

From: [Leigh McIsaac](#)
To: [Jessica Gillis](#)
Cc: [Richard Collier](#); [Caroline Davison](#); [Janine MacLean](#); [Philip Rafuse](#)
Subject: Re: LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities
Date: Friday, February 9, 2024 11:42:29 AM
Attachments: [image001.png](#)

Hello All,
Please see below for the requested responses to the jurisdictional questions.
Regards,
Leigh McIsaac

Question 1 - Can the Minister's decision respecting lack of jurisdiction to approve or deny the application be appealed to the Commission per s. 28 of the Planning Act?

Response:

Yes, the Minister's decision can be appealed to the Commission. One of our grounds for appeal is that the Minister failed to process the application in a timely manner. The Commission's role is to determine whether the bylaws or regulations were correctly applied when the municipal council or the Minister made the decision. Failing to process the application in a timely manner is in effect improper application of the planning laws by lack of application of those bylaws. A timely manner would be within the 265 days between when the application was submitted to the Minister and when the Regional Municipality of West River official plan was signed by the Minister. Within those 265 days there can be no doubt that the Minister did have jurisdiction.

Question 2 - Did the Minister lose jurisdiction to process the Appellants' subdivision application upon Ministerial approval of the Rural Municipality of West River's Official Plan?

Response:

No, the Minister did not lose jurisdiction. Our position is that the Minister did not lose jurisdiction because the subdivision application should be processed by the applicable law that was in force at the time the application was submitted to the Minister. Of note, at the Rural Municipality of West River (RMWR) information sessions related to the land use bylaw in the RMWR official plan it was stated that applications submitted to the Minister before the RMWR official plan was enacted would still be processed by the Minister.

On Wed, Jan 10, 2024 at 11:28 AM Jessica Gillis <jgillis@irac.pe.ca> wrote:

RE: Docket LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities

Good morning, Mr. McIsaac and Mr. Collier.

As you will recall, on November 2, 2023, we provided direction that this appeal would be

held in abeyance while the Commission considered a preliminary question of jurisdiction in appeal matter [LA23021 – Kris Currie and Carl Currie v. Minister of Housing, Land and Communities](#). That matter remains ongoing and no determination has been made on the preliminary questions as of yet.

I am now writing to provide further direction with respect to this appeal.

The record in this matter was provided November 30, 2023. The Commission is now inviting the parties to provide written submissions in response to the following jurisdictional questions:

1. Can the Minister’s decision respecting lack of jurisdiction to approve or deny the application be appealed to the Commission per s. 28 of the *Planning Act*? **and**,
2. Did the Minister lose jurisdiction to process the Appellants’ subdivision application upon Ministerial approval of the Rural Municipality of West River’s Official Plan?

We are asking the parties to provide these submissions based on the following timelines:

- The Appellant is to provide their written submissions by **Friday, February 9, 2024**.
- The Minister is to respond with written submissions by **Friday, February 16, 2024**.
- The Appellant will have an opportunity reply, if necessary, by **Wednesday, February 21, 2024**.

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.

If you have any questions, please feel free to contact us.

Thank you,

Jessica



Jessica M. Gillis (she/her)

General Counsel

D. 902.368.7860

irac.pe.ca/about/contact/

From: Jessica Gillis

Sent: Thursday, November 2, 2023 4:25 PM

To: 'Richard Collier' <racollier@gov.pe.ca>; 'leighmcisaac@gmail.com' <leighmcisaac@gmail.com>

Cc: Caroline Davison <carolinedavison@gov.pe.ca>; Janine MacLean <jmaclean@irac.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>

Subject: RE: LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities

RE: Docket LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities

Parties,

Thank you, Mr. Collier, for your email on this matter and setting out your intention to raise the preliminary issue of jurisdiction.

Upon review of the Notice of Appeal by Commission Staff, the question raised is with respect to the Minister's determination that it lacks jurisdiction to approve or deny the application on the basis that the Rural Municipality of West River is the appropriate authority having jurisdiction effective July 20, 2023. This does raise a question as to

whether the Minister's decision is one that can be properly appealed to the Commission per s. 28 of the *Planning Act*.

The Commission is currently considering this question of jurisdiction in the same or similar circumstance on another open appeal matter, [LA23021 – Kris Currie and Carl Currie v. Minister of Housing, Land and Communities](#).

Given that this appeal may be impacted by the Commission's finding on the preliminary matter in LA23021, the Commission proposes to hold the hearing of this appeal in abeyance while its decision on jurisdiction in LA23021 is pending.

However, in the meantime, the Commission still requires the Minister to provide its record to the Appellants and the Commission. The deadline set for that in our initial letter is Thursday, November 23, 2023. However, please note that we do not require the Minister's written response to the Notice of Appeal at this time.

Commission Staff will update the parties as to the status of LA23021 as it proceeds and we will provide further direction with respect to this matter accordingly.

If you have any questions, please feel free to reach out.

Thank you,

Jessica



Jessica M. Gillis (she/her)

General Counsel

D. 902.368.7860

irac.pe.ca/about/contact/

From: Richard Collier <racollier@gov.pe.ca>
Sent: Tuesday, October 31, 2023 1:13 PM
To: Philip Rafuse <PJRafuse@irac.pe.ca>; Jessica Gillis <jgillis@irac.pe.ca>
Cc: Caroline Davison <carolinedavison@gov.pe.ca>; Janine MacLean <jmaclean@irac.pe.ca>; 'leighmcisaac@gmail.com' <leighmcisaac@gmail.com>
Subject: RE: LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities

Good afternoon all,

Thank you Ms. MacLean. Caroline Davison (copied) and I will be assisting the Minister with this appeal.

My client has instructed us to raise the preliminary issue of whether the Commission has jurisdiction to hear this appeal in light of s. 28 of the *Planning Act* or whether the matter is appropriately dealt with by way of judicial review.

Regardless of the process implemented to address this preliminary issue, the Minister would like to retain the right to make written submissions on this preliminary issue.

Best Regards,

Richard

RICHARD A. COLLIER

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From: Janine MacLean <jmaclean@irac.pe.ca>

Sent: Thursday, October 26, 2023 2:00 PM

To: 'leighmcisaac@gmail.com' <leighmcisaac@gmail.com>; Eugene Lloyd <EMLLOYD@gov.pe.ca>; Dean Lewis <dhlewis@gov.pe.ca>; Shawn MacFarlane <smacfarlane@gov.pe.ca>

Cc: Meaghan Hughes <meaghanshughes@gov.pe.ca>; Richard Collier <racollier@gov.pe.ca>; Philip Rafuse <PJRafuse@irac.pe.ca>; Jessica Gillis <jgillis@irac.pe.ca>

Subject: LA23025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities

Good afternoon,

Please find attached the following documents with respect to planning appeal file LA23-025 – Leigh F. McIsaac et al v. Minister of Housing, Land and Communities:

1. LA23-025 Letter to the Parties; and
2. LA23-025 Notice of Appeal.

If you have questions about this matter, please contact Philip Rafuse, Appeals Administrator, either by phone at 902-892-3501 or by email at PJRafuse@irac.pe.ca.

Kind regards,

Janine MacLean

Executive Assistant

Island Regulatory and Appeals Commission

134 Kent Street, Suite 501

Charlottetown, PE C1A 7L1

Tel. 902-368-7843

<https://irac.pe.ca>

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Leigh McIsaac
leighmcisaac@gmail.com