

From: [Jessica Gillis](#)
To: ["Richard Collier"](#); [McKenna, Melanie \(Charlottetown\)](#); [Hooley, David \(Charlottetown\)](#)
Cc: [Janine MacLean](#); [Cathy Clow](#); [Caroline Davison](#); [Philip Rafuse](#)
Subject: RE: LA23021 - Currie & Currie v. Minister - Documents for Preliminary Matter - LS25783
Date: Thursday, November 2, 2023 3:32:26 PM
Attachments: [image001.png](#)

All,

Thank you for your patience while the Commission considers this matter.

The Commission appreciates the position of the Minister with respect to the limited record required on the preliminary issue. However, we note that it is unusual for the Commission to consider a matter based only on a partial record, and given that this is the first time the Commission will grapple with this question and because the Appellants have expressed their position that the question is on that is very fact-specific, the Commission, therefore, requires the Minister to provide the entire record. The deadline for doing so will be **Friday, November 17, 2023**.

The timelines for written submissions will be adjusted accordingly:

- The Appellants are to provide submissions in writing on the preliminary issue of whether the Minister's decision respecting lack of jurisdiction to approve or deny the application one which can be properly appealed to the Commission per s. 28 of the *Planning Act*, along with any additional documents/evidence, by Friday, December 1, 2023.
- The Minister will have until Friday, December 15, 2023, to respond to the preliminary issue; and
- The Appellants will be entitled to a reply by Friday, December 22, 2023.

If either party has concerns with these adjusted timelines, please let us know ASAP.

Finally, **please be advised** that at this time, the Commission intends to determine the preliminary issue based on the parties' written submissions (i.e. without an oral hearing) per Rule 41 of the Commission's Rules of Practice and Procedure, unless either party objects to this format.

Thank you,
Jessica



Jessica M. Gillis (she/her)

General Counsel

D. 902.368.7860

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From: Richard Collier <racollier@gov.pe.ca>

Sent: Thursday, November 2, 2023 12:11 PM

To: Jessica Gillis <jgillis@irac.pe.ca>; McKenna, Melanie (Charlottetown)
<mmckenna@coxandpalmer.com>; Philip Rafuse <PJRafuse@irac.pe.ca>

Cc: Janine MacLean <jmaclean@irac.pe.ca>; Hooley, David (Charlottetown)
<dhooley@coxandpalmer.com>; Cathy Clow <CCLOW@gov.pe.ca>; Caroline Davison
<carolinedavison@gov.pe.ca>

Subject: RE: LA23021 - Currie & Currie v. Minister - Documents for Preliminary Matter - LS25783

Hello again,

I have received instructions regarding a response. It is the Minister's position that a full record is not required to determine the preliminary issue of the Commission's jurisdiction to hear the appeal.

The cases and the arguments Melanie notes may, or may not, be persuasive when determining the substance of what her clients are seeking relief for, but, respectfully, do not impact the preliminary issue of the Commission's jurisdiction. Either the Commission has jurisdiction pursuant to the legislation, or it does not.

If the Appellants disagree, I note the Commission provided them with the opportunity of filing any other documents they deem relevant along with submissions on the preliminary issue of the Commission's jurisdiction.

In sum, the Minister does not feel further documentation is required to determine the preliminary issue of the Commission's jurisdiction. That said, the Minister will comply with the Commission's determination of this issue.

Best Regards,

Richard

RICHARD A. COLLIER

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From: Jessica Gillis <jgillis@irac.pe.ca>
Sent: Thursday, November 2, 2023 12:05 PM
To: Richard Collier <racollier@gov.pe.ca>; McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Janine MacLean <jmaclean@irac.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Cathy Clow <CLOW@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>
Subject: RE: LA23021 - Currie & Currie v. Minister - Documents for Preliminary Matter - LS25783

Hi, all.

I am writing to advise that the Commission is considering the request of the Appellants in light of the record provided and the preliminary record provided and I will be back in touch shortly with further comments and directions.

Thank you,
Jessica



Jessica M. Gillis (she/her)
General Counsel
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From: Richard Collier <racollier@gov.pe.ca>
Sent: Thursday, November 2, 2023 11:16 AM
To: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Janine MacLean <jmaclean@irac.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Cathy Clow <CLOW@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>
Subject: RE: LA23021 - Currie & Currie v. Minister - Documents for Preliminary Matter - LS25783

Good morning all,

I have sought instructions to provide a response the Appellant's position as outlined by Melanie outlined below. I hope to be in a position to do so in the near future.

Best Regards,

Richard

RICHARD A. COLLIER

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From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>
Sent: Wednesday, November 1, 2023 3:47 PM
To: Richard Collier <racollier@gov.pe.ca>; Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Janine MacLean <jmaclean@irac.pe.ca>; Hooley, David (Charlottetown) <dhooley@coxandpalmer.com>; Cathy Clow <CCLOW@gov.pe.ca>; Caroline Davison <carolinedavison@gov.pe.ca>
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Hi All:

I'm following up on Richard's email below. I am working on this now and just noticing Richard's comments with respect to providing a further record at a later date if the Commission were to decide to hear the appeal after reviewing submissions on jurisdiction.

Respectfully, we are of the view that the full and complete record is relevant and necessary for us to render those submissions, preliminary or not. We cited several cases in our Notice of Appeal, *Ottawa (City) v Boyd Builders Ltd.*, [1965] SCR 408 and *Dikranian v Quebec (Procureur general)*, 2005 SCC 73, and those, in addition to *Dalhousie University v Halifax (City)*, 1974 Carswell NS and *Smith's Field Manor Development Ltd. v Halifax (City)*, 1988 CarswellNS 67, demonstrate the basis for our appeal – the Currie's

vested/accrued rights with respect to their property. The complete file, including, but not limited to, communications between staff and the Currie's, communications amongst staff and departments, application forms, is essential to the processing of this appeal.

As such, we are requesting the full and complete file from the Minister and an extension of two weeks from the date the record is filed to file our submissions on jurisdiction.

Best,

Melanie

Melanie McKenna
she/her
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From: Richard Collier <racollier@gov.pe.ca>

Sent: Friday, October 20, 2023 3:57 PM

To: Jessica Gillis <jgillis@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>

Cc: Janine MacLean <jmaclean@irac.pe.ca>; Hooley, David (Charlottetown)

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Hello Jessica and Philip,

Please see attached the Minister's documents pertaining to the question of the Commission's jurisdiction, or lack thereof, to hear this matter in light of section 28(1) of the *Planning Act*, RSPEI 1988, Cap. P-8.

If it is ultimately determined the Commission has the jurisdiction to hear the within appeal, either via a preliminary decision by the Commission and any resulting appeals, or after a stated case to the PEI Court of Appeal pursuant to section 14 of the *Island Regulatory and Appeals Commission Act*, RSPEI 1988, Cap. I-11 and any resulting appeal, the Minister would provide a further record pertaining thereto.

I trust you all enjoy your weekend.

Best Regards,

Richard

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