



ENVIRONMENTAL COALITION OF PRINCE EDWARD ISLAND

81 Prince St, Charlottetown, PEI C1A 4R3

November 14, 2023

Scott MacKenzie
Chair and Chief Executive Officer
Prince Edward Island Regulatory and Appeals Commission
Box 577
Charlottetown, PEI
C1A 7L1
smackenzie@irac.pe.ca

Dear Mr. MacKenzie:

I am contacting you in my role as Co-chair of the Environmental Coalition of Prince Edward Island ("ECOPEI"). After hearing about the province's reversal of positions on the development next to the National Park in Greenwich, we were immediately put in a difficult position. We could launch an appeal of the decision through IRAC, but meeting the deadline for appeal could not be done if we waited for the provincial government to provide the details of the approval and the record that accompanies the permit. Nonetheless we were confident, based on the materials that we were able to gather from publicly available data that there were legitimate concerns, so we filed our appeal based on the information that we had at that time. The first round of documents that have since been provided lend further support to our belief that there are issues of both process and legislative interpretation/application, which we would like to appeal in relation to the Minister's decision. We are presently awaiting possible further documentation from the province. Mr. Rafuse has been extremely helpful and professional in guiding us through the process to date.

Soon after we received the first round of documentation from the province on September 15th, we received a Notice of Claim filed by the developer against ECOPEI, and others. You can imagine the shockwaves that were sent through our organization, a registered charity, that has operated with the highest levels of responsibility and integrity since 1989. As we are totally dependent on our well-earned reputation, this lawsuit is a serious threat even though the claims made against ECOPEI are patently false.

The developer's Statement of Claim was filed on October 30th (following the Notice of Action's filing on September 28th), and like the initial Notice, is upsetting and disturbing in its allegations. As a non-profit organization with charitable status, we rely on limited resources to fulfill our mission. Nonetheless, we will do everything we can to have this frivolous and vexatious lawsuit

dismissed. As you are well aware, these types of lawsuits are not meant to address meritorious claims but to scare and to stifle legitimate concerns.

IRAC has already had at least one other negative experience with this developer regarding these types of intimidation-oriented lawsuits, which has been brought to our attention. In 2010, an appeal to IRAC by Judy Gallant and Lys-Ondray Goulet (Dockets LA10006 and LA10007) was similarly blindsided by a SLAPP suit (albeit in a more dramatic but equally upsetting fashion). The Commission felt compelled to include the following in its decision:

"...Pan American/APM also showed disrespect for the legislated role and mandate of the Commission as a quasi-judicial body, may have constituted contempt, and will result in the Commission revisiting its current practices to strengthen and further protect the appeal process for all parties," the decision noted.

Unfortunately, it appears to ECOPEI that little, if anything, was done to further protect the appeal process. ECOPEI has launched a legitimate appeal and is participating in a process that is open to all Islanders. We were told by IRAC that it is a justiciable appeal. The question is, what kind of process is available to Islanders if they can be sued, sidetracked, and possibly derailed by someone with lots of resources and no real concern if they lose. IRAC must do something to stop and prevent these blatantly frivolous and intimidating lawsuits if the Commission truly wants meaningful public participation.

Presently, we are torn as an organization. We absolutely must defend against the developer's unmeritorious lawsuit that has the potential to destroy our resources and funds (including volunteer time and fundraising) as well as, by its very existence, impact on our hard-earned reputation. On the other hand, our participation in the IRAC process is based on legitimate concerns, which also will take up time and resources. We truly believe that this appeal is well founded and within the scope of our mission and we look forward to pursuing the appeal so that planning in PEI will reflect the spirit and intent of the legislation.

It is incumbent on IRAC to be part of the solution to this problem, for ECOPEI, the reputation of IRAC, and for any member of the public who in the future might otherwise be too afraid to participate in your process. As the Commission itself stated in 2010:

- *At the heart of the hearing process is the ability of all parties, especially those who are not represented by legal counsel, to present evidence in an unimpeded manner, free from any threat or intimidation. The principles of natural justice and procedural fairness must prevail.*
- *While Pan American/APM has the legal right to file documents in the Supreme Court of Prince Edward Island to initiate a legal action, the appellants have the right to have their appeals heard by the Commission.*
- *The service of the Statement of Claim could have delayed Pan American's proposed development of the Welsh-Owen Hotel and Plaza, as the Commission had the authority to adjourn the appeal sine die [without a future date], pending the resolution of the civil action by the Supreme Court of Prince Edward Island.*

ECOPEI takes the position that the developer in the present matter has abused the IRAC hearing process by causing a Statement of Claim to be served upon ECOPEI during an active appeal.

The developer's baseless lawsuit and the claims therein have, in our opinion, been conceived to intimidate ECOPEI directly in relation to the IRAC appeal and represent an abuse of process.

Since no procedural safeguards have been introduced to preserve the integrity of the IRAC process, ECOPEI requests that the Commission exercise its stated authority and adjourn our appeal (*sine die*) to allow us to first deal with the developer's civil lawsuit that is threatening our organization's existence.

I am available to discuss this issue at any time and am especially interested in how you are safeguarding the public's ability to exercise its democratic rights.

Sincerely,

A handwritten signature in black ink that reads "Gary Schneider". The signature is written in a cursive style with a large, prominent "G" and "S".

Gary Schneider, Co-chair
Environmental Coalition of Prince Edward Island

Cc: Doug Clow, Vice-chair dclow@irac.pe.ca
Phillip Rafuse, Appeals Commissioner pjrafuse@irac.pe.ca