority to stay the application process and finds that Council must reach a decision within the required thirty day period, regardless of the pending appeal.

The Commission also finds that the 30 day deferral period permitted under subsection 11.(1)(c) has expired.

Although, it is understandable that the Community Council might want to wait until the provincial government has established the regulations regarding the "buffer zone", Council must apply the bylaw provisions in effect at the time the application is under review. In the view of the Commission it would be improper to deliberately defer an application beyond the 30 day deferral period and then apply new rules to the application. It is the Commission's view that the bylaw does not permit the Council to withhold a decision beyond the required time frame prescribed by the bylaw in effect at the time of the application. Even if special circumstances might warrant a delay beyond the expiry of the deferral period, there are no such circumstances evident in this case.

According to Section 28 of the ***Planning Act*** any person has a right of appeal to the Commission if he or she is dissatisfied *by a decision of a c*ouncil. The decision of the Council was not to approve or deny the application but only to defer its decision—the specific matter of this appeal. Based on the above the Commission allows the appeal.

In the result, now that the 30 day deferral period has expired and for the reason that the Council had no authority to suspend action on its decision to approve or deny the application to subdivide, the Commission orders the Community Council to review the application for subdivision and issue its decision without delay.

IN THE MATTER of the ***Planning Act***, R.S.P.E.I. 1988 Cap. P-8;

and

IN THE MATTER of appeal, under Section 28 of the ***Planning Act***, by Clive Pickles (the Appellant) against a decision whereby the Alexandra Community Council (the Council) denied approval of a subdivision application for Provincial Property Number 279661 at Alexandra, P.E.I.

Order

WHEREAS Clive Pickles (the Appellant) appealed to The Island Regulatory and Appeals Commission (the Commission) a decision of the Alexandra Community Council (the Council);

AND WHEREAS the Commission heard the appeal at a public hearing conducted at Charlottetown on October 4, 1994, after due public notice;

AND WHEREAS the Commission has made a decision in accordance with the stated reasons;

NOW THEREFORE, pursuant to the ***Planning Act***;

IT IS ORDERED THAT the appeal is hereby allowed and that the Community Council forthwith review the application for subdivision and issue a decision.

DATED at Charlottetown, Prince Edward Island, this 4th day of November, 1994.

BY THE COMMISSION:

John L. Blakney, Vice-Chairman

Anne McPhee, Commissioner

Myrtle Jenkins-Smith, Commissioner

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local

ISSUE DATE: December 31, 2020 **CASE NO(S).:** PL200466

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Evergreen Environmental Inc.
Appellant:	Ummah Foundation of Durham
Applicant:	RIC (1515 Thornton) Inc.
Subject:	Minor Variance
Variance from By-law No.:	60-94
Property Address/Description:	1455, 1515, 1517 Thornton Road North
Municipality:	City of Oshawa
Municipal File No.:	A-2020-56
LPAT Case No.:	PL200466
LPAT File No.:	PL200466
LPAT Case Name:	Evergreen Environmental Inc v. Oshawa (City)

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1

Request by:	Evergreen Environmental Inc.
Request for:	Request for Directions

Heard: December 18, 2020 by video hearing

APPEARANCES:

Parties	Counsel
Evergreen Environmental Inc.	A. Heisey
Ummah Foundation of Durham	K. Coulter
City of Oshawa	A. Kosnick

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

OVERVIEW

[1] This Decision deals with a question of the Tribunal's jurisdiction. At issue is whether the motion of a Committee of Adjustment ("CoA") to "table indefinitely" an application for minor variance ("MV") is an action appealable by the applicant to this Tribunal.

[2] For the reasons that follow, the Tribunal finds that this appeal is permitted by the *Planning Act* ("Act") and is legitimately before the Tribunal for adjudication.

THE ISSUE

[3] Evergreen Environmental Inc. ("Evergreen") brought a Motion seeking an Order that the City of Oshawa ("Oshawa") CoA motion to "table indefinitely" Evergreen's MV application is an appealable "decision" under s. 45(12) of the Act (all section numbers herein refer to the Act). The Ummah Foundation of Durham, an owner abutting Evergreen's property and also an Appellant, supports Evergreen's Motion. Oshawa's Response to Motion opposes the request, arguing that the CoA's tabling of the file was not a refusal of the application under s. 45(8.1) and is therefore not appealable under s. 45(12).

[4] Oshawa had raised its concern for the legality of the appeal with Evergreen prior to the first Case Management Conference ("CMC") convened by the Tribunal. These issues were then included in Oshawa's draft Issues List ("IL"), being Issues 1 through

10 and Issue 50 encompassing both the legitimacy and prematurity of the appeal.

[5] Some background to the issue provides context for the Parties' positions. In addition to legal argument and cases filed, Evergreen filed a sworn affidavit from Michael Fry, Registered Professional Planner, and Oshawa filed a sworn affidavit from David Sappleton, Planner.

[6] Evergreen proposes to replace its current indoor and outdoor organic waste composting operation with a contained composting solution involving anaerobic digesters. Its property, at 1515 Thornton Road North, Oshawa, is subject to Oshawa's Interim Control By-law 25-2020 ("ICBL") passed on February 24, 2020 to prohibit development in the GI (General Industrial) Zones within the Northwood Business Park for a period of one year, with the potential of being extended for up to one additional year. The ICBL permits the continuation of lawful uses within existing buildings and structures but does not permit new development. Given Evergreen's intentions for redeveloping current indoor and outdoor processes with new indoor facilities, it applied for approvals under s. 45(1) as well as under s. 45(2)(a)(i) and (ii).

[7] Evergreen also appealed the absence of a decision by Oshawa to its site plan application under s. 41. That appeal is mentioned by the Parties but is not the subject of this Motion.

[8] In accordance with s. 38, Oshawa predicated its ICBL with direction to its staff to conduct a study on the appropriateness of industrial zoning within the Northwood Business Park. With the ICBL study still in process, Oshawa staff considers the MV application premature and recommended its tabling. Staff requested tabling the application "to allow for completion of the land use study, to receive any public comments and to complete a thorough review of the applicant's submitted studies and plans" (D. Sappleton affidavit, p. 30).

LEGISLATION

[9] Under s. 38, only the Minister of Municipal Affairs and Housing may appeal the original passing of a municipal ICBL. Other persons or public bodies may only appeal a by-law that extends the period within which an ICBL remains in effect.

[10] However, s. 45(1) permits the owner of land affected by an ICBL to apply for a MV:

> **45** (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof …

[11] Further, s. 45(2)(a) permits the owner of a use, prohibited by the by-law but which legally existed on the day the by-law was passed, to apply for certain relief. Such uses are commonly referred to as legal non-conforming ("LNC") uses. LNC uses are eligible for two types of relief as described in ss. (i) and (ii) below, being the enlargement of a building containing a LNC use, and permission for a new use considered similar to the LNC use, or more compatible with the uses permitted by the by-law as compared to the LNC use.

> 45(2) In addition to its powers under subsection (1), the committee, upon any such application,
>
> (a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,
>
> (i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
>
> (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; …

[12] Several sections of the Act are relevant to the issue at hand. As cited below, s. 45(6) authorizes a CoA to adjourn a hearing or reserve its decision, s. 45(8) speaks to how decisions of the CoA are made, s. 45(8.1) sets out written requirements for decisions with reasons, s. 45(10) prescribes the issuance of notice of decision, and s. 45(12) sets out the right of appeal of a decision to this Tribunal.

> (6) The hearing of every application shall be held in public, and the committee shall hear the applicant and every other person who desires to be heard in favour of or against the application, and the committee may adjourn the hearing or reserve its decision. R.S.O. 1990, c. P.13, s. 45 (6).
>
> …
>
> (8) No decision of the committee on an application is valid unless it is concurred in by the majority of the members of the committee that heard the application. 2015, c. 26, s. 29 (3).
>
> (8.1) The decision of the committee, whether granting or refusing an application, shall be in writing, shall be signed by the members who concur in the decision and shall,
>
> (a) set out the reasons for the decision; and
>
> (b) contain a brief explanation of the effect, if any, that the written and oral submissions mentioned in subsection (8.2) had on the decision. 2015, c. 26, s. 29 (3).
>
> …
>
> (10) The secretary-treasurer shall not later than ten days from the making of the decision send one copy of the decision, certified by him or her,
>
> (a) to the Minister, if the Minister has notified the committee by registered mail that he or she wishes to receive a copy of all decisions of the committee;
>
> (b) to the applicant; and
>
> (c) to each person who appeared in person or by counsel at the hearing and who filed with the secretary-treasurer a written request for notice of the decision,
>
> together with a notice of the last day for appealing to the Tribunal. R.S.O. 1990, c. P.13, s. 45 (10); 2017, c. 23, Sched. 5, s. 98 (2).
>
> …
>
> (12) The applicant, the Minister or any other person or public body who has an interest in the matter may within 20 days of the making of the decision appeal to the Tribunal against the

> decision of the committee by filing with the secretary-treasurer of the committee a notice of appeal setting out the objection to the decision and the reasons in support of the objection accompanied by payment to the secretary-treasurer of the fee charged by the Tribunal under the *Local Planning Appeal Tribunal Act, 2017* as payable on an appeal from a committee of adjustment to the Tribunal. 2017, c. 23, Sched. 5, s. 98 (3).

ARGUMENT

[13] Evergreen argues as follows. The CoA's motion to "table indefinitely" the application amounts to a refusal and is eligible for appeal. If found not to be a refusal, per se, such decision must be eligible for appeal in that it equates to a refusal in light of the time limitations of an ICBL. Given the short time an ICBL is operative, the opportunity to bring an application for MV to it is removed if such application can be deferred for the duration of the ICBL's effect. ICBLs impose severe restrictions on land uses and s. 45(1) of the Act should not be rendered inoperative by delaying such MV to the termination of an ICBL.

[14] Evergreen emphasizes that the CoA made the decision by carried motion signed by the concurring members, set out reasons in support of the decision, and gave notice of the decision in writing. The right of appeal should not be jeopardized by the CoA's notice letter not containing all of the required elements of a notice of decision.

[15] Evergreen argues that the requested supporting reports have been on file with Oshawa since before the MV application, in connection with its application to the Minister of Environment, Conservation and Parks for Environmental Compliance Approval regarding air emissions. Further, all of the mandatory information required by Ontario Regulation 200/96 for a MV was submitted to Oshawa. Evergreen submits that all necessary reports will be provided and addressed at the hearing on the merits.

[16] Evergreen refers to certain cases in support of its position, with emphasis on the findings of Member M.C. Denhez in *Starwood Acquisitions Inc. v. Ottawa (City),* [2011] O.M.B.D. No. 346 ("Starwood") at paragraphs 19 and 27:

> **19** Under subsection 45(6) of the *Planning Act*, the COA "may adjourn the hearing". The question raised by the City was whether that adjournment was itself a "Decision" on which the Board might intervene.
>
> **27** The more germane precedent, specifically on whether an adjournment *sine die* is appealable, points in the opposite direction. In ***Eden Oak (Lakeshore) Inc. v. Toronto*, [2001] O.M.B.D. No. 145**, **2001 CarswellOnt 7723**, the Board dealt specifically with a "decision of the City of Toronto's Committee of Adjustment (Etobicoke) which adjourned the application *sine die*":
>
> - Not only did the Board refer to that outcome as a "decision";
>
> - it also proceeded to hear the "appeal" in exactly the normal course, indistinguishable from any other appeal.
>
> Why is that not the appropriate way to proceed here? The City's argument might have been more compelling -- if not for jurisdictional reasons, than for pragmatic ones -- if the reason for COA adjournment was visibly logistical. It has not been usual Board practice to intervene in COA internal procedures, notably where the reason for adjournment was clerical, or personnel-related, or otherwise administrative. In this case, however, the adjournment was not logistical or administrative: it was based upon a substantive finding of prematurity; and that is a finding of fact. It is not a "nothing". If a finding of fact by a statutory body, with direct repercussions on the rights of citizens, is not a "decision", then what is it?

[17] Evergreen argues that if an indefinite tabling or deferral are not appealable, a CoA could resort to such practice for any application it did not want to approve. In this case, a MV under s. 45 is the only opportunity to address an ICBL during its restriction period.

[18] Ummah, as an adjacent property owner, supports what it sees as Evergreen's proposed improvements to its waste management operations. As an appellant to the MV application, Ummah supports the Motion as it does not want to incur the expense of preparing for a hearing on the merits if matters of jurisdiction and prematurity remain on the IL.

[19] Ummah contends that the CoA made a decision, that being to table the application, rather than a decision to approve or refuse the application. The duly moved and approved motion of the CoA is a decision, and as in Starwood, such decision is subject to appeal. Ummah underscores that Oshawa's finding of prematurity equates to the "finding of fact" in paragraph 27 of Starwood and such finding is a matter for the Tribunal to consider on appeal.

[20] In alignment with Evergreen, Ummah argues that if an unfinished ICBL study warrants deferment of a MV based on prematurity, then the right of application under s. 45 to an ICBL would be denied. Once an ICBL ceases, no MV to it could be considered, and such result would deny natural justice and procedural fairness to an applicant. Ummah refers to s. 1.1(d) of the Act's purpose "to provide for planning processes that are fair by making them open, accessible, timely and efficient."

[21] Oshawa responds that the CoA action is supported by the need for more information on the application and its review in light of the pending ICBL study, and does not constitute an appealable decision under s. 45(12). It argues that more time is warranted to peer review Evergreen's studies related to traffic, acoustics and air quality, and that a land use compatibility study is a further reasonable request. Oshawa does not dispute that tabling an application is synonymous with adjourning or deferring the application. It notes, however, that s. 45(6) does not specify a time for revisiting an application and deferrals are commonly made for unspecified time periods. Oshawa emphasizes that if the ICBL were to expire during the tabling period, the need for the MV would cease and no prejudice would result to Evergreen.

[22] Oshawa suggests that the conclusion cited in Starwood is not applicable to this case where a time limited ICBL is in effect and the requisite study is not completed. Here, a variance could potentially frustrate the land use study under way regarding the suitability of future industrial uses within the Northwoods Business Park.

[23] Regarding Issue 4 on the draft IL, Oshawa clarified that it has no intention of reconvening the CoA for this application if the Tribunal declares the appeal valid. If held not to be an appealable decision, however, the CoA would reconvene when the information referenced in the staff report becomes available.

FINDINGS

[24] On the primary question of whether the CoA's motion to table the application indefinitely constitutes a decision for which an appeal may be filed, the Tribunal finds in

the affirmative. The tabling of an application, in the absence of an approval or refusal, is found to be a decision for which an appeal may be lodged with the Tribunal.

[25] To start, unlike Evergreen's suspicions that the indefinite deferral was intended to frustrate success for Evergreen, the Tribunal finds acceptable rationale in Oshawa's reluctance to make an approval or denial decision without knowing the outcome of its ICBL study still underway. It appears reasonable to proceed with caution when an application intended to evolve an existing industrial use is proposed within an area where the long-term suitability of such uses is being considered. The Tribunal is aware that the deferral of applications for various reasons is not uncommon, and that the vast majority are not appealed on that basis. In such cases, it is often to an applicant's advantage to resolve issues raised or provide additional information before returning to the CoA. As Oshawa notes, s. 45(6) enables the CoA to "adjourn the hearing or reserve its decision."

[26] However, the inherent logic in Oshawa's approach does not affect whether the CoA's motion constitutes a decision that may be appealed to the Tribunal. As set out in the Act and supported in Starwood, the motion to "table indefinitely" the application constitutes a decision of the CoA, as follows.

[27] First, s. 45(8) directs that no decision of the CoA is valid unless concurred in by the majority of its members who heard the application. Accordingly, the CoA minutes note the affirmative response of all five members present and mark the motion as carried. Section 45(8.1) goes a step further for a decision "whether granting or refusing an application" and requires it in writing, signed by the concurring members, setting out the reasons for the decision and the effect that any submissions received had on the decision.

[28] The Tribunal notes that no apparent reason is given in the Act for the difference in requirements in the above-noted sections. Section 45(8) simply refers to a "decision" while s. 45(8.1) speaks to a decision "whether granting or refusing an application."

Presumably, the only reason is that more prescribed information is required to accompany an approval or refusal, as opposed to other decisions the CoA may make.

[29] The Tribunal is not necessarily concluding that the absence of reference to "deferral" in s. 45(8.1) excludes the possibility for this section to apply here also. As argued by Evergreen, the act of tabling may equate to a refusal where the eventual CoA review will likely coincide with the Applicant's loss of authority to make the application.

[30] In this case, the Tribunal finds that the CoA clearly made a decision under s. 45(8) and such decision has the effect of a refusal under s. 45(8.1).

[31] Section 45(10) then requires staff to send notice of the decision within 10 days to various parties, noting the last day for appealing to the Tribunal. Here, notice of the CoA's tabling of the application was sent, although no reference to appeal timelines or procedures was included. As noted in Mr. Sappleton's affidavit, deferrals are not uncommon and the communication of such decisions to applicants is appropriate. However, as argued by Evergreen, the absence of required content in the CoA's correspondence should not result in foregone appeal rights.

[32] Section 45(12) grants the applicant and others the right to "appeal to the Tribunal against the decision of the committee" within 20 days of the decision. In this case, the Tribunal finds the CoA's motion to "table indefinitely," whether under s. 45(8), 45(8.1) or both, to be the relevant decision against which an appeal may be lodged.

[33] Oshawa argued to distinguish Starwood from the case at hand, but filed no cases to demonstrate that a deferral is not a decision. As in Starwood (paragraph 27), the issue of prematurity here contributed to the CoA's indefinite deferral, representing a substantive "finding of fact by a statutory body, with direct repercussions on the rights of citizens" and therefore a "decision."

[34] The Tribunal accepts the positions of Evergreen and Ummah that to prevent an appeal to an indefinite deferral would be a denial of natural justice and procedural

fairness. Such appeal rights are a safeguard to the potential misuse of deferrals by a public body. In this case, where an ICBL is in play, the MV application brings a particular time consideration to the fore. While the Tribunal understands a certain basis for Oshawa's deferral, it also finds that to await the outcome of an ICBL study, and beyond that, to the potential zoning amendments that may arise from it, undermines the opportunity for a MV to a s. 38 ICBL permitted by s. 45(1). These findings are pertinent to the Motion only, and have no effect on an assessment of the merits of the application at a full hearing.

[35] On the secondary question of whether a hearing should be deferred on the basis of prematurity, as raised in Oshawa's arguments, the Tribunal finds in the negative. Despite Oshawa's suggestions of incomplete filings, the need for peer reviews of studies, and the need to await the ICBL study, the Tribunal does not equate these alleged shortcomings with a need to defer a hearing on the merits. Oshawa may well choose to use these arguments in its opposition to the proposed variances and it will be the responsibility of Evergreen to respond with the information it feels necessary. Matters such as traffic, acoustics, emissions, land use compatibility, or others that may be permitted in the final IL are issues for determination at the contested hearing.

[36] In summary, the Tribunal finds that this MV appeal is authorized by the Act, and as a result, the related procedural issues raised by Oshawa will be removed from the draft IL, and Oshawa's planning issues may be retained in the draft IL.

ORDER

[37] The Tribunal Orders that Evergreen's Motion is granted as follows:

- Oshawa CoA's motion to "table indefinitely" the application constitutes a decision for the purpose of an appeal under s. 45(12) of the Act;

- Oshawa's issue of prematurity is not a reason to defer a hearing on the merits, and the Parties should prepare for the issues per the final IL, when approved;

- Oshawa's draft Issues 1 through 10 and draft Issue 50 will be removed from the draft IL, although issues of suitability within an area affected by an ICBL, third party review, and land use compatibility may be retained in the draft IL.

[38] The next CMC and the hearing will proceed as previously scheduled by the Tribunal for the combined Tribunal files PL200463 and PL200466.

"S. Tousaw"

S. TOUSAW
MEMBER

Cour suprême du Canada

Supreme Court of Canada

Harry Dikranian

- c. -

Procureur général du Québec (Qc) (30243)

CORAM :
La très honorable Beverley McLachlin, c.p.
L'honorable juge Bastarache
L'honorable juge Binnie
L'honorable juge LeBel
L'honorable juge Deschamps
L'honorable juge Abella
L'honorable juge Charron

Appel entendu :
Le 10 mars 2005

Jugement rendu :
Le 2 décembre 2005

Motifs de jugement :
L'honorable juge Bastarache

Souscrivent à l'avis de l'honorable juge Bastarache :
La très honorable Beverley McLachlin, c.p.
L'honorable juge Binnie
L'honorable juge LeBel
L'honorable juge Abella
L'honorable juge Charron

Motifs dissidents :
L'honorable juge Deschamps

Avocats à l'audience :

Pour l'appelant
Leon J. Greenberg
Guy St-Germain

Pour l'intimé
Mario Normandin

Harry Dikranian

- v. -

Attorney General of Quebec (Que.) (30243)

CORAM:
The Right Honourable Beverley McLachlin, P.C.
The Honourable Mr. Justice Bastarache
The Honourable Mr. Justice Binnie
The Honourable Mr. Justice LeBel
The Honourable Madam Justice Deschamps
The Honourable Madam Justice Abella
The Honourable Madam Justice Charron

Appeal heard:
March 10, 2005

Judgment rendered:
December 2, 2005

Reasons for judgment by:
The Honourable Mr. Justice Bastarache

Concurred in by:

The Right Honourable Beverley McLachlin, P.C.
The Honourable Mr. Justice Binnie
The Honourable Mr. Justice LeBel
The Honourable Madam Justice Abella
The Honourable Madam Justice Charron

Dissenting reasons by:
The Honourable Madam Justice Deschamps

Counsel at hearing:

For the appellant
Leon J. Greenberg
Guy St-Germain

For the respondent
Mario Normandin

Références	Citations
C.A. Qué. : J.E. 2004-358, [2004] J.Q. n° 303 (QL).	Que. C.A.: J.E. 2004-358, [2004] Q.J. No. 303 (QL).
C.S. Qué. : [2002] R.J.Q. 969, [2001] J.Q. n° 6159 (QL).	Que. Sup. Ct.: [2002] R.J.Q. 969, [2001] Q.J. No. 6159 (QL).

RÉFÉRENCE

Avant la publication de ce jugement dans le R.C.S., il faut utiliser sa référence neutre : *Dikranian c. Québec (Procureur général)*, 2005 CSC 73. Après sa publication dans le R.C.S., la référence neutre sera utilisée comme référence parallèle : *Dikranian c. Québec (Procureur général)*, [2005] x R.C.S. x, 2005 CSC 73.

CITATION

Before publication in the S.C.R., this judgment should be cited using the neutral citation: *Dikranian v. Quebec (Attorney General)*, 2005 SCC 73. Once the judgment is published in the S.C.R., the neutral citation should be used as a parallel citation: *Dikranian v. Quebec (Attorney General)*, [2005] x S.C.R. x, 2005 SCC 73.

dikranian *v.* quebec (attorney general)

Harry Dikranian *Appellant*

v.

Attorney General of Quebec *Respondent*

Indexed as: Dikranian *v.* Quebec (Attorney General)

Neutral citation: 2005 SCC 73.

File No.: 30243.

2005: March 10; 2005: December 2.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Abella and Charron JJ.

on appeal from the court of appeal for quebec

Contracts – Student loans – Loan repayment terms – Vested rights – Clause of student loan contract incorporating by reference legislative provisions relating to exemption from paying interest during specified period – Legislative amendments reducing and then eliminating interest exemption period – Whether student having vested right with respect to duration of exemption period applicable to payment of interest – Whether legislative amendments having effect of limiting rights conferred on student in contract with financial institution – Act respecting financial assistance for students,

R.S.Q., c. A-13.3, s. 23 – An Act to amend the Act respecting financial assistance for students and the General and Vocational Colleges Act, S.Q. 1996, c. 79, s. 5 – An Act to amend the Act respecting financial assistance for students, S.Q. 1997, c. 90, ss. 4, 5, 13.

In Quebec, the repayment terms for student loans are set out in the *Act respecting financial assistance for students*. The appellant obtained student loans between 1990 and 1996 and completed his studies in January 1998. According to the loan certificate signed by the appellant with his financial institution in 1996, the appellant had to begin repaying the principal and paying the interest on the loan upon the expiration of the exemption period. However, as a result of amendments to the *Act respecting financial assistance for students* that came into force in 1997 and 1998, the financial institution charged the appellant interest on his loan that, under the certificate, was supposed to have been paid by the government. The appellant was authorized to institute a class action against the government seeking reimbursement of the interest paid. The Superior Court and the majority of the Court of Appeal dismissed the action, concluding that the 1997 and 1998 legislative amendments covered all student loans contracted before and after the amendments came into force. [2] [8-12] [45]

Held (Deschamps J. dissenting): The appeal should be allowed.

Per McLachlin C.J. and **Bastarache**, Binnie, LeBel, Abella and Charron JJ.: In 1996, the appellant and the financial institution signed a loan certificate provided by the government, thereby turning the certificate into a contract and crystallizing the parties' rights and obligations, including the interest payment terms. The appellant thus had a vested right with respect to the duration of the exemption period applicable when the contract was signed, since his legal situation (1) was tangible and concrete, and (2) was constituted at the time of the new statute's commencement. It is presumed, in the

absence of a clear indication in a statute to the contrary in light of the entire context, that the legislature did not intend to violate the principle against interference with vested rights. [32] [36,37] [43] [49] [54]

In the instant case, this vested right was not affected by the 1997 amending legislation. That legislation does not contain any transitional provision that might justify a conclusion that the legislature clearly intended to apply the new provisions so as to limit the rights of borrowers. Just because the government argues for the immediate and future application of the legislation does not mean it is authorized to interfere with rights conferred on the appellant in his contract. Moreover, the 1997 legislation does not refer to contracts that have already been entered into and therefore cannot apply to them. Finally, there is no evidence in the record that justifies imputing to the legislature an intention to interfere with vested rights. [44] [54]

Nor does s. 13 of the 1998 amending legislation, according to which the provisions of the statute apply to "juridical situations in progress" at the time of their coming into force, clearly state the legislature's intention to change the terms of contracts of loan that had already been entered into. Section 13 does not provide that the amendments apply to contracts or "contractual situations". Furthermore, the appellant's rights and obligations were no longer "in progress", since they had been definitively concluded under the terms and conditions of the contract. In the general context of the plan, the expression "juridical situations in progress" applies to a student who has received a loan certificate but not yet signed it (nor has the financial institution done so). In light of the ambiguity of s. 13, it is necessary to apply the principle against interference with vested rights. [45-50]

The administrative grounds raised by the government do not justify disregarding the express wording of the private contract. It is perfectly normal for some students who completed their studies on the same date to be treated differently if they obtained their student loans at different times and signed different loan agreements on an informed basis. It is the very foundation of the individualized contractual right that leads to this result. [52]

Deschamps J. (dissenting): In declaring, in s. 13, that the 1998 amending legislation applied to "juridical situations in progress", the Quebec legislature clearly indicated that the statute applied with immediate effect to the exemption period for the payment of interest by the appellant to his financial institution This expression applies not only to situations that are still being formed, but also to the effects of a given juridical situation. The *Act respecting financial assistance for students* thus applies to the contract between the appellant and his financial institution. An interpretation that denies that a juridical situation is still "in progress" when it has been formed, has not been extinguished and is producing effects is not consistent with the theory on which the legislature relied. Finally, the doctrine of vested rights should not be relied on to decide the instant case. Common law concepts that place a strong emphasis on this doctrine do not apply where an approach based on the immediate application of legislation and the concept of juridical situations in progress is adopted. [56-58] [64]

Cases Cited

By Bastarache J.

Applied: *Épiciers Unis Métro-Richelieu Inc., division "Écongros" v. Collin*, [2004] 3 S.C.R. 257, 2004 SCC 59; **referred to:** *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880; *Attorney General of Quebec v. Expropriation Tribunal*, [1986] 1 S.C.R. 732; *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 S.C.R. 271; *Upper Canada College v. Smith* (1920), 61 S.C.R. 413; *Acme Village District No. 2296 (Board of Trustees of) v. Steele-Smith*, [1933] S.C.R. 47; *Spooner Oils Ltd. v. Turner Valley Gas Conservation Board*, [1933] S.C.R. 629; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42; *Scott v. College of Physicians and Surgeons of Saskatchewan* (1992), 95 D.L.R. (4th) 706; *Abbott v. Minister for Lands*, [1895] A.C. 425; *Massey-Ferguson Finance Co. of Canada v. Kluz*, [1974] S.C.R. 474; *Marchand v. Duval*, [1973] C.A. 635; *Holomis v. Dubuc* (1974), 56 D.L.R. (3d) 351; *Ishida v. Itterman*, [1975] 2 W.W.R. 142; *Township of Nepean v. Leikin* (1971), 16 D.L.R. (3d) 113; *Location Triathlon Inc. v. Boucher-Forget*, [1994] R.J.Q. 1666.

By Deschamps J. (dissenting)

Épiciers Unis Métro-Richelieu Inc., division "Écongros" v. Collin, [2004] 3 S.C.R. 257, 2004 SCC 59; *Montréal (Ville) v. 9013-5286 Québec inc.*, [2002] Q.J. No. 2631 (QL); *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51.

Statutes and Regulations Cited

Act respecting financial assistance for education expenses, R.S.Q., c. A-13.3, ss. 15, 24, 27, 28, 29, 40, 41, 62.

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Act to amend the Act respecting financial assistance for students, S.Q. 1997, c. 90, ss. 4, 5, 13.

Act to amend the Act respecting financial assistance for students and the General and vocational colleges Act, S.Q. 1996, c. 79, s. 5.

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Consumer Protection Act, R.S.Q., c. P-40.1.

Interpretation Act, R.S.Q., c. I-16, s. 12.

Regulation respecting financial assistance for students, R.R.Q., c. A-13.3, r.1, 56.

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Roubier, Paul. *Le droit transitoire : conflits des lois dans le temps*, 2e éd. Cowansville, Qué.: Yvon Blais, 1993.

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APPEAL from a judgment of the Quebec Court of Appeal (Beauregard, Rothman and Forget JJ.A.), J.E. 2004-358, [2004] Q.J. No. 303 (QL), affirming a judgment of Journet J., [2002] R.J.Q. 969, [2001] Q.J. No. 6159 (QL), dismissing the appellant's action. Appeal allowed, Deschamps J. dissenting.

Leon J. Greenberg and *Guy St-Germain*, for the appellant.

Mario Normandin, for the respondent.

Solicitors for the appellant: Sternthal Katznelson Montigny, Montréal.

Solicitors for the respondent: Bernard, Roy & Associés, Montréal.

Translation

SUPREME COURT OF CANADA

HARRY DIKRANIAN

v.

ATTORNEY GENERAL OF QUEBEC

CORAM: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Abella and Charron JJ.

BASTARACHE J. —

1 Introduction

1 The class action giving rise to this appeal was instituted by Mr. Dikranian on behalf of approximately 70,000 students; it concerns the recovery of interest paid on student loans granted under the former *Act respecting financial assistance for students*, R.S.Q., c. A-13.3 ("*AFAS*"), and the *Regulation respecting financial assistance for students*, R.R.Q., c. A-13.3, r. 1 ("*RFAS*").

2 The problem in the case at bar stems from the fact that the loans were made under private contracts between individual financial institutions and students while the repayment terms have been set by the government in the *AFAS* and the *RFAS*. The Minister of Education (the "Minister") has imposed these terms by incorporating them

into a loan certificate that must be obtained to enter into a contract of loan, to which the Minister is not a direct party.

3 The instant case results from two amendments to the *AFAS* and the *RFAS* – one in 1997 and the other in 1998 – that reduced the period during which students are exempt from making interest payments and repayments on the principal. It must first be established whether, considering that the first amendment contained no transitional provisions, that amendment applied to loans that had already been granted. It will then be necessary to determine the meaning and scope of the transitional provision in the second legislative amendment, according to which the new provisions apply to "juridical situations in progress".

4 The student aid plan in place prior to the *AFAS* was based on administrative contracts (see the Web site of Quebec's Aide financière aux études, www.afe.gouv.qc.ca/english); under that plan, the government set the terms of the contract and could amend them as it saw fit at any time. Under the current plan, however, a certificate is issued in which the Minister guarantees the loan should the student default on it (*AFAS*, ss. 27, 28 and 29) (see Appendix) and pays the interest during the exemption period (*AFAS*, s. 24) (see Appendix). After the certificate is issued, the student enters into a private contract with a financial institution. Although the government dictates some of the terms of the contract by incorporating them in the certificate it issues, it is not a party to the contract. The government neither grants the loan nor approves it. The government makes parallel commitments in accordance with the *AFAS*. The issue here is whether, in the instant case, the changes to these legal

obligations have had the effect of limiting the rights conferred on the student in his or her contract with the financial institution.

5 This means that there is no need for me to consider the exact nature of the legal relationship between the government and the student. The substantive issue is whether the National Assembly can alter the private law relationship between the financial institution and the student and, if so, whether the legislative amendments of 1997 and 1998 satisfy the conditions under which it may do so.

2 Origin of the Case

6 Student loans in Quebec are governed by the *AFAS*. The Minister issues, to a student who is entitled to it under the *RFAS*, a loan certificate authorizing the student to contract a loan with a financial institution recognized by the Minister within 90 days. The government pays the interest (*AFAS*, s. 24) and guarantees the repayment of the principal. Before 1997, the legislation exempted students who had completed their studies from paying interest on their loans for a period specified in the loan certificate.

7 On July 1, 1997 (the day the first amending statute came into force), the National Assembly reduced the period during which student borrowers were exempt from making interest payments and repayments on the principal by one month: *An Act to amend the Act respecting financial assistance for students and the General and Vocational Colleges Act*, S.Q. 1996, c. 79, s. 5 ("*Amending Act, 1997*"). For students who, like the appellant, completed their studies during the winter trimester, the date on which interest payments and repayments on the principal were to begin was brought forward from January 1, 1999 to December 1, 1998. Effective May 1, 1998 (the day

the second amending statute came into force), students had to begin paying the interest as soon as they completed their studies: *An Act to amend the Act respecting financial assistance for students*, S.Q. 1997, c. 90, ss. 4 and 5 ("*Amending Act, 1998*").

8 The appellant obtained student loans between 1990 and 1996. He signed the last loan certificate with his financial institution, the Royal Bank of Canada, on November 15, 1996. The certificate issued by the Minister stated that the appellant could borrow an additional $4,255, which, after the amounts were consolidated, increased the total of his student loans from $22,510 to $26,765. The appellant completed his studies on about January 31, 1998, in the winter trimester. According to clause 10 of the loan certificate, he had to begin repaying the principal and paying the interest on the loan upon the expiration of the exemption period, that is, on January 1, 1999.

9 Around July 21, 1998, the appellant inquired about the repayment of his loan. A Royal Bank representative informed him verbally that interest on the loan had been debited since June 1, 1998 and that the principal would be repayable as of December 1, 1998, in accordance with the directives issued by Aide financière aux étudiants. As a result of the 1997 and 1998 legislative amendments, the appellant was being charged interest on his loan that, under the certificate signed in 1996, was supposed to have been paid by the Minister.

10 On August 7, 1998, the appellant repaid the principal of the loan and paid, without prejudice, $308.53 for the interest accrued from June 1 to August 6, 1998.

11 The appellant was authorized to institute, on behalf of himself and other students forming a specific group, a class action against the respondent, the Attorney General of Quebec, seeking reimbursement of the interest paid on the loans that had been granted (*Dikranian v. Québec (Ministère de l'Éducation)*, [1999] Q.J. No. 2086 (QL), *per* Lévesque J.). He argued that Quebec's Ministère de l'Éducation had to pay that interest in accordance with the loan certificate issued before the legislative amendments were passed.

3 Judicial History

12 On December 13, 2001, Journet J. of the Superior Court dismissed the appellant's action. On January 27, 2004, a majority of the Court of Appeal dismissed his appeal, Rothman J.A. dissenting.

3.1 *Superior Court ([2002] R.J.Q 969)*

13 Journet J. began by rejecting the appellant's arguments based on the provisions of the *Civil Code of Québec*, S.Q. 1991, c. 64 ("*C.C.Q.*"), concerning contracts of adhesion as well as his arguments relating to the *Consumer Protection Act*, R.S.Q., c. P-40.1. He found that the rights and obligations of the financial institution and the student were governed by the statute and the regulation, and not by the loan certificate. The rights and obligations were not imposed by one of the parties to the contract, as is the case with a contract of adhesion. They simply flowed from the exercise of statutory or regulatory powers. In his view, a mandatory provision of a statute or regulation cannot be nullified pursuant to the *C.C.Q.* on the ground that, because it is incorporated into a contract, it is contractual in nature. This would be [TRANSLATION] "to confuse and distort concepts of nullity that were incompatible with

each other — the rules of nullity applicable to contracts on the one hand and the rules of nullity and invalidity applicable to statutes and regulations on the other . . ." (at para. 76). Journet J. was of the opinion that the loan certificate was not in itself a contract but rather a juridical act issued pursuant to an enactment governing the rights and obligations of the parties referred to therein.

14 Journet J. then addressed the question of the retroactivity of the legislation. In his view, the issue was the immediate applicability of the legislation, not its retroactive application. He noted that the two amending statutes did not state that their provisions would take effect before they came into force. He added the following:

> [TRANSLATION] Section 13 of the 1997 statute states that the new provisions of the Act are applicable to the juridical situations in progress at the time of their coming into force. This statutory provision shows that the legislature intended the new legislation to apply immediately to all existing and future loans.
>
> The Court does not see how it could conclude that the two new statutes created different juridical situations for loans made before and after their enactment. In the absence of a provision to the contrary, every statute must apply immediately, both to contracts entered into before and to those entered into after it comes into force.
>
> The Court notes that there cannot be multiple sets of repayment terms for students completing their studies in the same trimester unless specific legislative provisions so indicate.
>
> The Court must favour an interpretation that results in the uniform application of one legislative scheme rather than a multiplicity of schemes.
>
> The interpretation suggested by [the appellant] for dealing with the temporal effect of the 1996 and 1997 statutes on the [*AFAS*] leads to unfair and different treatment of students who are nonetheless in the same situation, that is, who complete their studies in the same trimester and with the same loan amount to repay. If we accept the argument of [the appellant], only some of these students, he being one of them, would have to pay less interest on their loans and would thus obtain benefits not granted to others. [at paras. 88-92]

15 Finally, on the issue of vested rights, Journet J. noted that none of the students concerned, the appellant included, had completed their studies at the time the two statutes giving rise to the conflicting interpretations were enacted. The appellant had accordingly not taken advantage of the exemptions provided for in the original statute as of the time when the new provisions were enacted. He could not therefore claim to have vested rights.

3.2 *Court of Appeal ([2004] Q.J. No. 303 (QL))*

16 The appellant appealed from this judgment but was unsuccessful.

3.2.1 Forget J.A.

17 Forget J.A., Beauregard J.A. concurring, was of the opinion that the appeal should be dismissed. His brief reasons for judgment read as follows:

> [TRANSLATION] With due respect for the opinion of Rothman J.A., I am of the view that the trial judgment was correct.
>
> While the relationship between the student and the financial institution can be characterized as contractual, the same cannot be said of the relationship between the student and the government under the *Act respecting financial assistance for students*, which implements a public program to facilitate access to education.
>
> The amendments introduced by the 1996 and 1997 statutes applied immediately and governed active loans.
>
> I would dismiss the appeal with costs. [at paras. 48-51]

3.2.2 Rothman J.A.

18 Rothman J.A. accepted the appellant's arguments. To begin with, he found that the loan certificate imposed obligations on the appellant that were clearly contractual in nature. He wrote the following:

> While it is true, as the trial judge indicates, that the financial assistance programs created under the Act are worthy social programs designed to encourage equal accessibility to education for all Quebec students, the program of student loans contemplated in the Act did nevertheless impose contractual obligations upon students who obtained these loans, contractual obligations which included conditions as to the repayment of the capital of the loans as well as conditions concerning the payment of interest. One of the conditions in this contract stipulated the period of the loans during which the student was to be exempt from the payment of interest.
>
> The certificate of loan, issued by the Department and signed by the student as well as the financial institution, is in the form of a contract and the clauses setting out the conditions of the loan contain numerous references to "this contract". Any reasonable borrower or lender reading the document would consider himself bound by a contract.
>
> And while it is true that the Department did not itself sign the document, it was the Department that issued it to the student and it was the Department that had stipulated the conditions of repayment of capital and the exempt period for the payment of interest by the student. The Department was, moreover, itself contractually involved in the loan made to the student in that it guaranteed the repayment of the capital of the loan as well as the payment of interest to the financial institution, including the payment of interest for the period during which the student was exempt from interest payment.
>
> In sum, while the programs created under the Act can fairly be characterized as social and educational, the obligations and the rights of students under their loan agreements with the lenders were substantially contractual.
>
> I do not wish to suggest, of course, that the *Financial Assistance for Education Expenses Act* did not govern the relationship between the lending banks and the students and the relationship between the Banks and the Government.
>
> . . .
>
> But that being said, once it has been concluded that the contractual rights and obligations of a student borrower and a lender bank satisfy the

> requirements of the statute and the regulations, we must logically look to the contract concluded and the law that then existed to determine the rights and obligations of the borrowing student.
>
> Unless the subsequent amendments to the law are expressly stipulated to be retroactive or are retroactive by necessary implication, I can see no basis for applying provisions in the amendments in conflict with the rights of the parties under their contract and the law which was applicable when it was concluded. . . . On signing the contract of loan, the student had no reason to believe that the Government might, by simple legislative amendment, rewrite his contract with the bank and modify his interest obligation. Nor, in the absence of an intention, expressed or tacit, to impair the rights of the student under his loan contract, do I see any basis for interpreting the amendments in a manner that would have that effect. [at paras. 21-27]

19 Rothman J.A. pointed out that the 1997 and 1998 amendments, if applicable, would have had the effect of retroactively reducing the interest exemption period provided in the appellant's loan certificate. Yet this would have offended the principle against the retroactivity of legislation. He stated: "I can see no necessary implication that would require this interpretation" (at para. 33). He added the following:

> Nor can I easily accept that the phrase "[juridical situations in progress]" was intended to make the 1997 and 1998 amendments applicable so as to reduce the interest exemption period provided in the previously existing statute and in the contract signed by the borrowing student and the lending bank. In my respectful opinion, once the loan was approved by the Department and the contract of loan was signed by the student and the bank, appellant's obligation to pay interest and his exemption from the payment of interest were not "[juridical situations in progress]". They were rights and obligations which were no longer "in progress". They were crystallized, finalized and definitively concluded under the terms and conditions of the contract.
>
> There is no suggestion in the law or the contract that the obligations of the student or the bank as regards the payment of interest by the student or the duration of the exemption period were subject to discussion or change. These were matters definitively concluded in the contract insofar as appellant and the Bank were concerned. Appellant had no right to demand that the exemption period be extended and the Bank had no right to demand that the exemption be reduced. The Government had no right to demand that its guarantee in favour of the bank be reduced. What

"[juridical situations]" remained "[in progress]"? Absolutely none. [at paras. 34-35]

20 Rothman J.A. then noted that, in the absence of an express or tacit intention to do so, a new law should not be read as impairing vested rights. He wrote:

> In the 1998 amendment, Sec. 13 provided that the amending provisions would apply to "[juridical situations in progress at the time of their coming into force]."
>
> While it is true that when the 1998 amendment came into force, appellant had not yet ended the period of exemption provided in his contract, I find it hard to imagine that the Legislature intended, in adopting the 1998 amendment, to change the interest exemption period of a contract of loan that had previously been concluded merely on the basis that the period of exemption had not yet expired.
>
> When appellant undertook the loan, he did so under specific conditions for repayment of capital and payment of interest. There was no suggestion in the certificate of loan issued by the Department or in the contract that these conditions might be changed at any time. Nor is an interest exemption period, by its nature, of a kind that would be subject to periodic change. Appellant had every right to expect that his obligations for the repayment of capital and the payment of interest were those set out in the contract and that these conditions would be respected. Appellant fulfilled his obligations in repaying the loan and paying the interest on the loan under the terms required under his contract.
>
> In the absence of very clear terms in the amending statutes establishing that the Legislature intended to impair appellant's rights under his existing contract, I can see no reason why the Government should not respect the rights and obligations existing under that contract. If that means the payment of interest by the Government for the period of exemption in the contract, so be it. That was the basis on which the certificate was issued and the contract was signed.
>
> I would find it very difficult to interpret the words "[juridical situations in progress]" as evidence of an intention on the part of the Legislature to vary the terms of a loan contract that was concluded prior to the coming into force of the new law. [Emphasis in original; at paras. 39-43]

4 Analysis

21 Simply put, the Court must answer the following questions: whether the version of the *AFAS* in force on November 15, 1996, when the certificate was signed, governs the interest exemption period applicable upon the completion of studies; and whether the new legislative provisions altered the terms of the contract of loan that had been entered into before they came into force.

22 As a preliminary matter, I would like to make it clear that the plan set up by the *AFAS* and the *RFAS* is a complete one. This appeal does not concern the application of either the *Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 ("*Implementation Act*"), or the transitional provisions set out in that Act. Nor is it either helpful or necessary to refer to the rules relating to consumer protection.

4.1 *Legal Nature of the Relationship Between the Parties*

4.1.1 Contractual Relationship

23 The starting point for this analysis is the observation that there is a private law contract between the student and the financial institution, and the terms of the contract leave no doubt in this regard (arts. 1372, 1385 and 1387 *C.C.Q.*). The two parties signed the loan certificate and made specific undertakings. There is no question that the contractual relationship between the student and the financial institution has a special feature, as the Minister, who is not a signatory, has unilaterally undertaken to guarantee the loan and pay the interest for a certain time.

24 It appears that the *AFAS* implicitly recognizes the contractual relationship established between the student and the financial institution. The version of s. 15 that was in force at the time of the events that led to the dispute provided as follows:

> **15.** The Minister shall issue, to a student who is entitled to it and who is enrolled or deemed to be enrolled within the meaning of the regulation, a loan certificate authorizing him to contract a loan with a financial institution recognized by the Minister. The modalities of presentation of the certificate and payment of the loan shall be determined by regulation.

Before the amendments, the verb "contract" was also used in ss. 40, 41 and 62 of the *AFAS* and in s. 56 of the *RFAS*.

25 In short, any reasonable borrower or lender reading the document would consider himself or herself bound by a contract, as Rothman J.A. stated. It also appears that all the parties involved in this case recognize the contractual relationship between the student and the financial institution.

4.1.2 Contract of Loan: Loan Certificate

26 The contract of loan signed by the student and the financial institution on September 15, 1996 contains the following clauses:

> This contract is signed in accordance with the prescriptions of the Act respecting financial assistance for students (R.S.Q., c. A-13.3), the Regulation thereunder (A-13.3, r.1) and the prescriptions of the Loan Guaranty Program for the Purchase of a Microcomputer, if applicable.
>
> Without restricting the scope of the above, the parties also agree to the following:
>
> LOAN UNDER THE ACT RESPECTING FINANCIAL ASSISTANCE FOR STUDENTS

> 5. The student is exempt from payment of interest on the principal loaned by the financial institution, under the Act respecting financial assistance for students, for the exemption period defined in section 23 of the Act, which is cited in clause 10 of this contract.
>
> . . .
>
> 10. Exemption period "means the period beginning on the date on which the borrower obtains a first loan or on which he becomes a full-time student again after having ceased to be so, and ending
>
> 1° on 1 April, for a borrower who completes or abandons his full-time studies during or at the end of the preceding summer trimester;
> 2° on 1 August, for a borrower who completes or abandons his full-time studies during or at the end of the preceding autumn trimester;
> 3° on 1 January, for a borrower who completes or abandons his full-time studies during or at the end of the preceding winter trimester" (R.S.Q., c. A-13.3, s. 23).

Under the contract of loan, the appellant, who completed his studies on January 31, 1998 (winter trimester), was therefore obliged to repay the principal and assume the interest payments on his loan as of the expiration of the exemption period, that is, on January 1, 1999.

27 The reference to the *AFAS* has the effect of incorporating the relevant provisions of the *AFAS*. Moreover, this reference relates specifically to the juridical situation that existed when the certificate was signed, that is, before the legislative amendments. Rothman J.A. shared this view:

> But that being said, once it has been concluded that the contractual rights and obligations of a student borrower and a lender bank satisfy the requirements of the statute and the regulations, we must logically look to the contract concluded and the law that then existed to determine the rights and obligations of the borrowing student. [at para. 26]

28 Thus, the substantive issue is whether the rights conferred by the contract of loan can be unilaterally modified by the legislature, which is not a signatory to the contract.

4.2 *Vested Rights*

29 Before considering the question of vested rights, I would like to note that a distinction must be drawn between the principle of vested rights and the principle against retroactivity. This issue is of great importance here. The Attorney General of Quebec submits that the principle of the retroactivity of legislation is not in issue and asks the Court to apply the principle of the retrospectivity of legislation that was recently reiterated in *Épiciers Unis Métro-Richelieu Inc., division "Économgros" v. Collin*, [2004] 3 S.C.R. 257, 2004 SCC 59. However, it should be noted right away that *Épiciers Unis* dealt with the application of the *Implementation Act*, ss. 2 and 3 of which indicate that "the recent reform of the *Civil Code* is based not on the principles established at common law, principles which give great importance to vested rights. Rather, it is a system essentially based on the ideas of the French jurist Paul Roubier, a system which clearly dispenses with the notion of vested rights" (P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 118). This appeal does not concern a dispute resulting from the coming into force of the *C.C.Q.* We must therefore apply the *Interpretation Act*, R.S.Q., c. I-16, which gives effect to the principle of "acquired rights" in s. 12.

4.2.1 Distinctions Between Vested Rights and Retroactivity

30 Vested rights result from the crystallization of a party's rights and obligations and the possibility of enforcing them in the future. Professor Côté writes

that, "[w]ithout being retroactive, a statute can affect vested rights; correspondingly, a statute can have a retroactive effect and yet not interfere with vested rights" (at p. 156). In general, it will be purely prospective statutes that will threaten the future exercise of rights that were vested before their commencement: Côté, at p. 137.

31 Although the courts have in the past analysed the same question from the perspective of either the presumption against interference with vested rights or the presumption against retroactive legislation, there remains, as the submissions of the parties in the instant case demonstrate, a clear distinction between these two rules of construction: *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880, at p. 906; *Attorney General of Quebec v. Expropriation Tribunal*, [1986] 1 S.C.R. 732, at pp. 741 and 744; *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 S.C.R. 271, at pp. 279 and 282.

4.2.2 Statement of Principle

32 The principle against interference with vested rights has long been accepted in Canadian law. It is one of the many intentions attributed to Parliament and the provincial legislatures. As E. A. Driedger states in *Construction of Statutes* (2nd ed. 1983), at p. 183, these presumptions

> . . . were designed as protection against interference by the state with the liberty or property of the subject. Hence, it was "presumed", in the absence of a clear indication in the statute to the contrary, that Parliament did not intend prejudicially to affect the liberty or property of the subject.

This had already been accepted by Duff J. in *Upper Canada College v. Smith* (1920), 61 S.C.R. 413, at p. 417:

> . . . speaking generally it would not only be widely inconvenient but "a flagrant violation of natural justice" to deprive people of rights acquired by transactions perfectly valid and regular according to the law of the time.

(See also *Acme Village School District No. 2296 (Board of Trustees of) v. Steele-Smith*, [1933] S.C.R. 47, at p. 51; R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at pp. 569-70.)

33 The leading case on this presumption is *Spooner Oils Ltd. v. Turner Valley Gas Conservation Board*, [1933] S.C.R. 629, at p. 638, where this Court stated the principle in the following terms:

> A legislative enactment is not to be read as prejudicially affecting accrued rights, or "an existing status" (*Main* v. *Stark* [(1890), 15 App. Cas. 384, at 388]), unless the language in which it is expressed requires such a construction. The rule is described by Coke as a "law of Parliament" (2 Inst. 292), meaning, no doubt, that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament intends prejudicially to affect such rights or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference.

34 The principle has since been codified in interpretation statutes. The *Interpretation Act* is no exception:

> **12.** The repeal of an act or of regulations made under its authority shall not affect rights acquired . . . and the acquired rights may be exercised . . . notwithstanding such repeal.

4.2.2.1 *Rule of Construction*

35 In the past, this Court has stressed that the presumption against interference with vested rights could be applied only if the relevant legislation were ambiguous,

that is, reasonably susceptible of two constructions (see *Gustavson Drilling*, at p. 282; *Acme Village School District*, at p. 51; *Venne*, at p. 907).

36 This statement must be qualified somewhat in light of this Court's recent decisions. As Professor Sullivan says, care must be taken not to get caught up in the last vestiges of the literal approach to interpreting legislation:

> In so far as this language echoes the plain meaning rule, it is misleading. The values embodied in the presumption against interfering with vested rights, namely avoiding unfairness and observing the rule of law, inform interpretation in every case, not just those in which the court purports to find ambiguity. The first effort of the court must be to determine what the legislature intended, and . . . for this purpose it must rely on all the principles of statutory interpretation, including the presumptions. [at p. 576]

Since the adoption of the modern approach to statutory interpretation, this Court has stated time and time again that the "entire context" of a provision must be considered to determine if the provision is reasonably capable of multiple interpretations (see, for example, *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 29).

4.2.2.2 *Criteria for Recognizing Vested Rights*

37 Few authors have tried to define the concept of "vested rights". The appellant cites Professor Côté in support of his arguments. Côté maintains that an individual must meet two criteria to have a vested right: (1) the individual's legal (juridical) situation must be tangible and concrete rather than general and abstract; and (2) this legal situation must have been sufficiently constituted at the time of the new statute's commencement (Côté, at pp. 160-61). This analytical approach was used by,

inter alia, the Saskatchewan Court of Appeal in *Scott v. College of Physicians and Surgeons of Saskatchewan* (1992), 95 D.L.R. (4th) 706, at p. 727.

38 I am satisfied from a review of the case law of this Court and the courts of the other provinces that the analytical framework proposed by the appellant is the correct one.

39 A court cannot therefore find that a vested right exists if the juridical situation under consideration is not tangible, concrete and distinctive. The mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists: Côté, at p. 161. As Dickson J. (as he then was) clearly stated in *Gustavson Drilling*, at p. 283, the mere right existing in the members of the community or any class of them at the date of the repeal of a statute to take advantage of the repealed statute is not a right accrued (see also *Abbott v. Minister for Lands*, [1895] A.C. 425, at p. 431; *Attorney General of Quebec*, at p. 743; *Massey-Ferguson Finance Co. of Canada v. Kluz*, [1974] S.C.R. 474; *Scott*, at pp. 727-28). In other words, the right must be vested in a specific individual.

40 But there is more. The situation must also have materialized (Côté, at p. 163). When does a right become sufficiently concrete? This will vary depending on the juridical situation in question. I will come back to this point later. Suffice it to say for now that, just as the hopes or expectations of a person's heirs become rights the instant the person dies (see, for example, *Marchand v. Duval*, [1973] C.A. 635, at p. 637, and art. 625 *C.C.Q.*), and just as a tort or delict instantaneously gives rise to the right to compensation (see, for example, *Holomis v. Dubuc* (1974), 56 D.L.R. (3d) 351 (B.C.S.C.); *Ishida v. Itterman*, [1975] 2 W.W.R. 142 (B.C.S.C.); and arts. 1372 and

1457 *C.C.Q.*), rights and obligations resulting from a contract are usually created at the same time as the contract itself (see Côté, at p. 163).

4.2.3 Application to the Legislation at Issue

41 The government submits that the two amending statutes applied immediately and therefore necessarily had the effect of changing the repayment terms, since those terms concerned the future effects of the contract. According to the government, this result is justified by the rule relating to the retrospective application of legislation. It argues that repayment in accordance with the terms set out in the contract was merely an expectation. A contextual analysis favours this result, it submits, since the plan applies each year to a large number of students who, out of fairness, must be subject to the same repayment terms. The government adds that administering loans on an individual basis would be problematic. Also, it would directly undermine the integrity of the plan, which must be uniform, and this is another indication that the legislature could not have intended that loans be administered on an individual basis.

42 The appellant submits that his situation is a tangible one governed by a private contract the administration of which is the responsibility of a financial institution, not the government. He points out that the certificate was amended in 1997 to require him to comply with the repayment terms that would be in effect at the time he had to begin repaying the loan. The appellant thus argues that the two statutes modifying the legal obligations that are assumed and must in all cases be performed by the parties are retroactive. However, since retroactivity is not specified, it cannot be imposed.

4.2.3.1 *Amending Act, 1997*

43 The basic fact remains that the appellant and the financial institution signed a loan certificate provided by the Minister, thereby turning the certificate into a contract and crystallizing the parties' rights and obligations.

44 The *Amending Act, 1997*, which shortened the interest exemption period by one month, does not contain any transitional provision that might reveal the legislature's intent. In short, there is nothing to justify a conclusion that the legislature clearly and unambiguously intended to apply the new provisions so as to limit the rights of borrowers. Moreover, it seems obvious to me that just because the government argues for the immediate and future application of the *Amending Act, 1997* does not mean it is authorized to interfere with rights conferred on the appellant in his contract. The *Amending Act, 1997* does not refer to contracts that have already been entered into and therefore cannot apply to them. Moreover, I can find no evidence in the record that justifies imputing to the legislature an intention to interfere with vested rights. Nevertheless, let us continue with the review of the amending statutes.

4.2.3.2 *Amending Act, 1998*

45 In the *Amending Act, 1998*, the legislature provided for transitional measures in s. 13. It is the second paragraph of this section that interests us:

> **13.** The provisions introduced by sections 2 and 3 of this Act are applicable in respect of the years of allocation subsequent to their coming into force.
>
> The other provisions introduced by this Act and the first regulations made thereunder are applicable to the juridical situations in progress at the time of their coming into force.

The issue is therefore what the expression "juridical situations in progress" means. The majority of the Court of Appeal, as well as Journet J. of the Superior Court, found that the expression covered all student loans contracted before and after the coming into force of the new legislation. I do not agree.

46 First of all, it is necessary to determine the true scope of this section: does it clearly state the legislature's intention to change the terms of contracts of loan entered into prior to May 1, 1998? I do not think so.

47 It will be helpful at this point to set out the legal steps for obtaining a student loan. The following passage is from the appellant's factum (at para. 101):

> We would submit that there are two legal steps required for the obtaining of a Student Loan: first, the issuance of the Loan Certificate by the Minister and second, the signing of the Loan Certificate by the student and the Financial Institution to conclude a contract. The first step, by which the student obtains his Loan Certificate, creates the student's right to proceed to the second step and receive his Student Loan in accordance with the specific terms and conditions indicated on the Loan Certificate. If a change in the law were to modify the terms and conditions of student loans, this change (in the absence of clear legislative language) would not apply to modify or amend Loan Certificates already issued, as long as the student who had received it, signed it within the stipulated delay (90 days as per section 60 of the *Regulation respecting financial assistance for education expenses*, R.R.Q., c. A-13.3, R-1). In other words, by the mere receipt of his Loan Certificate, a student would have a right to sign the Loan Certificate and obtain his Student Loan in accordance with the terms and conditions of the Loan Certificate, notwithstanding a change in the governing law.

In my opinion, the appellant is correct to submit that, in the general context of the plan, the expression "juridical situations in progress" applies to a student who has received a loan certificate but not yet signed it (nor has the financial institution done so).

48 Section 13 does not provide that the amendments apply to contracts or "contractual situations". Yet it appears that in the past the Quebec legislature has drawn a distinction between "legal (juridical) situations which exist" and contractual situations which exist", as it used both expressions in the *Implementation Act* (in the *Implementation Act*, the words "*en cours*" were translated as "which exist", while in the *Amending Act, 1998*, the same words were translated as "in progress"). Section 3 of the *Implementation Act* contains the expression "legal situations which exist":

> **3.** The new legislation is applicable to legal situations which exist when it comes into force.
>
> Any hitherto unfulfilled conditions for the creation or extinction of situations in the course of being created or extinguished are therefore governed by the new legislation; it also governs the future effects of existing legal situations.

Section 4 of the same statute contains the expression "contractual situations which exist":

> **4.** In contractual situations which exist when the new legislation comes into force, the former legislation subsists where supplementary rules are used to determine the extent and scope of the rights and obligations of the parties and the effects of the contract.
>
> However, the provisions of the new legislation apply to the exercise of the rights and the performance of the obligations, and to their proof, transfer, alteration or extinction.

We need not, in the instant case, define these expressions in the context of the *Implementation Act*, which, as I mentioned above, is based on the ideas of P. Roubier (see P.-A. Côté and D. Jutras, *Le droit transitoire civil: Sources annotées* (1994)). It is nonetheless significant that both expressions have been used by the Quebec legislature, which means that they must refer to different realities.

49 In the case at bar, a contract was signed and entered into before new provisions came into force. The contract continued to produce its effects notwithstanding those provisions. The rights and obligations resulting from the contract were fixed and crystallized as soon as the contract was entered into (see P. Roubier, *Le droit transitoire: conflits des lois dans le temps* (2nd ed. 1993), at pp. 315-16; H., L. and J. Mazeaud and F. Chabas, *Leçons de droit civil*, t. 1, vol. 1, *Introduction à l'étude du droit* (11th ed. 1996), No. 147). Naturally, this included the repayment terms, which are essential clauses in any contract of loan. On this point, I adopt the following words of Rothman J.A.:

> Nor can I easily accept that the phrase "[juridical situations in progress]" was intended to make the 1997 and 1998 amendments applicable so as to reduce the interest exemption period provided in the previously existing statute and in the contract signed by the borrowing student and the lending bank. In my respectful opinion, once the loan was approved by the Department and the contract of loan was signed by the student and the bank, appellant's obligation to pay interest and his exemption from the payment of interest were not "[juridical situations in progress]". They were rights and obligations which were no longer "in progress". They were crystallized, finalized and definitively concluded under the terms and conditions of the contract. [at para. 34]

50 In light of the ambiguity of s. 13 of the *Amending Act, 1998*, we must apply the principle against interference with vested rights.

51 The cases dealing with purely statutory rights that an individual did not exercise prior to a legislative amendment are of no help here (see *Gustavson Drilling*; *Attorney General of Quebec*; *Venne*). In the instant case, the right was provided for in legislation but was later incorporated into a private contract (between the student and the financial institution) in which the parties freely, and on an informed basis, defined their rights and obligations. It was the contract (not the legislation) that created rights

and obligations for the parties as soon as it was formed (see Côté, at p. 163; *Épiciers Unis*, at para. 48; *Township of Nepean v. Leikin* (1971), 16 D.L.R. (3d) 113 (Ont. C.A.); *Location Triathlon Inc. v. Boucher-Forget*, [1994] R.J.Q. 1666 (Sup. Ct.)). The right *not to pay more* interest than the contract specified was also acquired at that time.

52 With regard to the administrative grounds raised by the government, particularly the need for consistent and equal treatment of students who complete their studies at the same time, they cannot lead the Court to disregard the express wording of the private contract. On this point, Rothman J.A. wrote the following:

> With great respect, I do not think this is a question of treating students uniformly nor even treating all students equitably. It is rather a question of respecting the difference in contractual rights and obligations concluded prior to the amendments. I can see nothing equitable in impairing the contractual rights and obligations that were concluded prior to the amendments on the basis that all students should be treated uniformly in their conditions of loan repayment. There is nothing equitable in treating students less favourably than they were entitled to be treated under their contracts and under the law that was applicable when the contracts were concluded. [at para. 46]

It is perfectly normal for some students who completed their studies on the same date to be treated differently if they obtained their student loans at different times and signed different loan agreements on an informed basis. It is the very foundation of the individualized contractual right that leads to this result. In determining the scope of the obligations of the parties to the contract, there is no reason to disregard the date the contract was entered into in favour of the date studies were completed; the government expressed its intention in the loan certificate.

5 Conclusion

53 The Quebec legislature's involvement in student loans clearly makes such loans one component of a social program designed to improve access to education. However, it is impossible to disregard the fact that the legislature intended its program to be based on private contractual obligations, even though several terms of the contract were to be imposed on students. The contract of loan between the student and the financial institution, which arises out of the loan certificate issued by the Minister, creates rights and obligations as soon as the contract is entered into. This explains the need not to interfere with vested rights.

54 I would therefore allow the appellant's action: (1) student borrowers with student loans that were active on July 1, 1997 have a vested right with respect to the duration of the exemption period applicable when the contracts were signed, as this right was not affected by the *Amending Act, 1997*; and (2) students with loans that were active on May 1, 1998 have a vested right with respect to the duration of the exemption period applicable when the contracts were signed, as this right was not affected by the *Amending Act, 1998*. The case is remanded to the Superior Court to determine the method for making claims, the amounts owed by Quebec and the payment procedures.

55 For these reasons, the appeal is allowed and the judgments of the Court of Appeal and the Superior Court are set aside, with costs throughout.

Appendix

Act respecting financial assistance for students, R.S.Q., c. A-13.3

15. The Minister shall issue, to a student who is entitled to it and who is enrolled or deemed to be enrolled within the meaning of the regulation, a loan certificate authorizing him to contract a loan with a financial institution recognized by the Minister. The modalities of presentation of the certificate and payment of the loan shall be determined by regulation.

23. For the purposes of this subdivision, "period of exemption" means the period beginning on the date on which the borrower obtains a first loan, or on which he becomes a full-time student again after having ceased to be so, and ending

(1) on 1 April, for a borrower who completes or abandons his full-time studies during or at the end of the preceding summer trimester;

(2) on 1 August, for a borrower who completes or abandons his full-time studies during or at the end of the preceding autumn trimester;

(3) on 1 January, for a borrower who completes or abandons his full-time studies during or at the end of the preceding winter trimester.

24. The Minister shall pay to any financial institution which has made an authorized loan the interest on the balance of such loan at the rate fixed by regulation, as long as the borrower is a full-time student and during his period of exemption.

. . .

27. In the event of the death of a borrower, the Minister shall reimburse the amount of the loan to the financial institution.

28. The Minister shall reimburse to any financial institution the losses in principal and interest resulting from an authorized loan.

29. The Minister is subrogated by operation of law in the rights of a financial institution to which he makes a repayment under section 27 or 28.

40. After having been notified in accordance with the provisions of paragraph 1 of section 39, or after having been otherwise informed of a change which may affect the amount of financial assistance to be granted to a student, the Minister shall reconsider the duly completed file of the student and render his decision.

However, in no case may the decision reduce the amount of or cancel a loan which has already been contracted.

41. The Minister may, where an application is produced after the time prescribed or where the provisions of paragraph 2 of section 39 have been contravened, refuse an application, reduce the amount of or cancel the financial assistance, or demand the reimbursement of any financial assistance already paid in the form of a bursary.

However, in no case may the Minister reduce the amount of or cancel a loan which has already been contracted.

62. Any loan contracted under the Student Loans and Scholarships Act shall be deemed to have been contracted under the provisions of this Act.

. . .

An Act to amend the Act respecting financial assistance for students and the General and Vocational Colleges Act, S.Q. 1996, c. 79

5. Section 23 of the said Act is amended

(1) by replacing the word "April" in paragraph 1 by the word "March";

(2) by replacing the word "August" in paragraph 2 by the word "July";

(3) by replacing the word "January" in pa0ragraph by the word "December".

An Act to amend the Act respecting financial assistance for students, S.Q. 1997, c. 90

4. Section 23 of the said Act is replaced by the following section:

"**23.** For the purposes of this subdivision, "period of exemption" means the period beginning on the date on which the borrower obtains a first loan or on which the borrower resumes being a full-time student, and ending on the date determined in accordance with the regulations."

5. Section 24 of the said Act is amended

(1) by replacing the words "his period of exemption" in the third and fourth lines of the first paragraph by the words "the additional period ending on the date determined by the regulation";

(2) by inserting the words "and provided the person is in a precarious financial situation within the meaning of the regulation" after the word "Minister" in the first line of subparagraph 2 of the second paragraph.

13. The provisions introduced by sections 2 and 3 of this Act are applicable in respect of the years of allocation subsequent to their coming into force.

The other provisions introduced by this Act and the first regulations made thereunder are applicable to the juridical situations in progress at the time of their coming into force.

Translation

SUPREME COURT OF CANADA

HARRY DIKRANIAN

- v. -

ATTORNEY GENERAL OF QUEBEC

CORAM: The Chief Justice and Bastarache, Binnie, LeBel, Deschamps, Abella and Charron JJ.

DESCHAMPS J.—

56 In declaring, in s. 13, that the *Act to amend the Act respecting financial assistance for students*, S.Q. 1997, c. 90 ("*AFAS*"), applied to juridical situations in progress, the Quebec legislature clearly indicated that the statute applied with immediate effect to the exemption period for the payment of interest by the appellant to his financial institution.

57 As this Court held in *Épiciers Unis Métro-Richelieu Inc., division "Éconogros" v. Collin*, [2004] 3 S.C.R. 257, 2004 SCC 59, common law concepts that place a strong emphasis on vested rights do not apply where an approach based on the immediate application of legislation and the concept of juridical situations in progress is adopted. Thus, the doctrine of vested rights should not be relied on to decide the instant case.

58 Bastarache J. is of the opinion that the expression "juridical situations in progress" applies only to situations that are still being formed (at para. 47) and that the effects of the contract continue to be governed by the legislation in force when the contract was entered into (at para. 49). I myself believe that the expression includes both situations that are being formed and the effects of a given juridical situation.

59 In using the expression "*situations juridiques en cours*" (translated as "juridical situations in progress" in the *AFAS*, but as "legal situations which exist" in the context of the transitional law relating to the implementation of the *Civil Code of Québec*), the Quebec legislature drew inspiration from jurist Paul Roubier's work on transitional law (*Droit civil québécois* (looseleaf ed.), vol. 8, at para. DT1 555, "Conflit de loi dans le temps"). Since transitional law is precisely what we are concerned with in the instant case, I consider it relevant to refer to his writings to determine the scope of the expression (P. Roubier, *Le droit transitoire: conflits des lois dans le temps* (2nd ed. 1993)):

> [TRANSLATION] The term "legal [juridical] situation" was chosen intentionally as being the most encompassing. We consider it better than "vested rights" because it is not subjective in nature . . . we also consider it better than "legal relationship" . . . which implies a direct relationship between two persons, whereas a legal situation can be unilateral and can be set up against any person whomsoever.
>
> . . .
>
> To understand the difficulties that may result from the temporal effect of a statute, one need only note that legal situations generally do not come about all at once; they develop over time, such that the new statute may come into effect at a certain point in this development. . . .
>
> However, this is where an essential distinction must be drawn as regards the development of the successive moments of a legal situation: there is a dynamic phase, which is the moment when the situation is created (and also when it is extinguished), and there is a static phase, which is the period when the situation produces its effects. [at pp. 181-82] [Emphasis added.]

60 If we rely on Roubier's use of the expression "legal situation", this concept encompasses at once the formation of the situation, its extinction and its effects. In light of this work, there is no reason to conclude that, when the legislature used the words "juridical situations in progress", it intended to refer to juridical situations in the process of being formed but not to juridical situations in the process of producing effects.

61 Côté and Jutras (P.-A. Côté and D. Jutras, *Le droit transitoire civil: Sources annotées* (1994)), commenting on Roubier's theory, also include in the expression "legal situations which exist" not only to the dynamic phase, that is, the formation and extinction of a juridical situation, but also to the static phase, that is, its effects:

> [TRANSLATION] In Roubier's system, once a rule has been tied to a given legal situation, a distinction must be drawn based on whether the rule relates to the situation's creation or extinction or determines its effects. There are two phases in the development of legal situations: the dynamic phase, which corresponds to their formation and extinction, and the static phase, which corresponds to their effects. This distinction between the dynamic (formation and extinction) phase and the static (effects) phase of a legal situation is echoed in the second paragraph of sections 2 and 3 of the *Implementation Act*. [at para. 1.048]

62 It is true that these comments relate to the *Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 (the "*Implementation Act*"), and that we do not have to interpret that statute here. However, we cannot disregard the fact that the same legislature, in the same decade, used the same expression for a concept that originated in the same legal works.

63 The Quebec Court of Appeal has also held that the expression "legal situation" includes effects:

> [TRANSLATION] Even where it is created unilaterally and there is no immediate legal relationship, the concept of "legal situation" applies to the existence of legal effects from the moment the situation arises. [Emphasis added.]
>
> (*Montréal (Ville) v. 9013-5286 Québec inc.*, [2002] Q.J. No. 2361 (QL), at para. 18)

64 Thus, when a loan certificate is issued to a student, a juridical situation (a situation that produces legal effects) is created. This situation does not cease to be "in progress" when the student and the financial institution together sign the certificate, transforming it into a contract of loan. To adopt the approach suggested by Bastarache J. would mean that the legislature has split the concept into two parts: the formation of the contract and its effects (at para. 47). I cannot accept this interpretation. An interpretation that denies that a juridical situation is still "in progress" when it has been formed, has not been extinguished and is producing effects is not consistent with the theory on which the legislature relied.

65 In the case at bar, the obligation to pay interest flowed from the contract, and the interest exemption period was clearly in progress. Since the duration of this exemption period was legislated, it could be modified by legislation of immediate application.

66 It is also strange to limit the scope of the expression by referring to s. 4 of the *Implementation Act*. This section establishes a specific rule for contractual situations governed by the *Civil Code of Québec*, S.Q. 1991, c. 64. In such situations, new legislation applies only "to the exercise of the rights and the performance of the obligations, and to their proof, transfer, alteration or extinction". The section does not say that effects are excluded from the expression "legal situations which exist".

Moreover, the *Implementation Act* deals with the dynamic and static phases in the same way, regardless of whether the situation is a contractual situation or any other legal situation. It is thus clear that effects are included in the legal situation concept.

67 Furthermore, an interpretation according to which the transitional provision applies to "a student who has received a loan certificate but not yet signed it (nor has the financial institution done so)" is so narrow that I cannot convince myself that the legislature could have intended to limit the scope of the *AFAS* in this way. In *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, at para. 43, the Court rejected an interpretation that limited the application of new legislation to a very limited number of cases. I believe that the same principle of interpretation applies in the instant case.

68 In *Épiciers-Unis Métro-Richelieu*, the Court did not hesitate to recognize the retrospectivity of a provision of the *Civil Code of Québec*. Retrospective effect is but one aspect of the concept of the immediate effect of legislation. In *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 154, Professor P.-A. Côté says the following on this subject:

> Where a new statute is declared applicable, for the future, to situations underway, we say it has immediate effect. This notion is used here to describe a situation not only where the facts contemplated by the rule are underway at the moment the law is modified (what Héron calls the general effect of the new statute), but also to describe situations where it is the legal effects of the rule which are underway (what Héron calls the retrospective effect of the statute).

It is in fact the retrospective aspect of the legislation that is in issue in the instant case. The exemption period has been modified for the future.

69 The concept of the immediate effect of legislation has been recognized by the commentators and by the courts. In its terse majority judgment in the case at bar, the Court of Appeal merely applied a concept it was familiar with. The legislature is free to enact statutory provisions that may seem harsh. It is not the place of the courts to interfere in the legislative process.

70 For these reasons, I am of the opinion that the decision of the majority of the Court of Appeal was correct. I would dismiss the appeal.